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SURVEY OF RECENT HALAKHIC PERIODICAL LITERATURE

HOST-MOTHERS

Any parent who has at one time or another been exposed by his children to the captivating Dr. Seuss fantasy, *Horton Hatches the Egg,* will recall the dilemma around which that tale centers: to whom does the offspring rightfully belong, to the irresponsible mother who abandoned it or to the faithful elephant who guarded and protected the egg over a span of months? The fictional solution may be both too facile—and too equitable—for real life. Preposterous and far-fetched as the situation may appear to be, the problems it poses may be upon us before long. We find ourselves in an age in which the science fiction of yesterday is rapidly becoming the reality of today; the hypothetical curiosity of today may well become the commonplace of tomorrow. These unfolding *realia* often carry in their wake hitherto unexamined moral and religious questions. Perhaps in no area is this more evident than in the field of embryology. Recent experimental developments indicate that it may soon become possible to remove a naturally fertilized ovum from the womb of a pregnant mother and to re-implant it in the uterus of another woman. The embryo would then remain in the womb of the "host-mother" throughout the period of gestation until birth.

In a statement released by his office, Rabbi Immanuel Jakobovits, Chief Rabbi of Great Britain, aptly characterizes such practices as offensive to moral sensitivities when resorted to as a convenience in order to avoid the encumbrancies of pregnancy. Certainly all will agree that "to use another person as an 'incubator' and then take from her the child she carried and delivered for a fee is a revolting degradation of maternity and an affront to human dignity."

Convenience, is, however, not the only conceivable motive which may prompt a procedure of this nature. Medical factors may well make it impossible for the natural mother to carry her baby to term. Would Halakhah sanction the use of a "host-mother" for the purpose of saving the fetus? If such a procedure is performed, with or without halakhic sanction, who is regarded as the mother in the eyes of Halakhah: the natural mother or the host-mother?

As yet, very little has been written on this subject although a related question has received some attention in rabbinic literature. The 5731 edition of *No'am* features an extensive and wide-ranging paper by Rabbi Isaac Liebes dealing with the various halakhic questions asso-

ciated with organ transplants. *Inter alia* Rabbi Liebes cites sources bearing upon the problems posed by ovarian transplants. The question of ovarian transplants was raised by Rabbi Yekutiel Aryeh Kamelhar in a Torah journal published in Warsaw in 1932 and was subsequently reprinted in his *Ha-Talmud u'Mada'ei ha-Tevel,* pp. 44-45. Rabbi Kamelhar relates that a paper was read at a medical conference held in Chicago some twenty-one years earlier in which it was alleged that in at least one instance sterility was successfully corrected by an ovarian transplant. The ovary of a fertile woman was transplanted into the body of a previously barren woman in an attempt to enable her to become pregnant and to bear children. Rabbi Kamelhar examines the question of which of the two women is to be considered the mother of the child in the eyes of Jewish law. Cases involving a donor who is a married woman pose yet another question. Is the husband of the woman receiving the transplant thereafter permitted to engage in intercourse with his wife? Is the husband who has sexual relations with a wife carrying a transplanted reproductive organ of another married woman guilty of adultery? Rabbi Kamelhar dismisses the latter question by demonstrating that the source of specific organs has no bearing upon the halakhic definition of adultery.

Furthermore, maintains Rabbi Kamelhar, a transplanted organ is deemed to have become an integral part of the body of the recipient. For this reason, the recipient of an ovarian transplant must also be considered the mother of any child subsequently conceived. Despite a lack of relevant sources dealing with human transplants Rabbi Kamelhar endeavors to establish this point by drawing upon regulations governing the classification of plants and animals. The fruits of a seedling are forbidden as *orlah* during the first three years following its planting. *Sotah* 43b, declares that a seedling which is grafted to a mature tree loses its independent identity and hence the fruit of the seedling is not deemed to be *orlah.* The same principle, argues Rabbi Kamelhar, applies with regard to the transplantation of organs; namely, a transplanted organ acquires the identity of the recipient. A second argument is based upon laws pertaining to hybrid animals. *Chullin* 79a, in discussing the classification of the offspring born as a result of the interbreeding of different species, records one opinion which maintains that the identity of the male parent is to be completely disregarded in determining the species of the offspring. According to this view, since it is the mother who nurtures and sustains the embryo, it is the female parent alone which determines the species of the offspring. It is thus the identity of the mother which is transferred to members of an interspecies. There is, however, a conflicting opinion which asserts that "the father's seed is to be considered." Rabbi Kamelhar asserts that even proponents of this latter view will concede that with regard to ovarian transplants the identity of the donor need not be considered

