

# 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 sent on disk, together with a double-spaced hard copy, to Rabbi Michael A. Shmidman, Editor, Congregation Keter Torah, 600 Roemer Avenue, Teaneck, NJ 07666. Letters may be edited.*

## STEM CELL RESEARCH

TO THE EDITOR:

As always, Rabbi Bleich's collection of sources in his article "Stem Cell Research" (*Tradition* 36:2, Summer, 2002) is thorough and his analysis well considered. I would, however, like to question two assertions that he makes.

In reviewing the discussion by Rabbi Shelomo Zalman Auerbach of the potential application of the principle that halakha disregards subvisual phenomena, commonly applied to justify our drinking water and breathing air that are full of microscopic organisms, he notes that R. Auerbach dismisses the applicability of this principle in the context of genetic engineering. He cites R. Auerbach as rejecting this application, because "since people engage themselves (*metaplim*) with these particles . . . this must be considered as visible to the eyes and not at all comparable to worms that are invisible." "Put somewhat differently," R. Bleich now writes in his own voice, "it may be argued that halakha disregards subclinical phenomena only when they are freestanding . . . [W]hen such subvisual phenomena serve as causal factors yielding readily perceived effects, cognizance must be taken of such phenomena, he [R. Auerbach] asserts, because they are . . . recognizable in their effects." These are in fact two arguments, and not one. In determining the relevance of the subvisual phenomenon, the first considers the intentions of the actors. The second looks to its future effects. While here they appear to be linked, since the attention paid to them is due to their effect, this need not be the case. We can imagine attention being paid for theorized reasons, for instance the belief that particular genetic signatures increase the wholesomeness of a product, without this being tied to any known effect. Philosophically, these are different assertions which require separate consideration, and, as such, they should not be conflated. In fact, R. Auerbach only makes the first argument. The latter is R. Bleich's

own extrapolation. While it is significant in its own right, it should not be attributed to R. Auerbach.

R. Bleich finds the distinction offered between an embryo gestating *ex utero* in some *in vitro* medium, which could be killed, and one gestating *in vivo*, in the fallopian tubes or after implantation in the womb, which could not, a distinction which several halakhic writers adopt, to be without a clear source. He notes that “a distinction between *in utero* and *ex utero* gestation” would produce the absurd result that a human conceived *in vitro* and brought to term in a laboratory incubator (currently science fiction, but not without the realm of our imaginings) could be killed with impunity, since he had developed fully *ex utero*. That this is absurd suggests that it is not a proper extrapolation of the views of those halakhists, and points to the source of this intuition. Those drawing this distinction would not propose that such a laboratory grown human could be killed, for he is clearly a living human being, and their permission to kill those embryos growing *ex utero* does not arise from the requirement of a mother’s womb to confer status as a human, as R. Bleich appears to assume. Rather, their permission follows from the fact that the embryo is not viable as is, if one did nothing, that is, barring some action to move it into a medium where it might grow. This is similar to the argument R. Bleich himself makes about the possible propriety of deriving stem cells from parthenotes which are currently alive, but have no potential to develop. He will, of course, respond that parthenotes produce embryos that are altogether not viable, whereas embryos *ex utero* could be supplied with the proper environment in which to gestate—but in other areas we permit *shev ve-al ta’aseh* behaviors without demanding that there be nothing that one *could* do. I think, particularly, of the procedure proposed by some for the terminally ill, whereby respirators are intentionally placed on timers so that physicians might face a *shev ve-al ta’aseh* situation when asked to restart the respirator rather than being asked to actively detach it (see *Iggerot Moshe* 2:73.1). The fundamental intuition is that a current and ongoing process of gestation, whether natural or artificial, is necessary to claim life potential. Whether this is ultimately considered to be a cogent argument is another question.

(Rabbi) AVRAM ISRAEL REISNER  
Baltimore, MD

RABBI BLEICH RESPONDS:

Dr. Reisner is quite right. I did indeed present two distinct arguments for distinguishing processes employed in genetic engineering from other subclinical phenomena. My use of the introductory phrase "Put somewhat differently" was designed to indicate that the ensuing formulation was somewhat at variance from what preceded. Reisner's objection is really that, while speaking in my own voice, I ascribe the second argument to Rabbi Auerbach as well. I cannot and did not attempt to demonstrate that Rabbi Auerbach intended the second argument rather than the first. Interpretation of Rabbi Auerbach's argument hinges upon the connotation of the verb "*metapplim*" in this context. It was precisely in order to allow the sophisticated reader to choose between the two formulations that I included the Hebrew in parentheses. To my ear, "*metapplim*," in modern Hebrew usage, has a goal-oriented connotation.

