

## SURVEY OF RECENT HALAKHIC PERIODICAL LITERATURE

### THE BABIRUSA: A KOSHER PIG?

An Associated Press news bulletin dated November 13, 1984, reported that a species of swine closely related to the domestic pig is a kosher animal. The author alleged that the babirusa, whose native habitat is Indonesia, is an animal possessing two stomachs and suggested that it also chews the cud. Since, in common with all swine, the babirusa also has split hoofs, the animal was alleged to possess the physical characteristics of a kosher species. The news items appeared in many American newspapers and was featured on television newscasts.

The Associated Press bulletin was based upon a report published by the National Research Council (NRC). In an article appearing in the Fall, 1984 issue of *Horizons*, a publication of the U.S. Agency for International Development, John Daly writes:

The babirusa stands out among pig-like animals because of its unique stomach, similar to a ruminant's. . . . This may make the babirusa a more efficient meat producer in some environments. In addition, cultures that do not eat swine might accept the babirusa. (p. 28)

In Israel, the report of the existence of an animal whose meat is allegedly indistinguishable from that of a pig in taste and appearance, but which is nevertheless kosher, created somewhat of a sensation. Newspaper accounts indicate that a number of prominent rabbinic authorities whose views were solicited were understandably incredulous and

reserved decision. In particular, some scholars expressed concern with regard to whether the configuration of the animal's toes manifests the criteria of split hoofs which are the hallmark of a kosher species. *Gilyon Maharsha, Yoreh De'ah* 79:1, citing earlier authorities, states that the hoofs must be split along their entire length. The London *Jewish Chronicle*, November 16, 1984, p. 1, quoted an anonymous Anglo-Jewish scholar who expressed concern that the animal may have been the product of crossbreeding between a kosher animal and the non-kosher pig.

The phenomenon of a kosher pig is not entirely unknown in rabbinic literature. R. Hayyim ibn Attar, *Or ha-Hayyim*, Leviticus 11:3, quotes an unidentified aggadic source which comments: "Why is it named 'hazir'? Because it will one day 'return' to become permissible," i.e., the pig will return to its pre-Sinaitic status as a permitted source of meat. In his commentary on Leviticus 11:7, *Or ha-Hayyim* questions the meaning of this statement. It is a fundamental principle of Judaism that the Torah is immutable; hence a pig which does not chew its cud cannot at any time be declared kosher.<sup>1</sup> Accordingly, *Or ha-Hayyim* comments that the phrase "but it does not chew its cud" which occurs in Leviticus 11:7 is conditional in nature, i.e., the pig is forbidden only so long as it does not chew its cud, "but in the eschatological era it will chew its cud and will 'return' to become permissible." Indeed, the etymological analysis presented by *Or ha-Hayyim* would lead to acceptance of a cud-chewing pig not only

as a kosher animal but as a harbinger of the eschatological era as well. A similar statement is made by Rema of Panu, *Asarah Ma'amarot, Ma'amar Hikur Din*, II, chapter 17.<sup>2</sup>

The comments of *Or ha-Hayyim* are, however, sharply challenged by R. Baruch ha-Levi Epstein, *Torah Temimah*, Leviticus 11:7, sec. 21. *Torah Temimah* asserts that the only rabbinic statement even vaguely resembling that which is quoted by *Or ha-Hayyim* is an etymological comment on the word "hazir" found in *Va-Yikra Rabbah* 13:5 and repeated in *Kohelet Rabbah* 1:28.<sup>3</sup> In context, the midrashic statement is clearly an allegorical reference to the eschatological role of gentile nations in causing the return of Israel to her original state of grandeur. A similar interpretation was presented much earlier by Rabbenu Bahya in his commentary on Leviticus 11:7.<sup>4</sup>

