

## HALACHA

### RECENT RESPONSA —

by Rabbi Jonathan Sacks

The Rishon Le Tsion, Rav Ovadiah Yosef, is one of the most prolific of contemporary halachic authorities. In the six volumes so far published of his responsa, *Yabia Omer*, he displays an astonishing erudition and a tireless and lucid pen. In the last few years, though, he has added to the literature at a more popular level as well. The three volumes of responsa published under the title *Yechaveh Da'at* (1977-1980), represent a reworking of talks given on Israeli radio on halachic problems of the day. As to be expected, the confines of this kind of medium mean that few of the questions dealt with are new, and none of the answers pathbreaking in their innovation. Nonetheless the collection is a useful compendium, not least because it deals with familiar rather than recherche issues; and the answers in each case cover the literature briskly and authoritatively.

The following are four examples, chosen for the light they throw on characteristically Israeli concerns.

#### A SEAT ON A BUS

If there is no Torah, there is no *derech erets*, said the rabbis; and if there is no *derech erets* there is no Torah. And yet it has occasionally been remarked, doubtless unfairly, that the delicacies of etiquette are not always the accompaniment of an intensive Torah education. An Israeli bus is not, perhaps, the place in which to find or practice the rule of *toujours la politesse*; on the contrary, it is more likely to be the best place to witness the

Darwinian law of the survival of the fittest. So it is refreshing to find asked and answered in a halachic context, the question: does the Biblical command, "Thou shalt rise up before the hoary head, and honour the face of the old man" (*Vayikra* 19:32) entail merely that one should stand up before old or the wise, in a bus, or that one should in addition offer them one's seat?

Rav Yosef (*Vol. 3, no. 71*) begins by explaining that the command does not merely mean that one should stand up, when confronted by the old or the wise, but that one should *remain* standing so long as they are there. This seems to be the implication of the

Talmudic passage in which R. Nachman stood during the hearing of a case in which the widow of R. Huna was one of the litigants, on the grounds that "the wife of a scholar is like a scholar" (*Shevout* 30; see *RaN and Chidushei Torat Chaim ad loc*; see however *Kos Hayesho'ot to Shevout ad loc.*) This principle is to be found explicitly in *Shibolei HaLeket* (ch. 43), that as long as one's teacher is standing, walking or riding without eyesight, one should stand. Only in the synagogue, is there an exception, namely that one does not have to stand the whole time that one's teacher does, if for example he is called up to the Torah, because there is another obligation alongside honouring one's teachers: respect for the congregation (see *Yorah Deah* 242:18).

If this is so, then it follows that one is

bound to offer one's seat in a bus to those before whom one is obliged to stand, if they have nowhere else to sit, for one may not sit down while they are standing. This applies only if they are within 4 cubits. Beyond this distance there is no strict obligation to stand (see *Kiddushin* 33, and *Rashi ad loc*; *Yoreh Deah* 244:2).

Rav Yosef quotes a relevant homily of R. Chaim Azulay, who writes in the name of Rabbeinu Ephraim: "Thou shalt rise up before the hoary head" means that if you see someone standing, who is very old and whose standing causes him discomfort, and you are sitting, then you should rise and give him your seat. "Honour the face of the old" means if he is not so old as to be in distress, nonetheless you should honour him by saying, Would you like to sit in my place? (*Chida, Nachal Kadmonim, Kedoshim*).

Homily though it is, it is, in fact, the case. Within four cubits, if there is nowhere else to sit, one must give up one's place to those before whom one must stand. Beyond that distance, one should practice *lifnim mishurat hadin*, and do so even though not required. The same is true, of course, for old or pregnant women (the latter as *gemillat chassadim*). These standards of politeness are particularly demanded of those who are, in the eyes of the world, representatives of the Torah community. For there is at stake more than the specific command: there is also the wider and crucial consideration of *kiddush hashem*, in the spirit of the rabbinic interpretation of "You shall love the Lord your God" — that the name of Heaven should be beloved because of you. If someone studies Bible and Mishna and attends on the disciples of the wise, and his dealings with people are conducted in pleasantness, what do people say of him? Happy the father who taught him Torah. Happy the teacher who taught him Torah... this man who has studied Torah, see how fine are his ways, how righteous his deeds". (*Yoma* 86).