Parenthetically, I am far from convinced that a quest for determination of "particular genetic signatures" or the mapping of a genome as a matter of pure science is not subsumed within the parameters of the second argument. A better example would be random tinkering with genetic material for no purpose, either practical or scientific.

I should also add that Rabbi Auerbach's position is rather novel and, in a certain sense, is counterintuitive. Conventional understanding of the cited principle is the common sense notion that the commandments of the Torah are to be defined in terms of perceivable phenomena within the ken of those addressed. Rabbi Auerbach introduces a new element, *viz.*, a *de minimis* notion defined other than in terms of perception. Hence, the second formulation, I believe, commends itself for two reasons: 1) It narrows the area of innovation. The concept reflected in Occam's razor is also an entirely appropriate form of halakhic methodology. 2) More significantly, a theory focusing upon the effect of a procedure is at least distantly related to the halakhic notion of *ahsheveih*, roughly speaking, the principle that, when applicable, an object lacking intrinsic value becomes endowed with value because of the purpose for which it is used. Rabbi Auerbach's cryptic statement, presented without sources or argumentation, certainly begs for elucidation.

Dr. Reisner's point with regard to a distinction between *in utero* and *ex utero* gestation I find to be confusing. He concedes that a fetus conceived *ex utero* and brought to term in an incubator is a human being for all purposes of Halakhah. If I understand him correctly, he

would also agree that a fetus conceived *ex utero* that has reached the stage of viability is a human fetus. It is at the next step of his argument—description of the status of the same fetus endowed with the capacity for, but prior to having reached the stage of, viability—that I fail to comprehend his reasoning. If “humanhood” does not depend upon conception *in utero*, the status of a potentially viable fetus conceived *ex utero* is identical to the status of a potentially viable fetus conceived *in utero*. Is there an obligation of rescue (as distinct from a prohibition against feticide) with regard to a potentially viable fetus? That issue is the subject of controversy between Ramban and *Ba'al ha-Ma'or* in their respective commentaries on *Perek Yom ha-Kippurim*. If it is conceded that *in utero* conception is not a necessary condition of “humanhood,” I fail to understand why obligations vis-à-vis an *ex utero* fetus should be any different from obligations vis-à-vis an *in utero* fetus. Breaking the fast on *Yom Kippur* in order to assure that a potentially viable fetus becomes viable in actuality is an act of overt intervention for the purpose of achieving viability. Surely, absent any other countervailing considerations, if it is granted that a fetus conceived *ex utero* is endowed with “humanhood” there must be a similar obligation with regard to preservation of its potential viability.

## THE SABBATH OBSERVING GENTILE

TO THE EDITOR:

Rabbi Elchanan Adler (*Tradition* 36:3, Fall 2002) develops the midrashic approach of the Sabbath-observing gentile as an infringement of the special relationship between the Almighty and the Jewish people. He could have bolstered his position by introducing Maimonides' approach (*Guide* 2:31) to the dual themes of *Shabbat*. Maimonides states, “two different causes are given [for this commandment] corresponding to two different effects.” He notes that in the first Decalogue the cause for exalting the *Shabbat* is God's creation of the world in six days and His rest on the seventh day. The verse in the first Decalogue highlights the exalted nature of the day: “therefore the Lord blessed the Sabbath day and hallowed it.” Thus by resting on the *Shabbat*, we attest to the Almighty's creation of the universe. Abravanel, in his commentary to the *Guide*, explains that as all people are beneficiaries of Creation, all could attest to God's creation by resting on the seventh day. In fact, the *Shabbat* could have been

included in the Noahide Laws for all people to observe—if not for a significant historical event highlighted in the second Decalogue.

The second Decalogue introduces a new theme accounting for the confining of the *Shabbat* to the Jewish people. In *Deuteronomy* (5:15) we hear, “Remember that you were a slave in the land of Egypt and the Lord your God freed you from there with a mighty hand and outstretched arm; therefore the Lord your God has commanded you to observe the Sabbath day.” Maimonides explains, “The commandment ordaining us in particular to keep [the Sabbath is] consequent upon the cause that we had been slaves in Egypt, where we did not work according to our free choice and when we wished, and where we had not the power to refrain from working.”

