

BOOK REVIEWS

Family Redeemed: Essays on Family Relationships

by RABBI JOSEPH B. SOLOVEITCHIK

edited by David Shatz and Joel B. Wolowelsky

(Toras Harav Foundation, 2000. 207 pages)

Reviewed by
Walter S. Wurzbarger

Many years ago, a distinguished scholar challenged *Maran HaRav* Rabbi Joseph B. Soloveitchik, *zikhrono livrakha*, to publish his seminal philosophical ideas. The Rav—so the scholar contended—had an obligation to provide his disciples with the kind of material which they could analyze and develop into a comprehensive Orthodox Jewish ideology, just as Kaufmann Kohler and Solomon Schechter had done for Reform and Conservative Judaism respectively. The Rav's reply, "My *shiurim* are in writing and my lectures are on tapes" elicited the sardonic response: "Rabbi Soloveitchik, are you creating your own *geniza*?" (a reference to the collection of ancient manuscripts which were discovered after many centuries in the attic of a Cairo synagogue).

Fortunately, the publication of this volume has allayed fears that the treasures contained in the Rav's writings and lectures would forever be buried in inaccessible storage or completely lost to posterity. Skillfully organizing material contained in his lecture notes and tapes, the editors have made available to the public many of the Rav's invaluable insights into the nature of the human self and its interrelationships with other selves of the family.

The Rav draws on his vast erudition in philosophy, theological literature, the natural and social sciences, and his sensitivity to the nuances of the biblical texts to develop a "scriptural philosophy of man"—the very antithesis of Feuerbach's thesis that "all theology is anthropology." Whereas the latter claimed that all our conceptions about God merely reflect the projection of our own human values upon God, Rav Soloveitchik maintains that human nature cannot be properly understood without understanding the implications of the Biblical doctrine that "God created man in His image." The Rav views the Bible not as a

textbook of cosmology, metaphysics or axiology, but as a source of norms and insights guiding us towards the realization of the image of God within us.

The Rav emphasizes that the numerous properties that humans qua biological creatures share with other organic beings and which render them integral parts of the natural world order do not exhaust the full meaning of their ontological status. Humans are not merely subject to the operation of the causal law, but are also confronted by divine norms, which require them to exercise their freedom by liberating themselves from complete domination by instinctual drives. The very awareness of the existence of a divine norm addressed to them radically transforms their identity and self-understanding. They cease to be creatures merely representing the human species; they become individual, spiritual personalities, with the capacity to enter into a special, unique relationship with God. But the Rav emphasizes that while the Torah seeks to emancipate human beings from bondage to natural drives and appetites, it does not seek their repression but their sanctification and redemption.

Natural man is redeemed when he succeeds in controlling his natural human appetites and gratifies them only to the extent sanctioned by the Torah. Holiness is attained when man rises above his natural urges and satisfies his desires only within the constraints of a divine norm. As the Rav so often stressed, the section entitled "*Laws of Holiness*" of Maimonides' *Code* refers not to ritual objects, prayer or Temple worship, but to the laws regulating our most basic animal drives such as those for food and sex.

When the sex drive is sanctified and redeemed through self-discipline, it serves as the "carnal medium [enabling] the unique, lonely individual to flee his solitude and share his existence with others. God somehow employs the flesh as the instrument of His will in order to enable a metaphysical craving to become a reality." (p. 94)

In a similar vein, Rav Soloveitchik views the natural bonds of affection between parents and children as the point of departure for the cultivation of appropriate relationships to God—the ultimate Source and Ground of our very being. "In loving father and mother a person is really in love with God." (p. 168)

As opposed to contemporary trends, the Rav insists that the differences between the genders are not merely of biological nature but have ontological significance. As the editors point out in their splendid introduction, "typological man and woman are different *personae* with singular qualities and distinct missions." (p. xxii)

Although both male and female bear the image of God, they do so in distinctive ways. God can be encountered in the father image as the Sovereign of the universe and authoritative Master Teacher who provides instruction but remains distant from us as well as in the mother image as the *Shekhina*, who shares our pains and joys and is close to us, however far we may stray and defile ourselves. Both approaches are indispensable ingredients of the religious experience.