in establishing maternity "The father's seed is to be considered" because the father plays a dynamic role in the birth of the offspring. The ovary alone, Rabbi Kamelhar points out, is an inert organ and incapable of reproduction were it not for the physiological contributions of the recipient. In conclusion, Rabbi Kamelhar notes that Rabbi Meir Arak, one of the foremost halakhists of the day, accepted the cogency of this argument.

To a significant degree the identical argumentation may be applied in determining the maternity of a child born of a fertilized ovum implanted in the womb of a host-mother. It is the host-mother who nurtures the embryo and sustains gestation. However, the role of the natural mother in determination of identity is a dynamic one and analagous to that of "the seed of the father." It may therefore be argued that, according to those who assert with reference to classification of hybrids that "the seed of the father is to be considered" in the case of an already fertilized ovum the maternal relationship between the child and the donor mother is to be "considered" no less than "the seed of the father." Consideration must also be given to the possibility that perhaps two maternal relationships may exist simultaneously just as maternal and paternal relationships exist at one and the same time. The child would then in effect have two "mothers," the donor mother and the host mother.

According to some authorities, however, the donor mother alone may be viewed as the mother in the eyes of Jewish law. There are those who maintain that the prohibition against feticide is applicable from the moment of conception and deem the fetus to be a nascent human being even in the earliest stages of gestation. According to this view, the zygote may perhaps be viewed as having already acquired identity and parentage.

The discussion thus far applies only to the transplantation of a fertilized ovum removed shortly after conception. Transplantation of an embryo in later stages of development presents a rather different question. What has preceded is based upon fragmentary sources and is but one aspect of a topic whose many ramifications have yet to be examined. There is indeed a great need for such examination and analysis for the transformations which may soon be wrought by scientific advances in this field touch upon the very foundations of the sanctity of the family.

Refusal to Grant a Religious Divorce

According to Jewish law matrimonial bonds can be severed in only one of two ways: by the decease of one of the parties or by means of a *get,* a bill of divorce written at the specific behest of the husband and delivered by him, or by his proxy, to the wife. Rabbinic literature is replete with references to cases of insufficient or inadequate evidence of the death of the husband. Unless such evidence is forthcoming the woman is forbidden to remarry. In halakhic terminology her status is that of an

agunah, a woman who remains "chained," without a consort but unable to marry another. The tragic plight of the *agunah* has spurred rabbinic authorities throughout the generations to seek every possible means of remedying such grievous situations.

In our own time, *agunah* situations arise most frequently not from instances of unprovable death but from the refusal of the husband to execute a *get* or religious divorce. In such cases, even though a civil divorce may have been obtained, the marital bonds continue to remain intact in the eyes of Halakhah and the woman is forbidden to contract a second marriage until she has obtained a religious divorce.

Over the years a number of proposals have been advanced in attempts to ameliorate this problem. These include a suggestion that all marriages be made conditional by incorporating a clause in the marriage ceremony stipulating that if the marriage is subsequently dissolved by a civil court the marriage be deemed null and void *ab initio.* It has also been suggested that the parties take a solemn oath to seek a religious divorce should they become estranged. Yet another proposal called upon the groom to obligate himself to the payment of a fine or penalty for failure to execute a religious divorce in the event that the need for one should arise. Each of these proposals has been rejected in turn by the consensus of recognized halakhic experts as being incompatible with the dictates of Halakhah.