## THE COHEN WHO HAS KILLED IN WAR

R. Jochanan said: A Cohen who has committed manslaughter should not lift his hands to give the priestly blessings, for it is written, "Your hands are full of blood" (*Isaiah* 1:15; *Berachot* 32b; *Orach Chayim* 128:35). Does this rule apply to an Israel soldier who has, in the course of one of the wars Israel has fought, killed one of the enemy?

R. Yosef (*vol. 2Q no. 14*) first discusses the question of whether R. Jochanan's ruling applies whether the victim was Jewish or non-Jewish. But the fundamental issue is: is there a difference between ordinary cases of manslaughter and those which occur in the course of war? And is there a difference between war in general and the defence of Israel in particular?

The later authorities are of the view that if a Cohen killed under coercion he may continue to give the priestly blessings (*Pri Chadash to Orach Chayim* 128:35; *Bet Menucha* 141, par. 27). A Cohen who stands exposed to danger, confronting enemy forces, is certainly in this category, for "if someone comes to kill you, rise and kill him first" (*Berachot* 62b). Moreover, even if a person is faced with the classic dilemma of kill or be killed, in which the rabbis ruled, "Why should you think that your blood is redder; perhaps his is redder" (*Pesachim* 25), and that one should die rather than transgress (*Maimonides, Hilchot Yesodei Hatorah* ch. 5; *Yoreh Deah* 157), nonetheless if a Cohen disobeyed the rule and killed, he may still make the priestly blessings, since although he has done wrong, he was nonetheless acting under coercion. There is no doubt, then, that in the case under consideration the Cohen may bless, for not only has he not acted against the halacha; he has to the contrary fulfilled a great mitzvah. For the defence of Israel against enemy attack comes within the category of a *milchement mitzvah* (*Hilchot*

*Melachim 5:1*). The Cohen who finds himself in such a situation should therefore have no qualms about his entitlement to bless the congregation.

R. Yosef adds the following footnote. Although he is in no doubt about the ruling, there seems nevertheless to be an interesting contrary indication in the Bible. We read that David said to Solomon, explaining why he himself had been unable to build the Temple: "The word of the Lord came to me, saying, You have shed blood abundantly, and have made great wars. You shall not build a house to My name, because you have shed much blood upon the earth in My sight" (*I Chronicles 22:8*). This seems to suggest that even though David had been guilty of bloodshed only in the course of war, this was a disqualification from a specific service to God. The passage, though, should not be taken as relevant to the case in point. Radak, for example, suggests that the reference in the verse was to the bloodshed of the priests in the town of Nov, of which David had been an unwitting cause; and of the slaughter of non-combatants during the course of David's military campaigns. War itself was not the disqualification (see also *Yalkut Shimoni, II Samuel, par. 145; Ralbag to I Kings 7:51*).

### THE BLESSING FOR PRESIDENTS

On seeing a non-Jewish monarch we make the blessing, "Who has given of Your glory to flesh and blood". Does this apply, nowadays, to Presidents of countries that have no monarchy?

In an early source, Rabbenu Avraham bar Yitschak had ruled that anyone who had the powers of a monarch, in terms of authority, the power to order executions, and to issue commands not subject to any higher countermanding, was to be considered as a king for the purposes of the blessing (see *Orchot Chayim, Hilchot Berachot 49; Responsa Radbaz, vol. I, no. 296*). Rav Yosef

(*vol. II, no. 28*) entertains the suggestion that the President of a democratic country cannot be said to have such powers, since he is subject to various constitutional constraints: he may, for example, have to win the support of the legislature. On the other hand, there is a sense in which he may have power over life and death. For, someone who has been sentenced to death by the judiciary, may turn to him as possessing the final right to exercise clemency. The fact that he may hold power only for a limited period of time is of no consequence, since what is decisive is his powers at any given moment. Rav Yosef concludes, in line with most other authorities, that the full blessing is to be made over Presidents, in virtue of their power to overturn the verdict of the courts in cases of capital punishment (see *Torat Chayim Sofer, 224:10; Resp. Shoel VeNishal, I, 73*; but see, for a dissenting view, *Resp. Kiryat Chanah David, II, 36*). This applies also to a visiting President from another country (*Resp. Chatham Sofer, Orach Chayim, 159*).