Whether or not there is a specific midrashic reference to a pig which chews the cud, it would appear that an animal which has split hoofs and which also chews its cud is *ipso facto* kosher. Indeed, Jewish law does not even deem it essential to examine an animal for the manifestation of both split hoofs and the chewing of the cud. Leviticus 11:4–6 enumerates three species of ruminants which chew the cud but which do not have split hoofs: the camel, the rock-badger and the hare. Deuteronomy 14:7 names a fourth animal, the *shesu'ah*, which is described as chewing the cud but as not having cloven hoofs. This animal is described by the Gemara, *Hullin* 60b, as a creature which has two backs and two spinal columns. The Gemara, *Niddah* 24a, further explains that the *shesu'ah* is the progeny of a permitted species. In effect, the birth of a *shesu'ah* is an anomaly. Both Leviticus 11:7 and Deuteronomy 14:8 name only one animal, the swine, which has split hoofs but does not chew its cud. The Gemara, *Hullin* 59a, on the basis of a pleonasm, regards these enumerated species, not as paradigmatic, but as exhaustive. Thus the Gemara comments, "The Ruler of the universe knows that there is no other beast

that chews the cud and is unclean except the camel [and the other species enumerated by Scripture]" and similarly comments, "The Ruler of the universe knows that there is no other beast that parts the hoofs and is unclean except the swine." These dicta pave the way for a determination that an animal may be declared kosher even without examination for the presence of both split hoofs and the chewing of the cud. The Gemara, *Hullin* 59a, notes that the absence of upper incisors and canines is a characteristic of all ruminants with the exception of the camel which has canines in both jaws.<sup>5</sup> Accordingly, declares the Gemara, "If a man was walking in the desert and found an animal with its hoofs cut off, he should examine the mouth; if it has no upper teeth he may be certain that it is clean, otherwise he may be certain that it is unclean; provided, however, . . . he recognizes the young camel." The possibility that the animal may be a young camel must be excluded since, even though the young camel has no teeth, it will eventually develop canines. The Gemara explicitly negates the possibility that there may exist some other animal that lacks teeth, i.e., a ruminant that chews the cud but is non-kosher by virtue of its non-cloven hoofs. Thus, if it were to be shown that the babirusa lacks incisors and canines on its upper jaw it may be declared a kosher species on that basis alone. Absence of incisors and canines is itself evidence that the animal is a cud-chewing ruminant.

The Gemara continues with the description of another criterion by means of which an animal may be recognized as a member of a permitted species: "If a man was walking in a desert and found an animal with its hoofs cut off and its mouth mutilated, he should examine its flank; if it runs crosswise he may be certain that is clean, but if not he may be certain that it is unclean; provided, however, he recognizes the *arod*. . . . Where should he examine the flesh? . . . Under the rump." In kosher species the flesh under the tail in the vicinity of the rump runs in a criss-cross fashion; one series of muscles runs down-

ward so that that portion of the meat is readily torn vertically and another series of muscles runs transversely so that that portion of the meat is readily torn horizontally. The Gemara explicitly states that we are the recipients of a tradition received by Moses at Mount Sinai to the effect that the *arod* is the sole non-kosher animal manifesting this characteristic. Thus, if the babirusa indeed manifests this characteristic there would be yet additional grounds for assuming that it is a kosher species.

There is yet another means of recognizing a kosher species. The Mishnah, *Niddah* 51b, declares, "Every [species] which has horns has [split] hoofs," i.e., is a kosher species. According to Rabbenu Tam, cited by *Tosafot*, *Hullin* 59a, that dictum is accepted as a unanimous pronouncement and hence, as Maharsha, *ad locum*, explains, the presence of any type of horn is a sufficient criterion of *kashrut*. However, Ravan, also cited by *Tosafot*, *Hullin* 59a, maintains that this dictum reflects the opinion of R. Dosa who is reported to have declared, "Those that have horns need not be examined as to their hoofs" (*Hullin* 59b). According to Ravan, the Sages disagree with R. Dosa and require the presence of both horns and split hoofs. However, even according to Ravan, the Sages accept the presence of any type of horn as a sufficient criterion of the *kashrut* of the species provided that the animal also manifests split hoofs.<sup>6</sup> Thus, if an animal possesses split hoofs, the presence of horns is sufficient to guarantee that it is not a forbidden swine. Accordingly, *Shulhan Arukh*, *Yoreh De'ah* 79:1, rules ". . . if its hoofs are split it is certain that it is clean, provided he recognizes a pig; if it has horns there is no possibility that it might be a pig and it is clean."<sup>7</sup>

