

# FAMILY VIOLENCE

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## Part I: The Legal Status of Abuse

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*The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.*

### שאלה

1. *Beating*: According to Jewish law as interpreted by the Conservative movement, under what circumstance, if any, may:

- A) husbands beat their wives, or wives their husbands?
- B) parents beat their children?
- C) adult children of either gender beat their elderly parents?

2. *Sexual abuse*: What constitutes prohibited sexual abuse of a family member?

3. *Verbal abuse*: What constitutes prohibited verbal abuse of a family member?

### תשובה

#### The Importance of the Conservative Legal Method to These Issues<sup>1</sup>

In some ways, it would seem absolutely obvious that Judaism would not allow individuals to beat others, especially a family member. After all, right up front, in its opening

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chapters, the Torah tells us that we are all created in the image of God.<sup>2</sup> That fundamental tenet would seem to require that, at a very minimum, we do not physically abuse others. The classical Rabbis of the Jewish tradition, those who wrote the Mishnah, the Talmud, and the Midrash, certainly understood that to be the case, for rabbinic law assumes that we do not have the right to strike others and thus specifies five sorts of compensation for personal injuries. Specifically, assailants must pay their victims for their lost capital value, their time lost from work, their pain and suffering, their medical expenses, and the embarrassment they suffered.<sup>3</sup> Courts may impose lashes for trespasses of the law, but due care had to be taken in the process to preserve the dignity of God and God's human creature, and even courts now refrain from such punishment.<sup>4</sup> Indeed, the Rabbis took the notion of the integrity of the individual so far as to say that those who slander others (let alone cause them physical injury) are as though they had denied the existence of God.<sup>5</sup> Conversely, Rabbi Eliezer said, "Let your fellow's honor be as dear to you as your own."<sup>6</sup>

Given these underlying principles, one would expect that any family violence that occurred within the Jewish community would be based on misinformation about our tradition, neglect of it, or simply the foibles of individuals. Unfortunately, when we probe the sources, we find some that permit forms of family violence, and some that actually encourage it. Consequently, before we delve into this subject, it is critical to indicate that the very method that we Conservative Jews use to interpret and apply the Jewish tradition requires us to see sources within their historical context and to make judgments appropriate to ours.

The Jewish tradition, after all, has spanned many centuries. During that time, it has not remained the same. Sometimes its development has been an internal unfolding of its inherent commitments in thought and in practice, and sometimes the example of other peoples among whom Jews lived produced changes within Judaism. Moreover, not all of the tradition is of an everlasting and compelling quality, and so generations of Jews have reinterpreted some parts of the tradition, all but ignored some, added other elements, and

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and who was kind enough to share the results of her research with me and to offer constructive criticism of an earlier draft; Ms. Benay Lappe for giving me some materials on the definitions of the various forms of abuse from the psychological literature; Dr. Ian Russ for supplying me with a bibliography on sexual abuse of children (see n. 57 and n. 63 below) and for giving me important suggestions regarding the psychological aspects of this responsum; and Mr. Mark Rotenberg for sending me information on false reports of abuse.

This responsum is based on an essay I wrote for a joint project of the University of Judaism and the Jewish Family Service of Los Angeles. The book in which it originally appeared is *Shalom Bayit: A Jewish Response to Child Abuse and Domestic Violence*, Ian Russ, Sally Weber, and Ellen Ledley, eds. (Los Angeles: The Shalom Bayit Committee, 1992), pp. 48-57, 64-66. That book can be procured from The Family Violence Project, Jewish Family Service of Los Angeles, 22622 Vanowen Street, West Hills, CA 91207, phone (818) 587-3322.

<sup>2</sup> Gen. 1:26-27; 9:6.

<sup>3</sup> M. Bava Kamma 8:1 and the Talmud thereon.

<sup>4</sup> Thus the Torah (Deut. 21:22-23) demands that even someone executed on court order for cause be buried the same day to preserve a degree of respect for God's creation ("for an impaled body is an affront to God"), and the Torah (Deut. 25:3) similarly restricts the number of lashes a court may inflict to forty, "lest being flogged further, to excess, your brother be degraded before your eyes." The Rabbis, in fact, diminished the number further on these grounds; cf. M. Makkot 3:10-11; B. Makkot 22a; M.T. Sanhedrin, ch. 17. For a summary of the use and restrictions of flogging as a penalty, see "Flogging," *Encyclopaedia Judaica* 6:1348-51. Such flogging, though, was restricted to courts and was not, one would expect, given to individuals to impose on others. Since the Enlightenment, Jewish courts in the Diaspora no longer have had the authority to inflict lashes, and the Israeli system of justice does not include such a penalty either.

<sup>5</sup> J. Pe'ah 1:1.

<sup>6</sup> M. Avot 2:15.

have even taken steps to make some portions of the tradition effectively inoperative. These changes have sometimes occurred through conscious, judicial decisions and sometimes through the changing customs of the people Israel in many times and climes.

That historical understanding of Judaism is critical for identifying its contemporary message on any subject, and the topic of family violence is no exception. We look to the tradition for enlightenment and guidance, and we often find it in a simple, straightforward manner. Sometimes, however, traditional sources say things that we find obsolete or even offensive. When that occurs, we have not only the right, but the duty to exercise judgment. We must determine whether such a mode of thinking or acting recorded in the tradition is an historical remnant that must be altered because contemporary circumstances or moral sensitivities have changed, or whether the tradition as it stands is, instead, an indictment of our own way of doing things and a challenge for us to change. Thus, to accomplish our expectation to be taught by the tradition, we must be aware of the twin duties we have as its heirs: we must learn it and preserve it, and, at the same time, evaluate it and reinterpret it when necessary. Only then can it continue to speak to us with wisdom and power.

One other factor must be mentioned at the outset. This responsum is written in answer to Jews asking about the status of family violence in Jewish law. Jews expect their tradition to give them guidance beyond the demands of civil law, for we aspire to holiness. We certainly cannot interpret Jewish law to allow us to be less moral than what civil law requires.<sup>7</sup> Since civil law in most areas of the Western world now prohibits most forms of family violence, Jews must eschew it for that reason in addition to the grounds afforded by the Jewish tradition.

### Acknowledging Family Violence Within Our Community

Family violence is not only an unpleasant memory from sources of the past; it afflicts our own Jewish families as well. That has not been part of our self-image; the contemporary Jewish community, in fact, is only now openly admitting that family violence occurs within its midst. Somehow we were supposed to be immune from such behavior; that was, our sources assure us, what non-Jews did, not how Jews behave. To take just one element of this problem, each of the past several years in the United States there have been over 400,000 reports of verifiable sexual assaults against children filed with authorities by teachers and doctors who deal with obviously battered and traumatized youngsters, and

<sup>7</sup> One might argue that Jews must avoid family violence because we are bound by civil law under the dictum, “the law of the land is the law” (דינא דמלכותא דינא). That may well be true, but it is not as clear as one might think, for that dictum was usually restricted to commercial matters. Even during the Middle Ages, though, Jews were forced by the government under which they lived to abide by its laws, and rabbis generally saw that as a Jewish obligation as well as a civil one – at least to protect the Jewish community from expulsion or governmental interference. Certainly, when Jews began living as full citizens under governments shaped by the philosophy of the Enlightenment, they saw themselves both legally and morally bound to abide by the government’s laws, and that continues to this day. The operative principle, then, is not so much “the law of the land is the law” as it is the need to avoid the *חילול השם* (desecration of God’s name) involved in Jews breaking just civil law and the requirement in Jewish law that Jews see themselves bound by moral standards beyond those of other nations.

For a discussion of the scope and rationales of “the law of the land is the law,” see Elliot N. Dorff and Arthur Rosett, *A Living Tree: Roots and Growth of Jewish Law* (Albany: State University Press of New York, 1988), pp. 515-23. For a discussion of sanctification of God’s name (and avoiding desecration of God’s name) and holiness as reasons to obey Jewish law, see Elliot N. Dorff, *Mitzvah Means Commandment* (New York: United Synagogue, 1989), pp. 113-134. For the demand that Jews be at least as moral as non-Jews, see, for example, David Novak, *The Image of the Non-Jew in Judaism* (New York: Edwin Mellon, 1983), pp. 90-93, and “Kiddush Ha-Shem,” *Encyclopaedia Judaica* 10:979-80.

studies indicate that at least one out of every three girls and one out of every five boys is sexually abused before age eighteen. Moreover, the number of cases of battered children reported to state agencies per year has grown from roughly two million in 1986 to three million in 1994, and some two thousand children, most of them under age four, die each year at the hands of parents or caretakers.<sup>8</sup> It is too early to know whether we Jews engage in these and other forms of family violence to the same degree as do other groups within the general population, but our community surely suffers from all modes of this malady.

Moreover, family violence occurs among the Orthodox at least as much as it does among Conservative, Reconstructionist, and Reform Jews. Devotion to tradition has not, unfortunately, prevented violent behavior within the family. Nobody, though, has the right to brag; family violence is all too common throughout our community. I have been a member of the Board of Directors of the Jewish Family Service of Los Angeles for about a decade now, with special interest in its Family Violence Project, and I have consequently been informed of the woeful extent to which this plague infests our community. Similar projects are now in place or in the planning stages in New York, Chicago, and other cities as Jewish communities throughout North America, Israel, and indeed the world finally acknowledge the problem and then take steps to deal with it.<sup>9</sup>

### *Beating Wives or Husbands*

In this area of family violence as in all the areas to follow, we must be careful to distinguish acceptable forms of physical contact from abuse. Affectionate or supportive forms of such contact between spouses are certainly not included in the category of abuse; they are easily differentiated from objectionable behavior by their motive, the willingness of the partner to be touched in that way, and the lack of physical and emotional wounds that normally result. Even a one-time slap in anger, while not pleasant or ideal, does not constitute abuse. When I speak in this section of beating a spouse, then, I am referring to repetitive blows, delivered out of anger, a desire to control, or some other motive inimical to the welfare of the victim, that ultimately inflict bleeding or a bruise, even a temporary one.

Naomi Graetz has written a book-length manuscript on rabbinic responsa regarding wife-beating.<sup>10</sup> She divides the responsa into five categories:

<sup>8</sup> The 400,000 figure: Christine Gorman, "Memory on Trial," *Time*, 17 Apr. 1995, p. 55. The estimate of one out of every three girls and one out of every five boys: J. Crewdson, *By Silence Betrayed: Sexual Abuse of Children in America* (New York: Harper and Row, 1988). The figures for battered children in 1986 and 1994: *U.S. News and World Report*, 8 May 1995, p. 14, based on statistics from the National Committee to Prevent Child Abuse. That 2,000 children died through parental neglect or abuse: *U.S. News and World Report*, 8 May 1995, p. 14, based on statistics from "A Nation's Shame: Fatal Child Abuse and Neglect in the United States," a 248-page report of the U.S. Advisory Board on Child Abuse and Neglect.

<sup>9</sup> I would like to thank Rabbis Vernon Kurtz and Gerald Skolnik for alerting me to the current efforts and plans of the Chicago and New York Jewish communities, respectively, on these matters, and Ms. Anita Altman, Director of Resource Development for the New York UJA Federation, for sending me a fact-sheet on the services currently provided by New York area Jewish agencies to counteract family violence and the grant proposal that was just funded to coordinate their efforts. For a summary of some Conservative movement efforts on this, see Bette Fried, "Responding to Domestic Violence: A Progress Report," *United Synagogue Review* 47:2 (spring 1995): 15-16, 23.

<sup>10</sup> Some of her research can be found in her article "Rejection: A Rabbinic Response to Wife Beating," in Tamar Rudavsky, ed., *Gender and Judaism: The Transformation of Tradition* (New York: New York University press, 1995), pp. 13-23. I want to thank her for sharing this article with me before it was published together with another as yet unpublished article that summarizes her research and that spells out this typology together with parts of her book-length manuscript on this subject. I also want to thank Professor Judith Hauptman for sharing her article-in-progress on this subject with me; it is now tentatively entitled, "Traditional Jewish

1. *Acceptance* – i.e., those rabbis who know that some Jewish husbands beat their wives and permit it. Such rabbis justify it either as a means for the husband to educate his wife in proper behavior, or as a way to obtain domestic harmony (שלום בית). Rabbis who permit husbands to beat their wives when they fail to perform the duties required of them by law or when they violate prohibitions in the law include Rabbi Yehudai Gaon (eighth century, Babylonia), Rabbi Shmuel Hanagid (936-1056, Spain), “the Gaon” reported by Rabbenu Nissim, and Maimonides, who writes that, “A wife who refuses to perform any kind of work that she is obligated to do may be compelled to perform it, even by scourging her with a rod.”<sup>11</sup> Later Rabbi Israel Isserlein (1390-1460, Germany/Austria) permitted a husband to beat his wife if she cursed her own parents “in order to keep her away from this strict prohibition.”<sup>12</sup>

A variation on this approach permitted a husband to beat his wife if she had hurt him, presumably so that after he vents his anger in this way, domestic harmony would return. That is how R. Shelomo ben Adret (“Rashba,” c. 1235-c. 1310, Spain) rules,<sup>13</sup> and so does R. Moses Isserles (“Rema,” c. 1525-1572, Poland), who condones wife-beating as a response to taunting or degradation. Thus R. Isserles rules that when the beating is rooted in the husband’s aggression, it is not acceptable, and the court should compel him either to desist or to divorce his wife:

A man who strikes his wife commits a sin, just as if he were to strike anyone else. If he does this often, the court may punish him, excommunicate him, and flog him using every manner of punishment and force. The court may also make him swear that he will no longer do it. If he does not obey the court’s decree, there are some authorities who say that we force him to divorce her, if he has been warned once or twice, because it is not the way of Jews to strike their wives; that is a non-Jewish form of behavior.<sup>14</sup>

However, when the beating is caused by her antagonistic behavior, then the husband is subjected to no such penalties:

But if she is the cause of it – for example, if she curses him or denigrates his father and mother – and he scolds her calmly at first but it does not help, then it is obvious that he is permitted to beat her and castigate her. And if it is not known who is the cause, the hus-

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Texts, Wife Beating, and the Patriarchal Construction of Jewish Marriage.” Naomi Graetz argues the same thesis – namely, that wife-beating stems at least in part from the inherent inequality in Jewish marriage – but from a metaphoric rather than a legal ground in her article, “The Haftarah Tradition and the Metaphoric Battering of Hosea’s Wife,” *Conservative Judaism* 45:1 (fall 1992): 29-42. [NOTE: Graetz’s book, subsequently published, is *Silence is Deadly: Judaism Confronts Wifebeating* (Northvale, NJ: Jason Aronson, 1998).]

<sup>11</sup> M.T. Laws of Marriage 21:10; cf. 21:3. The Mishnah (M. Ketubbot 5:5) requires a wife to “grind (flour), bake (bread), wash (clothes), cook food, nurse her child, make his [her husband’s] bed, and work in wool.” In M.T. Laws of Injury and Damage 4:16, however, Maimonides makes the husband who beats his wife liable for the usual remedies of assault, and in M.T. Laws of Marriage 15:19 he says that a man should honor his wife more than his body and love her as his body. For Rabbi Yehudai Gaon’s position, see *Otzar Ha-Geonim to Ketubbot*, pp. 169-70. Rabbenu Nissim refers to “the Gaon of blessed memory” who allows a husband to whip (or to refuse to sustain) his wife if she refuses to do the chores delineated for her by law; see Rabbenu Nissim on Ketubbot 63b. For Rabbi Shmuel Hanaggid’s position, see his *Ben Mishlei*, S. Abramson, ed. (Tel Aviv, 1948), p. 117, sec. 419.

<sup>12</sup> *Terumat Hadeshen*, sec. 218.

<sup>13</sup> Rashba, *Responsa*, pt. 4, sec. 113; pt. 5, sec. 264; and pt. 7, sec. 477.

<sup>14</sup> S.A. *Even HaEzer* 154:3 (gloss).

band is not considered a reliable source when he says that she is the cause and portrays her as a harlot, for all women are presumed to be law-abiding (כשרות).<sup>15</sup>

2. *Denial* – i.e., those rabbis who deny that Jewish husbands beat their wives. We have already seen in R. Isserles' comment that wife-beating "is a non-Jewish form of behavior" – even though he then condones it for Jews under specific circumstances.<sup>16</sup> R. Abraham ben David of Posquieres ("Rabad," c. 1125-1198, Provence) is more consistent. In commenting on the passage in which Maimonides permits a husband to beat his wife if she refuses to do the housework required of her by law, he expresses great surprise and says, "I have never heard of women being scourged with a rod."

