

CONTEMPORARY HALAKHAH

By Rabbi Dr. Jonathan Sacks M.A.

Expounding the weekly sedra between portions of the reading

In the spirit of an ancient precedent, many rabbis nowadays explain the sedra of the week, usually by a short summary before the Reading of the Torah begins. The practise is, in one form or another, as old as the time of Ezra. We read (Nehemiah 8:8) of how Ezra delegated a group of Levites to “read from the book of God’s Torah, making it clear and giving the meaning so that the people could understand what was being read”. Subsequently, a line by line translation and explanation of the Torah reading (targum) became a regular feature of the service.

The practise eventually fell into disuse. The targum was in Aramaic, and “what advantage is served by it nowadays, since people do not understand the language?” (*Shulhan Arukh, O.H. 145:3*). R. Jacob ben Asher explained why it was that no subsequent custom arose, to translate the sedra while it was being read into whatever language the congregation understood. “The targum is unique,” he writes, “in that it was Divinely inspired” (*Tur, O.H. 145*).

Interestingly, though, the *Shulhan Arukh* reproduces the laws for saying the targum at the same time as ruling that they are inapplicable. According to one commentator this is “in case the original custom should be restored” (see *Kaf-Ha-Hayyim, O.H. 145-10*). In some communities the reading of the translation survived (*Bayit Hadash ad loc.*).

Despite the existence of good English translations, many rabbis feel the need to explain the subject-matter of the sedra; and there are certainly no halakhic objections to the practise as such. The problem arises when the explanation is given during the course of the reading, between the portions (*bein gavra le-gavra*). Two recent responsa deal

with the question. R. Moshe Feinstein considers whether a rabbi may do so (*Iggrot Moshe, VI, 40:21*). R. Ovadiah Yosef examines the custom of a particular synagogue where the bar-mitzvah boy gives a short discourse between his aliyah and the next (*Yehaveh Da’at, V, 17*).

The problem is : may one talk between portions? A Talmudic source states that “Once the Torah scroll has been opened, it is forbidden to talk even about halakhic matters” (*B. Sotah 39a*). The rule is derived from the description of Ezra’s public reading of the Torah: “All the people listened attentively to the Book of the Law” (*Nehemiah 8:5*). From this we can infer that talking is not allowed during the reading. But what of the pause during the reading, *bein gavra le-gavra*? Is talking allowed then?

Opinions are divided. Rabbenu Yonah (*B. Berakhot 8a*) rules that it is forbidden, and R. Joseph Karo explains that our concern is that if one starts speaking during the break in the reading, the likelihood is that one might continue even after the next portion has begun (*Bet Yosef, O.H. 146*). R. Joel Sirkes dissents. The reason why talking is forbidden during the reading is that it prevents other from hearing. Between portions there is nothing for them to hear; so talking (words of Torah) is permitted (*Bayit Hadash ad loc.*).

R. Ovadiah Yosef suggests that on either view it should be permitted to explain or discourse on the sedra between portions. Even according to Rabbenu Yonah who forbids words of Torah at these points of the service this would apply only to private conversations. The same concern does not apply to public exposition, where the Torah reading would not begin again until the speech was finished. He brings support both from previous rulings on the subject (Resp. *Nahalat Ya’akov, 48; Le-David Emet, 6:61*), and from the fact that we permit other forms of interruption *bein gavra le-*

gavra: the saying of *piyyutim* in honour of a bridegroom or bar-mitzvah boy, and the recital — sometimes at great length — of a *mi she-berakh*.

R. Moshe Feinstein takes the opposite view, and on quite different grounds. His concern is the nature of the exposition itself. Why, he asks, was some new custom not introduced, once Aramaic ceased to be the everyday language of Jewish communities? The local rabbi could have translated the sedra in to the language of his congregation. Even if it was felt to be undesirable to leave the exposition to the private judgement of the rabbi, whose understanding of a verse might be idiosyncratic or unacceptable, there were alternatives. We might have insisted, for example, that he followed the standard commentaries: Rashi, Ramban, Rabbenu Bahya.

The reason must have been that a public translation must be one to which everyone agrees. And on many verses, these commentators give quite different interpretations. There is no single agreed way to explain the sedra. So nothing was instituted to take place of the targum. This applies all the more nowadays, he adds, to the expositions of our 'young rabbis', whose main content is "not relevant to Torah at all".

R. Yosef, writing in the light of R. Feinstein's responsum, comments on it that a distinction must be drawn between permission and obligation. R. Feinstein's observations might explain why no translation was instituted as a standard part of the service; but it does not follow that the practise is forbidden if the congregation desires it. And even if it might be forbidden as a verse-by-verse explanation during the reading itself, it is nevertheless permitted between portions. Even if the rabbi adds something to the explanation, of an ethical or homiletical character, everyone understands that there are other ways of understanding the Torah, and that his intention is merely to encourage the congregation to be better Jews.