The Gemara, *Hullin* 59b, does indeed state that, in order to qualify as a distinguishing criterion of an animal whose *helev* is permitted, the horn must be forked (according to Rashi: branched, like antlers; according to *Tosafot*: bent or hooked at the end) or, if not forked, the

horn must be rounded (i.e., composed of tubes or scales, one over the other), pointed (or according to one interpretation advanced by Rashi, rounded and narrow) and notched (i.e., rough), and the notches must run one into the other.<sup>8</sup> However, such distinctive horns are required only in order to determine that the animal is a *hayyah* or "wild beast" whose *helev* is permitted; the presence of any type of horn is indicative of the fact that the animal is a member of a kosher species. Thus *Shulhan Arukh* omits reference to the presence of a distinctive horn in declaring that the presence of horns is sufficient to exclude the possibility that an animal may be a pig.<sup>9</sup>

In discussing the status of the babirusa the *Jewish Chronicle* quotes the Sephardic Chief Rabbi of Israel, Rabbi Mordecai Eliyahu, as stating, *inter alia*, ". . . the question of its tusks is also relevant."<sup>10</sup> The question of the babirusa's tusks, which are virtually perpendicular and point upwards in the manner of horns, is indeed relevant in the sense that the presence of horns would also, in and of itself, be sufficient to distinguish the babirusa from forbidden forms of swine. Coupled with split hoofs, the presence of horns would be sufficient evidence of the animal's *kashrut*. Horns, however, by definition, emerge from the head.<sup>11</sup> Pictures of the babirusa show upwardly curved projections emanating from the area of the snout. Presumably, those tusk-like projections are rooted in the jaw or in the cheek, rather than in the head or skull, and, halakhically, would not be categorized as horns. Accordingly, the presence or absence of such tusks would be of no halakhic significance.<sup>12</sup>

Assuming that the babirusa manifests the requisite criteria of a kosher animal, the fact that it resembles a pig in appearance and taste is not sufficient grounds for banning its consumption as kosher meat. The Sages of the Talmud did indeed promulgate numerous edicts in order to prevent inadvertent transgression of biblical laws as the result of possible confusion between that which is permitted and

that which is forbidden in situations in which the permitted and the prohibited closely resemble one another. Yet, absent specific rabbinic legislation, there are no grounds to forbid any matter which has not been expressly prohibited.

The earliest formulation of this principle occurs in a responsum of Rav Sar Shalom Ga'on, *Teshuvot ha-Ge'onim: Hemdah Genuzah*, no. 77. Sandwiches were apparently known and enjoyed as early as the geonic period since the interlocutor asks whether it is permissible "to make a bun and to place in it [a piece of] tail or fat meat." His concern was that the bread might crumble and the particles of bread which break off from the bun might later be eaten with cheese. It is because of such concern that rabbinic law declares bread containing either dairy or meat products to be non-kosher, unless the bread is baked in a distinctive manner. However, with regard to placing meat in the already baked bun, Rav Sar Shalom Ga'on answers unequivocally that there is no reason for concern since there is no decree of "our early teachers" prohibiting the eating of meat sandwiches.

There are, however, two logical possibilities that must be discussed which would have the effect of negating the conclusion that, upon manifesting the physical criteria of a permitted species, the babirusa may be considered a kosher animal. The possibility must be considered that the animal may have originated either as the result of crossbreeding between a kosher species and a swine or as the result of a genetic mutation. The contention that the babirusa may perhaps be the result of crossbreeding may be dismissed quite readily. The possibility of the emergence of an interspecies of this nature, particularly of one which is not sterile and can reproduce, is extremely unlikely, to say the least. From the halakhic vantage point it is regarded as impossible. Although the Gemara, *Bekhorot* 7a, accepts the possibility of animals of different species mating and producing offspring, it rejects the opinion which asserts that progeny may be born of a

union between members of kosher and non-kosher species.

