

# Communications

*Tradition welcomes and encourages letters to the editor. Letters, which should be brief and to the point, should not ordinarily exceed 1000 words. They should be e-mailed to tradition-letters@rabbis.org. Letters may be edited.*

## THE PURSUIT OF SCHOLARSHIP AND ECONOMIC SELF-SUFFICIENCY

TO THE EDITOR:

It is always a pleasure to read an article that shows burning relevance in theoretical ideas. Such is Aryeh Leibowitz's article "The Pursuit of Scholarship and Economic Self Sufficiency: Revisiting Maimonides' Commentary to *Pirkei Avot*" (*Tradition* 40:3, Fall 2007). Using Geniza documents, R. Leibowitz shows that Maimonides' stance on not supporting Torah learning from community funds was not a theoretical opinion, but rather a castigation of then-current practices which resulted in poor people receiving only about 10% of communal allocations to charity, with the other 90% going to the support of rabbinical scholars.

However, I believe R. Leibowitz's enthusiasm led to unnecessary exaggeration. As I will try to show below, Rambam believed in two stages of prohibition: a) It is prohibited, under all circumstances, (including privately or through family members) for a rabbinical scholar to be supported by financial funding; b) when the rabbinic scholar is supported by communal charity funds, there is a desecration of God's name. Such a statement is fully consistent with both the tone and sources of R. Leibowitz's article.

R. Leibowitz, however, posits that the *only* prohibition on rabbinic scholars is to be supported by communal charity funds. I contend that in developing this point R. Leibowitz avoids proper methodology which requires giving primary attention to original legal codes and secondary attention to exhortative commentaries, responsa, and anecdotal stories. Let us examine the article in more detail.

R. Leibowitz shows his erudition in sources: He cites A) the commentary on *Avot*, B) the true, but anecdotal, story of partnership between Rambam and his brother, C) the lofty description (*Shemittah ve-Yovel*, 13-12:13) of the God-devoted life, D) the permissibility of paying teachers to learn (*Talmud Torah*, 1-7:11) and E) the very clear and strong prohibitive language of "benefitting" from Torah study (*Talmud Torah*, 3:9-11). Other sources are also cited, but we will simply contend with the above.

R. Leibowitz further shows his scholarship by correctly identifying *Shemitah ve-Yovel* as a description of what a scholar should *forgo*, not what he has *a right to*, and also as an allowance for increased *Divine assistance*, not *community assistance*. Similarly, R. Leibowitz correctly identifies the issues in *Talmud Torah* (1-7:11) as issues of *payment* for study of the written law. (I would add that this source deals with the issue of whether a person should *pay* for learning, not whether a person should be *paid* for learning.) All this is correct.

I believe, however, that proper methodology would require an examination of the primary legal prohibition found in *Talmud Torah*, 3:9-11, in the body of the article, and not in a footnote. R. Leibowitz only examines Rambam's commentary on *Avot* in the body of the article and correctly notes that the focus in *Avot* is on taking communal charity funds. Furthermore, in discussing *Talmud Torah* (3:9-11) in a footnote, R. Leibowitz "refutes" the interpretation that taking money from family members to learn is prohibited by citing Rambam's economic relationship with his brother. But R. Leibowitz admits that we do not have full details on this relationship. In effect then, an anecdote lacking complete details is used to interpret a primary legal source instead of vice versa. Rambam in *Sheluhim ve-Shutafim* (Chapter 6) clearly defines an investorship as a legitimate way to make money and explains the underlying reason: The person funding the investments is taking "risk"—they do not have a guaranteed return, and consequently the investorship is classified as business rather than charity. There is no reason to assume that Rambam was funded—he may have had an investorship relationship with this brother.

I will conclude this letter by showing a simple way to read *Talmud Torah*, 3:9-11. In 3:9, Rambam speaks about people with the following three attributes: They learn, they have no livelihood, and they take communal charity funds. Such a person is castigated with several admonitions: They desecrate God's name, they ridicule the Torah, they extinguish the light of religion, they bring evil upon themselves, and they uproot themselves from the next world. The reason given for these harsh warnings is that "there is a prohibition of benefit from Talmud Torah in this world." Continuing in 3:10, however, Rambam notes that a person who simply "benefits from the Torah" has the punishment of "uprooting himself from the world."