The most widely publicized proposal of this nature is a formula promulgated by the Conservative movement. The couple bind themselves to submit any marital disputes which may arise to an ecclesiastical court established by the Conservative rabbinate and to abide by any decisions of that body. Implicit in the agreement is an obligation to pay any penalty which may be imposed upon failure to issue a *get* when it is so ruled by that court. A clause to this effect is incorporated in the text of the Conservative *ketubah.* The Orthodox rabbinate strongly opposed this innovation for several reasons. In the first place, there is serious doubt with regard to whether the proposed penalty can be legally or halakhicly imposed. Secondly, many authorities reject the threat of financial penlaty for non-conformity with the decisions of a *Bet Din* as constituting a form of unlawful coercion which may invalidate the *get.* An even more fundamental objection forcuses upon the competence of the proposed *Bet Din.* Normative Judaism does not recognize the authority of a Conservative *Bet Din.* (See *Igrot Mosheh, Yoreh De'ah,* no. 160.) Persons who deny the authority of Halakhah in whole or in part are disqualified from serving as members of a rabbinical tribunal charged with interpreting and enforcing Jewish law.

In a paper appearing in the Tammuz-Sivan 5731 issue of *Sinai,* Rabbi Elyakim Elinson advances an interesting suggestion which, if accepted, would resolve the problem of *igun* in a significant number of cases. Opposition to previous proposals that every groom obligate

himself to pay a fine or penalty for failure to execute a *get* when warranted centers upon the coercive nature of such a stipulation. Halakhah requires that the bill of divorce be presented to the wife by the husband of his own free will. The threat of punitive measures, according to many authorities, constitutes coercion which may invalidate the divorce. There are, however, certain financial responsibilities which devolve upon the husband as a matter of statutory obligation. The husband is bound by Jewish law to support his wife. This obligation ordinarily remains in force until such time as the marriage is dissolved. In Israel, where rabbinic tribunals have jurisdiction over domestic matters, the husband can be held liable for the support of his wife until such time as he executes a bill of divorce. A decree ordering the husband to provide for the sustenance of his estranged wife will in most cases effect a change of heart in even the most recalcitrant of husbands. Desire for release from further financial obligation usually prompts the husband to terminate the relationship voluntarily by executing a religious divorce. This method of gaining compliance with the edict of a *Bet Din* is identical to the procedure outlined by *Bet Me'ir, Even ha-Ezer* 154:1, as a means of persuading an apostate to execute a bill of divorce.

In the Diaspora the problem is more complex. Civil courts view a marriage as having been dissolved upon the issuance of a divorce decree and, barring an alimony award, the husband is released from further obligation with regard to financial support. Rabbi Elinson proposes that prior to the wedding ceremony each groom be asked to enter into a legally binding civil contract providing for the support of his bride and stipulating that the extent of this obligation be in accordance with the provisions of Jewish law. The contract would be drawn up as a legal document enforceable in civil courts. The husband would then be legally obligated to support his wife until a religious divorce has been executed since Jewish law recognizes an ongoing obligation to support one's wife until the union has been dissolved by a *get*. This arrangement would provide ample motivation for the otherwise uncooperative husband to comply in granting a religious divorce.

A precedent for this innovation may be found in *Nachlat Shivah* 9:14 which reports that it was customary in certain German communities to draw up an engagement contract which contained a clause providing that in case of domestic strife a specific sum be paid to the wife for her support until such time as the couple appear before a *Bet Din* which would then make a final determination with regard to all matters at issue.

It is quite possible that a remedy along the lines suggested by Rabbi Elinson already exists. Were this point to become a matter of litigation it is conceivable that the court would rule that no additional contract to this effect is necessary since the *ketubah* or marriage contract drawn up prior to the wedding ceremony specifically contains a clause providing for support of the

wife in accordance with Jewish law. In at least one case dating back to 1926 (Hurwitz v. Hurwitz 216 A.D. 362, 215 N.Y. Supp. 184) the court recognized the *ketubah* as constituting a binding legal contract and on that basis upheld certain claims of a widow against the estate of her deceased husband. More recently, in a decision handed down in March 1972, the New York State Supreme Court (Kaplan v. Kaplan 329 N.Y.S. 2nd 750) invoked the provisions of the *ketubah* in an award for support and maintenance. Whether or not the provisions of the *ketubah* are enforceable in a court of law is a matter to be determined by legal experts. In any event, it would appear that any legal deficiencies in the *ketubah* could indeed be remedied by introducing a separate contract such as that outlined by Rabbi Elinson.