The possibility of a genetic mutation which is transmitted to future generations is much more within the realm of both scientific and halakhic possibility. The halakhah to be applied in the event of the occurrence of such a contingency is clear. Codifying a principle laid down in the Mishnah, *Bekhorot* 5b, *Shulhan Arukh, Yoreh De'ah* 79:2, rules that the offspring of an unclean mother is non-kosher even if the animal itself manifests all the characteristics of a kosher animal. The comments of many authorities, particularly Shakh, *Yoreh De'ah* 79:4, and *Pri Megadim, Sifte' Da'at* 79:1, indicate that the principle involved is that of *yotse*, i.e., anything which "emerges" from, or is produced by, an unclean animal is itself not kosher. It is on the basis of this principle that, for example, the milk of non-kosher animals is forbidden.

R. Hayyim ha-Levi Soloveichik, in his commentary on the Rambam, *Hilkhot Ma'akhalot Asurot* 3:11, explains this halakhic provision in an entirely different manner. R. Hayyim states that, in effect, an animal is a member of a given species, not because it possesses the distinctive characteristics of that species, but because it was born to a mother who is a member of that species. It is, then, maternal identity which is transmitted to progeny and which determines the species to which the offspring belong for purposes of halakhic classification. On the basis of either analysis, the offspring of a non-kosher animal is not kosher even if, as the result of genetic mutation, it manifests the criteria of a kosher animal.<sup>13</sup>

The two theories do, however, yield a halakhic difference with regard to the punishment to be administered for consuming the meat of an ostensibly "kosher" animal born to a non-kosher mother. If the animal is regarded as intrinsically non-kosher, the punishment is lashes; if the offspring is only the "product" of a non-kosher species, no lashes are administered for eating its flesh. There are also other halakhic ramifications which are

contingent upon acceptance of one or the other of these theories. If the offspring is intrinsically non-kosher there is no punishment of *karet* for partaking of the animal's *helev*, since the prohibition against partaking of *helev* does not extend to the fat of non-kosher species which cannot be offered as sacrifices. Furthermore, if the animal is itself kosher, but forbidden as the "product" of a non-kosher animal, upon *shehitah* its flesh would not defile as carrion; if the animal is intrinsically not kosher, it would defile as carrion even if killed by means of *shehitah*.<sup>14</sup>

Although a clean animal born of an unclean animal is not kosher, absent evidence that such a phenomenon has occurred, there is no halakhic basis for suspecting that an animal manifesting the characteristics of kosher species is in reality the offspring of a non-kosher animal. Were this not the case, no animal could be definitively accepted as kosher unless a witness was present at its birth to observe that, in actuality, it is the offspring of a kosher mother. The general halakhic principle is that such unlikely contingencies need not be contemplated.

Thus it might appear that there are no halakhic grounds for a suspicion that the babirusa is a genetic mutation of a forbidden species of swine and hence itself non-kosher. There are, however, grounds for skepticism with regard to the permissibility of the babirusa. The Gemara, *Hullin* 109b, declares:

For everything God has forbidden us He has permitted us an equivalent: He has forbidden us blood but has permitted us liver; He has forbidden us intercourse during menstruation but has permitted us the blood of purification; he has forbidden us the fat of cattle but has permitted us the fat of a wild beast; He has forbidden us swine's flesh but has permitted us the brain of the *shibbuta*. . . .