The above reading clearly distinguishes between the more severe category of benefitting from communal charity funds and the less severe category of benefitting from the Torah (possibly by receiving private

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funding). The former desecrates God's name, while the latter is simply a prohibition.

Finally, in 3:11, Rambam points out that the contrastive behavior of learning and working is not merely abstention from prohibition but a high and lofty goal.

In conclusion, I advocate reading R. Leibowitz's article as it has extreme relevance even today. However, I believe the sources he cites support a two-layer prohibition on funding of scholars: Ordinary funding (from private sources) is prohibited and unworldly, while charity funding is a desecration of God's name.

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### ARYEH LEIBOWITZ RESPONDS:

I was honored by Prof. Hendel's compliments and I am thankful for his attention to my article. One of my goals in writing this article was to demonstrate that two of the sources typically quoted in this timely debate should be reconsidered. Those who quote the passage in the end of *Hilkhhot Shemitah ve-Yovel* in support of the kollel enterprise must reconsider if this source is truly granting entitlements, or as I argue, requiring concessions. Similarly, those who quote Maimonides' sharp language in *Perush ha-Mishnayot* in arguing against *kollelim* should reconsider Maimonides' audience and the social realities of medieval Egypt.

As a general response to Prof. Hendel's letter I will stress that nowhere in my article do I attempt to present Maimonides' full halakhic posture on the issue of supported full time Torah study, and it is for this reason that I did not directly analyze the legal text in *Hilkhhot Talmud Torah*. Moreover, I don't recall ever stating that the "only prohibition on rabbinic scholars is to be supported by communal charity funds." As the sub-title clearly indicates my intention in the article was to account for Maimonides long winded and strong worded remarks in his *Perush ha-Mishnayot*. My presentation was directed at *that source specifically*, arguing that Maimonides' ire in that instance was directed specifically at communal support of Rabbinic scholars. I never excluded the possibility that Maimonides was also opposed to private arrangements, as I note explicitly in footnote 3. Even if Prof. Hendel is correct,

that Maimonides' also prohibited private funding arrangements, my thesis would remain unchanged—that Maimonides' focus in the discussed excerpt from *Perush ha-Mishnayot* was focused on communally enforced funding arrangements.

Additionally, I was surprised by Prof. Hendel's charge that I "used an anecdote lacking complete details . . . to interpret a primary legal source," as I never made any claims regarding the interpretation of *Hilkhot Talmud Torah* based on this anecdote. I only referenced this anecdote, perhaps using language that was formulated too strongly, to bolster my suggestion regarding Maimonides' audience in *Perush ha-Mishnayot*. However, my conclusion regarding *Perush ha-Mishnayot*, with which Prof. Hendel agrees, emerged from textual analysis - as I indicated clearly - and was not based on this anecdote. In hindsight, I should indeed have worded that paragraph differently, making my intentions more clear.

Having addressed Prof. Hendel's criticism, I would like to move on to his suggested reading of the third chapter of *Hilkhot Talmud Torah*. Although not the focus of my article, I think the question of whether Maimonides also prohibited private funding arrangements for Torah study is a halakhic discussion that warrants scholarly attention. As I noted in footnote 3 of my article, Maimonides' may not have viewed private funding arrangements as ideal, but I'm not as convinced as Prof. Hendel is that Maimonides thought it was prohibited.

This is not the place to engage in a complete treatment of the issue, but I will suffice with a few *ba'arot* that I feel might indicate that Maimonides position is more nuanced and that the halakhic issue is more complex than Prof. Hendel presents it.

First, Maimonides does state explicitly in *Hilkhot Talmud Torah* 3:10 that it is prohibited to reap benefit from Torah study. Actually, in the very next halakha (3:11), he says that it is an elevated level and a characteristic of the early Hasidim to provide for oneself—implying an ideal, not a requirement (Note that in 3:11 Rambam doesn't actually mention Torah study nor does he specifically address "the contrastive behavior of learning and working").