3. *Apologetic* – i.e., those rabbis who seek to defend the honor of the Jewish community by whitewashing the facts. This usually involves a heavy dose of denial. When the facts cannot be ignored, though, apologists seek to marginalize the phenomenon, stating that Jews who engage in wife-beating do so less frequently and less violently than non-Jewish batterers; or to justify such behavior, maintaining that Jews who actually engage in such behavior do not really hurt their wives or do so for a good reason; or to displace the blame by shifting it to the surrounding culture. Often, even while acknowledging some of the evidence of wife-beating, apologists ignore other pieces of it that do not fit their thesis. Naomi Graetz points to Rabbi Joseph Hertz as an example of such an apologist.<sup>17</sup>

4. *Rejection* – i.e., declaring that wife-beating is unconditionally unacceptable. This is the strain of rabbinic rulings that is most in keeping with our own point of view. The three medieval rabbis who were most articulate on this issue were R. Simhah b. Samuel of Speyer (second half of the twelfth and the beginning of the thirteenth centuries, Germany), Rabbi Meir b. Barukh of Rothenburg ("Maharam," c. 1215-1293, Germany), and R. Perez b. Elijah of Corbeil (died c. 1295, France). R. Simhah, the earliest of these three, condemns wife-beating in the strongest of terms. He sees wife-beating as more serious an offense than assaulting any other person because a husband takes on a specific obligation to honor his wife in the marriage contract (ketubbah) beyond the normal obligations we all have to respect the integrity of other creatures of God. Consequently, Rabbi Simhah decrees penalties for wife-beating that are considerably more severe than the five remedies for general assault. He says:

Therefore penalize him severely, whether physically or financially, for what has happened. Great repentance is necessary, and deal severely with him in the future as you see fit.<sup>18</sup>

Rabbi Joseph Karo records Rabbi Simhah's opinion more fully:

I found in a responsum of Rabbenu Simhah that "it is an accepted view that we have to treat a man who beats his wife more severely than we treat a man who beats another man, since he is not obligated to honor the other man but is obligated to honor his wife, more, in fact, than himself. And a man who beats his wife should be

<sup>15</sup> S.A. Even HaEzer 154:3 (gloss). See also Moses Isserles, Darkhei Moshe to the Tur, Even HaEzer 154:15.

<sup>16</sup> A note found in Isserles there (S.A. Even HaEzer 154:3) says that this was said several centuries earlier by R. Mordecai ben Hillel in his commentary on the fourth chapter (Na'ara) of Ketubbot, but I was not able to find it there.

<sup>17</sup> Joseph Hertz, *The Pentateuch and Haftorahs* (London: Soncino, 1938), p. 935.

<sup>18</sup> R. Simha in Or Zarua, Piskei Bava Kamma, sec. 161.

put under a ban and excommunicated and flogged and punished with various forms of torment; one should even cut off his hand if he is accustomed to it (wife-beating). And if he wants to divorce her, let him divorce her and give her the ketubah payment.”

Further on he writes:

You should impose peace between them, and if the husband does not fulfill his part in maintaining the peace but rather continues to beat her and denigrate her, let him be excommunicated, and let him be forced by non-Jewish (authorities) to give her a writ of divorce.<sup>19</sup>

(In traditional Jewish law, only a man can initiate a divorce, but under specific circumstances a court will coerce him to grant his wife a writ of divorce (a *get*) “until he says, ‘I want to!’”<sup>20</sup> Such coercion has historically included everything from gentle persuasion to defaming him to his friends and employer to lashes, depending upon the degree of the husband’s recalcitrance and the remedies available to the Jewish court. In modern times, the State of Israel has gone as far as imprisoning men who have refused to grant their wives a writ of divorce at the command of the court, but Jewish courts in the Diaspora lack that power and have instead used other tactics up to, and including, dissolution of the marriage through annulment.)<sup>21</sup>

Rabbi Meir of Rothenburg follows R. Simhah’s lead. He too rules that “a man who beats his wife. . . is compelled (by the court) to give her a divorce.”<sup>22</sup> Moreover, he says that, “The batterer must be boycotted and excommunicated, beaten and punished with all sorts of beatings, and his hand should be cut off if it used to beat her.”<sup>23</sup>

Finally, in proposed legislation (תקנה), R. Perez b. Elijah of Corbeil, notes that, “The cry of the daughters of our people has been heard concerning the sons of Israel who raise their hands to strike their wives. Is it not rather forbidden to strike any person in Israel?” Citing the authority of the Tosafists, R. Samuel, R. Jacob Tam, and R. Isaac, sons of R. Meir, R. Perez then decrees that one who beats his wife must, on complaint of his wife, or one of her relatives, “undertake on pain of excommunication not to beat his wife in anger or cruelty or so as to disgrace her, for that is against Jewish practice.” Furthermore, if the husband disobeys, the Court will assign the wife alimony as if the husband were away on a journey.<sup>24</sup>

5. *Evasiveness* – i.e., evasion of responsibility by the rabbis of the time, or “the wringing hands syndrome.” The rabbis recognize that wife-beating is wrong, but they maintain

<sup>19</sup> Joseph Karo, *Bet Yosef to the Tur*, Even HaEzer 154:15.

<sup>20</sup> *Kiddushin* 50a; *Yevamot* 106a.

<sup>21</sup> For a discussion of how the Conservative, Orthodox, and Reform movements have dealt with this issue, and the legal theory behind each approach, see Dorff and Rosett, *A Living Tree* (at n. 7), pp. 523-45.

<sup>22</sup> Quoted in Moses Isserles’ commentary on the *Tur*: *Darkhei Moshe*, Even HaEzer 154:11. However, another source (*Responsa of Binjamin Ze’ev* – first half of the sixteenth century, Greece – no. 88) cites Rabbi Meir of Rothenburg as one of those who permit physical punishment to chastise a wife. On this entire subject, see Samuel Morell, “An Equal or a Ward: How Independent Is a Married Woman According to Rabbinic Law?,” *Jewish Social Studies* 44, nos. 3-4 (summer-fall 1982), pp. 190-201; and Rachel Biale, *Women and Jewish Law* (New York: Schocken, 1984), pp. 92-96.

<sup>23</sup> Maharam, *Responsa of the Maharam* (Prague edition), sec. 81. See also what he wrote in the Cremona edition, sec. 291, which is a later answer.

<sup>24</sup> Louis Finkelstein, *Jewish Self-Government in the Middle Ages* (New York: Jewish Theological Seminary of America, 1924), pp. 216-7. On the topic of those who reject wife-beating altogether see Graetz, “Rejection: A Rabbinic Response to Wife Beating” (at n. 10).

that they are powerless to do anything about it. So, for example, R. Solomon b. Abraham Adret (“Rashba,” 1235-1310, Barcelona, Spain) says:

A question was asked of him: What is the ruling for a husband who regularly beats his wife, so that she has to leave his home and return to her father’s home?

The answer is: The husband should not beat his wife. She was given to him for life, not for sorrow. He should honor her more than his own body. The court investigates to determine who is responsible. If he beats her, she is allowed to run away, for a person does not have to live with a snake. But if she curses him for no reason, the law is with him, for the woman who curses her husband leaves without collecting the money promised in her marriage contract (ketubbah). At any rate, I do not see that the court can do more than tell him in strong language not to beat her and warn him that if he beats her not according to law, he will have to divorce her and give her the money of her marriage contract.<sup>25</sup>

Similarly, R. David b. Solomon ibn Avi Zimra (“Radbaz,” 1479-1573, Spain, Egypt), affirms the right of a husband to beat his wife “if she behaves improperly, according to our Torah, in order to bring her back to the right path, for she is under his jurisdiction.” He adds the condition, though, that there must be witnesses to the wife’s violation of the law, and he asserts that “he is not allowed to beat her for matters that pertain to him personally, for she is not his servant.” Moreover, “if he habitually beats her, he should be punished.” In a clear reference to R. Simha, however, he says, “There is one who exaggerated in his teaching and said that we can force him to divorce her, even by use of non-Jewish courts.” In another responsum, Radbaz goes so far as to say that if the court does force the husband to divorce his wife on this ground, her children by a second marriage would be illegitimate (mamzerim).<sup>26</sup> In other words, the husband’s actions may be wrong, and the court may even punish him for that, but it cannot free the woman to marry someone else on that ground. This Naomi Graetz rightly classifies as evasion of responsibility on the part of the court.

In sum, then, the sources are not as unified in their stance against wife-beating as we probably would have expected and certainly would have hoped. In general, rabbis living in Muslim countries were the most permissive of wife-beating, those in France less so, and those in Germany not at all. According to Avraham Grossman, wife-beating among Jews in Muslim countries was frequent, especially among the lower social strata and particularly when economic times were hard. Moreover, the phenomenon of early marriage for girls contributed to this, for the older men who were their husbands may have assumed that they were not only partners, but substitute parents for their wives. Undoubtedly, rabbis in Muslim countries were also influenced by Muslim practices, for the Quran calls upon the husband to beat his wife if he suspects that she is behaving immodestly or disobeying him.<sup>27</sup> Even so, Grossman asserts, “the situation of Jewish women in Muslim countries was better than that of the Muslim women.” Conversely, in Germany in the eleventh to thirteenth centuries, women enjoyed high social status: the legislation of Rabbenu Gershon prohibited

<sup>25</sup> Rashba, Responsa, pt. 7, no. 477.

<sup>26</sup> Radbaz, Responsa, pt. 3, no. 447; pt. 4, no. 157.

<sup>27</sup> Quran, ch. 4, v. 38. See J. Schacht, *An Introduction to Islamic Law* (Oxford, 1964), pp. 161-168.

polygamy, restricted divorce against the will of the woman, and fixed a high sum in the woman's marriage contract, and women played a significant role in supporting the family. In addition, the Ashkenazic Hasidim made any insult or shame caused to a person, including wife-beating, not only a crime, but a sin, where repentance was inflicted measure for measure. This attitude clearly influenced those outside the community of Hasidim as well.<sup>28</sup>

In addition to these historical factors, there is an important legal institution underlying whatever permission exists in some sources for a husband to beat his wife, namely, that Jewish law assumes that the husband owns his wife. The Mishnah and Talmud went very far to protect the rights of the woman, but, after all is said and done, the very language for betrothal is that a man "acquires" (קונה) his wife.<sup>29</sup> It is precisely this that Naomi Graetz, Judith Hauptman, and others suggest we change to uproot the underlying legal context that sets the stage for the permission of wife-beating.

Even if one does not want to go that far in changing institutions from the past, we can certainly say that we no longer think of marriage as the acquisition of the husband, even if we still use that terminology (קנין). Husbands in our day have no more right to discipline their wives than wives have to discipline their husbands. In our times, then, the opinions of Maimonides and Isserles on this issue, among others, must be set aside as no longer applicable. Instead, relying on opinions like those of R. Simhah, R. Meir of Rothenburg, and R. Perez b. Elijah of Corbeil, as well as our own judgment, *we declare wife-beating is prohibited by Jewish law*. Indeed, those of us who want to retain the language of קנין for marriage would point out that, in traditional Jewish marital law, when a husband "acquires" his wife, he thereby takes on a number of binding legal and moral obligations to her, and, as we Conservative rabbis interpret those obligations, wife-beating is not only inconsistent with, but contrary to, those obligations.

Moreover, in cases where wife-beating occurs and cannot be corrected through therapy for the husband, we will do all in our power to help the woman free herself from the marriage. That includes counseling to help her make the decision to extricate herself from the abusive situation, referrals to Jewish Family Service or other such agencies that can facilitate that process and show her how to protect herself (and her children) from further harassment, guidance (if necessary) in obtaining legal help to dissolve the marriage in civil law, and then appropriate actions within Jewish law to dissolve the marriage by a formal Jewish writ of divorce (*get*), if possible, or by an annulment (הפקעת קידושין), if necessary. A commitment to the life and health of the woman demands no less.

The same is true in the opposite direction. While there is not, to my knowledge, any source within our tradition that ever allowed the wife to beat her husband, it does occur. Indeed, if instances of wife-beating are underreported because of worries about shame, slander, and economic support, instances of husband-beating are probably even more underreported because men are too embarrassed to admit that they have been battered by a woman; since childhood, after all, boys are taught that they are supposed to be the physically stronger gender.<sup>30</sup> Con-

<sup>28</sup> Avraham Grossman, "Medieval Rabbinic Views on Wife-Beating, 800-1300," *Jewish History* 5:1 (spring 1991): 53-62, especially pp. 57 and 59-60. I want to thank professor Judith Hauptman for calling my attention to this article.

<sup>29</sup> M. Kiddushin 1:1.

<sup>30</sup> As I was writing this, I happened to come across a "Dear Abby" column in the morning paper just on this topic. Abigail Van Buren states that "the number of men who have been battered by women would shock most people. This crime is underreported because many men are too embarrassed to admit that they have been battered by a woman." She then cites a letter from a man who "was raised never to hit a woman – even in self-defense" – another contributing factor to this phenomenon – but "many times my ex-wife

sequently, it is worthwhile to mention here that it is also the case that *husband-beating is also prohibited by Jewish law*<sup>31</sup> and is equally as reprehensible. In such cases as well we will do all in our power to help the man free himself from the abusive situation in ways similar to those delineated above for a wife suffering abuse.

The Rabbinical Assembly's recently-issued *Rabbinic Letter on Intimate Relations* applies this line of thinking to sexual areas as well. The Letter specifically prohibits coercive sex, and it recommends divorce, rather than passive acceptance, if the marital bond includes abuse by either party. This responsum specifically endorses those stands.

### ***Child Beating***

If a man's wife was construed as his possession in the past, all the more so were his children – a tenet that is shared by American law and that only recently has been challenged in the court case of Gregory K. “‘Portable property’ was Emerson's term for children, and most people believe kids do belong to their parents, body and soul. As a practical matter, the courts have tended to uphold that view.”<sup>32</sup>

Similarly, if discipline was the major justification for Maimonides for beating a wife, that rationale applies all the more for children – at least in some Jewish sources. “Spare the rod and spoil the child” has firm roots in the biblical Book of Proverbs:

Do not withhold discipline from a child; if you beat him with a rod he will not die. Beat him with a rod and you will save him from the grave.<sup>33</sup>

This applied to mothers as well as fathers:

Rod and reproof produce wisdom, but a lad out of control is a disgrace to his mother.<sup>34</sup>

Along these lines, the Rabbis specifically exempt parents and teachers from the monetary damages usually imposed on those who commit assault on the theory that beating a child is sometimes necessary to carry out the parental duty of teaching the child Torah

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would throw things at me and come at me with her fingernails, drawing blood from the scratches she would inflict on my face and neck. She even broke my arm and ribs when she threw a heavy chair at me.” When he finally sued for divorce, she retaliated by filing charges that he had sexually molested their child. He had to “endure humiliating questions,” and it cost him \$10,000 in legal fees to prove his innocence – and that his ex-wife was clinically psychotic and paranoid with multiple personality disorders. “Meanwhile, the accusations were devastating.” Aside from documenting one case of husband-abuse, this illustrates another point that will be discussed in Part IV, below – namely, the need to take careful steps in determining just who is at fault when there is alleged abuse. Abigail Van Buren, “Not All Spouse Abusers Are Men,” *Los Angeles Times*, 28 May 1995, p. E2.

<sup>31</sup> M.T. Laws of Injury and Defense 4:18; S.A. Hoshen Mishpat 424:10. After this responsum was submitted and approved by the Committee on Jewish Law and Standards, Naomi Graetz pointed out to me that it should take note as well of the fact that some gay and lesbian partners abuse each other in patterns similar to wife-beating. While it would not be fair to the Committee to insert this in the body of the responsum after their vote, let me at least mention what is clearly in the spirit, if not the letter, of the responsum that the Committee approved – namely, that the same condemnation of abuse would apply to gay or lesbian partners, and the same aid to the abused party to extricate him/herself from the abusive situation must be extended.