If the babirusa is indeed a "kosher pig" it is a much more obvious example of a kosher counterpart to the non-kosher

swine than is the brain of the fish known as the *shibbuta*. Moreover, the Gemara, *Hullin* 80a, states that the only animals which are kosher are the ten species specifically enumerated in Deuteronomy 14:4-5. This dictum is recorded as a normative ruling by Rambam, *Hilkhot Ma'akhalot Asurot* 1:8. There are, of course, other kosher animals which one might regard as distinct species, including perhaps the *kevi*, which according to one talmudic opinion is an "independent species." Those animals, for purposes of halakhic classification, are subsumed under one or another of the species enumerated by Scripture.<sup>15</sup>

Thus, assuming that the babirusa manifests the criteria of a clean animal, to be regarded as kosher it must be classified, not as a "kosher pig," or even as an independent species, but as a subspecies of one of the ten kosher animals enumerated by Scripture. Given its biological and anatomical similarity to the swine, the possibility that it is a mutation of a swine appears more cogent. Since, in this case, there are grounds for suspecting that the babirusa is "a clean animal which has been born of an unclean animal" it would appear to this writer that its status would be, if not definitively non-kosher, *de minimus*, that of a *safek*, i.e., an animal of doubtful *kashrut*.

In any event, it would not be permitted to eat the babirusa for an entirely different consideration. According to a number of latter-day authorities, it is forbidden to eat the meat of any hitherto unknown species even if it possesses the characteristics of a kosher animal and does not in any way resemble a non-kosher species. *Hokhmat Adam* 36:1 declares, ". . . we eat only [those animals] with regard to which we have received a tradition from our fathers." Therefore, "it is forbidden for us to eat of the 'wild beasts' [*hayyot*] except the deer which is recognized by us." This rule is stated by Rema, *Yoreh De'ah* 82:3, with regard to birds and is extended by *Hokhmat Adam* to encompass animal species as well. *Hokhmat Adam*'s position appears to be based upon

a comment of Shakh, *Yoreh De'ah* 80:1, although the thrust of Shakh's comment is understood in a different manner by *Pri Megadim*, *Siftei Da'at* 80:1. *Hokhmat Adam's* ruling is endorsed by *Hazon Ish*, *Yoreh De'ah* 11:4–5, as an established practice.<sup>16</sup>

In point of fact, the entire discussion is only of academic interest. *Science News*, vol. 126, no. 2 (November 24, 1984), p. 327, reveals that babirusas are to be found in this country in the Los Angeles Zoo. A Zoo official, Dr. Warren Thomas, is reported as stating that the babirusa is not a ruminant and does not chew its cud.<sup>17</sup>

In actuality, it has been known for some time that the babirusa is not a true ruminant. With the exception of an early investigation conducted by Willem Vrolik, *Recherches d'anatomie comparée sur le Babyrussa* (Amsterdam, 1844) and a brief discussion by a noted nineteenth-century English anatomist and paleontologist, Sir Robert Owen, *On the Anatomy of Vertebrates* (London, 1868), III, 465, the sole scientific study of the babirusa is the 1940 report of D. Dwight Davis, "Notes on the Anatomy of the Babirusa," *Field Museum of Natural History*, XXII, 363–411. That study was based upon post-mortem dissection of a babirusa that had died in the Chicago Zoo. Davis, p. 388, reports that, although the animal's stomach, except for the absence of an omasum, is strikingly similar to that of the domestic sheep, the arrangement of the stomach "is scarcely such that true rumination could take place . . . and it is certain that the similarity is due to convergence, and consequently is without such phylogenetic significance."<sup>18</sup> Moreover, the non-ruminating character of the babirusa was recognized well over a hundred years ago by Sir Robert Owen, in his previously cited discussion.<sup>19</sup>

Moreover, a report issued by the National Research Council, *Little-Known Asian Animals with a Promising Economic Future* (Washington, 1983), p. 89, states, "The male has large upper canines that grow upwards, piercing right through the flesh of the snout and curving back

and downwards towards the forehead without even entering the mouth." Thus the tusks of the babirusa are not horns, but are described as canines. As has been indicated earlier, the Gemara, *Hullin* 59a, declares that the presence of incisors or canines is a conclusive indication that the animal does not chew the cud. As stated by Rabbi Eliyahu, the "question of [the babirusa's] tusks" is certainly "relevant." Indeed, it is more than relevant; it is dispositive.