Congratulations to the editors for their remarkable feat in rescuing from oblivion many of the Rav's brilliant insights! That it will be followed by the publication of many more of the Rav's extensive writings is the fervent hope of his numerous devotees.

Case Studies in Jewish Business Ethics

by AARON LEVINE

(KTAV/Yeshiva University Press, 1999. 419 pages)

Reviewed by
Yehoshua Liebermann

During the last two or three decades there has been much public attention given to moral behavior in the workplace, and in particular, interest in arriving at principles of what constitutes appropriate and inappropriate activity. As a result, there has emerged a new area of study widely known as business ethics. Numerous texts, case study collections, scholarly studies, scientific articles and both academic and professional periodicals have been published dealing with a plethora of ethical issues that are relevant to conduct in a business environment. In many universities mandatory courses of business ethics have been developed and incorporated into regular as well as executive MBA programs. The emphasis on business ethics has become so dominant that some have wondered only half-jokingly whether offering a program of business studies without a business ethics course would be considered, well, unethical.

Given this trend, it was only to be expected that a person who is both a professional economist and versed in halakha would make a contribution to the field from a Jewish perspective. Fortunately, contemporary readers are privileged to enjoy the vigorous response of Aaron Levine to this challenge. In various writings, Levine has undertaken the difficult task of amalgamating a variety of different ethical issues from

diverse areas of Jewish law and integrating them into a systematic view of business behavior as envisioned by halakha. Titles such as *Free Enterprise and Jewish Law: Aspects of Jewish Business Ethics* (1980), *Business Ethics in Jewish Law* (1987), and *Jewish Business Ethics: The Firm and Its Stakeholders* (1999) attest to Levine's considerable talents as both a prolific academic writer and an authoritative expert in halakha.

His latest offering is no exception. It fits nicely with the line of reasoning Levine has developed in his previous works, including those treating more broadly the relationship between economics and Jewish law. Moreover, this specific volume, being a compilation of case studies, also represents something refreshing and new. This style will enable people to relate the theories discussed to practical issues they might confront. As many as 27 cases are presented, covering a variety of business areas, industries and behavior patterns, all aiming at revealing the potential contribution of Jewish law to enhancing ethical behavior in the marketplace. (Absent from the book is a discussion of the new internet "economics" and the questions it raises.)

Case Studies in Jewish Business Law is unlike any other case study volume of general business ethics. A typical "case" in most other studies is extremely detailed. Authors generally attempt to document as many relevant details as possible and present characters in a vivid manner that captures closely their conduct (and even their thought!) in a given business situation. Quite often the case study designates a specific executive role to the reader, who is provided with a sufficient amount of information to solve the problem underlying the case. Commonly, cases are open-ended, challenging the reader to cope with an unresolved problem.

Levine takes a totally different route. Most of his cases are presented in the form of highlights, the story occupying around three pages from beginning to end. Furthermore, Levine does not leave the reader an open-ended puzzle. Rather, he tries to provide him with comprehensive halakhic analyses of the problem formulated. The number of halakhic references in each case study is astonishing. An example in point is the case study entitled *Sheldon Hass' Brand of Limited Paternalism* (p. 114). In this case an aggressive encyclopedia salesman is colorfully depicted as using shrewd tactics to close an ethically dubious deal. Carefully analyzing Hass' conduct from a halakhic angle, Levine lists the following ethical issues: disclosure obligations, disclosure of nonmaterial defects, seller's reasonable expectations, eliciting customers' particular needs, letting the customer do himself in, misleading information (*lifne iver*), financial ruination and the duty of salesperson, pricing issues (*ona'a*), opportunity

cost, superior product, separated marketplace, discount pricing, limited paternalism, and, most surprising, the duty to help an endangered fellow (*lo ta'amod al dam re'ekha*), which Levine extends from life-threatening hazards to include financial risks as well.

The abbreviated style of presentation of each case's facts and circumstances is fully compensated by Levine's learned and extended discussions of each of the above-mentioned issues. Combining talmudic discussions with citations to codes, along with commentaries, responsa and novellae, Levine develops insightful halakhic conclusions blended with a deep, up-to-date understanding of economics. The Hass case study is representative of the other cases, which are classified into six subject areas: moral education, advertising and marketing, salesmanship, pricing policies, labor relations, and consumer and social ethics in the marketplace.