<sup>32</sup> Pat Wingert and Eloise Salholz, “Irreconcilable Differences,” *Newsweek*, 21 Sept. 1992, pp. 84-90. The citation appears on p. 84.

<sup>33</sup> Prov. 23:13-14; cf. Prov. 3:11-12, 13:24, 19:18, 20:30, 29:17.

<sup>34</sup> Prov. 29:15.

in its widest sense, including the difference between right and wrong.<sup>35</sup> (The teacher is, in the Rabbis' view, simply an agent to enable the parents to fulfill this responsibility of theirs.) Deuteronomy, the fifth book of the Torah, goes even further: it states that parents may bring a "wayward and defiant son, who does not heed his father and mother and does not obey them even after they discipline him" to the town elders to be stoned.<sup>36</sup> In the latter case, of course, the physical damage to the child is to be inflicted by public authorities and not the parents, and that is a significant difference, but the parents are still the instigators of this procedure.

One must immediately distinguish, though, between discipline of a child and child abuse. It is arguable whether striking a child is ever a good way to discipline a child, but if it is, that constitutes one end of a spectrum. Presumably, at that end the parent would hit the child only when the child's behavior was so unusually vile that, in the estimation of the parent, milder forms of reprimand would not work.

At the other end of the spectrum is child abuse, wherein the parent's striking of the child is frequent, uncontrollable, unprovoked, and excessively severe. Hitting the child is not responsive to the child's behavior or needs, but rather acting out the parent's frustration. This occurs especially when the parent either does not understand the needs of the developing child or has expectations of behavior that do not match the child's capabilities. Parents also abuse children when they do not know alternative, effective methods of discipline. Striking the child, then, is the parent's misdirected attempt to calm his or her own inner anxiety and is either not responsive at all, or is not properly responsive, to the child's behavior in his or her social and developmental context.

In between those extremes are cases in which the line between legitimate discipline and child abuse is harder to discern. Even granted such ambiguities in the middle of the spectrum, though, we surely have a problem in our society when ten to twenty percent of university students retrospectively report that as they were growing up, both they and other family members were beaten to the point of producing, at a minimum, bruises or bleeding.<sup>37</sup>

At most, then, verses like the ones from Proverbs cited above legitimate striking a child only for reasons of discipline, and then only when no milder form has been effective in correcting the child's behavior. We moderns, though, no longer think of children as the parents' property to do with as they will, but rather as the parents' blessings and the parents' responsibility to raise into moral, informed, caring, and productive adults. Moreover, we also now recognize that hitting a child is usually not the best way to accomplish those ends. Consequently, while we Conservative rabbis would acquiesce to a light smack on the buttocks (a "potch") or even striking the child elsewhere on the body with an open hand (but not punching or pummeling with a fist), only those types of contact

<sup>35</sup> M. Makkot 2:2; B. Makkot 8a-b. For a collection of rabbinic statements concerning corporal punishment, see Zvi Elimelech Bloom, *Hanha'ot Ha-Hinukh* (Jerusalem, 5741), pp. 140-158. See also Gerald Blidstein, *Honor Thy Father and Mother: Filial Responsibility in Jewish Law and Ethics* (New York: Ktav, 1975), pp. 123-6, 208-9.

<sup>36</sup> Deut. 21:18-21. "Wayward and defiant" is the rendering of the new translation published by the Jewish Publication Society of America; other translations render "stubborn and rebellious." Verse 20 adds that, "He is a glutton and a drunkard."

<sup>37</sup> John N. Briere, *Child Abuse Trauma* (Newbury Park, CA: Sage, 1992), pp. 7-8. I would like to thank Ms. Benay Lappe for calling my attention to this book and for lending it to me. Others, however, maintain that the degree of physical injury is not what makes an action abusive; it is rather the use of physical force in an unwanted and intimidating way. ("Unwanted" must be part of that definition because people who voluntarily play football are certainly expecting to be subjected to physical force and even intimidating force, but since they see that as part of the fun of the game and since they voluntarily play, football in and of itself does not constitute "abuse.")

that do not produce bleeding or a bruise would be permissible. In contrast to the verses cited above from the Book of Proverbs and to the practice permitted in times past, however, *we forbid striking a child with a rod, belt, or instrument of any kind*. We also hereby declare that, as we interpret and apply the Jewish tradition in our day, it clearly and emphatically prohibits a parent's use of corporal punishment to the point of abuse – i.e., where the child is seriously harmed or where the punishment is clearly excessive as a response to the child's misdeed.<sup>38</sup>

After all is said and done, though, the use of corporal punishment, even within permissible parameters, is questionable. That same biblical Book of Proverbs that advocates the use of physical force in raising children also says, "Educate a child according to his own way."<sup>39</sup> The Talmud understands this to mean that parents should make age-appropriate demands so as not to put their children into a situation in which corporal punishment would be called for. In other words, parents have a duty to set reasonable standards for their children so as to avoid even being tempted to use physical forms of discipline. They must not put a stumbling block in the way of their children fulfilling the commandment of honoring them.<sup>40</sup>

Even in the worst of cases – the kind described by Deuteronomy – the Talmud could not accept anything like the death penalty. The Rabbis therefore legislated evidentiary procedures that made it impossible ever to attain a capital conviction in such a case. Once having created these barriers, they themselves said, "A wayward and defiant son [subject to execution according to Deut. 21:18-21] never was and never will be."<sup>41</sup> If the Rabbis insisted that even courts not go to the limit available to them under biblical law in physically punishing children, parents should certainly limit the physical punishment they inflict – or, even better, refrain from it altogether. After all, if the parents' duty is to teach the child proper behavior, they should not, in the process of doing so, do to the child exactly what they do not want the child to do to others. Educationally and pragmatically, then, as well as Jewishly, the best policy is not to use physical punishment at all.

One especially troubling aspect of this picture occurs in instances where parents beat retarded children. While there is minimal justification for beating a normally intelligent child for purposes of discipline, retarded children often cannot even understand why they are being subjected to blows, and so the abuse loses much of its justificatory cover. One

<sup>38</sup> M.T. Laws of Assault and Injury 5:1; Laws of Study (Talmud Torah) 2:2; S.A. Yoreh De'ah 240:10, 450:1; Kitzur Shulhan Arukh 165:7. Cf. M. Semahot, 2:4-6, B. Sotah 47a, and B. Sanhedrin 107b.

<sup>39</sup> Prov. 22:6. The context of the verse – especially the second line of the couplet – requires that the first part of the verse be rendered as the new translation of The Jewish Publication Society of America does: "Train a lad in the way he ought to go; he will not swerve from it even in old age." The Hebrew of the first part of the verse, however, is hard to read that way, and the Rabbis understood its words according to their usual meaning, as translated and developed here.

<sup>40</sup> B. Kiddushin 30a, and see Rashi there. Cf. also B. Mo'ed Katan 17a. Maimonides, following the Talmud, speaks of this restriction as applying to a "big child," which presumably means an older child (twenty-two or twenty-four years old, according to Rashi on B. Kiddushin 30a, s.v. משיח; see also S.A. Yoreh De'ah 240:20), or one married (even at a younger age), and perhaps even one financially independent of the parents, whatever his or her age. Maimonides, though, in the law immediately previous to this one, states that even though inordinate demands are included in the commandments of honoring and respecting one's parents, parents (presumably of younger children too) should not make harsh demands on their children lest they thereby create an obstacle to the child's ability to fulfill the commandments demanding their honor and respect; indeed, one who does so is to be excommunicated for violating the commandment in Lev. 19:14 of not producing such an obstacle! See M.T. Laws of Rebels 6:8-9. (Lev. 19:14 is interpreted by the Rabbis to prohibit putting a stumbling block not only before the physically blind, but also before those who are intellectually or morally blind; see Sifra on that passage, B. Pesahim 22b, and B. Mo'ed Katan 17a, which explicitly uses that verse to prohibit striking one's grown child.)

<sup>41</sup> B. Sanhedrin 71a.

can understand the extra measure of frustration that parents might feel in raising a retarded child, and one can certainly appreciate the additional demands that that entails over those involved in rearing a child of normal intelligence, but parents of retarded children need to get help so that they can respond to those aspects of parenting their special-needs child in appropriate, non-violent ways.<sup>42</sup>

The same rules that apply to the discipline of children – but with even less endorsement for striking the child – apply to family-like situations outside the family where adults are in charge of children. Thus teachers, youth group leaders, counselors, coaches, and the like may, at the very most, give a light slap on the buttocks to children to get them out of bed or going to the next activity. They may not strike the child in any form of corporal punishment.

None of the above, of course, is intended to prohibit hugging a child so as to comfort him or her or putting an arm around the child's shoulders as an expression of congratulations in, for example, a ball game. On the contrary, parents who refuse to hug their children or kiss them thereby deprive them of some of the most effective and needed forms of love. All of the above strictures, then, are with reference to acts of violence against the child, differentiated from acts of love or friendship by both the intention and context of the parties and the form and energy of the physical contact.<sup>43</sup>

### ***Beating Parents***

Abuse of elderly or infirm parents is, unfortunately, a growing phenomenon in our society, especially as people live longer and suffer from the mental and physical disabilities of old age. The Jewish tradition has no room for maltreatment of parents. Parents, of course, are human beings and are therefore protected under the general rules against assault and the monetary remedies entailed therein. The Torah, though, makes parents special. It specifically prohibits striking one's father or mother, and it prescribes the death penalty for one who does so.<sup>44</sup> That, I take it, leaves little room for doubt about the Torah's view of striking parents.

<sup>42</sup> I want to thank Naomi Graetz for pointing out to me the importance of noting this special class of cases of child abuse.

<sup>43</sup> When I returned home after the meeting of the Committee on Jewish Law and Standards during which this responsum was approved, I found an article in the *Los Angeles Times* describing the efforts of some Latino parents to save their children from America's world of drugs, sex, and violent gangs by returning them to live with relatives in Latin America, which "offers more rigid school discipline and law enforcement, and encourages stiff corporal punishment – a welcome contrast, they say, to America's softer legal and social systems." The article depicts a mother who "is still bothered by the fact that when school officials here saw the bruises from the beating she had given Maria, they warned her that she could go to prison. . . . It galled her when Maria began to threaten to call 911 to avoid physical punishment, while De La Cruz was required to enroll in parenting classes to avoid criminal charges for beating the girl. When she sent Maria to live for seven months with an aunt in Guadalajara, De La Cruz told the aunt to beat Maria if necessary. . . . Maria, afraid that her aunt would hit her, did not misbehave. She said she found out that 'in Mexico, that's your child and no one else's business. The police don't care.' In Los Angeles, De La Cruz had wanted to make her daughter get a full-time job after school to keep her off the streets. That was something else American law did not allow children to do. . . . Today, Maria has replaced gang parties with the LAPD (Los Angeles Police Department) Explorer Academy. A ninth-grader, she has made finishing high school her highest priority." I am not citing this article to justify child abuse, but simply to indicate the other side of the story that we so often – and rightly – hear, namely, that while corporal punishment should in most cases be avoided, as I have maintained here, discipline of children is definitely necessary, and in some circumstances even corporal punishment short of child abuse may be appropriate. Jose Cardenas, "Unruly Teens Packed Off to Mexico," *Los Angeles Times*, 12 Dec. 1995, pp. B1 and B6.

<sup>44</sup> Exod. 21:15. Cf. B. Sanhedrin 84b. If the child did not cause a bruise while striking his or her parents, however, the child is liable for the damages of assault rather than for the death penalty; cf. M. Bava Kamma 8:3.

If any more grounding is sought for prohibiting parental abuse, it would come from the Torah's positive commandments to honor and respect one's parents. The biblical commands specifically mention that mothers as well as fathers are to be revered and honored, and the Rabbis construed these commands to be demanded of daughters as well as sons. The Rabbis understood "respect" to require that children not harm parents and "honor" to insist that they actively provide for them:

What is "honor" (כבוד) and what is "respect" (מורה)? Respect means that he (the son) must neither stand in his (the father's) place nor sit in his place, nor contradict his words, nor tip the scales against him (in an argument with others). Honor means that he must give him food and drink, clothe and cover him, and lead him in and out.<sup>45</sup>

So, for example, if the child has food and the parent does not, the law permits forcing the child to provide food for the parent, and a midrash gives a trenchant justification:

"Honor your father and mother. . . You shall not murder." Why are these two laws juxtaposed (in Exod. 20:12-13)? To teach you: If a man has food in his house and does not share it with his father and mother, even when they are young and most certainly when they are old, then he is considered as if he were an habitual murderer. Therefore the verses "Honor (your father and mother)" and "You shall not murder" stand next to one another.<sup>46</sup>

The Talmud, on the one hand, sets limits to these obligations, so that, for example, one may provide for one's parents out of their assets rather than from one's own.<sup>47</sup> On the other hand, stories in the Talmud recount instances in which specific people went to extraordinary lengths to honor and respect their parents, and these are taken as models for us all.<sup>48</sup> With this as a background, one can understand that the tradition, which prized honor and respect of parents so much, would in no way countenance parental abuse.

These laws stand on their own, independent of any assessment of the quality of parenting that one's own parents provided. There are at least two rationales in Jewish sources to justify a duty to honor even bad parents. One is that the parents, along with God, are the three partners in the creation of their children. Children owe their very existence to their parents, and for that reason alone parents have a call on the children's time, their effort, their honor, and their respect. Moreover, the divine partnership in the creation of a person along with the parents means, for the Talmud, that "if people honor their father and mother, God says, 'I reckon it to them as if I dwelled among them and as if they honored Me.'"<sup>49</sup>

<sup>45</sup> The biblical command to honor parents: Exod. 20:12; Deut. 5:16. The command to respect parents: Lev. 19:3. That daughters as well as sons are commanded to honor and respect their parents: M. Kiddushin 1:7; B. Kiddushin 29a. The Rabbinic exposition of those commands: Kiddushin 31b, from which this citation comes; M.T. Laws of Rebels (Mamrim) 6:3; S.A. Yoreh De'ah 240:2, 4; cf. also 228:11. For further development of these commandments, see my article, "Honoring Aged Fathers and Mothers," *Reconstructionist* 53:2 (Oct.-Nov. 1987): 14-20.

<sup>46</sup> Tanna d'bei Eliyahu 26. Cf. M.T. Laws of Rebels 6:3 and S.A. Yoreh De'ah 240:5 for forcing the child to provide food.

<sup>47</sup> B. Kiddushin 31b-32a; M.T. Laws of Rebels 6:3; S.A. Yoreh De'ah 240:5. Using one's own resources is, however, preferred: cf. Kesef Mishneh to M.T. Laws of Rebels 6:7.

<sup>48</sup> B. Kiddushin 31b-32a; J. Kiddushin 1:7 (67b); J. Pe'ah 1:1 (15c-d); Deuteronomy Rabbah 1:15.

<sup>49</sup> B. Kiddushin 30b.

Secondly, parents are commanded to teach their children how to behave according to the dictates of the Torah. While some parents fail miserably in this task, to the extent that they carry out this obligation, they fulfill a God-like role and are to be respected as such. Philo, a first century Jewish thinker from Alexandria, put this point well. The tradition understands the first five of the Ten Commandments as those governing the relationships between human beings and God, while the second group of five shape the relationships among human beings. Noting that the command to honor parents is placed as the fifth of the Ten Commandments and thus the last of the first set, even though parents and children are clearly human beings, Philo says:

After dealing with the seventh day (the Fourth of the Ten Commandments), He gives the Fifth Commandment on the honor due to parents. This commandment He placed on the borderline between the two sets of five: it is the last of the first set, in which the most sacred injunctions, those relating to God, are given, and it adjoins the second set, which contain the duties of human beings to each other. The reason, I think, is this: we see that parents by their nature stand on the borderline between the mortal and the immortal sides of existence – the mortal, because of their kinship with people and other animals through the perishableness of the body; the immortal, because the act of generation makes them similar to God, the progenitor of everything. . . .

Some bolder spirits, glorifying the name of parenthood, say that a father and mother are in fact gods revealed to sight, who copy the Uncreated in His work as the Framer of life. He, they say, is the God or Maker of the world; they (the parents) only of those whom they have begotten. How can reverence be rendered to the invisible God by those who show irreverence to the gods who are near at hand and seen by the eye?<sup>50</sup>

Thus abuse of parents is even more specifically and severely denounced in the Jewish tradition than abuse of other people or even other family members.<sup>51</sup> The positive obligations to honor and respect one's parents add yet more strength to the general obligation to respect the divine element in each one of us. Since respect of a person would certainly preclude abuse, we are doubly warned in the case of parents against beating them.