It is of interest to note that R. Meir Leibush Malbim, in his commentary on Leviticus 11:7, describes an animal remarkably similar to the babirusa. Malbim reports that the animal, which he calls a "tai'asu," is found in the tropical areas of South America and possesses four stomachs. Although Malbim is unclear, and perhaps even contradictory, with regard to whether this animal chews the cud, he reports that it has incisors in the upper jaw. As has been noted earlier, absence of incisors is regarded by the Gemara, *Hullin* 59a, as proof that the animal chews its cud and the converse is regarded as proof that it is unclean, i.e., the presence of incisors is incompatible with chewing the cud. Accordingly, it must be assumed that Malbim intends us to understand that the tai'asu does not chew its cud. Malbim declares the animal to be non-kosher and points to its physical characteristics in order to illustrate the use of the future tense in the phrase "*ve-hu gera lo yigar*—it will not chew the cud." According to Malbim, the verse alludes to this particular species of swine and declares that, although it has developed some characteristics of a ruminant, viz., four stomachs, it remains non-kosher because "it will not chew the cud."

The animals described by Malbim are peccaries originally known as dicotyles and now usually referred to as tayassu. Their anatomical characteristics are described in some detail by Georges Cuvier, *Règne Animal* (Paris, 1817), I, 237, and W. H. Flower and R. Lydekker, *An Introduction to the Study of Mammals Living and Extinct* (London, 1891), p. 289,

as well as by Sir Robert Owen in his previously cited work, *On the Anatomy of Vertebrates*, III, 465. A more recent discussion, in which the animals are referred to as tayassu, appears in E. P. Walker, *Mammals of the World*, 3rd edition (Baltimore, 1975), pp. 1355 and 1365–66. The animal is indeed found only in the Western Hemisphere, as reported by Malbim. The tayassu is found primarily in Central and South America, although Walker states that it is also found in Texas, New Mexico and Arizona. Malbim appears to be inaccurate in describing the tayassu as possessing a four-chambered stomach. Sir

Robert Owen states that the stomach is divided into three compartments, while E. P. Walker reports that although its stomach is more complex than that of the pig, it is only two-chambered. All agree on the crucial point, viz., that the tayassu is non-ruminating.

Were the babirusa to chew the cud as originally alleged, its *kashrut* status would, at best, have been doubtful. However, since all available evidence indicates that it lacks the physical criteria of a kosher animal, it must, of course, be regarded as non-kosher.

#### SEFIRAT HA-OMER AND THE OBSERVANCE OF SHAVU'OT FOR TRAVELLERS CROSSING THE DATELINE

A person travelling across the Pacific Ocean from east to west, and hence following the path of the sun, will lose a full day in crossing the international dateline. Thus, for example, if he crosses the dateline at precisely 6:00 P.M., Sunday, January 10th, he will find himself in a locale in which the time is 6:00 P.M., Monday, January 11th, and will have lost an entire day. Conversely, if a person travels in the opposite direction from the sun, i.e., from west to east, he will gain a full day. Thus, for example, if he crosses the dateline at precisely 6:00 P.M., Monday, January 11th, he will find himself in a locale in which the time is 6:00 P.M. Sunday, January 10th, and hence will have gained an entire day. There is, to be sure, considerable controversy with regard to the location of the dateline for purposes of Halakhah. One who crosses the halakhically recognized dateline, wherever it is established, will find himself having gained or lost a day in terms of calculating the days of the week for purposes of religious observances. Thus, a traveller from east to west will observe his next *Shabbat* upon expiration of only a five-day period, whereas a traveller from west to east will experience seven full weekdays before observing another *Shabbat*. This is so because the Sabbath

is observed, not on an individual basis upon expiration of six days of labor, but in accordance with objective determination of the day at the longitude at which one finds oneself. Hence all Jews in any given locale observe the Sabbath in a uniform manner. The same is true with regard to observance of festivals which occur on specific days of the month.<sup>20</sup>