In lieu of Levine's comprehensive halakhic approach, two comments are in order. First, the detailed discussion of the concept of *ona'a* in the Hass case (as well as in other cases, e.g., *Price Matching at the Electronics Emporium*, p. 191) ignores the position taken by *Arukh ha-Shulhan* (R. Yehiel Mikhel Halevi Epstein, 1835-1905). In his discussion of *ona'a* (*Hoshen Mishpat* 227:7), he points out that in uncontrolled markets the notion of false overcharge (or undercharge) is irrelevant, because no single equilibrium price prevails in such markets. In terms of modern microeconomic theory, it can be said that R. Epstein refers to a monopolistic competition regime that does not converge into a pure equilibrium market-clearing price. This attitude seems to be much more practical than the belief that in modern markets there is a single market-clearing price.

Second, and more important, is the blurred distinction between ethics and law. While the title of the book relates to business *ethics*, the main thrust of discussion concentrates on Jewish *law*, and many cases are dealt with from an almost exclusively legal perspective. Does the letter of the law always exhaust one's ethical responsibility? Levine himself seems to hint that it does not when he writes in his introduction (p. *xvi*) that ". . . man's duty is not summed up as an obligation to comply with the law. Instead, man must apply the law to contexts not explicitly covered by legislation." Whether or not one accepts this formulation, in my view it fades rapidly as Levine rolls out the different cases with a strong halakhic emphasis.

Notwithstanding these small caveats, Levine's excellent new book is highly recommended to any business-oriented person interested in what Judaism has to say about business from an actual market perspective.

Silence is Deadly: Judaism Confronts Wife-Beating

by NAOMI GRAETZ

(Jason Aronson, 1998. 244 pages)

Reviewed by
Joel B. Wolowelsky

I picked up Naomi Graetz's book with great expectations. I had recently read and reviewed Abraham J. Twerski's *The Shame Borne in Silence: Spouse Abuse in the Jewish Community*,¹ which focuses on Orthodox Jewry. Twerski's book had great impact in the Orthodox social system, bringing the problem of abuse into the open, inducing rabbinical leaders to speak out on the subject and establish education programs in the yeshiva system.² Graetz writes from a non-Orthodox, feminist perspective, and I looked forward to her helping galvanize the broader Jewish community to respond similarly to this social pathology and mental health problem.

The tension between Orthodox and feminist perspectives can be creative and productive. Orthodoxy, to be sure, is usually the better for such intellectual challenges, as uncomfortable problems must be confronted and unproductive solutions jettisoned. Indeed, much has improved in the halakhic community as a result of having to respond to productive challenges. On the other hand, as I pointed out previously in these pages,³ when Orthodoxy cannot understand the fundamental challenge it faces and reacts instead with ideological self-righteousness, the result is at best muddled and unproductive, and at worst damaging to the fabric of the Orthodox community itself.

Twerski is an Orthodox rabbi and psychiatrist who is founder and medical director of a drug and alcohol rehabilitation center. He has taken the lead in raising consciousness regarding abuse issues in the Orthodox community, waking it up to the fact that no segment of society is immune from these social plagues. Some segments of the Orthodox population are isolated from the mass media, and many have not fully benefited from the consciousness raising on these matters available to the general public. Twerski therefore took great pains in his book to describe spouse abuse for the disease that it is, impress upon the victim the fact that she is not blameworthy or culpable, encourage her to seek help, and, at the same time, effectively berate the Orthodox leadership for not providing shelters and support services.

Graetz too has uncovered a pathology, but for her it is the halakhic system which is unhealthy. She too has a program for confronting the issue, but it is a program for amending halakhic divorce procedures. In substituting an ideological program for a practical one, she represents the other side of the ineffectual coin, forfeiting the opportunity to make a significant contribution to addressing and solving a real and painful problem.

Graetz's ideological perspective is perhaps best exemplified by her comment (p. 74) regarding the fact that there is almost no discussion of the battered wife in early rabbinical sources. Given the Talmud's well-known willingness to discuss just about any subject under the sun, one might conclude that wife-beating was not very widespread at that time. Indeed, says Graetz, some "apologists" make that point. But for her, a "better" alternative explanation is that the phenomenon existed, and the rabbis knew about it but chose to downplay it through a form of censorship. It is this type of preinclination to see wife-beating as an integral part of the rabbinic perspective that informs her chapter on the Bible laying "the groundwork for domestic violence in [a] patriarchal society" (p. 15) and the rest of her book.