Thus, the two themes of *Shabbat* in the two Decalogues account for unique aspects of the *Shabbat*. The Creation theme of the first Decalogue accounts for the exalted nature of the day. The Exodus theme in the second Decalogue explains the confinement of the Sabbath to the Jewish people who recall God’s favor “by giving us rest from under the burdens of the Egyptians.” While the Sabbath might have been a universal precept included in the Noahide Laws to attest to the existence of God and His creation of the world, God confined it to the Jewish people after they were enslaved in Egypt for 210 years.

With this background, the words describing the *Shabbat* in the liturgy take on a new meaning. The *Shaharit Amida* says, “You did not give it (the *Shabbat*), Hashem our God, to the nations of the land...for to Israel, your people have you given it in love, to the seed of Jacob, whom you have chosen.” We do not find such a formulation in connection with other *mitsvot*. Never do we hear, for example, in connection with *lulav* and *etrog* or *tefilin* a formulation saying “You have not given these *mitsvot* to the nations of the land.” In connection with *Shabbat* such a formulation is, indeed, understandable, for the *Shabbat* has a universal aspect—divine creation of the world and rest on the seventh day. All peoples of the world could have attested to the truth of God’s existence and creation if not for the special gift that He bequeathed exclusively to His people. After freeing them of the oppressive yoke of Egyptian slavery, He, as an expression of divine love and favor, confined the day of rest to the Jewish people. Having been denied rest during their years of slavery, they would now recall God’s beneficence by resting on the *Shabbat*.

Indeed, the gentile who rests on *Shabbat* seeks to undo that which the Almighty did pursuant to the Exodus, i.e., bequeathing the univer-

sal day of rest exclusively to the Jewish people as an act of love. This aspect, introduced by Maimonides and amplified by Abravanel, deserves mention in an essay on the Sabbath-observing gentile.

(Rabbi) MENAHEM MEIER  
Teaneck, NJ

ELCHANAN ADLER RESPONDS:

Rabbi Meier suggests a link between the midrashic approach that views the prohibition of *goy she-shavat* as an infringement on the special relationship between *Hakadosh Barukh Hu* and *Benei Yisrael* and the rationale for *Shabbat* that appears in *Parashat Va-ethanan*, as understood by Maimonides in the *Guide* and expanded upon by Abarbanel. In fact, I allude to this linkage in a footnote (1) by stating “the tension between the universal and particularistic dimensions of *Shabbat* seems to be reflected in the discrepancy between the two accounts of *Shabbat* in the *asseret ha-dibberot*.” I wish to emphasize, however, that associating the midrashic approach to *goy she-shavat* with the Exodus motif employed in the second Decalogue leads us to revisit an issue raised at the outset of the article regarding the precise historical point that the prohibition of *goy she-shavat* became normative. In analyzing the midrashic approach, I observed the following (p. 17): “It is interesting to note what may emerge as a subtle, yet crucial, difference between the two passages cited by the midrash to preclude Noahides from *Shabbat* observance: ‘*Re’u ki Hashem natan lakhem ha-Shabbat*’ and ‘*beni u-ven Benei Yisrael*.’ While the latter verse, which appears in *Parashat Ki Tisa* (post *Mattan Torah*), suggests that the prohibition of *goy she-shavat* originated with *Mattan Torah*, the former verse, from *Parashat Beshalah* (pre-*Mattan Torah*), implies that it began with the *Shabbat* associated with the manna. Thus, the precise historical juncture—whether at Sinai or at Alush—that imposed a formal restriction upon Noahides to engage in *shemirat Shabbat* may hinge on these two derivations.” In the latter section of the essay, I note the position of Rabbenu Yehuda Ben Yakar which draws a contrast between *Shabbat*’s initial designation as “*mattana*” at Alush, during which time a Noahide’s Sabbath observance would have been tolerated (and even recompensed on the scale of *eno metsuveh ve-oseh*) and its subsequent designation as “*nahala*,” attained at *Mattan Torah*, which absolutely precludes such observance (p. 34).