In terms of Halakhah the basic premise upon which the proposal rests is open to question. There is some uncertainty concerning a husband's obligation under Jewish law with regard to financial support of an estranged wife. Rema, *Even ha-Ezer* 70:12, rules that the husband's obligations cease when the wife leaves his home. However, *Baba Metzia* 12b declares that in all instances in which there are unresolved halakhic questions surrounding the efficacy of a particular bill of divorce the financial obligations of the husband remain in force. Although the woman no longer shares his bed and board the husband must provide for her sustenance since she is "bound to him" and is not free to remarry. Various Israeli rabbinical courts have issued conflicting rulings with regard to this question. There are recorded decisions in which the *Bet Din* has decreed that the husband is not obligated to provide for the support of his estranged wife. On the other hand, in at least some instances *Batei Din* have ruled that if the wife is prepared to accept a bill of divorce the husband is bound to provide for her maintenance should he be unwilling to execute a *get*. Opinions to this effect by the late Chief Rabbis Herzog and Uziel are to be found in notes appended to *Otzar ha-Poskim*, II, p. 8 and p. 16. Since Rabbi Elinson's proposal hinges upon this fundamental point the issue clearly requires further investigation and analysis.

The proposal under discussion also has a number of practical drawbacks which detract from its effectiveness in certain cases. For example, there is no halakhic obligation on the part of the husband to support his wife if she earns her own livelihood. However, in the event that the husband refuses to accede to the wife's desire for a religious divorce, a working woman who would have to resort to a claim of maintenance as a means of securing a *get* could be advised to cease working temporarily. Similar problems arise in the case of a woman who derives an independent income from invested capital. According to Halakhah, such funds accrue to the husband who may then claim that the income, if paid to the wife and sufficient for her needs, discharges his obligation with regard to maintenance. In order to obviate this contingency

Rabbi Elinson suggests that every groom be required to enter into an agreement renouncing his right to such monies.

The most serious deficiency with regard to this proposal arises from the fact that an alimony award frequently accompanies a divorce decree. When such is the case it is difficult to perceive how the proposed document would influence the husband to execute a religious divorce. Of course, in such eventualities the wife does retain the option of offering to forego alimony rights in return for a religious divorce.

It is hoped that ultimately the various halakhic and practical difficulties involved can be overcome. With refinement and modification perhaps there will emerge a proposal which may serve to relieve the agony and anguish of such modern-day *agunot*.

Apartments Over a Synagogue

Characteristic of the contemporary urban scene is the proliferation of high-rise apartment dwellings of skyscraper proportions. The scarcity of potential construction sites in metropolitan areas forces real estate developers to build the maximum number of stories on available lots. The exorbitant price of land coupled with rising construction costs present a formidable financial obstacle to metropolitan residents seeking to erect new houses of worship and educational facilities. As one means of ameliorating the situation it has been proposed that schools and houses of worship be constructed on the ground floor with apartment units on higher levels. Proceeds derived from the sale of air rights for development purposes serve to defray construction costs of these communal institutions.

There are, however, a number of halakhic considerations which call into question the propriety of such an arrangement. The very erection of an edifice towering above the synagogue presents a problem since *Shulchan Arukh, Orach Chaim* 150:2, records that a synagogue should be built upon the most elevated site in the city and that no dwelling should rise higher than the synagogue structure. Rema, however, notes that an exception may be made in case of need or in face of government edict forbidding the preferred mode of construction.