Graetz surveys those halakhic authorities who are willing to accept some form of "lawful" wife-beating, that is, beatings done for the purpose of chastising wives who do not perform the duties required of them by Jewish law. Could she be suggesting that these opinions are somehow responsible for the spousal abuse that takes place within the Orthodox community? The general tone of her study implies it, and the introduction by Elliot Dorff, vice-chair of the Conservative Movement's Committee of Jewish Law and Standards, comes close to saying so explicitly. "Family violence," writes Rabbi Dorff, "occurs among the Orthodox at least as much as it does among Conservative, Reconstructionist and Reform Jews." (p. xviii) No statistical studies are quoted to justify the conclusion that violence in the Orthodox community is *at least*—rather than, say, *at most*—as much as that in other communities.

Of course, few wife abusers in the Orthodox community, like their counterparts in the more general Jewish—or non-Jewish—community, have ever heard of any of these halakhic opinions. They abuse their wives because they suffers from mental illness, as Twerski stresses. Suggesting that rabbinic opinions are the root cause of this social pathology does nothing to encourage the non-Orthodox community, which is far removed from such esoteric halakhic discussions, to launch a campaign against tolerating actions which violate basic halakhic and

secular ethics. And, of course, it also discourages the Orthodox community, which is far from ready to disown its *posekim* (halakhic authorities) as morally corrupt, from addressing the issue.

But the practical ineffectiveness of quoting these rulings is not the main problem. It is rather the confusion of different issues melted together in an ideological cauldron. To understand this, let us briefly note two related but not-exactly parallel phenomenon: torturing prisoners and physically disciplining children.

One can certainly make a good case for not allowing the abuse of any prisoner, but surely we understand the difference between a dictatorship which puts political opponents on the rack to find out who is leading the opposition on the one hand, and a democracy applying severe physical pressure under judicial review to find out in which bus locker a bomb has been planted, on the other. Not all wrongs need carry the same label of human rights criminality.

Similarly, while I myself cannot understand how a parent could strike his or her child for any reason, I think we all understand that not all those who do not spare the rod are necessarily child abusers. Indeed, one can have very a strong principled objection to corporal punishment and still understand the difference between a parent who slaps his or her children and one who seriously abuses them. And a judge who refuses to put a child who is regularly slapped into foster care does not deserve to be charged with judicial tolerance of child abuse.

These examples are far from parallel to the issue of wife beating, as we quite properly cannot imagine any justification for striking one's spouse. But what of a society in which physical punishment is regularly handed out to both men *and* women who do not live up to their religious and contractual responsibilities? The issue then is not the striking but who is doing the striking, and it is important to keep that distinction in mind. Of course, we recoil at the notion that a man could be lashed only by a court while a woman could be physically disciplined by her husband. Most *posekim* did too, and certainly all contemporary authorities do.

Yet in a society in which women did not appear in court or the more general public arena, having the punishment administered at home can make a kind of sense—not that I would support it for a moment. And as strange or repulsive such a society might seem, we should not lose sight of the fact that the very sources Graetz brings are evidence of strict judicial review of such punishments. Any battery that was against the norms of physical punishment for men and women in

that society was treated like any other criminal beating, even though it was committed by a husband against his wife.

For Graetz, a contemporary *posek* like R. Ovadia Yosef is among those who “evade responsibility” because he holds that one may not beat a husband who has abused his wife in order to force him to give a *get* (p. 181). Now, I think it would certainly strike most of us as odd that one would be upset at the suggestion that courts not beat people in order to enforce their decisions. And that should alert us to the problem at hand. One must read sources with a sense of historical perspective. It is indeed embarrassing to find halakhists who thought, in the context of their times, that there might be an occasion when a man might legitimately strike his wife. We wonder what they could have been thinking, just as, I would imagine, we wonder how contemporary mothers or fathers could strike their children for any reason. But this is far from endorsing or tolerating spousal abuse. Indeed, Graetz counts Rabbi Meir of Rotenberg among those who will not tolerate any violence against wives, yet is not concerned that he suggests lashing the husband or amputating his arm (p. 26). And among her “feminist halakhic solutions” for cases of a man who will not issue a *get* to his wife is organizing a vigilante squad to beat the husband until he agrees to divorce his wife (p. 191). Would it be fair to charge her with tolerating torture and human rights violations? I think not.