A problem does, however, arise with regard to fulfillment of the *mitsvah* of *sefirat ha-omer*, the counting of the 49 days between *Pesah* and *Shavu'ot*. Ostensibly, the counting of the days of the *omer* does not necessarily entail the counting of consecutive days of the week or of consecutive days of the month, but simply of consecutive twenty-four-hour periods. Thus it might appear that the traveller may ignore the date of the month in the locale in which he finds himself and continue counting consecutive days *in seriam*. This, however, would lead to an incongruity with regard to the observance of *Shavu'ot*. The traveller journeying from east to west will find that the festival occurs one day prior to his completion of the counting of seven full weeks; the traveller journeying from west to east will complete the counting of the seven-week period but will experience a delay of one day before

*Shavu'ot* is observed in the area in which he finds himself. Scripture, however, commands that the festival be observed on the day immediately following completion of the counting of the seven-week period: "Until the morrow after the seventh week shall you number fifty days and you shall bring a new meal-offering unto the Lord" (Leviticus 23:16). Thus, the observance of *Shavu'ot* is inexorably linked to the counting of the *omer*. Moreover, the counting of the days of this seven-week period is associated with the offering of a sacrifice of the newly harvested produce. The reckoning is essentially the counting off of days until the arrival of the appointed time for the offering. Since the offering is a single communal act it would be somewhat incongruous to define the counting of the *omer* as a personal, and hence variable, act with the result that a person may complete his own reckoning either a day earlier or a day later than the day associated with the meal-offering.<sup>21</sup>

A highly novel resolution of this problem is presented by Rabbi Menachem Mendel Schneerson, the Lubavitcher Rebbe, in his Yiddish-language *Likkutei Sihot*, III, *Parshat Emor* (New York, 5724). This material was translated into Hebrew and published in a work entitled *Hiddushim u-Bi'urim be-Shas* (Jerusalem, 5739), no. 36. More recently, in honor of Rabbi Schneerson's eightieth birthday in 5743, Chabad Lubavitch of Ontario, Canada published a collection of articles entitled *Gevuratah shel Torah* which contains an earlier and somewhat different version of this material in the form of a responsum composed by Rabbi Schneerson in 5709 as well as a number of brief letters written in 5718 and 5730, one of which appeared in a Lubavitch publication, *Kovets Yagdil Torah*, no. 3 (Jerusalem, Tammuz 5737), p. 22. The balance of this material earlier appeared in *Likkutei Sihot*, VII (New York, 5732), addenda, pp. 284–287. All of these letters are also published in the addenda to *Hiddushim u-Bi'urim be-Shas*, pp. 355–357. These letters also appear in Rabbi Schneerson's recently published

responsa collection, *Yagdil Torah: Teshuvot u-Bi'urim be-Shulhan Arukh* (Kfar Habad, 5741), no. 105.

Ostensibly, the problem of counting the *omer* under these circumstances cannot be resolved by escaping between the horns of the dilemma. Rather, one or the other of the horns must be firmly seized. Either the counting of the *omer* is not personal and individual, but entails the counting of the particular day as it is established at a given geographic point, or the observance of *Shavu'ot*, unlike the observance of other festivals, is not uniform in any given place. In his more recent writings, Rabbi Schneerson does not hesitate to affirm that the second thesis is correct. Accordingly, he rules that the traveller should continue counting the days of the *omer* consecutively without interruption or repetition and observe the *Shavu'ot* festival on the morrow of his completion of the counting of seven full weeks. Thus, if the traveller has journeyed from east to west he will observe *Shavu'ot* on the seventh day of Sivan, i.e., one day later than the indigenous Jewish populace, and if he has travelled from west to east he will observe *Shavu'ot* on the fifth day of Sivan, i.e., one day earlier than his local neighbors.