The construction of apartment dwellings above the synagogue proper poses a more serious problem. *Orach Chaim* 151:12 rules that it is forbidden to sleep upon the roof a synagogue and expresses doubt with regard to the propriety of utilizing the roof for secular purposes. *Mordekhai, Shabbat* 1:228, quoting Maharam of Rotenburg, asserts unequivocally that the roof of a synagogue is imbued with sanctity and should not be used for mundane pursuits just as the roof of the Temple was sacred and dared not be profaned by such use. There is also a well-known autobiographical comment of Taz, *Orach Chaim*, 151:4, in which that authority recalls, "In my younger years I dwelt with my family in Cracow in my House of Study which was above the synagogue; I was greatly punished through the

death of my children and I attributed it to this fact." These sources notwithstanding, construction of dwellings above a synagogue is not uncommon. In an article published in the Tishri 5732 issue of *Ha-Darom,* Rabbi Samuel Hibner analyzes the various factors involved and cites the following authorities and their reasons in affirming this practice:

1. Chida, *Chaim Sha'al, Orach Chaim,* no. 56, draws a sharp distinction between a roof and an attic or upper story. Chida argues that early references to restrictions upon the use of the synagogue carefully employ the term "roof" rather than "attic." Unseemly use of an exposed roof of a synagogue in public view constitutes disrespectful behavior vis-a-vis the synagogue; the selfsame activity taking place in the privacy of a walled enclosure does not constitute unseemly conduct. This distinction is also drawn by *Mishneh Berurah, Bi'ur Halakhah* 151.

2. In the same discussion, Chida cites a responsum by Rambam, *P'er ha-Dor,* no. 74, in which the latter states that the prohibition against sleeping on a synagogue roof is limited to the section of the roof or attic directly above the Ark. According to Rambam, only that section is deemed to be imbued with a sanctity analagous to that of the Temple site. On the basis of this opinion, which is accepted as authoritative by *Mishneh Berurah* 151:40, apartments above a synagogue may be used for dwelling purposes provided care is taken not to place the beds directly above the Ark. Some scholars maintain that even this limitation applies solely to the story directly above the Ark but not to higher floors.

3. *Maharit, II, Yoreh De'ah,* no. 4, and *Tz'lach, Pesachim* 86a rule that the roof of a synagogue is sacred only if the roof opens directly into the synagogue. A roof lacking such an aperture does not acquire the sanctity of a synagogue and may therefore be used for secular purposes.

4. Taz, *Orach Chaim* 151:4, argues that apartments above a synagogue may be used for dwelling purposes provided that both the synagogue and the apartments are erected simultaneously. Under such circumstances the synagogue roof is originally intended to serve as the floor of the apartment rising above the synagogue and hence the roof never acquires the sanctity of the synagogue structure. Nevertheless, concludes Taz, the synagogue dare not be demeaned by utilizing the upper stories for activities such as idol worship or storage of waste.

5. The Sages recognized that since Torah scholars "live" in the House of Study, spending the major portion of their days and nights therein, the House of Study is in effect their domicile. Hence, Rema, *Orach Chaim* 151:1, rules that it is permissible to sleep in a House of Study. *Eshel Avraham, Orach Chaim* 151:12, concludes that since one may sleep in the House of Study itself, *a fortiori* it is permissible to sleep upon the roof above it. Accordingly, there is no objection to the construction of apartment dwellings above the synagogue provided that it is stipulated at the time of construction that the

sanctity of the edifice be that of a House of Study.

6. *Divrei Chaim,* I, no. 3, rules that synagogue roofs have no intrinsic sanctity and may be used for secular purposes.

Rabbi Hibner concludes that the serious financial loss involved in rejecting the proposal for the use of air rights above the synagogue in order to construct apartment units constitutes a "grave need" and hence the lenient opinions may be followed.

A Responsum from Behind the Iron Curtain

One of the most remarkable phenomena of our time is the extent to which Russian Jews have succeeded in preserving their sense of identity despite decades of physical persecution and spiritual oppression. Fully cognizant of the deep meaning of the observance of *mitzvot,* the Communist regime has persistently placed obstacle after obstacle in the path of its Jewish nationals seeking to discharge their religious obligations. However, Russian Jewry, in large numbers and often at great self-sacrifice, refuses to succumb to oppressive measures designed to stifle all meaningful forms of religious expression. For reasons which are at once religious, psychological and symbolic, the baking of *matzot* for use on Passover has been a focal point of this struggle. Seemingly oblivious to the protestations and censure of democratic peoples throughout the world, the Soviet regime perennially seeks to hamper the preparation and distribution of *matzot.*