I would not want to suggest that all rabbinic leaders from *any* of the denominations of contemporary American Judaism are blameless in allowing women to suffer from spousal abuse. They become unwilling co-conspirators in this phenomenon for a variety of reasons, not the least of which is that many simply cannot imagine that normal-looking congregants in their synagogues are pathological abusers, and most of those who size up the situation correctly simply do not know what to do. (Unfortunately, there are also some rabbis—Orthodox and non-Orthodox—who are timorous and lack the proper scruples to face up to powerful members of their shuls.) It is these deficiencies, rather than a compilation of sources, that must be confronted if abused spouses are really to be helped.

Graetz does discuss a genuine problem in the Orthodox community, but here too she does so in a way that obscures the real issues. There has been much discussion within the contemporary Orthodox community on expanding the role of women in private and public religious life. People take different opinions on specific suggestions, but they cannot escape one constraining truth: halakhic Judaism is non-egalitarian. It is

a frustrating and, to many, a painful fact, but it is a fundamental and basic component of the structure of halakha.

In contemporary Jewish society, the most distressing consequence of this component of the halakhic system is in the area of divorce, as only the husband may formally issue a *get* (a bill of divorce). If he refuses to do so, his wife remains an *aguna*, a woman “chained” to her husband, unable to remarry and get on with her life. This is a cruel reality, disturbing no less to those who are constrained by halakhic legalisms as it is to those who are free of them.

In general, if the husband is forced to give a *get*, say by threatening him with a beating, the divorce is no more valid than if he had signed away his home to someone under such circumstances. “In general,” that is, because there are a limited number of situations where a Jewish court is actually empowered to force the husband to issue the *get*. However, if they use power when it is not allowed under the rules of the system, the divorce is invalid.

The wife-beating “study” is, then, but a bit of unproductive sensationalism designed to set the stage for Graetz’s discussion of divorce. Here, too, her ideological agenda has deflected her from making a positive contribution to the discussion. The divorce issue is a very real problem, one that weighs heavy on most members of the Orthodox community. There are indeed hateful men who do withhold a *get* from their wives, and the rabbinic courts—especially those in America—do not have many tools at hand to force them to do so. This frustrating situation has led to many heated discussions in the Orthodox community in America and the more general community in Israel, where it is the rabbinic courts that must supervise the divorce process. But a positive contribution to solving the problem for the halakhically-committed community must assume the binding nature of halakha and work from there. Any other proposal is already available to those who see halakha as having a voice but not a veto.

Graetz’s proposal for solving the *aguna* problem is a *takkana* (amendment) to halakha that will empower the court to issue a divorce against the husband’s will. This *takkana* is supported in an appendix by Graetz’s husband, Rabbi Michael Graetz, who is a member of the *Va’ad Halakha* of the Conservative Rabbinical Assembly of Israel. Rabbi Graetz had already proposed a *takkana* allowing women to act as witnesses in opposition to existing halakhic standards, provided 200 rabbis agree.⁴ Of course, the Conservative Movement is free to accept any ruling that it wishes, but it is hardly realistic to think that those in

the Orthodox community who feel bound by normative halakha would be willing to jettison centuries of normative halakhic practice based on a vote of 200 rabbis of *any* association, be the issue witnesses, divorce, *kashrut*, Shabbat or any troubling restriction.

A pluralistic discussion demands respecting the theoretical framework of the parties involved. The Reform Movement does not require a *get*, and the Conservative Movement has no need for this *takkana*, as it accepts *hafka'at kiddushin*, the right of a *bet din* to retroactively annul a marriage in the case of a recalcitrant husband. (This is a valid theoretical construct in halakha, one that almost all Orthodox authorities have viewed—for reasons that demand their own discussion—as inoperative today.) Graetz's proposal is therefore clearly directed toward the Orthodox community, but her proposal has no real relevance there.