To be sure, *Shavu'ot*, unlike other festivals, is not inherently associated with a specific day of the month. It uniformly occurs on the fiftieth day following the first day of Passover. Since, in the calendar presently in use, Nisan uniformly contains thirty days and Iyar uniformly contains twenty-nine days, *Shavu'ot* always occurs on the sixth day of Sivan. However, in earlier periods of Jewish history, when the *Bet Din* sanctified the months on the basis of witnesses testifying to the sighting of the new moon, it was entirely possible for both Nisan and Iyar to be either twenty-nine or thirty days in length. Thus, in those times, *Shavu'ot* might occur on either the fifth or seventh day of Sivan as well as on the sixth day of Sivan—precisely the dates on which, arguably, the traveller crossing the dateline must observe the festival. The fact that *Shavu'ot*

might have occurred on the fifth or the seventh day of Sivan in days gone by is, however, not dispositive with regard to the problem confronted by the traveller who crosses the dateline. When the *Bet Din* declared both Nisan and Iyar to be twenty-nine or thirty days in length, the date of *Shavu'ot* was determined as occurring on the fifth or the seventh of Sivan for *all* of Israel. The fundamental question posed by the dateline problem is whether the observance of *Shavu'ot* is individual and contingent upon each person's own reckoning of *sefirah*, or whether it is universal and hence uniform for all Jews in a given geographic locale.

Although there is cogent reason to question whether the counting of the days of the *omer* is a matter of individual reckoning or whether it is entirely objective and standard, there is strong reason to assume that, even if the reckoning of the *omer* is personal in nature, the observance of *Shavu'ot* is nevertheless uniform for all Jews. To wit: a minor who reaches religious maturity during the *omer* or a proselyte who becomes a convert to Judaism during that period is certainly obliged to observe *Shavu'ot* together with all of Israel even though those individuals are under no obligation to count "seven full weeks." Moreover, according to many early authorities, there is no longer a biblical obligation to count *sefirah* in the present era. Nevertheless, the biblical obligation to observe the festival of *Shavu'ot* has certainly not lapsed. Rabbi Schneerson counters this objection by asserting that it is not the obligation to count the seven weeks of the *omer* period which determines the observance of *Shavu'ot*, but the variable and varying situational basis upon which that counting is predicated which determines the date on which *Shavu'ot* must be observed.

Rabbi Schneerson further opines that, although the traveller who crosses the dateline must observe *Shavu'ot* on either the fifth or the seventh day of Sivan, he must nevertheless omit the phrase, "the time of the giving of our Torah (*zeman matan Toratenu*)" from the liturgy of the

festival since the giving of the Torah is commemorated on the sixth day of Sivan, the date on which the Torah was actually given and not on the fifth or the seventh of Sivan.<sup>22</sup>

In his earlier responsum, written in 5709, Rabbi Schneerson's conclusions are much more tentative and indeed somewhat at variance with his later enunciated views. In his earlier version of this material, Rabbi Schneerson explains the nature of the perplexity concerning the proper mode of counting the *omer* and advises his interlocutor to count the *omer* two separate ways, i.e., to count both the day of the *omer* according to his own reckoning and also to count the day in the manner in which it is counted by the local populace. In a letter written in 5718 he adds that there should be an interval between the two acts of counting lest the counting appear to be contradictory in nature. In that letter, Rabbi Schneerson further rules that a person finding himself in this situation should not pronounce the blessing prior to counting the *omer*.<sup>23</sup> Citing *Devar Avraham*, I, no. 34, Rabbi Schneerson explains that the blessing cannot be pronounced, even though one of the two acts of counting must be correct, because a "doubtful" or inconclusive act of counting does not constitute "counting" which, by definition, must be precise and accurate.<sup>24</sup>

With regard to observance of *Shavu'ot*, Rabbi Schneerson, in his first responsum (5709), rules that a traveller journeying from America to Australia must regard the day which is observed in Australia as the first day of *Shavu'ot* as being only "doubtfully" *Shavu'ot* insofar as he is concerned since according to his individual reckoning it is the last day of the *omer*. Accordingly, he advises his interlocutor to refrain from activities prohibited on the *Yom Tov*, but to count the 49th day of the *omer* and to don phylacteries on that day. The traveller must, of course, observe the second day of the festival as a holy day in every respect. Rabbi Schneerson, however, rules that the traveller need not observe a third day as the "doubtful" second day of *Shavu'ot*.