Although the restrictions surrounding the provision of *matzot* have received widespread attention only in the past few years, such harrassment is not of recent vintage. In *Or ha-Mizrach,* Tammuz 5731, there appears a hitherto unpublished responsum which is of more than passing historical interest. The manuscript, dated 1929, was authored by Rabbi Moshe Terashansky, who at the time served as rabbi of Kremenchug, one of the most prominent Jewish communities in the Ukraine. Although written over forty years ago, the responsum is a reflection of much of what transpires today. In this document, the writer openly and candidly refers to malevolent "adversaries" who sought to interfere with ritual slaughter and who had attempted to close the local synagogue and, in particular, inveighs against the vexing impediments encountered in the baking of *matzot.*

The specific problem which Rabbi Terashansky discusses is the unavailability of flour ground in accordance with halakhic requirements. Wheat which comes into contact with any moisture may become *chametz* and hence unfit for use on Passover. Accordingly, *Orach Chaim* 453:4 stipulates that supervision must be provided at least during the grinding process in order to assure that the kernels do not become wet. Apparently, when this responsum was written it had already become impossible to arrange for such supervision in the U.S.S.R. Rabbi Terashansky's advice was sought with regard to the

suggestion that in light of the difficult circumstances it might be possible to permit the use of ordinary flour even though the milling process then employed utilized water in separating the kernel from the husk. "Rinsing" of wheat for this purpose is permitted by the *Gemara* because the minimal contact with moisture entailed by this process when properly performed does not cause leavening. At a later period in Jewish history the practice was forbidden by the *Ge'onim* because they feared that knowledge of the precise nature of this art had become lost. Lack of expertise in the proper performance of this operation may readily cause the wheat to become *chametz*. The tentative proposal that this stringency be waived because of "dire necessity" is couched in poignant tones of anguish which cannot fail to arouse the reader's sympathy.

Rabbi Terashanasky responds that the questioner has either been inadvertently mislead or intentionally deceived with regard to the milling process actually in use. In point of fact, Rabbi Terashansky claims, the process in use at the time required soaking of the kernels for a matter of hours. This procedure would definitely have rendered the wheat unfit for Passover use under any circumstances. Rabbi Terashansky adds that in his own community he had permitted the use of ordinary flour which had been ground in the surrounding villages without rabbinic supervision. Whereas commercial mills in the large cities employed more advanced methods necessitating soaking of the kernels, the villagers utilized a primitive, dry stone mill which would not, in the normal course of events, cause the grain or flour to become moist.

Despite the pathos in this communication which reverberates from across the years and from behind the iron barriers, there is an element in the exchange which is most heartening. The document stands as eloquent testimony to the indomitable spirit of Russian Jewry, as an assurance that, whatever the obstacles, there will always be Jews to ask, Jews to respond, Jews to observe—Jews to affirm together with the Psalmist, "I shall not die, but I shall live and proclaim the works of the Lord."

Electric Substitutes for Chanukah and Sabbath Lights

The suitability of electric lights for use in place of the usual Sabbath candles and as a substitute for the traditional Chanukah *menorah* has been a recurrent theme in halakhic literature since the invention of the incandescent bulb. Numerous responsa expressing conflicting viewpoints have been written on this topic. One of the earliest authorities to discuss the matter, R. Yitzchak Schmelkes, *Bet Yitzchak, Yoreh De'ah,* no. 120, sec. 5, ruled that electric bulbs may be utilized in fulfilling the *mitzvah* of kindling the Sabbath lights but not in discharging the obligation with regard to Chanukah lights. Later R. Abraham Steinberg, *Machazeh Avraham,* I, *Orach Chaim,* no. 41 concurred in the opinion that electric bulbs may be used as *Shabbat* lights. More recently, Rabbi Y. E.