It is worth noting that there is a halakhic construct whose application in the case of wife-beaters was regretfully not explored by either Graetz or Twerski. *Hafka'at kiddushin* annuls a *valid* marriage. But not every marriage that appears to be valid is in fact so. Sometimes it is possible to nullify a marriage by finding that the original legal proceedings were in error.

A marriage is a legal contract that assumes trustworthiness between the parties. For example, a person has the right to say that he or she would not marry a diabetic. If one relies on the false representation that one's putative partner did not have diabetes and then discovers the deception, the partner who was misled can claim deceit and walk away without the necessity of a *get*. Of course, this would not be applicable if one finds out that his or her spouse is not Mr. or Ms. Perfect or if one develops diabetes into the marriage. An underlying assumption of any marriage is that one's partner has some flaws that will eventually become evident and that sickness is an ever-present threat. Specific concerns generally have to be stipulated in advance, and the representation must be false at the time of the marriage.

While something like freedom from diabetes as a prenuptial condition would have to be spelled out before the wedding, there are certain conditions that may legitimately be assumed, even absent a formal declaration. For example, Rabbi Moshe Feinstein held that a reasonable woman would not want to marry a practicing homosexual, and even if nothing explicit had been mentioned in advance, if the husband were indeed a practicing homosexual at the time of the marriage, the marriage is void.⁵ But in such a case, the woman must walk out as soon as she finds out the facts. Otherwise we may assume that she is reconciled

to the fact of her husband's condition, and when she changes her mind the marriage must be dissolved with a *get*.

What then of the wife-beater? Does he have a mental condition that could have been diagnosed at the time of the marriage? Is there a dynamic here that prevents his wife from walking out as soon as she realizes he is an abuser? Good social science research here might provide halakhists with the opportunity to dissolve these marriages in accordance with regular halakhic practice.

Until then, the most effective solution to these cases is a determined campaign to make pariahs of every wife-beater and every person who withholds a *get* from his wife. In the end, it is not the halakha that is at fault here, but ourselves. It is, after all, within our power to institute proper educational programs in our schools, deal with the issues publicly in our synagogues and insist that marriages not be celebrated on our shul premises without a halakhic pre-nuptial agreement in effect. Our community certainly has the financial resources to create and staff a network of shelters. With proper determination, we can change our community for the better. But our focus must be on solving the practical problem, not in making ideological points.

NOTES

1. Pittsburgh, PA: Mirkov Publications, 1996. I reviewed the book in *Tradition* 32:1 (Fall 1997), pp. 87-91.
2. See, for example, the description of Project SARAH (Stop Abusive Relationships At Home) described in the Communications column of *Tradition* 32:2 (Winter 1998), pp. 173f.
3. Joel B. Wolowelsky, "Modern Orthodoxy and Women's Changing Self-Perception," *Tradition* 22:1 (Spring 1986), pp. 65-81, and subsequently in my *Women, Jewish Law and Modernity: New Opportunities in a Post-Feminist Age* (Hoboken, NJ: KTAV, 1997).
4. *Responsa of the Va'ad Halakha of the Rabbinical Assembly of Israel*, vol. 5, pp. 23f.
5. R. Moshe Feinstein, *Iggerot Moshe, Even Ha-ezer*, part 4, responsum 113, p. 175f. On this issue, see Michael Broyde's article "Error in the Creation of Jewish Marriages: Under what Circumstances Can Error in the Creation of a Marriage Void the Marriage without Requiring a Get according to Halacha" on the Jewish Law web site: www.jlaw.com.

REVIEWERS IN THIS ISSUE:

WALTER S. WURZBURGER, a former editor of *Tradition* and Rabbi Emeritus of Congregation Shaaray Tefila in Lawrence, NY, teaches philosophy at Yeshuva University. His latest book is *God is Proof Enough*.

YEHOSHUA LIEBERMANN is a student at the Graduate School of Business Administration at Bar-Ilan University.

JOEL B. WOLOWELSKY is Chairman of Advanced Placement Studies at the Yeshivah of Flatbush and Associate Editor of the *MeOtsar HoRav Series: Selected Writings of Rabbi Joseph B. Soloveitchik*.