Not all parents, of course, are model human beings or paradigm parents; some are nasty or even abusive. According to some Jewish sources, one is required to love them nevertheless, either as a corollary of honoring them or as an instantiation of the command, "Love your neighbor as yourself."<sup>52</sup> Maimonides, however, does not require love of parents:

<sup>50</sup> Philo, *Treatise on the Decalogue*, Loeb Classical Library edition, trans. F.H. Colson, vol. 7 (1939), pp. 61, 67, 69.

<sup>51</sup> This does not mean that one must continue to administer life-support systems to parents in failing health beyond all hope of cure. Quite the contrary, doing so might arguably be construed as abuse! On such medical issues at the end of life, see my "A Jewish Approach to End-Stage Medical Care," *PCJLS* 86-90, pp. 65-126; and Avram Israel Reisner, "A Halakhic Ethic of Care for the Terminally Ill," *PCJLS* 86-90, pp. 13-64.

<sup>52</sup> The command to love your neighbor as yourself: Lev. 19:18. Rashi, on B. Kiddushin 32a, s.v. פורדן and רומאכילין; R. Elazar Azkari, *Sefer Haredim* (Warsaw: 1879), p. 31; R. Abraham Danzig, *Hayyei Adam* (1810) 67:1. These sources are cited and discussed in Blidstein, *Honor Thy Father and Mother* (at n. 35 above), pp. 56-57.

Know that the Torah has placed us under a heavy obligation in regard to the proselyte. We were commanded to honor and revere our parents, and to obey the prophets. Now it is possible for a person to honor and revere and obey those whom she or he does not love. But with the proselyte there is a command to love him or her with a great, heartfelt love. . . much as we are commanded to love God Himself.<sup>53</sup>

Moreover, one may certainly disagree with one's parents – although not in a way that they are publicly shamed, as the rabbinic definition of “respect” cited above specifies.

When parents have abused their children or violated the law, a number of Ashkenazic sources (Rashi, Rabbenu Tam, R. Moses Isserles) assert that the Torah's commands to honor and respect them no longer apply. Sephardic sources, however, generally assert that the commands to honor and respect parents continue even in the face of abuse or other illegality. This is true for R. Alfasi, Maimonides, and R. Karo.<sup>54</sup>

This dispute has an effect not only on whether one must provide for formerly abusive parents, but how. Ideally, the children should tend to their parents' needs themselves, for, as the Talmud notes, part of the honor of parents comes from their child's personal care for them.

You are My children, and I am your Father. . . . It is an honor for children to dwell with their father, and it is an honor for the father to dwell with his children. . . . Make, therefore, a house for the Father in which He can dwell with his children.<sup>55</sup>

When the relationship between parents and children makes that emotionally impossible, however, children may use the services of others to fulfill their filial obligations.<sup>56</sup> For that matter, even when the relationships between parents and children are good, people may choose to use nursing homes and similar facilities when that proves to be best for all concerned. In those cases, however, children continue to have the obligation to visit their parents as often as possible, by telephone if not in person. The need we all have for family ties does not diminish in old age; if anything, it may get stronger as we cope with illness and our ultimate demise. The Talmud's insistence on personal care is thus as important today as it was in the past.

While one may, if necessary, delegate the care of one's parents to others rather than performing the duty oneself, beating parents is another matter. The former is failing to do one's duty in the optimal way; the latter is violating an explicit interdiction – actually, a

<sup>53</sup> Maimonides, *Responsa*, ed. J. Blau, vol. 2, no. 448, p. 728. Cited in Blidstein, *Honor* (at n. 35), p. 55.

<sup>54</sup> Rashi: B. Sanhedrin 47a, s.v. על; B. Berakhot 10b, s.v. גירי. Rabbenu Tam: Tosafot to B. Yevamot 22b, s.v. כשעשה; Mordecai to Yevamot, sec. 13. R. Alfasi: B. Yevamot 22b. Maimonides: M.T. Laws of Rebels (Mamrim) 5:12; see also 6:11. Karo and Isserles: S.A. Yoreh De'ah 240:18 (with gloss). On this generally, see Blidstein, *Honor* (at n. 35), pp. 130-6; and Benay Lappe, “Does a Child Who Has Been Sexually Abused by a Parent Have the Obligation to Say Kaddish for That Parent: A Teshuvah,” an M.H.L. thesis at the University of Judaism, Los Angeles, 1993.

<sup>55</sup> Exodus Rabbah 34:3. Note also that one version of the story of the death of Rabbi Judah, president of the Sanhedrin, has it that as he was dying he specifically asked for his children to be in attendance; see B. Ketubbot 103a. The ideal of giving personal care, however, did not become a legal requirement recorded in the codes – although those legal texts probably assume such care; cf. Blidstein, *Honor* (at n. 35), pp. 113-115.

<sup>56</sup> *Sefer Hasidim*, P. Margalioth, ed. (Jerusalem: 1957), sec. 564, p. 371; cf. sec. 343, p. 257. R. Eliezer Pappo, *Pele Yo'etz*, pt. 1, “Kaph,” pp. 170-172; cited in Blidstein, *Honor* (at n. 25), p. 115. The entire Autumn 1994 issue of *The Melton Journal* was devoted to the treatment of the elderly in the Jewish tradition and in modern contexts. It is all worthwhile, but for our purposes I want to call special attention to the article by Eliezer Diamond, “Do Not Cast Us Away in Our Old Age”: Adult Children and Their Aging Parents,” pp. 12, 13, 20.

host of them. The specific prohibitions of the Torah against parental abuse and the concepts and laws of reverence and honor for parents add to the general laws punishing assault in Judaism's unequivocal condemnation of parental abuse.

In sum, then, one may not love one's parents, either for cause or just as a function of the personalities involved, and if the cause is severe enough, one may even be released from the commands to honor and respect them. One may also arrange for care for one's parents at the hands of others, assuming that personal caring is either physically or emotionally impossible or practically less desirable and that arrangements are nevertheless made for visiting and calling often. At no time, though, do children have the right to assault their parents.

### *Sexual Abuse*

"Sexual abuse," as applied to children, is defined in psychological literature as "sexual contact, ranging from fondling to intercourse, between a child in mid-adolescence or younger and a person at least five years older." When defined that way, "at least twenty percent of American women and five to ten percent of American men experienced some form of sexual abuse as children."<sup>57</sup> Among adults, sexual abuse is usually understood to be any nonconsensual sexual act or behavior. This definition assumes that we fully acknowledge the well-known ambiguities of some expressions of agreement or refusal, but it asserts that such ambiguity does not affect all or even most expressions of one's desires. For either age group, sexual abuse demeans and humiliates, making one feel shameful and exposed, particularly with regard to one's sexuality.

Some forms of sexual molestation of either women or men leave wounds, including permanent ones that preclude the victim's future ability to procreate. Even those attacks that do not leave such wounds fall under the category of physical abuse, for they represent unwanted and often violent invasions of one's body. Consequently, all of the objections described above to beating a family member would also apply to sexual assault.

Sexual violation, however, is objectionable on other grounds as well. The Torah states unequivocally, "None of you shall come near anyone of his own flesh to uncover nakedness: I am the Lord." After a long list of such forbidden relationships, it then states that such were the abhorrent practices of the nations that occupied the Promised Land before the Israelites. The land thus became defiled and is now spewing them out – almost as if the land had gotten an upset stomach from toxic food. The Israelites themselves may remain in the holy land only if they eschew such practices and act as a holy people. Furthermore,

All who do any of those abhorrent things shall be cut off from their people. You shall keep My charge not to engage in any of the abhorrent practices that were carried on before you, and you shall not defile yourselves through them: I the Lord am your God.<sup>58</sup>

Sexual contact with members of one's own family, then, is seen in Judaism as abhorrent and as a violation of the holiness of the people Israel and its land. Put another way, part

<sup>57</sup> David Finkelhor, "Current Information on the Scope and Nature of Child Abuse," in *The Future of Children*, vol. 4, no. 12 (Los Altos, CA: The Center for the Future of Children, The David and Lucille Packard Foundation, 1994), pp. 21-53. Briere, *Child Abuse Trauma* (at n. 37 above), p. 4, reports higher figures (twenty to thirty percent for females, ten to twenty percent for males), but that undoubtedly includes acts short of physical contact like voyeurism and being the subject of unwelcome sexual advances. A by-now classic study of one aspect of this subject is *Father-Daughter Incest* by Judith Lewis Herman, with Lisa Hirschman (Cambridge, MA: Harvard, 1981).

<sup>58</sup> The two cited verses are Lev. 18:6 and 18:29-30.

of what it means to be a people chosen by God as a model for others is that Jews must not engage in incest or sexual abuse. To do so violates the standards by which a holy people covenanted to God should live and warrants excommunication from the people Israel. Jews are expected to behave better than that.

Why does the Torah speak of incest and sexual abuse as “defilement” and “abomination” in addition to its usual language of transgression? In part, it is because the Promised Land was itself seen as alive and violated by such conduct, but surely the words refer to the human beings involved too. One’s bodily integrity is compromised when one is sexually abused. That is experienced not only as an assault upon one’s body, but also – and usually more devastatingly – as an onslaught upon one’s person. One has lost one’s integrity – not only in body, but in soul. One no longer feels safe in the world; at any moment, one can be invaded in the most intimate of ways. The abuse is thus indeed a defilement: what was sacred and whole now is desecrated and broken.<sup>59</sup>

Sexual abuse is also the source of much embarrassment. The Torah makes this exceedingly clear: “If two men get into a fight with each other, and the wife of one comes up to save her husband from his antagonist and puts out her hand and seizes him by his genitals, you shall cut off her hand; show no pity.”<sup>60</sup> Despite the special justification the woman had for shaming her husband’s assailant, the Torah demands drastic steps in retribution for the degradation she caused – although the Rabbis transformed this to a monetary payment that she must pay.<sup>61</sup> (Incidentally, note that, as the Torah recognized, feelings of shame and embarrassment are experienced by men who are sexually abused just as much as they are by women.) The Talmud, when determining the payment to be exacted for the shame involved whenever one person assaults another, uses this case as the paradigm for what embarrassment means. We are humiliated when we are sexually abused – even just touched in our private parts against our will – for we feel that our sense of self has been invaded, that our honor has been compromised in the most fundamental way possible.

When children are sexually abused, the damage is even worse. Children depend upon the adults in their lives – parents, other family members and friends, teachers, clergy, coaches – to help them master the skills of living. Their psychological well-being depends upon their ability to trust such people to act for their welfare, for that is the only way that children can learn to trust themselves and others. Thus, when an adult sexually abuses a child, the child may not at first experience it as an assault; for young children, it may even be just an interesting, pleasurable game. Whether immediately or gradually, however, children come to recognize sexual activity with adults as an abuse of their bodies and their wills, and they feel not only violated, but betrayed. This often leads to difficulty later on in forming relationships with others, especially sexual ones, and, in some cases it even undermines the person’s ability to trust the world enough to go out into it for any productive activity.

This kind of frontal assault on not only the body, but the psyche of the child is clearly prohibited by all the Jewish laws mentioned above prohibiting assault, sexual contact with one’s family members, sexual contact outside marriage, and embarrassment of others.

<sup>59</sup> I think that we would all agree that the Torah’s use of the words “abomination” and “defilement” aptly apply to the kind of sexual abuse of which we are speaking. Whether we should also endorse this biblical language with regard to its prohibition against homosexuality is, to put it mildly, a matter of dispute. Even those who would permit homosexual relations, though, would definitely apply that language to coercive sex (be it homosexual or heterosexual), and that is the subject here.

<sup>60</sup> Deut. 25:11-12.

<sup>61</sup> Sifre on Deut. 25:12; cf. M. Bava Kamma 8:1; B. Bava Kamma 83a, 86a-b, 28a, etc.

The Jewish tradition understands the Torah to ban not only sexual penetration, but any form of illicit fondling or inappropriate behavior for the purpose of gratifying sexual desire.<sup>62</sup> Indeed, in light of the extensive damage it causes to the future ability of the child to cope with life, without too much exaggeration I would say that, in the case of children, sexual abuse is akin to murder.<sup>63</sup>

### ***Verbal Abuse***

Verbal abuse of either one's spouse or one's children is not treated in Jewish sources as an offense special and apart from the offense of verbally abusing any other person, but it certainly is included within the latter, more general prohibition. By "verbal abuse" we commonly mean comments that degrade a person, especially if they are said constantly. "You never get it right," "You are simply stupid," and "How could anyone like you?" are examples of such abuse. Overly harsh criticism, name-calling, and intimidating speech are also included in the category of verbal abuse. (Sexual harassment, when verbal, is a specific form of such abuse that raises problems beyond those that I am discussing here.)

Some call this "emotional abuse" or "psychological abuse," and psychological literature includes definitions that point to a number of identifying dysfunctions.<sup>64</sup> While I have no doubt that such abuse happens and that this phenomenon needs further study and refining, both as to identification and cure, I hesitate to use either of those terms now for fear that some will understand them to include anytime that one person makes another feel bad. When one does that as part of justified and constructive criticism, however, that may actually be a good thing to do, although even then it should be done as tactfully as possible. Generally, making others feel bad is something one should strive to avoid, but it does not rise to the level of abuse for which another is responsible unless that other person does specific things that cause the feelings. Consequently, to make the offense as clearly identifiable as possible, I shall retain the phrase "verbal abuse," insisting that there be objectively recognizable behavior that makes the culprit guilty of an offense.

One must first distinguish justifiable rebuke for errors from verbal abuse. That distinction follows more or less along the same lines as the one between reasonable discipline and physical abuse. Specifically, verbal abuse is constant, uncontrolled, and unprovoked, while a warranted reprimand occurs only when an error is made and when the reproach is proportionate to the error. At their best, negative evaluations are also constructive, with suggestions for change, a factor that is always absent in cases of verbal abuse. While verbal abuse is often perpetrated by one who has power over the other, it can occur among equals as well, as, for instance, when "friends" insult each other, not in jest or good humor but in an effort to embarrass, humiliate, or harm the recipient in some other way.

<sup>62</sup> B. Shabbat 13a; M.T. Laws of Forbidden Intercourse 21:1; Maimonides, *Sefer Ha-Mitzvot*, Prohibition no. 353; *Sefer Ha-Hinukh* no. 188; S.A. Even HaEzer 20:1. Some, however, maintain that intimacy without penetration is not biblically, but rabbinically prohibited. See, for example, Nahmanides on B. Shabbat 13a and on *Sefer Ha-Mitzvot*, *ibid.*; the Gaon of Vilna, *Biur ha-Gra* on S.A. Even HaEzer 20:1.

<sup>63</sup> Dr. Ian Russ, a child psychologist active in the Conservative movement and a good friend, has suggested the following as the best literature on the long-term, serious effects of the sexual abuse of children: John Briere, *Therapy for Adults Molested as Children: Beyond Survival* (New York: Springer Publishing, 1989); John Briere and Diana Elliott, "Immediate and Long-Term Impacts of Child Sexual Abuse," in *The Future of Children* (see n. 57 above), pp. 54-69; Christine Courtois, *Healing the Incest Wound* (New York: W.W. Norton, 1988); and D. Everstine and L. Everstine, *Sexual Trauma in Children and Adolescents: Dynamics of Treatment* (New York: Brunner/Mazel, 1989). I would like to thank Dr. Russ for supplying this bibliography for our use.

<sup>64</sup> See Briere, *Child Abuse Trauma* (at n. 37 above), pp. 8-12.

Verbal abuse of anyone is forbidden by the Jewish tradition under the biblical command, “and you shall not wrong one another” (Lev. 25:17).<sup>65</sup> This prohibition includes verbal abuse of minors as well as adults,<sup>66</sup> an important point especially for teachers and parents.

