

fifteen years ago the *rav* of one of the major *Yekkishe* congregations in England arranged a mixed-seating wedding for his daughter. I am grateful to the *av bet din* of Amsterdam, Rabbi Aryeh Leib Lewis, for this information. The statement by Reisman was part of a lengthy exchange between him and myself, only part of which was printed by the *Jewish Observer*.

29. On seating at weddings and other occasions, see *Bnei Banim*, I, no. 35 and *Otsar Haposkim* (vol. 17), sect. 62:13, pp. 106-7.
30. See *Bnei Banim*, I, nos. 37 (7-11) and 39.
31. The requirement of separate seating is derived in *Sukka* 52a from *Zekharia* 12:12-14, which describes funerary orations where *hirhur* was presumed to be negligible. Another source is the design of the Temple, which distinguished between the *Ezrat Yisrael* and *Ezrat Nashim*. See, at length, in B. Litwin, *Sanctity of the Synagogue*, and *Bnei Banim*, I, nos. 1-3 and 35, and for a different explanation, II, nos. 12-13.

## HABITUATION: AN HALAKHIC VOID WITH RISKY IMPLICATIONS

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Rabbi Yehuda Henkin's article attempts to introduce an halakhic concept that where men are accustomed to seeing women constantly, as in present-day society, many halakhic stringencies designed to curb male *hirhur* (erotic thoughts) do not apply, for where men are habituated to women, *hirhur* concerns are no longer an issue.

To claim that one need not be concerned with erotic thoughts nowadays as much as in previous generations is a surprising thesis. Contemporary experience indicates that with all the mingling of the sexes in our society, the male libido and *yetser hara* are still quite alive and active. For example, today's widespread problems with sexual harassment in the workplace are obviously related to the universal mingling of the sexes. Such harassment is exacerbated rather than reduced by societal norms. And if one considers that modern society—unlike earlier generations—encourages open sexual expression and disdains any man who restrains such impulses, the classic limitations that the Sages

imposed on these impulses take on added importance. If anything, one would think that the restrictions should be embraced with even greater fervor—and even added to—in our times than in previous times.

R. Henkin states that “habituation plays a definite although often overlooked role in the development of halakha.” Apparently, he would apply his theory to explicit prohibitions enacted by the Sages to prevent *hirhur*. Thus, according to him, it is possible to envision a scenario in which some or all of the restrictions in *Shulhan Arukh Even HaEzer 21* against potentially provocative contact with women could be rendered irrelevant by a modern-day “posek.” Utilizing R. Henkin’s theory, such a “posek” could take into consideration—using R. Henkin’s words—“knowledge of the community, psychology and sociology” of his times, and could conclude that men are no longer brought to *hirhur* by certain acts and that they are therefore permitted.

In fairness, R. Henkin does add a disclaimer:

Habituation is an argument for permitting activities which are innocent in and by themselves. . . . It is not an argument for permitting activities that have explicit or implicit sexual content, in which case *hirhur* is inevitable. Mixed swimming . . . is one example. Another is mixed social dancing. . . . The principle of habituation has the potential of being abused and misused by the irresponsible. Applying it to *halakhot* that exist independently of *hirhur*, such as head-covering by married women or the requirement of a *mehitsa* in the synagogue, is abuse and misuse. . . .

However, despite his disclaimer, his theory is fraught with perilous ramifications. Who is this all-knowing “posek” who determines which acts produce or do not produce erotic thoughts? Could not one argue with equal force that activities such as mixed social dancing or, say, kissing someone else’s wife on the cheek as a greeting, should be permitted since they are accepted in society as acts without “explicit or implicit sexual content”?

Could not R. Henkin’s theory be applied to annul the laws of *yihud* (seclusion with a forbidden woman), since their intent is to restrain a possible rush of sexual ardor that might lead to sin? Could not one argue that in our “inured” society there is no need to be concerned with this?

R. Henkin says that it is “abuse and misuse” to apply his theory to the laws of a synagogue *mehitsa*, which “exist independently of *hirhur*.” True, the reason for a *mehitsa* is not *hirhur*, but for our “posek” this

might not make a difference, since the reason is *kalut rosh* (lit. light-headedness or frivolous behavior); that is, the mingling of the sexes during prayer might lead to their conversing with one another, physical contact, or frivolous behavior with one another.<sup>1</sup> What if this “*posek*” decides that in his society there is no fear of this happening? Could he not abrogate the need for a *mehitsa*?

R. Henkin’s application of his theory ignores the well-known principle that Torah laws are made for all times. Even rabbinic enactments were made “*lo palug*”—i.e., independent of particular ages and situations. Illustrating this undisputed principle is the *Radvaz*, who was asked whether the rabbinic restriction against walking behind a woman applies even where the woman is covered from head to toe. His answer was that, even assuming that the prohibition is due to *hirhur*, this is forbidden because “the Sages did not make their words dependent on particular cases (*lo natnu divreihem leshiurin*) and all women and all places are equal.”<sup>2</sup> The same would apply to all rabbinic enactments.