Second, Maimonides writes that it is spiritually healthy to maintain a livelihood while engaging in Torah study. The implication here is that even if one is independently wealthy, it would be spiritually advisable to maintain a profession besides Torah study. However, elsewhere in this chapter (3:9) he implies the opposite, as he writes that for one to truly excel as a Torah scholar he must limit his mundane work to the point of self-preservation. He then adds that even this minimal amount of work

should only be undertaken “if he has nothing to eat.” This addition implies that if a budding Torah scholar is independently wealthy he should devote all of his time to Torah study, and does not need a profession for his spiritual health.

Third, in *Hilkhot Tefilla* (6:8) Maimonides addresses a regular individual’s requirement to interrupt Torah study for prayer and then adds that if one’s profession is Torah study, “and he does no work whatsoever,” then Torah study does not need to be interrupted for prayer. Although there is no indication that this individual is supported by another, Maimonides does speak unapologetically here of a person whose sole occupation is the study of Torah.

I believe, and I am not alone in this suggestion, that these instances might indicate that Maimonides construed of a stratified system for balancing Torah study and a profession, with different parameters for different individuals.

In conclusion, I reiterate that the focus of my article was to account for the sharp tone and identify the audience of Maimonides in the specific instance of his *Perush ha-Mishnayot* to the fourth chapter of *Avot*. Assessing Maimonides’ full ruling as it relates to all financial arrangements, which was not the focus of my article, is not a simple task and is deserving of further analysis and exploration.

## RABBINIC RESPONSES TO COMMUNISM

TO THE EDITOR:

Rabbi Y. Blau’s article “Rabbinic Responses to Communism” (*Tradition* 40:4, Winter 2007) was highly instructive, especially due to his outstanding *bekiut*, so that I feel privileged to be able to suggest a supplementary comment. The article concentrated primarily on the totalitarian aspects which are neither essential nor exclusive to communism. It would be constructive to contrast the essential aspects of communism with those of capitalism, and then turn to the Torah.

The ideal of communism is: “to each one, according to his need; from each one, according to his ability.” Its mechanism is abolishment of the right of the individual to own property.

Capitalism, on the other hand, believes that competition is what makes mankind progress. Hence the mechanism calls for the sanctity of private property.

The Torah adopts the ideal of communism and combines it with the mechanism of capitalism—the right of the individual, in general, to own property. The Torah viewpoint sees private property as strengthening the individual, potentially making him a better servant of his Creator. However, combining property rights with the ideal “to each one, according to his need” is not a simple matter. Indeed, a major aspect of Torah is to educate and ennoble the individual to make this combination workable.

The failure of pure capitalism, as well as the total failure of communism, illustrates the need to accept God’s rule in order for any social system to succeed.

For details of this suggestion, and especially for source material, the reader is referred to Essays 6 & 7 in my *Facing Current Challenges* (Lambda, Brooklyn, 1998).

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## IS THE MILK WE DRINK KOSHER?

TO THE EDITOR:

Rabbi J. David Bleich (*Tradition* 41:1, Spring 2008) analyzes the question of estimating the proportion of milk of *treif* cows included in a pool of the milk of a herd of cows in which the *treif* cows are not identifiable. One of his lines of reasoning involves the use of probability theory, and his halakhic conclusion is based on a probability that he calculated. It is the purpose of this letter to indicate the limitations of this approach.

R. Bleich writes “If milk in a specific dairy is collected from one hundred cows and if, statistically, the minority of cows known to be *treifot* is ten percent, ten of the cows may be presumed to be *treifot* and the milk produced by these cows is likewise nonkosher.” His reason is given in footnote no. 9; using elementary probability theory, he shows that if one hundred cows are selected at random from a population of cows having a ten percent prevalence of *treifot*, then the probability is greater than one-half (about 0.55) that such a sample of cows contains at least ten *treifot*. Thus, since 55% is a so-called majority, we presume that the sample of cows actually contains ten *treifot*. The implication is that the determination of the *kasbrut* of the milk hinges on the computed probability. One might reasonably conclude that if the computed

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probability in this example turned out to be not 55% but 40%—a “minority probability”—then the proportion of non-kosher milk is less than ten percent, and so all the milk is kosher.