In addition to these general interdictions of verbal abuse, Jewish sources tell a man to be especially careful not to abuse his wife verbally “for since she cries easily, it is all too easy to oppress her.”<sup>67</sup> Similarly, the Talmud says that a man’s wife is given to him so that he might realize life’s plan together with her; she is not the man’s to vex or grieve: “Vex her not, for God notes her tears.”<sup>68</sup> These commands are derived, in part, from the promise that the man is required to make in the wedding contract to honor his wife. Indeed, “He who loves his wife as himself and honors her more than himself is granted the Scriptural promise, ‘You shall know that your tent is in peace.’”<sup>69</sup> Contemporary readers may be offended by the sexism of some of these remarks, but that sensitivity should lead one to argue that wives as well as husbands are duty-bound to avoid verbally abusing their spouses, for husbands, too, can and do feel hurt by such shaming.<sup>70</sup>

In any case, the sexism in some of these rabbinic comments should not blind us to the power that they gain from the theological basis they explicitly invoke: verbal abuse violates not only the relationship among the human beings involved, but also that between the individual and God. Therefore, even though, to my knowledge, verbal abuse of one’s spouse is never categorized as an independent violation of the law with its own distinctive legal remedies, it partakes of another form of sanction available to a specifically religious legal system, namely the disapproval of one’s tradition and of God. One honors God and the Jewish people when one honors others; conversely, one dishonors God and desecrates God’s people (חילול השם) when one verbally abuses a human being created in the divine image.

There is a related, more general category, though, that is framed in a combination of legal and theological terms. That category is **אונאת דברים**, oppression by means of words. Since one biblical command not to oppress one’s fellow already covers the financial areas of life, the Rabbis applied the second verse prohibiting oppression of one’s neighbor to verbal abuse.<sup>71</sup> As illustrations of that, they say that one may not remind repentant sinners of their past sins, or converts of their previous, non-Jewish lives. Similarly, one may not call people by an opprobrious nickname, even if they say they do not mind, and one may not taunt people about their illnesses or the loss of their children.

In that same section, the Talmud points out that verbal abuse is more serious an offense than financial deception is. The latter, after all, affects one’s money, while the former affects one’s person. Moreover, financial misappropriation can be returned, while verbal abuse can

<sup>65</sup> See Me’irat Einayim to S.A. Hoshen Mishpat 420:49.

<sup>66</sup> B. Bava Kamma 90a; M.T. Laws of Assault and Injury 3:5; S.A. Hoshen Mishpat 420:38.

<sup>67</sup> Bava Mezia 59a. Literally, “for since her tears are common, her oppression is near.” Rav, whose comment this is, does not limit his remark to verbal abuse, but the context is discussing the prohibition of oppressing people by means of words.

<sup>68</sup> Ketubbot 61a.

<sup>69</sup> Yevamot 62b; the verse cited is Job 5:24.

<sup>70</sup> Robert Bly is perhaps most well-known for making this point in a number of his books, from *Iron John* on. Whether due to nature or nurture or both, boys and men are, in his analysis, particularly sensitive to shaming, especially when it is done by someone close to the particular male involved and even more when it is done in public.

<sup>71</sup> The Rabbis in Bava Mezia 58b apply Lev. 25:14 to monetary oppression and Lev. 25:17 to verbal oppression.

never be recompensed. The Torah itself reflects this increased severity of verbal abuse over monetary crimes, for it specifically warns us to fear God with respect to the former but does not include that admonition with regard to the latter. None of this, of course, justifies monetary cheating in any way, but it does underscore the importance that the Rabbis attached to the avoidance of verbal abuse.

As violations of a negative, biblical command, acts of verbal abuse would make a person subject to lashes inflicted by the court in addition to the opprobrium of the community and of God. It would not justify victims striking back with physical blows or with verbal abuse of one's own – although one may and should defend oneself from such abuse by either telling the abuser off or by removing oneself, if possible, from the context of the abuse. Thus, even though verbal abuse of one's spouse and children is never developed as an independent violation of the law, it is certainly included in the more general prohibition proscribing verbal oppression of any member of the community.

Parents, again, occupy a special place in these matters. The Talmud tells a remarkable story to illustrate offensive verbal abuse against parents:

A man may feed his father on fattened chickens and inherit hell (as his reward), and another may put his father to work in a mill and inherit paradise.

How is it possible that a man might feed his father fattened chickens and inherit hell? It once happened that a man used to feed his father fattened chickens. Once his father said to him: "My son, where did you get these?" He answered: "Old man, old man, eat and be silent, just as dogs eat and are silent." In such an instance, he feeds his father fattened chickens, but he inherits hell.

How is it possible that man might put his father to work in a mill and inherit paradise? It once happened that a man was working in a mill. The king decreed that millers should be brought to work for him. The son said to the father: "Father, go and work in the mill in my place[, and I will go to work for the king]. For it may be [that the king's workers will be] ill-treated, in which case let me be ill-treated instead of you. And it may be [that the king's workers will be] beaten, in which case let me be beaten instead of you." In such an instance, he puts his father to work in a mill, but he inherits paradise.<sup>72</sup>

Thus verbal abuse of parents, aside from sharing in the more general prohibition of oppressive speech (אונאת דברים), involves the added violation of disrespect for parents.

### ***Conclusions of the Response to Part I***

1. Beating wives, husbands, or anyone else, and other forms of physical abuse, such as sexual abuse, are absolutely forbidden by Jewish law as we Conservative rabbis understand it.

2. Parents are obligated to discipline their children but should use means that do not in and of themselves teach children that physical assault is a right of parents or anyone in authority. For most people, that means *no use of any form of hitting at all*. For those who do use spanking or other forms of physical beating as a mode of discipline, it is difficult to

<sup>72</sup> J. Peah 1:1 (15c); see B. Kiddushin 31a-31b; S.A. Yoreh De'ah 240:4.

draw definitive lines as to what is permissible and what is prohibited, but some guidelines can be stipulated. Specifically, a light smack on the buttocks (a “potch”) or a slap with an open hand is permissible, but any strike that causes bleeding or bruises, or blows administered with a rod, belt, or other weapon are forbidden. All the more so, any assault that causes severe, permanent damage to the child is clearly and emphatically forbidden. In addition, since discipline of the child is the only acceptable justification, random or unbridled beating or any beating unrelated to discipline of the child in a very specific way would also be forbidden. In general, discipline is better done without beating of any kind.

The same rules – but with even less endorsement for striking the child – apply to family-like situations outside the family where adults are in charge of children. Thus teachers, youth group leaders, counselors, coaches, and the like may, at the very most, give a light slap on the buttocks to children to get them out of bed or going to the next activity. They may not strike the child in any form of corporal punishment.

None of the above is intended to prohibit either a parent or a parent-substitute (counselor, coach, etc.) from hugging a child so as to comfort him or her or putting an arm around the child’s shoulders as an expression of congratulations in, for example, a ball game. All or the above strictures are with reference to acts of violence against the child, differentiated from acts of love or friendship by both the intention and context of the parties and the form and energy of the physical contact.

3. Children may not beat their parents, even when parents were formerly abusive themselves. Adult children may designate others to care for their parents if the emotional or physical conditions make that necessary, but separation is one thing, abuse another.

4. Verbal abuse is also forbidden. One may and should criticize others, including one’s family members, when criticism is called for, but that must be done constructively and, if possible, in private.

## Part II: Witnesses to the Act or Results of Abuse

*This paper was approved by the CJLS on September 13, 1995, by a vote of seventeen in favor (17-0-0). Voting in favor: Rabbis Kassel Abelson, Ben Zion Bergman, Stephanie Dickstein, Elliot N. Dorff, Shoshana Gelfand, Myron S. Geller, Arnold M. Goodman, Susan Grossman, Judah Kogen, Vernon H. Kurtz, Aaron L. Mackler, Paul Plotkin, Mayer Rabinowitz, Joel E. Rembaum, Gerald Skolnik, Elie Kaplan Spitz, and Gerald Zelizer.*

*The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.*

### שאלה

1. Do the prohibitions of לשון הרע (defamatory speech about a person), causing shame to a person (בושת), or desecrating God (חילול השם) make it wrong for a witness to the act or results of abuse to make the abuse public?

2. Do any of these duties or the traditional prohibition against handing Jews over to non-Jews for prosecution (מסירה) make it wrong for a Jewish witness to report abuse inflicted by a Jew to civil authorities?

3. Conversely, is there a positive obligation to intervene to halt the abuse by making it public and by contacting civil authorities?

4. In the case of a child, do parents' obligations to teach their children and the prerogatives that issue from that command supersede the duty to try to prevent harm to the child by reporting the abuse and, if necessary and appropriate, testifying against the parents?

## תשובה

Two commands within Judaism are sometimes misinterpreted to prevent someone from making one's way out of an abusive situation. One is the prohibition against "evil speech" (לשון הרע), and the other is the Jewish imperative to avoid shame.

The Jewish tradition forbids several kinds of speech that are related, but different. These include lies (שקר); truths that it is nobody's business to know (רכילות, or gossip); and truths that, for all their truth, are defamatory (לשון הרע). It is this last type that some people invoke to claim that Judaism prohibits an abused wife or child from publicly declaring the abuse in an effort to get help. Since complaints about the abuse, the argument goes, will inevitably defame the abuser, the abused may not describe what is going on to others.

Defamatory speech is an important thing to avoid as much as possible, but there are some very clear exceptions to the prohibition. One exception occurs when failure to defame the person will result in harm to someone else. If you are asked to be a reference for someone applying for a job, for example, and if your report will be generally negative, you are duty-bound either to refuse to write a letter of reference in the first place or to tell the truth, however negative it may be. Similarly, when failure to disclose the abuse to the proper authorities will result in continued abuse, the abused person, and, for that matter, anyone who notices the abuse, is obliged to reveal the abusive facts: even though that will inevitably defame the abuser, that is not only permissible, but mandatory when it is done in an effort to prevent harm to another.<sup>73</sup> As Maimonides writes,

Anyone who can save [someone's life] and does not do so transgresses "You shall not stand idly by the blood of your neighbor" (Lev. 19:16). Similarly, if one sees his brother drowning in the sea, accosted by robbers, or attacked by wild animals and can save him personally or can hire others to save him, and does not save him, or he heard non-Jews or informers plotting evil or attempting to entrap another and he does not inform him. . . transgresses "You shall not stand idly by the blood of your neighbor."<sup>74</sup>

Indeed, if one person (A) is attacking another (B), any third party (C) has not only the right, but the obligation to stop A – even at the cost of A's life if that is necessary. This is the law of the pursuer (רודף).<sup>75</sup> Unlike the law in many American states, Jewish law would

<sup>73</sup> B. Bava Kamma 56a; S.A. Hoshen Mishpat 28:1 (gloss). In B. Pesahim 113b, Rav Papa has a man named Zigud punished for testifying alone against another man named Tuvya on the ground that the testimony of a single witness is inadmissible and so Zigud, knowing that he was the only witness, was effectively spreading defamatory information (מוציא שם רע) about Tuvya. That, however, was when the act had already occurred; the requirement in Bava Kamma and in the comment of Isserles to testify even singly in all cases in which there is a benefit, including preventing another person from sinning, refers to a future gain.

<sup>74</sup> M.T. Laws of Murder 1:14. In 1:15, Maimonides adds both affirmative and negative injunctions to this obligation based on Deut. 25:12, "And you shall cut off her hand (being applied here to the abuser); your eye shall have no pity." See also Rashi, B. Sanhedrin 73a, s.v. לא תעמוד.

<sup>75</sup> M. Sanhedrin 8:7; B. Sanhedrin 73a.

thus justify c in even killing an abusive spouse or parent if that were the only way to stop constant assaults on b, but only when there is imminent danger of the death or rape of b. In other words, Jewish law allows a third party (c) to do what b him/herself could legally do according to both legal systems as an act of self-defense.<sup>76</sup>

The law of the pursuer is based on a broader principle in Jewish law, that of פיקוח נפש (saving a life). Specifically, the Torah proclaims the command to follow God's commands and to live by them (Lev. 18:5). The Rabbis interpreted this to mean that we must live by them and not die by them. Toward that end, the Rabbis determined that we not only may, but must, violate all but three of the commandments if that is necessary to save a life. The three exceptions that we may not violate even to save a life are murder, incest/adultery, and idolatry. The first of those exceptions, however, applies only when we would be murdering an innocent person to save our own or someone else's life; if, instead, the person in question is threatening oneself, we both may and must seek to kill him or her first, and if the person in question is pursuing another, we must intervene, even to the point of killing the pursuer, as the law of רודף demands.<sup>77</sup>

Now, of course, these are extreme cases. They demonstrate, however, exactly how far Jewish law was willing to go in order to stop assaults. Civil law is not as supportive of those who murder family members to stop assaults, and even Jewish law would permit homicide in such cases only when the pursuer's murder or rape of another is imminent and unavoidable by any other means. People thus clearly need to extricate themselves from such situations before they ever come to this. Nevertheless, if Jewish law justifies even homicide to prevent assault, it certainly expects third parties to intervene in less violent ways to free abused people from the situations of their abuse, such as reporting cases of abuse to legal authorities. "One may not stand idly by the blood of one's neighbor," the Torah enjoins.<sup>78</sup> One who has information to report and fails to do so is in violation of that commandment and of Lev. 5:1, "If he does not come forth with his information, then he shall be subject to punishment."<sup>79</sup> While in monetary affairs the witness may wait until summoned, in other matters, such as abuse, the witness must come forward voluntarily in order to "destroy the evil from your midst."<sup>80</sup>

This is true whether the abuser is a parent, a teacher, or anyone else. Abusive teachers must be removed from classrooms. The leaders of schools, camps, and youth groups must, of course, investigate the claim before taking such action, and the usual presumption of innocence applies. I shall discuss that aspect of the matter at some length in Part IV of this responsum. If the charges prove true, however, Jewish institutions have a clear duty to protect their students from verbal, physical, and sexual abuse.

<sup>76</sup> Tosafot, B. Sanhedrin 72b, s.v. באב על הבן, make this explicit with regard to children's right (obligation?) to defend themselves against abusive parents.

<sup>77</sup> B. Yoma 85a-b; B. Sanhedrin 72a, 74a. On these principles generally, cf. Immanuel Jakobovits, *Jewish Medical Ethics* (New York: Bloch, 1959, 1975), chs. 3-7.

<sup>78</sup> Lev. 19:16. The new translation of the Jewish Publication Society reads, "Do not profit by the blood of your fellow," interpreting this phrase, whose meaning is uncertain, as the note there says, in the context of the civil legislation in the verse immediately before this one. The rabbinic tradition, however, interpreted and applied Lev. 19:16 to establish a positive obligation to come to the aid of those in danger: cf. M. Sanhedrin 8:7; B. Sanhedrin 73a.

<sup>79</sup> M.T. Laws of Testimony 1:1.

<sup>80</sup> Kesef Mishneh to M.T. Laws of Testimony 1:1; Rosh to Makkot, ch. 1, no. 11. "Destroy the evil from your midst" occurs a number of times in the Torah as a general purpose of the law: Deut. 13:6, 17:7, 19:19, 21:21, 22:21, and 24:7; cf. also 17:12 and 22:22.

This raises one complication that inheres in cases of child abuse. Typically, the teacher or friend who reports the abuse is doing so on the testimony of the child together with supportive evidence in the form of bruises on the child's body. One rabbi who specialized in the laws of defamation, the Hafetz Hayyim, ruled that any information that would cause harm to the accused must only be revealed if it could be legitimately introduced into a Jewish court of law.<sup>81</sup> Since the testimony of minors is usually inadmissible,<sup>82</sup> this would preclude many interventions to redeem a child from an abusive situation. As I will spell out later in this responsum, recent evidence indicates that minors – and, for that matter, adults remembering childhood events – are prone to remember them as others suggest they were, and that should prompt us to be even more skeptical of children's testimony.

Some Jewish authorities, however, accept the testimony of minors if supported by other evidence,<sup>83</sup> and that should be our stance. Children, after all, are not to be presumed untruthful, especially in matters as painful and personal as this, and the corroborating, external evidence can alleviate any doubt we might otherwise have. In any case, the report that must be given to civil authorities generally remains confidential and goes only to the governmental agencies responsible for child welfare, which must investigate further. Consequently, even if one takes the ruling of the Hafetz Hayyim as being authoritative, this should not prevent adults who hear of child abuse from children and see evidence thereof from taking steps to have the complaint examined and, if it proves accurate, acted upon.