This response, however, will not deal at length with the overall implications of R. Henkin’s theory. Rather, it will concentrate on an examination of the classic rabbinic sources that he cites as support for his ideas, and will attempt to demonstrate that not only do these sources offer no support for his thesis, but that there is in fact no clear source that habituation will render a Torah law or rabbinic enactment inapplicable to changing situations.

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As a source for his habituation theory, R. Henkin cites the *Maharshal* who states that people generally rely on a particular Talmudic passage to permit using the services of, and looking at, women.<sup>3</sup> The passage states that contact with women is permitted where it is done “*hakol leshem shamayim*” (“the intention is for godly [noble] purposes”).<sup>4</sup> This passage refers to contact with totally platonic intentions; it has nothing to do with habituation. According to this text, platonic relations are permitted because they were never forbidden in the first place. The *Maharshal* makes no mention that habituation is a factor in making this contact platonic.<sup>5</sup> This is R. Henkin’s thesis, but there is no source in the *Maharshal* for it.

Furthermore, although the *Maharshal* indeed states in the title of this paragraph that the principle of *hakol leshem shamayim* is the basis of the general lenient practice, he explicitly states at the end of the para-

graph that this leniency should be relied upon only by someone who is a great *basid* (saint) who is certain that no erotic thoughts will enter his mind while dealing with women. Obviously, this leniency can hardly be widely applied nowadays.

R. Henkin also cites as a source the *Arukh Hashulhan* that women's uncovered hair is not an *erva* (a potential source of erotic thoughts) with respect to reading the *Shema*. This, too, is not a tenable support. Uncovered hair of married women is considered an *erva* only because it is usually covered. This is why an unmarried woman's hair, which does not need to be covered, is not an *erva*. Thus, the *Arukh Hashulhan* is merely saying that where married women do not cover their hair (even though this is forbidden), their hair is no longer considered "usually covered" and reverts to the status of an unmarried woman's hair. There is nothing here to suggest that habituation renders previously forbidden behavior permitted. Hair which is usually uncovered (such as an unmarried woman's) was never forbidden in the first place.

A further source which R. Henkin offers is the *Leket Yosher* who states:

It is permitted for one to walk behind the wife of a Torah scholar or his mother, because nowadays we are not so prohibited (*ein annu muzharin kol kakh*) from walking behind a woman.

R. Henkin claims that the reason for this passage is that "nowadays women go everywhere and we are used to walking in back of them and so no *hirhur* results." Thus, the Talmudic proscription against walking behind women does not apply where there is habituation to women.

It is a general principle of halakhic jurisprudence that sources that are in themselves cryptic and are thus subject to various interpretations cannot be used as proof-texts. Before such a source can be cited as a support, one must first demonstrate conclusively that the reading of the cryptic text is correct and that it is the only possible reading. An example of such a cryptic source is this citation of the *Leket Yosher*. R. Henkin explains that the reason for permitting walking behind a woman is habituation. This is based on Rav Eliezer Waldenberg's reading of *Leket Yosher*.<sup>6</sup> However, this interpretation leaves too many ends unresolved. Why does the *Leket Yosher* only permit walking behind "the wife of a Torah scholar or his mother" and no other woman? Also, why the equivocation in the statement, "we are not so prohibited"?

Most importantly, R. Waldenberg himself cites two alternative, and better, interpretations, for the *Leket Yosher* which do not involve habituation. One is an interpretation by R. Shlomo Zalman Auerbach who

interprets the text in a manner unrelated to habituation.<sup>7</sup> The other is based on an opinion that is not accepted in halakha. This makes it impossible to cite the *Leket Yosher* as a source, for perhaps these other interpretations are the correct ones.

In addition to this fact, before citing Rav Waldenberg's reading as a source for the habituation theory, one must consider the following: a) It is offered by a contemporary authority as a possible interpretation of an obscure text and not intended as an halakhic ruling. b) This interpretation is contradicted by the *Radvaz* who, as cited above, maintains that the prohibition of walking behind a woman applies even where there is no *hirhur*. c) The *Leket Yosher*, according to R. Waldenberg and R. Auerbach, permits walking behind a woman only where it is a *mitsva*, as in the case of a scholar's wife or one's mother (the latter being the interpretation of "his mother," see n. 7). Considering all of this, the *Leket Yosher* is hardly a source for R. Henkin's theory.