His conclusion is that it is certainly preferable for the exposition to be given before or after the reading. But where a congregation already has the custom to do so between portions, it may continue.

The stranded motorist

Changing technologies give us new situations in which to perform old *mitzvot*. "If you see the donkey of someone you hate lying under its load, you might want to refrain from helping him, but instead you must make every effort to help him unload it" (Exodus 23:5). "If you see your brother's donkey or ox fallen on the road, you must not ignore it. You must help him pick up the load" (Deuteronomy 22:4). Beautiful commandments. But how often do we have the chance to fulfil them, these days?

R. Ovadiah Yosef poses an interesting question. Driving along, you see a motorist by the side of the road, whose car has broken down. If you know something about cars, you may be able to help him repair it, or at least give him some advice. Are you obliged to do so? Undoubtedly it is a *mitzvah* to do so, under the general heading of *gemillat hassadim*. But does it come specifically under the obligation of helping the person with a fallen donkey? (Resp. *Yehaveh Da'at*, V, 64).

The question hinges on the point of the biblical command. Was it primarily concerned with the donkey or its owner? Both are in distress, in different ways. Was the Torah anxious to avoid animal suffering (*tza'ar ba'alei hayyim*)? Or was it directing our attention to the plight of the person, unable singlehandedly to cope with his animal and its burden? If the latter, then a stranded motorist is not free from ambiguity, some guidance can be him as well. If the former, then it does not: his car is not in pain.

The issue is an old one, disputed from the *tannaim* to the *acharonim*, as to whether *tza'ar baalei hayyim* is a biblical, or rabbinic, idea. Although it is not free from ambiguity, some guidance can be derived from the words in which Maimonides sets out the law. Having explained that the phrase "someone you hate" refers to a fellow-Jew, he continues: "How can it be that one Jew is spoken of as hating another, seeing that the Torah says, 'You shall not hate your brother in your heart' (*Leviticus* 19:17)? The sages explained that his refers to someone whom you saw — without another witness — committing a transgression. You warned him, but he would not desist. It then becomes a *mitzvah* not to show him love until he

repents and turns from his wickedness. Nevertheless, even though he has not yet repented, if you find him distressed by his burden, it is a *mitzvah* to help him load or unload it and not to leave him in a state of mortal hazard. For he may stay where he is, anxious about his property, and thus expose himself to danger. And the Torah is concerned for Jewish souls, whether of the righteous or of the wicked. (*Hil. Rotze'ah*, 13:14).

Here, and elsewhere in the chapter, Maimonides seems to indicate that the object of the commands is the plight of the owner rather than the animal (see *Kesef Mishne*, *Hil. Rotze'ah*, 13:9; *Derishah u-Perishah*, to *Tur*, *H.M.* 272, who maintain that Maimonides holds that *tza'ar ba'alei hayyim* is Biblical. The Torah is concerned with both animal and owner. But see Vilna Gaon, *Bi-ur HaGRA*, *H.M.* 272:11, 16, who argues that Maimonides holds that it is rabbinic: Torah itself is concerned with the owner only. See also, *Guide of the perplexed*, 111,17). If so, then the reasoning applies equally to the stranded motorist. And although we do not use the idea of the 'reason of the commandment' to limit a command, we do use it to extend it (*Resp. Hatam sofer*, *Y.D.* 104,254).

Accordingly R.Yosef concludes that if we are in a position to help the driver whose car has broken down, we must do so, not merely as an act of kindness but also in fulfilment of the commands about overlaid donkeys. The human need is the same in both cases.

Honouring divorced parents

With divorce tragically on the increase, there is a contemporary note about about the recent responsum of R.Eliyahu Bakshi Doron about filial responsibility towards a divorced parent (*Tehumin*, vol.3, 1982, pp.168-174). The question addressed to him was this. A son was born to his mother after she had already obtained a divorce from her husband. The child had never had any relationship with his father, who, as part of the divorce settlement, had agreed to forgo any parental rights. The son was now seeking advice as to whether he had any halakhic duties towards his father, and whether, on his death, he would be bound to observe the normal rules of mourning.

R.Doron begins his reply by noting that the command to honour parents does not depend on the human relationship between them. Even if the father fails in his responsibilities as a parent the duty remains (*Shulahan Arukh*, *Y.D.* 240:18). the Mishna, in defining the respective honour due to parent and teacher ("His father brings him into this world; his teacher brings him to the world to come": *M.Baba Metzia* 2:11), makes it clear that it is the mere biological fact of paternity that creates the duty. Accordingly, a son is bound to honour his natural father, whether or not he was raised by him, whether or not he has any relationship with him.