### *The Scope of the Laws of Shaming Another*

Similar remarks apply to the issue of shame. Judaism certainly prohibits embarrassing someone else publicly. Indeed, rabbinic statements compare public shaming of a person to killing him or her. Moreover, as we have seen, an assailant must pay for the embarrassment caused to the victim and his or her family as part of the remedies for causing a personal injury. The Talmud, in fact, engages in a sophisticated discussion of the nature of shame, asking whether it is the degradation in the public's esteem or in the victim's own sense of self-worth that is at the heart of the phenomenon of shame.<sup>84</sup> These sources within the tradition that proscribe shaming others are all corollaries to the underlying theological principle of Judaism that human beings are worthy of respect as creatures of God created in the Divine image.

Some things, though, take priority over this prohibition. Specifically, as in the case of defamatory speech, when shaming another is not done out of meanness or indifference but is rather an outgrowth of a practical or moral necessity, it is justified, and, in some cases, required. For example, if someone is committing fraud, a person who discovers this is not only allowed, but duty-bound to expose the fraud. Even though that will inevitably embarrass the perpetrator, the overriding need is to enable his or her innocent victims to recover what they can and to protect all of his or her future victims.

<sup>81</sup> Hafetz Hayyim, *Be'er Mayyim Hayyim*, Laws of Slander 9:20.

<sup>82</sup> M.T. Laws of Testimony 9:1; S.A. Hoshen Mishpat 35:1.

<sup>83</sup> S.A. Hoshen Mishpat 35:14, gloss. Isserles there accepts children as עדי בירור (witnesses of explanation) based on the enactments (*takkanot*) of either Rabbenu Tam or Rabbenu Gershom.

<sup>84</sup> The comparison of publicly embarrassing a person to killing him or her, which appears in Bava Metzia 58b, is aided by a play on words: the Hebrew expression for "embarrassing" a person (מלכין פני חבריו ברבים) literally means to make the person's face white, and that occurs also when one dies. The legal remedy in personal injury cases for embarrassment is discussed in the Mishnah Bava Kamma 8:1 and 8:6 and in the Talmud at Bava Kamma 86a-b, where the discussion of the essence of shame also appears.

If such monetary concerns supersede the concern of shaming another, preventing bodily injury or even death does so all the more. As in the case of defamatory speech, we may not stand idly by but must rather expose the abuser so as to stop the abuse and get help for his or her victims. This is demanded, as explained above, both under the laws of רודף (the pursuer) and also under its legal root, the requirement to violate all but three of the commandments of the Torah in order to save the life of another (פיקוח נפש). Identifying an abuser will inevitably cause him or her shame, and we should not do that any more than necessary. The Torah, after all, demands that we respect even the executed body of a murderer by not letting it remain unburied overnight.<sup>85</sup> But we are not only permitted, but required to override our concern for embarrassing the perpetrator to stop the abuse and to get help for the victims.

### ***Informing Civil Authorities: The Issues of Mesirah and Hillul Ha-Shem***

Traditional Jewish law forbids מסירה, turning Jews over to non-Jewish courts for judgment.<sup>86</sup> This prohibition undoubtedly arose out of two concerns. First, rampant discrimination against Jews in society generally made it unlikely that Jewish litigants would get a fair hearing. On the contrary, a dispute among Jews aired in a gentile court might supply the occasion for punishing both Jewish litigants and perhaps the entire Jewish community. Better that we not call attention to ourselves altogether.

Moreover, rabbis over the generations wanted to make sure that the authority of Jewish law was not undermined any more than necessary through the use of non-Jewish courts by Jews. In civil matters there was often no choice, and so Samuel in the third century already announces the principle of דינא דמלכותא דינא, the law of the land is the law. That was restricted, though, to civil matters, and until the Enlightenment, Jews did, in fact, use Jewish courts to adjudicate even their civil disputes, although often by the generally accepted, non-Jewish laws of commerce in force at the time. How, then, can a Jew in good conscience inform civil authorities about a Jew who is apparently abusing his or her family member?

Since the advent of the Enlightenment, a number of rabbis have ruled that the laws of מסירה no longer apply. Some, like the Arukh Ha-Shulhan, have maintained that using non-Jewish courts was prohibited only when they were unfair to Jews (and perhaps to others as well), and when the prosecution of a Jew in a non-Jewish court would be the occasion for persecution of the entire Jewish community. Since neither of these factors characterizes courts in Western democracies nowadays, Jews may use non-Jewish courts.<sup>87</sup>

Even if one maintains that the prohibition of using non-Jewish courts still holds, it would not apply to criminal matters, where Jewish courts have no jurisdiction or power to punish. Thus Rabbi Moses Isserles, who lived in a pre-Enlightenment society (sixteenth-century Poland), cites others who lived even earlier who hold that “if a person is struck by

<sup>85</sup> Deut. 21:23.

<sup>86</sup> B. Gitin 88b; M.T. Laws of Courts (Sanhedrin) 26:7. See Dorff and Rosett, *A Living Tree* (at n. 7 above), pp. 320-324 and 515-539. See also Herschel Schachter, “Dina deMalchusa Dina,” *Journal of Halacha and Contemporary Society* 1:1, and Simecha Krauss, “Litigation in Secular Courts,” *Journal of Halacha and Contemporary Society* 11:1. I am indebted for much of the material of this section to the article by Rabbi Mark Dratch, “The Physical, Sexual and Emotional Abuse of Children,” in *Shalom Bayit: A Jewish Response to Child Abuse and Domestic Violence*, Ian Russ, Sally Weber, and Ellen Ledley, eds. (Los Angeles: University of Judaism and the Jewish Family Service of Los Angeles, 1994, the edition for the Orthodox community), pp. 1-8, 59-62.

<sup>87</sup> Arukh Ha-Shulhan, Hoshen Mishpat 388:7.

another, he may go to complain before the non-Jewish court even though he will thereby cause great harm to the injurer.”<sup>88</sup> Since Jewish courts in our day have even less power and authority to handle such matters than they did in pre-Enlightenment times, Ashkenazi Jews, those whose ancestors came from Central and Eastern Europe, can rely on that ruling.

Sephardic Jews generally follow Rabbi Joseph Karo, author of the *Shulhan Arukh* on which Rabbi Isserles commented. Rabbi Karo asserts that the prohibition of *מסירה* continues to his day, making it illegal for a Jew who is being harassed to report that to the civil authorities. Even Karo, though, maintained that when there is a *מצער הציבור*, a menace to the community as a whole, *מסירה* is permissible.<sup>89</sup> He was probably talking about non-Jews attacking the Jewish community as a whole for the reprehensible action of one of its members. Legal authorities in Western democracies are unlikely to inflict penalties on the Jewish community as a group on the excuse that there are some Jews who are batterers; the government is much more likely to prosecute such people as individuals, just as they would any other citizen who violated the law.

In our time, though, abuse of spouses, elderly parents, and especially children has unfortunately reached the extent of a *מצער הציבור* in three other senses – namely, those who abuse others constitute a physical threat not just to the ones they have already abused, but to all potential, future victims as well and therefore to the entire community; secondly, abusers pose a threat to the sense of well-being of the community as a whole by making it an unsafe place to live; and, thirdly, abusers within our community defame us as a community and God whom we worship, and the desecration of the divine Name (*חילול השם*) involved is also a source of pain and suffering for the community. Consequently, it is certainly within the spirit of these precedents, if not their letter, to assert that for both Sephardic as well as Ashkenazi Jews, victims of abuse and witnesses to abuse may, and indeed should, enlist the help of governmental agencies. In any case, we in our time, as the Conservative movement’s Committee on Jewish Law and Standards, hereby rule that, according to Jewish law as we interpret it, victims of abuse should inform the police and avail themselves of the remedies and protections that civil law affords.

Rabbis present a special case in this because American law recognizes a clergy-client (usually called “priest-penitent”) privilege. Thus if a Jew in the course of counseling with his or her rabbi disclosed that he or she had engaged in spousal or child abuse, American law would protect the confidentiality of that disclosure unless the counselee waived that right or indicated his or her intention to engage in future abuse of the same kind. Absent either of those conditions, the rabbi might be successfully sued as a breach of privacy for reporting the past abuse to civil authorities – although some states interpret the immunity of clergy to the child abuse reporting laws very narrowly.<sup>90</sup> For purposes of this responsum, then, suffice it to

<sup>88</sup> S.A. Hoshen Mishpat 388:7, gloss, and see comment no. 45 of the Shakh on that passage. Shakh there (on 388:12), in comment no. 60, understands Isserles to be saying categorically that “if someone is accustomed to strike others, it is permissible to hand him over (to gentile authorities) for one’s protection so that he will not strike people any longer.” See also glosses of Isserles to Hoshen Mishpat 388:9 and 26:4 and his commentary *Darkhei Moshe* to the Tur, Hoshen Mishpat 338, comment no. 14. The earlier sources he cites are the *Teshuvot Maimoniot* of Maimonides (1140-1204, Spain and Egypt), *Nezikin*, Responsum no. 66; the *Mordecai* (Mordecai ben Hillel Ha-Kohen, 1240?-1298, Germany), R. Jacob ben Judah Weil (Germany, d. 1456), and Maharam of Ritszburg (possibly R. Menahem of Merseburg, first half of the fourteenth century, Saxony, Germany).

<sup>89</sup> S.A. Hoshen Mishpat 388:12, according to the text quoted by Shakh at that place, comment no. 59, and by the Gaon of Vilna (Gra), no. 71.

<sup>90</sup> The exception to the clergy/client privilege was established in the case of *Tarasoff vs. Board of Regents of the University of California* 529 P.2d 553 (Cal. 1974); modified 551 P.2d 334 (Cal. 1976), which also affirmed the general privilege itself. The California Evidence Code, Article 8, Section 1033, states: “Subject to Section 912, a

say that the provisions in Jewish law demanding that we save life and limb would require those who know about an abusive situation to report it to the civil authorities so that it might end, and, from the perspective of Jewish law, that would apply to rabbis no less than to any other Jew. Rabbis who become aware of an abusive situation in a counseling setting, however, should consult with an attorney to determine whether civil law grants them the right to report the matter in the specific case before them and, if not, they should seek to end the abusive situation in some other way.<sup>91</sup>

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penitent, whether or not a party (i.e., litigant in the case before the court), has a privilege to refuse to disclose, and to prevent another from disclosing, a penitential communication if he claims the privilege;" and Section 1034 states: "Subject to Section 912, a clergyman, whether or not a party, has a privilege to refuse to disclose a penitential communication if he claims the privilege." The parallel Arkansas statute reads: "No minister of the gospel or priest of any denomination shall be compelled to testify in relation to any confession made to him in his professional character, in the course of discipline by the rule of practice of such denomination." New York and Michigan, like California, substitute "allowed" for "compelled," thus giving the penitent the right to prevent the clergyperson from revealing the confession made to him/her in his/her capacity as a member of the clergy. This "seal of the confessional" has been generally recognized by the civil courts even in those states that do not have such a privilege written into their evidence codes, even though by the old common law confessions were not considered privileged. New York is possibly the first of all English-speaking states from the time of the Reformation to grant this protection, for it is documented in a decision of De Witt Clinton made in June, 1813. See Louisell, Kaplan, and Waltz, *Cases and Materials on Evidence*, 3d ed. (Mineola, NY: Foundation Press, 1976), pp. 666-667. I would like to thank Rabbi Ben Zion Bergman for these references.

<sup>91</sup> It is important as well to determine whether the clergy member's immunity from the legal responsibility to report abuse is narrowly or broadly construed in the state in which it takes place. Thus although California has written that privilege into its laws of evidence, Dr. Ian Russ has shared with me an official opinion of the state's Office of the Attorney General according to which a clergy member's immunity from being a mandated reporter of child abuse only exists in the "priest-penitent" relationship and not when the rabbi is serving as a teacher, camp counselor, or educational director. Under this interpretation, the privilege would never apply to those professionals or rabbis acting in those capacities; it probably would not even apply to a cantor, for even though cantors are construed as clergypersons in California for the purposes of performing weddings, they are not regularly called upon to engage in confidential counseling, and their job description rarely includes that. Moreover, even for rabbis, the privilege may be very narrowly construed, for, as the definition of priest-penitent privilege in the third paragraph of this opinion and in the last paragraph of it indicate, it exists only when the religion itself affirms it, but Judaism prefers saving life and limb to privacy.

The Attorney General's office opinion states the following:

**RESPONSIBILITY OF THE CLERGY UNDER THE CHILD ABUSE REPORTING LAW  
(Penal Code Sections 11165-11174)**

Participation of the clergy in reporting a case of suspected child abuse is entirely voluntary. Priests, ministers, rabbis and other clergy are not included in any of the categories of professionals required to report child abuse. . . (See Stats. 1980, ch. 1071, nos. 1-4). . . .

It must be remembered, however, that insofar as a member of the clergy is also practicing a profession or vocation which is included in one of the categories of mandated reporters, he or she must report suspected child abuse discovered while acting in that capacity. For instance, clergy who are teachers, school administrators, marriage, family and child counselors, or social workers are required to report. . . . In no event, however, may clergy be required to reveal "penitential communications," for these communications are protected by the penitent-clergyperson privilege.

A "penitential communication" is a communication made in confidence, in the presence of no third person so far as the penitent is aware, to a clergyperson who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear such communications and, under the discipline or tenets of his or her church, denomination, or organization, has a duty to keep such communications secret."

This penitent-clergy privilege, when coupled with the Right to Privacy guaranteed by the California Constitution, may serve to limit voluntary reports of child abuse by the clergy. The privilege can be effectively waived only by the penitent, for even if a clergy member wishes to waive the privilege and disclose a penitential communication, the penitent may nonetheless invoke the privilege to bar disclosure.

Another concern that sometimes inhibits people from reporting abuse to the civil authorities is the prohibition of *חילול השם*, defaming the reputation of God and God's chosen people. The worry is that public acknowledgement that some Jews abuse their family members through reporting such abuse to the authorities will reflect poorly on the entire Jewish community and perhaps even become the excuse for acts of anti-Semitism.

*חילול השם*, though, cuts both ways. Not reporting or testifying about such abuse will undoubtedly redound to the detriment of the Jewish community, for, as the Mishnah reminds us, attempting to sequester a *חילול השם* will always be unsuccessful: "Whoever desecrates the name of Heaven in private will ultimately be punished in public; whether the desecration was committed unintentionally or intentionally, it is all the same when God's name is profaned."<sup>92</sup> That is especially so when civil law requires reporting abuse, for then the Jews involved in trying to hide the abuse will be correctly perceived as engaged in illegal activities as well as unwise and uncaring conduct. This, too, would be a threat to the welfare of the community (*מצער הציבור*).

The Jewish community is not perfect. Jews cannot expect that of themselves, and non-Jews must be taught not to expect that either. We ultimately do more for our own reputation as a community and for the Name of God, our covenanted partner, if we own up to the problems in our communities and try honestly to deal with them. *חילול השם*, then, far from prompting us to try to hide the abuse that is going on among us, should motivate us instead to confront it and to root it out.

### *The Scope of Parental Prerogatives*

"And you shall teach your children diligently" (Deut. 6:7), a part of the first paragraph of the Shema, is an obligation that Jews know well. To fulfill that duty, parents may enlist the aid of teachers, but ultimately the responsibility rests with the parents. Consequently, Jewish law assumes that children would ordinarily reside with their parents so that the latter could fulfill this duty – in addition, of course, to the emotional bonding that is so vital to the well-being of the child.

Custody of children, however, is not automatically a parental right in Jewish law. It depends upon the welfare of the child. Thus in divorce proceedings, for example, there is a presumption in the law that children are served best when they are living

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The clergy member and the penitent are joint holders of the privilege. That means that the clergy member has the right to invoke the privilege on his or her own behalf, or the penitent has the additional right to prevent the clergy member from disclosing a penitential communication. Thus, the intent of the law to afford maximum personal privacy to penitents is manifest. Accordingly, it appears that a clergy member may not report, even voluntarily, child abuse learned of in the course of receiving a penitential communication unless the penitent himself or herself waives the privilege afforded that communication.

Remember, however, that the legal limitations on disclosure of information received in confidence apply only to those communications that in every aspect meet the definition of a "penitential communication" as noted above. Thus, it appears that suspected child abuse learned of through other "confidential" communications received by clergy in the course of performing pastoral functions may be reported under the Child Abuse Reporting Law. Whether or not a clergy member should do so is a matter of personal conscience and integrity measured in the light of the moral and religious obligations of the clergy member's own religious affiliate.