The final source cited by R. Henkin is the *Levush*, who writes:

The *Sefer Hasidim* states that wherever men and women can see each other, such as at a wedding feast, the blessing *shehasimcha bime'ono* ("in Whose abode there is joy") is not recited because there is no joy before God where there are erotic thoughts. We are not careful about this nowadays; perhaps because nowadays women are frequently among men and there are not so many erotic thoughts because—since they are commonly with us—they are "like white geese" for us.<sup>8</sup>

First of all, it should be pointed out that the *Levush* is an isolated opinion contradicted by numerous classic authorities, many of them his own contemporaries. The *Kenesset Hagedola*,<sup>9</sup> *Bach*,<sup>10</sup> *Maharsha*,<sup>11</sup> *Beit Shemuel*,<sup>12</sup> *Kitsur Shulhan Arukh*<sup>13</sup> and *Hafets Hayyim*,<sup>14</sup> all disagree, and there are passages in the Talmud itself which contradict the way R. Henkin reads the *Levush*.<sup>15</sup> (Although there are those who rely on this *Levush* to recite *she-ha'simcha bime'ono* even though his is a solitary opinion, they may be doing so because they consider themselves to be in a *bedi'avad* situation, in which case a solitary opinion may be relied upon.) In any event, it is an inadequate base for the change in halakhic practice suggested by R. Henkin.

Furthermore, even if the *Levush's* opinion were to be accepted as authoritative, we cannot read into the *Levush* an intention meant to permit prohibitions designed to prevent erotic thoughts because of habituation, as R. Henkin understands him. Torah or rabbinic enactments, as stated above, are binding irrespective of changing conditions. If there is

any doubt about this, the following is what the *Levush* writes in his code of laws:

It is written, "You shall not stray after your hearts, etc." and therefore Torah law requires that one distance himself from women. . . . If one finds himself behind a woman in the street it is forbidden to walk behind her lest he come to *hirhur*. It is forbidden to listen to the voice of a forbidden woman or to see her hair because all of these matter bring to *hirhur*.<sup>16</sup>

If the *Levush* were to subscribe to R. Henkin's habituation theory, then why would he forbid walking behind a woman (which, as above, R. Henkin says does not apply where there is habituation) or the other behaviors that are forbidden because they might result in *hirhur*? According to R. Henkin, the *Levush* should have added a qualifier to his codes which would state that this concern does not apply in his times where there is habituation to women.

Thus, it seems apparent that although the *Levush* states that, in situations where women are frequently found among men, "there are not so many erotic thoughts" ("*ein kan hirhurei avera kol kakh*"), he is only applying this principle to permit the recitation of *sheha'simcha bim'ono*, which may be recited where there is no *hirhur*.<sup>17</sup> But he does not use this principle to permit acts potentially leading to *hirhur* and thus specifically proscribed by the Sages—for, as indicated above, rabbinic enactments were made independently of specific ages and situations. Accordingly, the *Levush* has no relevance to R. Henkin's theory that habituation creates new halakhic rulings.

Finally, it would seem that the opinion of the *Levush* is totally irrelevant to our contemporary life. The *Levush* permits the blessing to be recited because a cursory glance at a woman does not necessarily cause *hirhur*. However, it is highly questionable whether the *Levush* would offer his leniency in times such as ours when interaction between the sexes is much freer and when it is not uncommon for men to assess the physical appearance of women, to flirt with them, and for women to react in kind—besides not always dressing in a manner that maintains halakhic norms of modesty. It is difficult to believe that the *Levush* would permit the blessing to be recited in our days because of our habituation to women.

In the same manner, R. Henkin finds support for his habituation theory in the practice of some pre-war German rabbis to shake hands with women. But this, too, is an issue unrelated to habituation. Those

who proscribe it do so under the rubric of “*lo tikrevu* [to forbidden women]”—which is independent of *hirhur*. Those who permitted it, did so not because of habituation but because they did not consider a courtesy handshake to be part of this restriction.

## CONCLUSION

R. Henkin's theory is unacceptable because of the following difficulties: 1) Modern society is not the paragon of innocent sexuality which R. Henkin claims it is. 2) Who is to determine if and when erotic thoughts do not exist in modern day society? 3) Even if we could determine this, lack of *hirhur* is insufficient reason to annul existing prohibitions. 4) One is hard-pressed to find a valid source for this theory in any of the classic authorities.

Beyond these considerations, the theory has such unforeseen ramifications that it is very risky even to suggest that any local “*posek*” can apply it. R. Henkin himself recognizes that “the principle of habituation has the potential of being abused and misused by the irresponsible.” The fact is that the parameters of the habituation theory are so loose and so open to misreadings that they can be misused even by those who are responsible and well-meaning. And the slippery slope is only inches away.