The question raised by the case under review, though, is whether the agreement of the father to forgo parental rights, at the time of the divorce, amounts to a renunciation of the honour due to him under the fifth of the ten commandments. The rule is that a father can effectively forgo this honour (*B.Kiddushin* 32a; *Y.D.* 240:19). But what is the force of this renunciation?

There are two possibilities. The first is that honouring a father is a commandment wholly conditional on the father's consent. If so, it would be analogous to the command that someone who rapes an unmarried girl must take her as his wife (*Deuteronomy* 22:28-29). This command is dependent on her consent: without it there is no *mitzvah* at all in his doing so. The second is that honour is always obligatory on the son; but that when his father says that he does not desire that or this to be done for him, he merely indicates that these acts of service do not count as honour as far as he is concerned. He had no need or desire for them.

Some authorities seem to take the former view, namely that if a parent forgoes the honour due to him, the command to honour parents no longer applies to his children (see *Resp.Rashba*, I, 18; *Ketzot Ha-Hoshen* 97:1). Rashba uses this idea to explain why there is no blessing made over the fulfilment of the command of honouring parents: we never make a blessing over a command whose performance depends not only on us but also on the agreement of others. Nor do we make a blessing over a command which can be made not to apply to us. The duty of honour may not apply, if parents choose not to be honoured.

Many other authorities disagree. For them, if a

parent forgoes honour, this does not set the command aside. The child is still bound by it. Firstly the parent may change his mind, or may request some other form of service at a later stage. The duty to obey remains in the wings, as it were, awaiting its moment. In this respect it is unlike the duty of the rapist to marry his victim, which once forgone by the girl cannot be revived (R.Asher, in *Shittah Mekubetzet*, *Baba Metzia* 32a; *Tosafot Yeshanim*, *Ketubot*, 40a). Secondly there is a difference between a command which is *conditional* on the will of another, and a command — like honouring parents — whose *very essence* is to fulfil the will of another. Paradoxically, not honouring them when they do not desire it is itself within the spirit of the command (see *Ha-Makneh*, *Kiddushin* 32a). Thirdly, there are those who hold that if a parent renounces his honour, the child is still bound to honour him; the renunciation is only effective in removing punishment, not duty (Resp. *Radbaz*, I, 524). Several cite this as a view to be followed in practise (see R.Akiva Egar and *Pit'hei Teshuvah*, to *Y.D.* 240:19).

R. Doron concludes that if the father should at some stage make a request of his son, the son would still be bound to honour it. He adds, though, that the son is not bound to seek his father out if he has not expressed any desire to see him, especially if his mother is opposed to the association.

On the question of mourning, Rema rules that the laws of *shiva* and *sheloshim* are to be observed for the deceased even against their will (*Y.D.* 334:10). R.Shabbatai Hakohen adds that this does not extend to the twelve-month period of mourning for parents. Since this extra period does not apply to other relatives, and is a facet of parental honour, it may be foregone if they so instructed (*Siftei Kohen*, *Y.D.* 344:9). Some have doubts about Rema's ruling and are inclined to the view that even *shiva* may be foregone if the deceased so wished (Resp. *S'evut Ya'akov*, II, 102; R.Akiva Egar to *Y.D.* 344:10).

In the case of the divorced father, R. Doron notes that since most authorities hold that the command of honouring parents cannot be wholly abdicated, the son should still observe all the laws of mourning, for the seven and thirty day periods, and for the full twelve months. At the time of the divorce, the father agreed to forego any claims on

his children. But he did not command explicitly that they should not mourn him. His agreement, in any case was given so that he could avoid contributing towards their maintenance; hence we can assume that he meant it to cover his lifetime, but not beyond.

What, though, if the mother should object to the son observing *avelut*? R.Ezekiel Landau rules that in such a conflict the wishes of the living parent take priority (*Noda BiYehudah*, II, *E.H.* 45). R. Akiva Eger is less certain: perhaps the rule is that the wishes of the father take priority (Responsa, I, 68; see *Bet Yosef*, *Y.D.* 376). In fact (though R. Doron for some reason omits reference to it) Rema rules that a son should say *kaddish* for his mother even though his father objects (*Y.D.* 376:5, see *Darkhei Moshe ad loc.*) all the more so in the reverse situation. R.Shlomo Luria suggests that the question as to which parent takes priority only applies where each request something that is permitted; not where one asks for something that is forbidden. If one of them asks the child not to say *kaddish* for the other, then they are asking him not to carry out a rabbinical custom, and perhaps even asking him to break the command of 'Love thy neighbour as thyself'. Hence they should not be heeded (*Yam Shel Shlomo*, *Kiddushin* 1:63).