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<sup>92</sup> M. Avot (Ethics of the Fathers) 4:5.

with the parent of the same gender.<sup>93</sup> That presumption is based on the social setting of times past in which it was only fathers who knew enough to teach their sons a profession and possibly Torah (most fathers had little formal training in Judaism themselves), and it was only mothers who knew enough about household skills to teach them to their daughters. The social situation in modern times has changed considerably, and that in itself may call this presumption into question with regard to contemporary custody decisions. The important thing for our purposes here, though, is that even in traditional Jewish law the presumption is rebuttable.<sup>94</sup> In particular, the welfare of the child and, as a corollary, the need to maintain close ties among all of the children can and often do override these gender-based assumptions.<sup>95</sup> A parent's right to have custody of his or her children, then, applies only when the welfare of the child is served by that arrangement.

In our case, if the child is in any danger of physical or sexual abuse, the welfare of the child would certainly supersede any parental claim to custody. Even if removal from the parental home would lead to the child's placement in a foster home or a non-Jewish institution, that must be done to save the life of the child. **פיקוח נפש** takes precedence over the positive obligation to teach one's children Torah and the negative command prohibiting the placing of a stumbling block before the blind (Lev. 19:14), which was interpreted to include the educationally and morally blind.<sup>96</sup> Moreover, the one who reports the apparent abuse does not know that the child will be raised by non-Jews: the court may determine that abuse did not, in fact, take place, or, if it did, the court may (and probably will) place the child with other family members or other Jews. The Jewish community should certainly see it as an obligation to offer such Jewish facilities for children and adults who need them, as Jewish Family Service of Los Angeles, for example, does through Vista Del Mar (for children) and Gramercy Place (for abused wives and their children). Even in the extreme case, however, where the child is ultimately taken from his or her parents and raised by non-Jews, one who reports such abuse to the authorities is correctly preferring the saving of the child's life over the other commandments mentioned above.

<sup>93</sup> B. Eruvin 82a; B. Ketubbot 65b, 122b-123a. For these and other relevant sources and a discussion about them, see Basil Herring, "Child Custody," in *Jewish Ethics and Halakhah for Our Times*, vol. 2 (New York: Yeshiva and Ktav, 1989), pp. 177ff.

<sup>94</sup> See, for example, S.A. Even HaEzer 82:7.

<sup>95</sup> See Eliav Schochetman, "On the Nature of the Rules Governing Custody of Children in Jewish Law," *The Jewish Law Annual*, vol. 10 (Philadelphia: Harwood Academic Publishers, 1992), pp. 115-158; Michael J. Broyde, "Child Custody in Jewish Law: A Pure Law Analysis," *Jewish Law Association Studies VII: The Paris Conference Volume*, S.M. Passamanek and M. Finley, eds. (Atlanta: Scholars Press, 1994), pp. 1-20.

<sup>96</sup> Sifra on Lev. 19:14; B. Pesahim 22b; B. Mo'ed Katan 17a; B. Kiddushin 32a; B. Nedarim 62b; B. Bava Mezia 75b. Abaye sets a limit to this concern – namely, that we must concern ourselves with what the person with whom we are dealing will do and not with others with whom she or he will come into contact (B. Avodah Zarah 14a), but R. Barukh Halevi Epstein argues that that only applies to a non-Jew, and with regard to Jews we must be concerned not to mislead even those who may be lead astray by the ones with whom we are now interacting; cf. his Torah Temimah on Lev. 19:14, comment no. 93.

In any case, in the situation we are dealing with here, the concern is that placing a child in a non-Jewish home will lead him/her to be ignorant of Judaism and even to convert out of the faith. As serious as that concern is, it must be set aside to save the life of the child. As Rabbi Lionel Moses has pointed out, however, it is not clear that **פיקוח נפש** would justify such action to save a child from verbal abuse. In such cases, all involved with the case must take special care to make sure that removing the child from the custody of one or both parents is warranted and that the new home for the child is Jewish – which, we would hope, is the normal procedure in cases of physical and sexual abuse too.

## ***Conclusions to the Response to Part II***

1. It is not a violation of Jewish laws prohibiting defamatory speech (לשון הרע) or shaming another (בושת) for an abused party, or, for that matter, for anyone who witnesses the abuse, to report it to civil authorities. On the contrary, the requirement that one preserve not only oneself (פיקוח נפש) but others as well, demanded by the laws of the pursuer (רודף) and of not standing idly by when another is in danger (לא תעמוד על דם רעך), not only permit, but require others who discover spousal, filial, or parental abuse to help the victim report the abuse and take steps to prevent repetition of it.

2. It is not a violation of Jewish law to hand over Jews suspected of abusing others to civil authorities for trial and, if found guilty, for punishment. On the contrary, because Jewish courts have no power to invoke civil and criminal penalties, and because courts in Western countries can be assumed to be fair in treating individual Jews and not punish the entire Jewish community for their transgressions, and because most, if not all, civil jurisdictions now require that such abuse be reported (at least when it is done to children), it is the Jewish, and often the civil, duty of Jews to report abusers to governmental authorities.

3. Parents' duties to educate their children do not justify abusing them. Consequently, Jews who suspect that children are being abused must report such abuse to the civil authorities, even if that may mean that the child will be taken from the custody of one or both parents and even if, in the extreme, it will mean that the child will be raised by non-Jews. Saving a life takes precedence over the presumption that parental custody is usually best for the child and even over the duty to raise the child as a Jew.

## **Part III: The Abused Party**

*This paper was approved by the CJLS on September 13, 1995, by a vote of seventeen in favor (17-0-0). Voting in favor: Rabbis Kassel Abelson, Ben Zion Bergman, Stephanie Dickstein, Elliot N. Dorff, Shoshana Gelfand, Myron S. Geller, Arnold M. Goodman, Susan Grossman, Judah Kogen, Vernon H. Kurtz, Aaron L. Mackler, Paul Plotkin, Mayer Rabinowitz, Joel Rembaum, Gerald Skolnik, Elie Kaplan Spitz, and Gerald Zelizer.*

*The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.*

### **שאלה**

1. Do the laws of לשון הרע or those that forbid causing shame (בושת) to someone else forbid the abused party from making the abuse public? From seeking help from outside sources, including the police? From seeking to end the relationship on the grounds of the abuse?
2. Is there a positive obligation in Jewish law for victims of abuse to take such steps?

### ***Response to Part III***

In the case of the abused party, the duty to disclose is even stronger than it is for other people. "Avoiding danger is a stronger obligation than any prohibition," the Talmud says,

and saving a life supersedes all commandments save the prohibitions against murder, idolatry, and incest or adultery. Furthermore, saving your own life takes precedence over saving the lives of others.<sup>97</sup>

This applies even to cases where the victim's life is not at stake through physical or sexual abuse, but even where the victim is constantly subjected to verbal abuse. Thus if a parent becomes insane and continuously hurls insults at her or his adult child, the Talmud and codes even permit the child to distance him or herself from this verbally abusive parent as long as the child fulfills the command to honor one's parents by providing for the parent's care at the hands of another.<sup>98</sup> Contemporary circumstances involving Alzheimer's patients come immediately to mind, for this precedent makes it clear that one may, and probably should, place a parent in the advanced stages of that disease in a facility designed for that purpose so that the parent can be continuously protected against harming her or himself and, where applicable, so that the child need not suffer the parent's verbal abuse.

These Jewish legal principles together mean that abused adults have a positive obligation to ignore the issues of defamation of the abuser since that is necessary to save their lives, and their duty to report an abuser in the context of saving their own lives is even greater than their responsibility to disclose abusers of others. Abused minor children, like all children, cannot be made legally responsible for this or anything else, but they certainly have the sanction of the tradition to reveal parental abuse to those who can help them, despite the defamation involved.

The other Jewish value that sometimes stymies abused people from seeking help is the need to maintain the family's honor and to avoid causing it shame. Since disclosure of an abusive spouse or parent is certainly an embarrassment to all concerned, some abused people feel that it would be better to continue suffering the abuse than to endure the shame of publicly identifying the family's abuser. Sometimes abused people mistakenly feel that the abuse is at least partly their fault, and this adds to the reticence to "come out of the closet" with regard to the abuse.

As discussed above, the Jewish tradition was keenly aware of the offense involved in publicly embarrassing a person. The injury involved is all the worse when it affects a family member. Thus it is not surprising that the Talmud uses a family situation to illustrate both the intensity of shame when one family member abuses another and the broad scope of the command to honor parents. Specifically, it tells a story in which an elderly woman publicly shames her adult son and yet the son continues to honor her. In approving the son's actions, the Talmud was not sanctioning public degradation of children; quite the contrary, the story can make its point only if the hearer or reader assumes that normally parents should not publicly humiliate their children.<sup>99</sup> Thus avoiding shame within a family is definitely a concern of the tradition, even more than it is within the public arena.

The concern for honor, though, may not get in the way of preserving one's life and health. It may be painful to "air your dirty laundry in public," but when someone's life or health is at stake, one must endure the dishonor – and all the more when the life at

<sup>97</sup> Hullin 10a; see S.A. Orah Hayyim 173:2, Yoreh De'ah 116:5 (gloss). The three exceptions are specified in Sanhedrin 74a. That saving your own life takes precedence over saving the lives of others is established in B. Bava Mezia 62a.

<sup>98</sup> B. Kiddushin 31b; M.T. Laws of Rebels 6:10. Radbaz on that passage points out that this may be best for the parent, for the child is forbidden from striking the parent, but others may do so if that is in the parent's best interests, "for there are incidents every day" in which striking a person can retrieve him or her from his or her insanity (or, presumably, at least from the behavioral effects of it).

<sup>99</sup> B. Kiddushin 31a.

stake is your own. Consequently, abused adults must muster the courage to disclose the abuse to those who can help them out of the abusive circumstances in which they live, however much shame they initially feel in doing so. Abused minor children, while not legally liable in Jewish law for doing this, are encouraged to do so. Both children and adults caught in this painful situation can take heart in the fact that ultimately such bravery will not only restore whatever dignity they lost in the process, but actually increase their self-respect and honor as they escape the cycle of abuse and mistaken self-blame in which so many are unfortunately enmeshed.

### ***Conclusions of the Response to Part III***

1. It is not a violation of Jewish law prohibiting defamatory speech or shaming another for the victim of abuse to seek help to stop the abuse or to extricate oneself from the abusive relationship altogether. Those whom one seeks out could be agencies within the Jewish community and/or governmental authorities.

2. On the contrary, it is a positive obligation of the most authoritative sort for victims to contact others to help them save their own lives by freeing them from the context and the relationships in which the abuse is taking place.

## **Part IV: The Abuser**

*This paper was approved by the CJLS on December 13, 1995 by a vote of twenty in favor (20-0-0). Voting in favor: Rabbis Kassel Abelson, Ben Zion Bergman, Stephanie Dickstein, Elliot N. Dorff, Jerome M. Epstein, Baruch Frydman-Kohl, Myron S. Geller, Arnold M. Goodman, Susan Grossman, Judah Kogen, Vernon S. Kurtz, Alan B. Lucas, Aaron L. Mackler, Paul Plotkin, Mayer Rabinowitz, Avram Israel Reisner, Joel E. Rembaum, Gerald Skolnik, Elie Kaplan Spitz, and Gerald Zelizer.*

*The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.*

### **שאלה**

1. What precautions must we take to ensure that people are not falsely accused of being abusers?
2. When it is confirmed that someone is an abuser, what steps does Jewish law impose on her or him to make amends for the abuse? What may (must) the community do in response to such amends?
3. What steps can rabbis and educators take to prevent future abuse and to alleviate the effects of past abuse?

### ***Response to Part IV***

Until now, we have assumed that it is clear that a given person has abused another. While the combination of physical evidence and admission by the culprit make that so in many cases, it is not always an undisputed claim. After all, multiple bruises attest to abuse, but they do not identify who inflicted it, and the accused may deny that she or he caused the harm. In

some cases of alleged physical or sexual abuse, there may be no physical evidence at all. In recent, highly-publicized cases before the American courts, the incidents happened years, if not decades, ago. What steps, then, must we take to confirm the abuse and the identity of the abuser?

In Jewish law, even more than in American law, a person is innocent until proven guilty. Moreover, while self-incrimination is “like a hundred witnesses” in civil matters,<sup>100</sup> it is not accepted as a ground for court action in criminal matters.<sup>101</sup> Indeed, long before we get to the standards of evidence required in Jewish legal actions, we have the overarching principle that we may not slander people (מוציא שם רע), let alone deprive them of their jobs or their freedom on the basis of such slander. While the Torah explicitly prohibits talebearing,<sup>102</sup> the Talmud hesitates to impose legal remedies for slander due to its general principle that legal redress can be exacted only if damage is done to another directly.<sup>103</sup> Nevertheless, later courts decreed severe legal remedies for slander, basing themselves on the Talmud’s granting of power to inflict sanctions beyond the letter of the law if it is for the benefit of society.<sup>104</sup> Thus R. Asher b. Jehiel (d. 1327) states that it is the custom of the courts everywhere to impose fines on “those who put others to shame with their words” and to assess the damages according to the social status of the offender and the victim,<sup>105</sup> and Rabbis Karo and Isserles go further yet:

If a man spits on his neighbor, he is liable to pay damages, but he should not pay if he only spits on his neighbor’s garments or if he shames him verbally. But the courts everywhere and at all times should introduce legislation for this matter as they see fit. Some say that he is to be placed under a ban of excommunication until he pacifies the victim of his insult. [Gloss] And some say that he is to be flogged.<sup>106</sup>

Legal procedures exist, of course, to identify and punish those who commit wrongs. Mere suspicion of wrongdoing, however, does not constitute guilt, and slandering a person to make others incorrectly think that she or he committed an offense – or that it is confirmed that s/he did when that has not yet been determined – is thus itself a punishable crime.

Nowadays, we do not have the authority to impose fines or lashes, but a person who accuses another of abuse knowing that the accusation is false and solely for purposes of slandering or otherwise harming the accused or for gaining sympathy for oneself should be subjected to appropriate sanctions. The falsely accused person can, of course, and should avail him/herself of any and all remedies prescribed in civil law. In addition, though, he or she has a right to expect the Jewish community to demonstrate its disgust at such behavior and its unwillingness to tolerate it. In the process of dealing with such an instance, the relevant laws prohibiting defamation (מוציא שם רע, Num. 12:1-6; Deut. 22:13-19), lying (שקר, Lev. 19:11), and even the related law about plotting witnesses (עדים

<sup>100</sup> B. Kiddushin 65b; Bava Metzia 3b; etc.

<sup>101</sup> B. Sanhedrin 9b, 10a, 25a; B. Ketubbot 18b; B. Yevamot 25b. See also T. Sanhedrin 11:1; B. Ketubbot 27a; B. Bava Kamma 72b. Cf. Aaron Kirschenbaum, *Self-Incrimination in Jewish Law* (New York: Burning Bush Press, 1970); and “confession,” *Encyclopaedia Judaica* 5:877-8.

<sup>102</sup> Lev. 19:16; cf. Jer. 9:2-4; Ps. 34:13-15.

<sup>103</sup> B. Bava Kamma 91a.

<sup>104</sup> B. Bava Kamma 46a.

<sup>105</sup> R. Asher b. Jehiel (“ROSH”), Responsa, no. 101.

<sup>106</sup> S.A. Hoshen Mishpat 420:38.

זוממים, Deut. 19:15-21) should be taught, along with their rabbinic developments. In addition, sanctions appropriate to the situation should be employed. Depending upon the situation, that might include dismissal from a job in the Jewish community (on grounds of moral turpitude), expulsion from the camp, school, or synagogue in which the incident took place, and, minimally, a demand for a public apology before the entire congregation or in the synagogue bulletin.

All such sanctions, of course, apply only to cases where there clearly was no abuse and where the accuser knew that and nevertheless lodged the complaint; they would not be appropriate in cases where there is reasonable question as to whether the defendant's actions constitute abuse or not. In such cases, the accuser, in lodging the complaint, acted out of an honest, even if mistaken, understanding of the situation, and is blameless for doing so. The defendant can then dispute that understanding in a judicial tribunal if she or he thinks that the accuser misconstrued the situation, and the judges can decide.