## NOTES

1. *Iggerot Moshe* O.H. I, p.98.
2. *Teshuvot Radvaz* II, 770, cited in *Be'er Hetev* to *Even HaEzer* *ibid*, sub. par. 2.
3. *Yam Shel Shelomo* to *Kiddushin* 4:25.
4. *Kiddushin* 82a.
5. R. Henkin reads the passage where the Maharshal says that the “whole world” relies on this leniency as implying that the reason it is permitted is because “the community is accustomed to mingling with and speaking to women, their familiarity may be relied on to forestall sinful thoughts.” This is reading into the Maharshal things which are not there. When the Maharshal says “the whole world” relies on the leniency, he is merely stating that the practice is widespread and nothing more.
6. *Tsits Eliezer* 9:50.
7. In a letter to Rav Eliezer Waldenberg, cited in *Tsits Eliezer* *ibid*. (I am indebted to his son, Rav A. Auerbach, for clarifying certain difficulties in this letter.) This interpretation is as follows: The *Leket Yosher* is doubtful as to whether the prohibition against walking behind a woman applies where

it is common for women to be present in the streets (which is why he says, "we are not so prohibited"). The explanation is that since women frequented the streets in the days of the *Leket Yosher* more than in Talmudic times (when social norms dictated they stay indoors), it became impossible to adhere to the Sages' admonition not to walk behind a woman, for if someone would find himself walking behind a woman and change directions, he would likely find himself behind another woman. To the *Leket Yosher* this argument is not a definite one; however, it is enough to create a doubt. Therefore, following the principle that in the case of a *mitsva* we rule a doubt leniently, the *Leket Yosher* permits walking behind a woman where a *mitsva* is involved, such as honoring the wife of a Torah scholar or one's mother to go first.

According to this interpretation, as well as those mentioned below, the "mother" in the *Leket Yosher* is the mother of the one following the woman and not, as Rabbi Henkin assumes, the mother of the Torah scholar. This latter interpretation, as Rav Waldenberg points out, could not be correct since the mother of a Torah scholar has no special standing in halakha. R. Henkin, nevertheless, interprets it in this manner, giving the forced explanation that a mother of a scholar would not walk provocatively. There is no source that the basis for the prohibition is that the woman walks provocatively, and this explanation does not explain why a scholar's mother is different from any other modest woman.

R. Auerbach adds, at the end of his letter, a comment that "in any event we are used to them," which could be interpreted as a leniency due to habituation. But it is unclear why he adds this, since he has already adequately explained the *Leket Yosher*; furthermore, the *Radvaz*, cited above, explicitly states that the prohibition of walking behind a woman is independent of its causing *hirhur*. R. Auerbach seems to be applying this argument as an additional reason (*senif*) to be used only in conjunction with the first explanation. Accordingly, habituation by itself is not a reason in itself for the permission; furthermore, it is operative, like the first, only in the case of a *mitsva* such as honoring the wife of a scholar or one's mother.

8. *Levush*, the section on "*Minhagim*," at the very end of *Orah Hayyim*.
9. *Shulhan Arukh*, *Even HaEzer* 62:29.
10. *Tur Even HaEzer* 62, s.v. *veyesh omrim*.
11. *Yam Shel Shelomo Ketubot*, 1:30, cited by R. Henkin, footnote 26. R. Henkin seeks to justify this ruling of the *Maharshah* with his ruling in *Yam Shel Shelomo*, *Kiddushin* 4:25, cited above, which R. Henkin understood to be rooted in his habituation theory. However, as pointed out above in footnote 5, there is no basis for reading this into the latter *Yam Shel Shelomo*; consequently, there is no need to justify the two passages.
12. *Shulhan Arukh*, *ibid.* sub-par. 11.
13. 149:1.
14. In his *Ahavat Hesed*, III:6.
15. R. Shlomo Sobel (author of *Salmat Hayyim*, cited in Wildman, *Kedoshim Tihyu* [Jerusalem 5693] p. 41) cites *Sanhedrin* 64a which relates that the Men of the Great Assembly (*Anshei Keneset Hagedola*) removed the sexual



attraction of a mother and a sister. If habituation neutralizes sexual attraction, then there would have been no need for this attraction to be removed, since one is in any case habituated to one's mother and sister. Cf. *Sefer Hasidim* No. 1138, who states that even the sexual attraction of close relatives is aroused by gazing at them. Further, *Ketubot* 17a indicates that only very saintly persons can rely on the "white geese" argument, which is the basis of the *Levush*. (*Kedoshim Tihyu* is primarily an argumentation against men and women sitting together at weddings, and contains letters of approbation from the leading Torah authorities of the time, including Rav Avraham Yitshak HaKohen Kook.)

16. *Levush, Even HaEzer*, 21:1.

17. The wording of the *Levush* would seem to indicate this. If his argument is meant to permit men to look at the women, as R. Henkin reads him, then the argument that "there are not so many erotic thoughts" is meaningless. Even a small amount of erotic thought is forbidden. However, if he is attempting to justify reciting the blessing, the blessing may be recited, since at any particular moment it is possible that there are no erotic thoughts.