R.Doron's conclusion is that, despite any reservations that the mother might have, the son should observe the laws of mourning and *kaddish* for his father.

Naming a child before a delayed Brit Milah

A *brit milah* is often delayed on medical grounds. In the latest issue of *Assia*, the journal devoted to halakhah and medicine, Professor A. Eidelman raises the question of a psychological effect on the mother-child relationship of a prolonged period during which the child does not have a name (*Assia*, IV, 1983, pp.234-245). Naming a child is an important element in conferring an identity on him. For the child not to have a name before its *brit* may — of the *brit* is delayed — weaken the psychological link between mother and child, to the detriment of the child's early development.

R.Mordekhai Halperin examines the basis and force of the custom not to name a son before the *brit*, and the general issue of whether

psychological effects such as these are recognised as factors in the halakhah. He points out at the outset that Professor Eiderman's concern would require confirmation by controlled experiment before it could command the attention of the halakhah; unproven conjectures are not facts (see Resp. *Rivash* 447). However, in the present instance, grounds for leniency are not hard to find.

In the case of the biblical account of the birth of Isaac, it would seem that the name was given *before* the *brit*: "Abraham gave the name Isaac to the son Sarah bore him. When his son Isaac was eight days old, Abraham circumcised him, as God commanded him" (Genesis 21:3-4). The delay of naming a son until the *brit* seems to have no Biblical source.

The prayer said at the *brit* in naming the child ("Preserve this child to his father and mother and let his name be called in Israel . . .") is not mentioned in the Talmud amongst the blessings to be said on the occasion (*B. Shabbat* 137b). Furthermore, early texts of the prayer (*Ha-Ittur*, cited in *Tur*, Y.D. 265; *Abudraham*) have, in place of "let his name be called", the phrase "whose name has been called", perhaps implying that the custom had been to give the name beforehand. The *Sefer Hassidim* describes a naming ceremony independent of the *brit* (para. 1140; edn Mossad HaRav Kook, p.568; see note of R. Margoliot *ad loc.*).

The custom of associating the naming with the *brit* is to be found in the *K'lalei Ha-Milah* of R. Jacob Ha-Gozer, who explains it on the grounds that, since the child is to be blessed after his circumcision, he must have a name by which to be blessed. Another reason cited is that Abraham's change of name was accompanied the command of circumcision (Genesis 17; *Hesed Le-Avraham*).

In a note accompanying the article, R.E. Lange cites two other sources, also from 12th century C.E., which mention the custom. R. Judah bar Yeker refers to it in his *Pirush Ha-Tefillot*, and bases it on the interesting observation that a name before the *brit* is impermanent; after the *brit* it cannot be removed. When the names of Abraham and Sarah were changed their previous names disappeared. But when Jacob — born after *brit*

had been instituted — had his name changed, the previous name remained. The custom is also to be found in a note of R. Elazar ben Judah of Worms, author of the *Roke'ah*. There may be an illusion to it in *Pirkei De-Rabbi Eliezer*, 48, which speaks of the birth of Moses: "His parents saw that he resembled a Divine angel. They circumcised him at eight days and called him Yekuti'el."

Given, then, that the practise is an old-established custom, may it be overridden on medical grounds? In fact, even without such grounds the custom is already mentioned of naming the child before the *brit*, where it is known that it will be delayed. In one view this should be done within the eight days (*Himudei Daniel*); on another, after the eight days (*Koret Ha-Brit*). The naming is done on calling the father to the Torah. Even though the normal practise is to wait until the *pidyon ha-ben* in the case of a firstborn, this may be foregone if the delay would cause distress to the mother.

In another supplementary note, R. Hayyim Miller gives a number of instances where Torah authorities — asked by distraught parents to pray for their unwell and as yet unnamed children — insisted that they immediately be given a name, and that the parents should not wait until the *brit*.

R. Halperin ends with a comment on child psychology. The Talmud mentions that on Yom Kippur young children are allowed to eat or drink and wash. One affliction, though, is applied to them: not wearing leather shoes. Why the difference between this and the others? The Talmud answers: others would affect their natural growth and health (*B. Yoma* 78b). The passage then continues with a statement by Abaye about things that assist a child's development, amongst which is "the breaking of vessels". Rashi explains this to mean that allowing the child to break things gives him the chance to express, rather than suppress, his energies. Rabbah "used to buy damaged clay vessels for his children to break". Apparently the psychological benefit to the child overrode any consideration against needless waste (*bal tashchit*).