Henkin, *Edut le-Yisrael,* p. 122, adopted a similar position. In *Ha-Chashmal le-Or ha-Halakhah,* a work devoted exclusively to the halakhic implications of electricity the author, Rabbi S. A. Yudelevitz, also endorses this position On the other hand, R. Elozor Lev, *Pekudat Elozor, Orach Chaim,* nos 22-23, R. Ben Zion Uziel, *Mishpetei Uziel,* I, *Orach Chaim,* no. 7, and, as we shall see, R. Zevi Pesach Frank all ruled that incandescent bulbs cannot be used in fulfilling the *mitzvah* of kindling Sabbath lights. None of the aforementioned authorities sanction the use of electric bulbs as Chanukah lights.

A renewed discussion of this topic is to be found in two current Israeli periodicals. The Tevet 5732 edition of *Ha-Ma'ayan* features a responsum on this theme by Rabbi Zevi Pesach Frank, the late Chief Rabbi of Jerusalem. A section of another paper on the same topic, authored by Rabbi Mordecai L. Katzenellenbogen, appears in the Cheshvan-Kislev 5732 issue of *Moriah.* Every practicing rabbi can attest to the frequency with which this question is posed and the interest it evokes. Although definitive answers to some aspects of the problem remain clouded by controversy, the complex nature of the considerations involved requires elucidation and merits a somewhat fuller discussion.

1. Chanukah *Menorah*

The halakhic principle governing the lighting of the Chanukah lamp is the dictum, "Kindling constitutes performance of the *mitzvah.*" For this reason, the lights, once properly kindled need not be relit should they become extinguished. But, on the other hand, if the lamp, at the time of kindling, contains an insufficient quantity of fuel additional fuel should not be added; rather the lamp must be extinguished and relit. On the basis of this principle Rabbi Frank peremptorily dismisses consideration of the halakhic feasibility of an electric Chanukah *menorah.* Electric current is not stored for future use but is consumed as it is generated. Thus the requisite amount of "fuel" is not immediately available at the moment the lamp is turned on. The lamp is dependent upon continuous generation of power to remain lit. Hence the act of kindling in itself is insufficient to cause the lamp to burn for the prescribed period of time. An identical line of argument is advanced by R. Shlomo Zalman Auerbach in the third chapter of his *Me'orei Esh,* a classic monograph on the halakhic ramifications of electrciity.

Elsewhere in his published responsa, *Har Zevi, Orach Chaim,* no. 143, Rabbi Frank raises yet another objection. He questions whether the turning on of an electric switch constitutes an act of kindling. He expresses doubt as to whether this is to be deemed a direct action or an "indirect action" (*gerama*) and enters into a further discussion of whether a direct action is indeed required or whether an "indirect action" is sufficient with regard to the fulfillment of *mitzvot.* This point is also discussed by R. Eliezer Waldenberg, *Tzitz Eli'ezer,* I, no. 20, ch. 12, and is

the subject of one section of Rabbi Katzenellenbogen's paper in *Moriah.*

Objections to the use of electric bulbs in place of the Chanukah *menorah* have been advanced by other authorities on the basis of different considerations. R. Yitzchak Schmelkes maintained that since electricity is in common use throughout the year, use of electric lights on Chanukah does not constitute "publicizing the miracle. Rabbi Eliyahu Kletzkin, *D'var Halakhah,* no. 36, and Rabbi Henkin both assert that the Chanukah *menorah,* since it is modelled upon the candelabrum used in the Temple, must contain fuel and a wick. Electric bulbs do not incorporate these features and, hence, in their opinion, cannot be used as Chanukah lights. Both Rabbi Waldenberg and Rabbi Katzenellenbogen disagree and present evidence supporting their contention that neither wick nor fuel is essential for fulfillment of this obligation. Rabbi Waldenberg nevertheless expresses doubt with regard to the utilization of electric bulbs for this purpose on the basis of a consideration which will be examined in the following section. While there is some disagreement with regard to the specific grounds for its disqualification, none of the above authorities approve the use of an electric Chanukah *menorah* for fulfillment of the *mitzvah.*