If we adopt Rabbi Meier's proposition that the midrashic approach to *goy she-shavat* should be predicated on the rationale for the *mitsva* of *Shabbat* expressed in the second Decalogue, two additional historical junctures ought to be considered as markers for the onset of the prohibition. The first is Mara—a way station visited by *Benei Yisrael* several days after *keri'at yam suf* where, according to rabbinic tradition, the Jews received a series of commandments including *Shabbat*. (For a lengthy analysis of Nahmanides' view concerning the nature of the *mitsvot* given in Mara, see my article "*be-Inyan ha-Mitsvot She-Nittenu be-Mara*," in the recently published *Or Hamizrach* (Vol. 48: 3-4, pp. 17-41.) If the gentile's exclusion from Sabbath observance stems from the Jews having been denied rest during their years of servitude in Egypt, it follows that the *Shabbat* commandment issued in Mara soon after the Exodus should have immediately generated a concomitant prohibition against a gentile's observance. Such a position becomes even more compelling in light of the scriptural source cited by the Talmud (*Shabbat* 87b) as evidence that the Sabbath commandment originated in Mara: "*ka'asher tsivekha Hashem Elokekha*" (*Deuteronomy* 5:12) ["Observe the Sabbath day to sanctify it] as Hashem has commanded you [previously in Mara]." Inasmuch as this implicit reference to Mara appears in the second Decalogue, it can be inferred that all of the halakhic/*hashkafic* implications that flow from the rationale offered for *Shabbat* in the second Decalogue—i.e. the prohibition of *goy she-shavat*—would have become normative from the historical point identified in that very same section as the basis for the commandment.

Alternatively, linking the midrashic approach of *goy she-shavat* with the Scriptural rationale for *Shabbat* recorded in the second Decalogue might lead one to deduce that the prohibition against a gentile's Sabbath observance did not set in until a historical juncture of post-*Mattan Torah*, namely, the Jews' receiving the second *luhot* on *Yom Kippur*. Such a conclusion would be based on the assumption that the variant readings of the Decalogue in *Exodus* and *Deuteronomy* correspond to the respective texts of the first and second tablets—a view cited by *Ibn Ezra* in his commentary to *Exodus* 34:1 and held by the *Netsiv* in *Ha'amek Davar* to *Deuteronomy* 5:19, based on *Bava Kama* 55a. Hence, the particularistic rationale attached to *Shabbat* in the second Decalogue, through which the Sabbath should be characterized as a manifestation of Divine love, did not effectively come into play until the granting of *luhot sheniyot*—the second tablets. Noteworthy in this regard are the comments of the *Beit ha-Levi* (*derush* 18) that *luhot*

*sheniyot* symbolize the emergence of *Torah she-be-al Peh* and serve as a paradigm of the separation between Jew and non-Jew. Interestingly, the notion of differentiation between the Jewish people and the nations of the world is emphasized by Moses in his dialogue with God just prior to his being instructed to carve a second set of tablets: “And I and your people are made distinct from every people on the face of the earth” (*Exodus* 33:16). (The evolution of the *mitsva* of *Shabbat* from Mara through *Mattan Torah* through Yom Kippur is a fascinating theme worthy of further analysis. I hope, God willing, to address this topic in a future issue of *Or Hamizrach*.)

In sum, while Rambam’s perspective as amplified by Abarbanel could have merited explicit mention in the article, its ability to “bolster” the midrashic approach to *goy she-shavat* is far from clear. The midrashic recourse to verses in *Beshalah* and *Ki Tisa* while omitting reference to the passage in the second Decalogue appears to suggest a kindred yet independent formulation of *goy she-shavat* with its own implications vis-à-vis a timetable for the onset of the prohibition. I thank Rabbi Meier for his thoughtful comments in suggesting an alternative approach to the midrashic construct and giving me pause for reflection and additional elaboration.

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## CORRECTIONS

On page 20 of the article “The Sabbath Observing Gentile,” by Elchanan Adler, in *Tradition* 36:3, Fall 2002, the word “work” in the sentence, “But what of the talmudic formulation which prohibits work on any day of the week, irrespective of motives?” should be replaced with the word “rest.”

Also, on page 58 in note 32 of Esther Shkop’s article “Rivka: The Enigma Behind the Veil,” the phrase following the words “the daughters of Haran,” should read “the third of Terah’s sons.”