The major objection to this approach is that the prevalence of *treifot* in the general cow population is not known, or at least not known with accuracy sufficient for reliable computation of the indicated probability. Indeed, the computation is extremely sensitive to even small variations in the prevalence rate. While R. Bleich’s example assumes a prevalence of 10%, there is no supporting evidence for such an assumption. However, even if one is willing to go along with an approximate value of 10% plus or minus 1%, the computed probabilities are strikingly different. Indeed, if the prevalence is really 9% instead of 10%, then, by the method used by R. Bleich, the probability that the sample contains at least ten *treifot* is 0.41, a “minority probability,” and one could conclude that the milk is kosher. Thus the non-kosher status of the milk based on a supposed prevalence of 10% is changed to a kosher status based on a supposed prevalence of 9%. Thus, in order to use this method based on probability theory, one would have to have an extremely accurate estimate of the prevalence.

The paper states further that, “In days gone by when milk for home consumption was obtained from a single cow or from a handful of cows, the applicability of the principle of *rov* was obvious,..., and hence (there was) no reason to challenge the *kashrut* of the milk produced by the cow.” Here R. Bleich claims that the problem arises only in modern times when milk is collected from large herds of cows and pooled. However, the analysis used in the example of one hundred cows is also applicable to very small herds and exactly the same problem arises in the pooling of the milk. For example, consider a herd of at most ten cows. By the ten percent criterion for *mi’ut ha-matsui*, the milk is kosher if none of the cows is *treif*, and nonkosher if at least one cow is *treif*. In the following table are given the probabilities that herds of sizes 1 through 10 will contain no *treif* cows for several assumed prevalence rates of *treifot*.

*Probabilities that the herd contains no treifot*

Number of cows	1	2	3	4	5	6	7	8	9	10
Prevalence 0.08	.92	.85	.78	.71	.66	.61	.56	.51	.48	.43
Prevalence 0.10	.9	.81	.73	.66	.59	.53	.48	.43	.39	.35
Prevalence 0.12	.88	.77	.68	.60	.53	.46	.41	.36	.32	.28

According to this table, the milk is kosher for herds of sizes at most 8, 6, and 5, for prevalence rates of 0.08, 0.10, and 0.12, respectively. For

example, when the prevalence is 0.08 the probability is 0.51 (a “majority”) that the herd has no *treifot*.

The application of the Binomial distribution requires the assumption that the cows in a given dairy have been selected at random from some universal population of cows with a specific but possibly unknown prevalence of *treifot*. This is not necessarily a realistic assumption because the so-called universal population may consist of several sub-populations whose prevalence rates may vary with location and/or time, due to local variations in the practice of raising cows, as well as progress in veterinary medicine. Even if the assumption of a single universal population is valid, the uncertainty about the true value of the prevalence and the resulting uncertainty about the calculated probabilities raise doubts about whether halakhic decisions should be based on such calculations.

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J. DAVID BLEICH RESPONDS:

As one would anticipate, the points Professor Berman makes with regard to the application of probability theory are entirely correct. Nevertheless, in connection with the question under discussion, they constitute a *non sequitur*. That is so because, unfortunately, Professor Berman has missed the thrust of the halakhic analysis. Since it is not inconceivable that I have been guilty of a lack of clarity, let me reiterate the following points:

1) The discussion begins with a definition of *mi'ut ha-mazu'i*, i.e., “a frequently encountered minority.” The paradigm for, and hence the statistical threshold of, *mi'ut ha-mazu'i* is the incidence of *treifot* during the talmudic period. The most widely cited, and also the most significant lenient opinion, with regard to the threshold level triggering a requirement for examination, is that of *Mishkenot Ya'akov*. On the basis of talmudic evidence, *Mishkenot Ya'akov* endeavors to show that a *mi'ut ha-mazu'i* is defined as ten percent.

However, it has been argued that, although *Mishkenot Ya'akov's* view constitutes a leniency with regard to examination, it nevertheless constitutes a “worst case” scenario insofar as the *kashrut* of milk is concerned. Hence, my discussion focuses upon a “worst case” hypothetical, i.e., that as many as ten percent of dairy animals are *treifot*.