There is, though, another ground for doubting whether the blessing should be made. For if a President or monarch is seen without official uniform or entourage, can it be said that he has been seen in his glory: the glory being the subject of the blessing? R. Yeshaya Pinto (*Resp. Nivchar MiKeseif, 3*) was asked whether the blessing could be made on seeing a King dressed incognito. And he replied that one could not. For the blessing is made over the glory of the King, and this was represented primarily by his robes of office. If he is dressed as an ordinary citizen, there is nothing to make the blessing over. A part of the idea of glory is also the royal entourage; and if this too is missing, then certainly the blessing is inappropriate (see also, along similar lines, *Zachor Le-Avraham 22b; Resp. Yehuda Ya'aleh, Orach Chayim no. 28*).



Against this, Rav Yosef argues, the ruling of Rabbeinu Avraham had suggested that the essence of *glory*, as far as the blessing was concerned, lay in the *powers*, not the appearance of the person. However, the weight of halachic opinion is that appearance, too, is a factor, and therefore on seeing a President who is dressed as an ordinary citizen one should make the blessing without the Divine name and kingship.

Rav Yosef adds that, since indirect seeing is not regarded as seeing (*Rosh Hashana* 24), no blessing should be made upon seeing a monarch on television.

#### TRAVELLING TO EGYPT

*Rav Yosef was asked, during the peace negotiations with Egypt, whether it was permitted for Israel journalists to travel to Egypt to report on the progress of the talks. (Vol. III, no. 81).*

The starting-point of the analysis is Maimonides' ruling that it is permitted to settle anywhere except Egypt (*Hilchot Melachim* 5:7). The prohibition is implied three times in the Bible: in the command that no future king should "cause the people to return to Egypt" (*Deut.* 17:16); in the passage describing the punishments that would follow upon disobedience to the covenant, "And the Lord shall bring you into Egypt again, by the way of which I spoke to you: You shall see it no more again" (*Deut.* 28:68); and in Moses' words at the Red Sea: "For the Egyptians whom you have seen today, you shall never see them again" (*Ex.* 14:13). (*For the source of Maimonides' ruling, see Yerushalmi Succah, ch. 5; Mechilta, Beshallah, 3*). The Babylonian Talmud, after describing the great wealth of the Jewish community in Alexandria, says that "Trajan slew them all" because they transgressed against the prohibition of returning to Egypt (*Succah* 51b; our text reads, "Alexander of Macedon slew them").

Considerable questions therefore arose in the light of the fact that there were distinguished Jewish communities in Egypt; and that Maimonides himself lived there. There is a report that Maimonides signed a letter with the words, "The writer, who every day transgresses the three prohibitions against living in Egypt" (*see Kaftor VaFerach, ch. 5; cited in Rambam LaAm, Hilchot Melachim ad loc*). Rav Yosef cites a list of later authorities who refused to give credence to this account. But in any case Maimonides was a special case, being unable to leave since he was bound by his position as royal physician. What of the others?

The Ritva offers two explanations. One: the original settlements which had been the subject of the Biblical prohibition had ceased to exist, and the present Egyptian towns were built subsequently and therefore escape the ban. Two: the prohibition applied only when Jews were settled in Israel, and not during the period of diaspora in which all countries outside Israel bore the same status (*Chidushei Ritva to Yoma* 35). The second answer would not have been acceptable to Maimonides, however, since he does not make the prohibition subject to the vicissitudes of time. The first, though, is adopted by R. Ya'akov Kastro (*Hagahot Mahari Kastro to Even HaEzer ch. 128*) who rules that Cairo does not come within the scope of the Biblical definition of Egypt. But this does not account for the Jewish settlement in Alexandria, which is explicitly included by Maimonides and others in the ban (*see Hilchot Melachim loc. cit; Sefer HaChinuch no. 500*).

Rabbeinu Bachya (*Commentary to Deut.* 17:16) suggests that the prohibition was only a temporary one, grounded in the corruption of Egypt at the time, and was not intended to stand for future generations. Other authorities too suggest that the rule was based not on the land of Egypt per se, but upon mixing with its inhabitants, so that a permission can