2. Sabbath Lights

The factors involved in determining the suitability of electric bulbs for use as a substitute for the customary Sabbath candles are more complex. *Magen Avraham, Orach Chaim* 263:11, rules that a woman who reminds herself after sunset that she has not as yet kindled the Sabbath lights should request a non-Jew to perform this service on her behalf but should pronounce the blessing herself. Subsequent commentators question *Magen Avraham's* rationale in directing that the mistress of the house pronounce the blessing. There is a fundamental halakhic principle that a non-Jew, who is himself exempt from such duties, cannot serve as a proxy in the performance of ritual obligations. If, then, the obligation is not fulfilled through the agency of a non-Jew, why is the woman in question instructed to pronounce the blessing? The explanation is that, in contradistinction to the *mitzvah* of kindling the Chanukah lamp, the precept concerning Sabbath lights is fulfilled, not in the act of kindling, but in the subsequent benefit derived from the illumination. According to Rabbi Frank, if this were the sole consideration electric bulbs would be eminently suitable for use as Sabbath lights because the "benefit" derived from their illumination is at least equal, if not superior, to that derived from candles. Rabbi Yudelevitz, *Ha-Chashmal le-Or ha-Halakhah,* no. 3, ch. 6, concurs in this analysis. Rabbi Katzenellenbogen disputes the basic premise and asserts that the act of kindling constitutes the essence of the *mitzvah* with regard to Sabbath lights just as is the case with regard to the Chanukah *menorah.* This position has previously been

held by *Mishneh Berurah* 675:1 In disagreeing with *Mishneh Berurah* on this point, Rabbi Waldenberg demonstrates that early authorities viewed the principle "Kindling constitutes the performance of the *mitzvah*" as having been formulated solely with regard to the Chanukah lamp. Rabbi Uziel endeavors to show that the applicability of this principle to the *Shabbat* lights has long been the subject of dispute. According to his analysis, Rambam maintains that no direct act of kindling is required while Rabbenu Tam and Tur maintain that such an act is essential with regard to this *mitzvah*.

Rabbi Frank finds electric bulbs unacceptable on other grounds. He argues that an electric bulb is not the type of "lamp" designated by the Hebrew term *ner*. A *ner*, by definition, claims Rabbi Frank, implies the presence of a flame. The source of illumination in an electric bulb is a heated filament; there is neither fuel nor a burning flame within the glass bulb. Since the halakhic requirement stipulates lighting of a *ner* in honor of the Sabbath, Rabbi Frank concludes that a glowing filament may not be substituted. A similar point is raised by Rabbi Kletzkin who observes that the term *ner* connotes a lamp containing both fuel and wick. Rab-Kletzkin does not assert that the absence of fuel or wick invalidates fulfillment of the *mitzvah* but advises that it is preferable not to use electricity wherever the Sages specify use of a *ner*. Parenthetically, Rabbi Kletzkin is the one authority who also discusses use of an electric lamp as a *yahrzeit* light. In this case as well he advises against use of electricity for the identical reason.

A somewhat far-fetched argument against the use of electricity for Sabbath lights was advanced by Rabbi Uziel. Doubtless this line of thought was prompted by the rather frequent power failures to which the inhabitants of the early *Yishuv* were accustomed. The Mishnah, *Shabbat* 24b, records Rabbi Yishmael's pronouncement that *itran* (a type of resin) may not be used as fuel for the Sabbath lamp. The *Gemara* explains that since this fuel is foul-smelling there is a distinct possibility that the householders may abandon their residence in order to escape the odor. The resultant state of affairs is, of course, the opposite of the "Sabbath delight" which the Sages sought to promote by promulgating a decree requiring the kindling of a Sabbath lamp. Rabbi Uziel argues that, since there is a strong likelihood that power failure will occur as a result of mechanical malfunction, electricity cannot be used for the Sabbath lamp. Inconvenience and discomfort resulting from power failure is antithetical to the "Sabbath delight" which the Sabbath light is designed to provide. Rabbi Waldenberg dismisses the analogy between resin and electricity as drawn by Rabbi Uziel. According to Rabbi Waldenberg, the Sages forbade the use of *itran* because when this substance is used as fuel it is the lamp itself which causes discomfort. Electricity, on the contrary, carries with it no inherent inconvenience as long as it provides light. Rabbi Yudelevitz, more co-