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2) It is also quite true that a “so-called universal population may consist of several subpopulations whose prevalence rates may vary with location and/or time due to local variations in the practice of raising cows as well as progress in veterinary medicine.” *Hazal* were speaking of the “classic” cows that existed in Sura and Pumbedita in the early centuries of the common era. That variable phenomenon, but a phenomenon that was objective in their locale, served to establish *Hazal*’s objective definition of *mi’ut ha-mazu’i*. No one has demonstrated that the incidence of *treifot* raised in the United States is lower. Nor, as was explained in my article, is it possible to do so because of the many accrued doubts and stringencies that have been incorporated in accepted practice. In terms of contemporary practice, the proportion of animals deemed to be *treifot* is far in excess of ten percent. The thrust of my article is an endeavor to demonstrate that no investigation into the actual proportion of *treifot* need be undertaken even were it feasible to do so.

3. The argument under consideration is that, assuming that *mi’ut ha-mazu’i* is defined as ten percent and that each individual animal is nevertheless deemed kosher, the probability that ten out of one hundred cows are *treifot* is .5487. Since that probability is more than fifty percent the problem is obvious: How were *Hazal* able to drink milk?

The observation that there would have been no problem if the incidence of *treifot* were reduced even to nine out of a hundred is off the mark. *Mishkenot Ya’akov* tells us that in the days of *Hazal* it was ten percent and it is that empirical presumption that must be subjected to analysis. The problem is particularly significant since, as noted earlier, we have no way of establishing the actual incidence of *treifot* in our age.

4. The statement “In days gone by when milk for home consumption from a single cow or a handful of cows . . .” was an endeavor to answer the question “How were *Hazal* able to drink milk?” and to explain why the issue has been raised only in light of contemporary reality.

Professor Berman makes an obvious point in demonstrating that probability theory applies to small samples as well as to large. He proceeds to claim that, when milk is collected from a herd, the milk is “non-kosher if at least one cow is *treif*.” That is simply not the case. Defining a set of cows as containing a *mi’ut ha-mazu’i* of *treifot* serves to establish an obligation to examine the lungs, but only when such examination is possible. Since the lungs cannot be examined *in vivos* it may be argued that the milk collected from a herd of animals containing a *mi’ut ha-mazu’i* of *treifot* is entirely permissible unless there is halakhic reason to presume that over fifty percent of the animals in the herd are nonkosher.

5. My assertion is that the above formulated *apologia* that might be offered to justify consumption of milk by *Hazal*—or to rebut the objection to the thesis of *Mishkenot Ya'akov*—fails because the *kashrut* of milk is impugned not only by statistical probability that a quantity of milk greater than fifty percent is present in the total mixture but even by the presence of as little as 1.67 percent of nonkosher milk. Thus, given the assumption that ten percent of all cows are *treifot*, the probability that at least two cows out of a herd of one hundred are *treifot* is .9997. Precisely because, as Professor Berman points out, probability theory applies to small samples as well, either the problem is longstanding in nature or is nonexistent. My entire argument—which Professor Berman apparently does not challenge—is that proper understanding of the nature of *rov* serves to dissipate the problem.

6. Professor Berman concludes: “Even if the assumption of a single universal population is valid, the uncertainty about the true value of the prevalence and the resulting uncertainty about the calculated probabilities raise doubts about whether halakhic decisions should be based on such calculations.”

Professor Berman is right but for the wrong reason. If the Halakhah as formulated by *Hazal* were expressly predicated upon “the assumption of a single universal population” any present-day “uncertainty about the true value of the prevalence” would not result in rejection of the consequences of applying probability theory but would be assessed in terms of the applicable internal canons of the halakhic system. Nevertheless, at least with regard to this question, I fully agree that halakhic decisions are not to be “based upon such calculations.” Indeed, the entire import of my article was to develop the thesis that a proper appreciation of the applicable principles, i.e., of the halakhic categories of *rov*, render such considerations irrelevant.

*The following note was inadvertently omitted from the article by Rabbi Dr. J. David Bleich in the Rabbi Dr. Walter S. Wurzburger Memorial Volume, Tradition 41:2, Summer 2008:*

I am deeply indebted to Rabbi Walter Wurzburger, of blessed memory, for inviting me to write for *Tradition* as early as 1962 and to contribute a regular column beginning in 1970, as well as for his unfailing graciousness as editor and warm friendship over the decades. Of his many writings, I have a particular fondness for a little-known gem—his biography of R. Chaim of Volozhin, in which he presents a lucid explication of the opposing views of the *Nefesh ha-Hayyim* and the *Tanya* regarding the doctrine of *tsimtsum*.