The presumption of innocence built into Jewish law is even more critical in light of some evidence that false reports of abuse occur more often than one might expect and in light of the disputable evidence that has recently been adduced in some such cases. Specifically, the incidence of false rape reports has been variously computed in research studies as being between two and fifty percent (the latter figure based on police reports of two large Midwestern universities). That discrepancy is much too large to feel confident in any of the results, and, as David Marcus, a student of CJLS member Mark Rotenberg, has suggested in an unpublished research paper on this subject, the numbers depend crucially on the definition used by various police agencies and researchers of "false" and "unfounded" reports.<sup>107</sup> Nevertheless, even if the incidence is at the very lowest percentage reported, Jewish legal and moral norms regarding slander would require that we be extremely cautious in reporting, let alone acting upon, such allegations, and similar concerns would apply to charges of domestic abuse and violence.

The other phenomenon that would make one uneasy about accusing people too quickly and too confidently is the recent use of recovered memory in American court cases regarding sexual abuse of children, sometimes decades after it is alleged to have happened, and even abuse of teenagers or adults remembered years later. As Christine Goritan notes:

In recent years, thousands of Americans, many with the help of psychotherapy, claim to have recovered bad memories. They have recalled being raped, being sexually abused or even seeing someone killed. And in most cases, they did not remember the events for decades after the crimes were supposed to have taken place. A large number of juries have believed these stories – enough to convict two men of murder and award millions of dollars in damages to victims. But some scientists have challenged the validity of repressed memories, arguing that many of these recollections

<sup>107</sup>David Marcus, "False Rape Reports," unpublished paper written at the School of Law of the University of Minnesota. Marcus cites, among other statistics, the FBI *Uniform Crime Reports* (1992), pp. 23-4, according to which eight percent of forcible rape complaints were "unfounded," meaning that they were "determined through investigation to be false;" Morrison Torrey, "When Will We Be Believed? Rape Myths and the Idea of a Fair Trial in Rape Prosecutions," 24 U.C. Davis L. Rev. 1013, 1028 (1991); Susan Brownmiller, *Against Our Will* (1975), p. 387; and Sedelle Katz and Mary Ann Mazur, *Understanding the Rape Victim* (1979), p. 209, all report that about two percent of rape accusations prove to be false. On the other end of the spectrum, Eugene J. Kanin, "False Rape Allegations," *Archives of Sexual Behavior* 23:1 (1994), p. 84, reports that forty-one percent were false in his study of rape allegations in a small Midwestern city, and in the police records of two large Midwestern state universities that he examined, exactly half (fifty percent) were false (Kanin, p. 90).

are false creations, born of patients' suggestibility and their therapists' leading questions.<sup>108</sup>

Elizabeth Loftus, a professor of psychology at the University of Washington, has shown just how easy it is to create a false memory. She asked older relatives of twenty-four people to make up a story about the younger person being lost at the mall between the ages of four and six. Eighteen of twenty-four insisted that the incident never happened, but six not only believed the story but also developed their own memories of the fictitious event. Without corroborating evidence, Loftus says, an accurate memory cannot be distinguished from an imagined one.<sup>109</sup>

On the other hand, other elements of Jewish law create a real tension with these concerns. As much as we are commanded by our tradition to assume the innocence of the accused, we are also commanded not to stand idly by while the life or safety of others is threatened and, indeed, to take steps to save them. Child and spousal abuse, after all, are real. Nobody is disputing that. Indeed, family violence of all types is an enormous problem in our society, and it clearly must stop. In the process of rooting it out, however, we must be diligent in preserving the presumption of innocence firmly embedded in the Jewish tradition while we also take steps to protect those who may have been harmed and may be hurt again.

I personally know of a case in which a youngster at Camp Ramah accused his teacher of hitting him. There were no witnesses, there was no bruise, and the teacher denied it altogether. Even though the camper had been in trouble with other staff members on other occasions, and even though the teacher had had an unblemished record in these matters, the camp authorities chose to remove the teacher from his position for fear of a lawsuit. I certainly understand that fear, especially given today's litigious society, but Jewish law would not countenance that action. In our zeal to protect our students and families from abuse, we must not ride roughshod over the reputations, the livelihoods, and the very lives of the accused simply because they are accused.

In all of these matters, it would be well for us to remember both sides of Sir Mathew Hale's famous eighteenth-century dictum to a jury: rape "is an accusation easily to be made and once made, hard to be proved, and harder to be defended by the party accused, tho [sic] never so innocent."<sup>110</sup> We must, on the one hand, not dismiss out of hand the accusations of children and adults of physical, sexual, or verbal abuse. On the other hand, though, we must remember that, in the many cases where there are no witnesses or physical evidence, the credibility of such accusations must be weighed against a strong presumption of the innocence of the accused until and unless a finding of guilt is reached by an appropriate tribunal.

### ***Making Amends***

When a fair hearing determines that there is sufficient evidence that a given person has abused another, in addition to whatever civil or criminal penalties apply, Jewish families and communities need to take steps to avoid any further abuse. This may mean, for a family, moving out of the quarters occupied by the abuser or forcing him or her to move out

<sup>108</sup>Christine Gorman, "Memory on Trial," *Time*, 17 Apr. 1995, p. 54.

<sup>109</sup>*Ibid.*, p. 55.

<sup>110</sup>Cited by Marcus (at n. 107 above), p. 1, n. 1, and in Katz and Mazur (at n. 107 above), pp. 205-6. This quotation is discussed in the modern context of our concern for paying more attention to the testimony of women alleging rape (and children alleging abuse) by Brownmiller (at n. 107 above), p. 369.

of theirs, and it may mean, for a Jewish school, youth group, or camp, relieving the person of her or his job and perhaps even ostracizing the abuser from the community.

At the same time, the Jewish tradition puts great faith in the ability of those who do wrong to make amends and correct their behavior. It never expects us to be perfect: Jewish liturgy, after all, has us say three times each day, “Forgive us, our Father, for we have sinned,” and every Yom Kippur evening we know full well that next year we will be back trying to cleanse our souls once again. The date is already scheduled! That does not mean, however, that efforts to improve oneself are fruitless and that we therefore have no duty to try. Quite the contrary, Judaism imposes a positive obligation on us to do teshuvah, to take steps to return to the proper path, and it assumes that we can do it if we really try.

What are those steps? They include: (1) acknowledgement of the wrong; (2) remorse; (3) public confession; (4) asking for forgiveness from the aggrieved party; (5) restitution to the extent that that is possible; and, (6) refraining from committing the wrongful act the next time the opportunity arises.<sup>111</sup> The famous twelve-step programs used to help people with addictions of various sorts have strong echoes with these traditional steps in Judaism, and Jewish forms of those programs have therefore quite naturally emerged. They offer one form of changing abusive behavior that has proven effective for many people. It should be said, then, that in addition to the famous programs of this sort for alcoholics, drug abusers, and overeaters, there also exist Parents Anonymous for those who physically abuse their children and Parents United for those who sexually abuse their children.

Going through such a program, of course, is anything but easy, for it seeks to change long-standing behavior. Indeed, unless successful therapy has intervened through programs such as the ones mentioned above, people who were themselves abused as children are more likely than the general population to abuse their own children. At the same time, though, most people who have been abused do not abuse others, and usually that is because they have found a caring community who confirm their own self-worth despite the degradation they suffered from previous abuse. That makes it all the more imperative for synagogues to sponsor groups such as Parents Anonymous and Parents United or at least to refer those of their members who abuse family members to such groups, and it also makes it critical that synagogues accept such steps as indications of teshuvah, making the person worthy of reinstatement into the community as a whole. Teshuvah, after all, is very difficult, especially when it involves deeply-rooted behavior patterns such as the ones we are discussing. No wonder, then, that the Talmud says that fully righteous people (צדיקים) cannot stand in the same place as those who have repented, for the strength needed to repent is much greater than the strength needed to be good in the first place.<sup>112</sup>

If one succeeds in reversing a history of abuse, one attains the status of a person who has returned (בעל תשובה). American law makes felons who have served their sentence indicate their criminal past on all sorts of documents, and such people often continue to be denied voting privileges, the right to apply for a government job, etc. Jewish law requires us to trust the process of return (teshuvah) much more strongly. It mandates that Jews not even mention the person’s past violations, let alone bar him or her from full participation in society. Such recounting of the person’s wrongful deeds is categorized as verbal abuse (אונאת דברים) itself. Moreover, it puts obstacles in the way of those who try to do better, a violation of the

<sup>111</sup> For a good summary of these steps as required by rabbinic sources, see Maimonides, *Laws of Repentance* (Teshuvah), especially 2:1-2.

<sup>112</sup> Sanhedrin 99a, and see Rashi’s comment there. See Graetz, “The Haftorah Tradition” (at n. 10), for further discussion of when and how the safety of the synagogue can be helpful for airing matters of human intimacy, including areas of vulnerability such as being a victim or perpetrator of abuse.

biblical command, “Before a blind person you may not put an obstacle.”<sup>113</sup> Thus the Jewish tradition strongly encourages abusers to seek help to control their abusive drives, promising full restitution in legal, social, and theological status if they succeed.

The abuser, however, must go through all these steps to be accorded the renewed status of being in good standing within the community. Being punished by the civil authorities is not sufficient. So, for example, in one of our congregations a man who for years was head of the synagogue’s Cub Scout troop was later accused by a number of his former charges of sexual abuse. On the strength of the testimony of a number of these teenagers, he was sent to prison. When he was released, he wanted to join the synagogue once again. He refused, however, to admit that he had ever done anything wrong. That does not constitute teshuvah, despite the time he had spent in prison, and so the congregation was right in refusing to readmit him to membership.

If the man in this example (which actually occurred) had fulfilled the requirements of teshuvah, the congregation would be duty-bound to readmit him to membership but would not be obligated to reinstate him as its Cub Scout leader. While one may not routinely remind the offender or anyone else of his or her past offense, one may, and probably should, invoke that information in making decisions regarding the ways in which that person is permitted to interact with others. People may do full teshuvah and yet continue to be sorely tempted to repeat their offense if the opportunity arises. For such people, it is a favor neither to the offender nor to the people she or he may harm to put the culprit in the position where such temptation exists; that would be “putting an obstacle before the blind.”<sup>114</sup> The past offense is enough of a ground to suspect that the offender may remain weak-willed in this area and likely to harm others once again. This is especially true for child abusers, whose behavior is so deeply rooted in their psyche that it is often impossible to undo. The only way to prevent future abuse, then, and the very therapy which they need is for the perpetrators to avoid situations in that they will be tempted to engage in such acts.

Therefore, even though we may not gratuitously mention the offense or bar the person from activities irrelevant to the offense, we may, and probably should use that knowledge to help the offender avoid tempting situations and to protect others at the same time.<sup>115</sup> We need to support people in their efforts to return to proper behavior, but we are not obligated to give such people opportunities to test their new resolve, especially when the welfare of others is at stake.

<sup>113</sup> One of the specific examples of *אונאת דברים* given in Bava Mezia 58a is reminding a person of past violations of the law. The verse forbidding putting a stumbling block before the blind (Lev. 19:14) is probably talking in its plain meaning about physically blind people and physical stumbling blocks, but the classical Rabbis applied it also – indeed, more often – to intellectual and characterological stumbling blocks put before those who are blind in those areas. See n. 40 above.

<sup>114</sup> See n. 40 and n. 113 above for the meaning of this expression in Jewish law.

<sup>115</sup> As Rabbi Mayer Rabinowitz has pointed out, if the process of teshuvah works to its fullest extent, the abuser should not even be tempted to abuse others when confronted with situations similar to the ones that led him or her to abuse people in the past. In a similar situation, we do not tell recovering alcoholics to avoid going to a Kiddush after worship services altogether; we ask them, instead, to participate in the Kiddush and to take grape juice instead of wine. On this model, abusers who have gone through full teshuvah might be trusted, at least under supervision, to resume their former tasks with children.

While I can understand this line of reasoning, and while I can imagine situations in which that may be appropriate, I hesitate to recommend it because in cases of abuse, more than in cases of alcoholism, the welfare of others is directly affected. Moreover, a significant percentage of alcoholics have managed to achieve and sustain a state of recovery, but pedophiles have much greater difficulty overcoming their addiction. It is therefore better for all concerned for them simply to avoid situations in which they may be tempted. We must trust the process of teshuvah while being realistic of its limits – and of the need to protect those who would be victims if it fails.

As a result, it may well be that, for such people, full teshuvah may not be possible. For its own protection and for the sake of the abuser too, the community may not afford the abuser the opportunity to complete the last stage of teshuvah, where the sinner confronts the same situation in which she or he previously sinned and acts differently. In such cases, the community, recognizing that that is the case not because of a failure in the abuser's resolve to do teshuvah but rather because of their own decision, may reinstate the abuser into the community, despite his or her failure to complete the process of teshuvah, for all purposes except for functioning in situations where she or he was previously abusive. The process of teshuvah, as described in the sources, may not be possible or appropriate for all cases, and the community's norms must respond accordingly.<sup>116</sup>

### ***The Role of Rabbis and Educators in Preventing Abuse and in Repairing its Consequences***

While rabbis and Jewish educators may agree wholeheartedly with the thrust of this responsum, many would probably ask what they can and should do to prevent abuse, where possible, or at least to alleviate its consequences. The Clergy Advisory Board of the California Department of Social Services has produced a brief pamphlet that was distributed to all members of the Board of Rabbis of Southern California as well as members of the clergy of all religions throughout the state.<sup>117</sup> It focuses on child abuse, but its recommendations can easily be adapted to spousal or parental abuse as well. In the paragraphs below, I will paraphrase and embellish upon the pamphlet's instructions, generalizing them to apply to spousal abuse as well as child abuse, to jurisdictions outside California, and to specifically Jewish concerns and contexts:

1. *Learn to recognize abuse.* If you fail to recognize the signs of abuse in your congregation, school, camp, or youth group, the abuse will undoubtedly continue. The opportunity to protect people from future abuse is often lost due to ignorance, denial, or fear of interference. Our professional schools and organizations should provide training for their students and members in how to discern potentially abusive situations, take family histories that include instances of abuse, provide religious counseling for abusers and their victims, and know which other professionals within the community should be called upon to help in both preventive and curative actions.

2. *Do not assume that you can handle the situation alone.* While clergy can be critical in helping victims and perpetrators of abuse, as explained below, they should not try to do this alone. If abuse is going to be stopped and its effects ameliorated, professionals of various sorts must be called upon. One clergy member is quoted in the pamphlet as saying this:

A father divulged to me that he was molesting his daughter. He was repentant. I prayed with him, but did not seek further help to protect the victim. She later made a serious attempt on her life because, even after repentance and prayer, the father had continued to molest. It shook me.

<sup>116</sup>I would like to thank Rabbi Joel Rembaum for pointing out this aspect of the situation and its implications for the process of teshuvah.

<sup>117</sup>*Protecting Our Children: Information for Clergy Members about Abuse and Neglect*, a publication of the Clergy Advisory Board of the California Consortium to prevent Child Abuse, in collaboration with the Office of Child Abuse Prevention of the California Department of Social Services, 1600 Sacramento Inn Way, Suite 123, Sacramento, CA 95815. Copies can be ordered by calling (800) 405-KIDS.

3. *Know and obey your government's requirements to report abuse to legal authorities.* Many states, provinces, and cities have enacted laws that require clergy and teachers, as well as physicians, to report abuse to legal authorities. Exactly what must be reported, and to whom, varies. California, for instance, wants rabbis and teachers to err on the side of over-reporting abuse rather than underreporting it: California law specifies that educational and religious professionals must report suspicions of abuse and leave it to legal authorities to determine whether those suspicions are founded. The laws in other places may be different, going further in the direction of protecting the accused. In cases of spousal abuse, reports are generally made to the police, and in some locations that is true for child abuse as well; in other places instances of child abuse are to be reported to the Office of Children's Protective Services (or the equivalent agency of state or local government, whatever its title).

Sometimes clergy or teachers become aware of abuse through the confession of a congregant in a private counseling setting, and that raises questions of confidentiality. California law, though, specifically requires professionals to break professional-client confidentiality when the safety or physical welfare of a child or adult is involved, and it protects professionals from lawsuits complaining of such a breach of confidentiality. I would imagine that the laws and/or judicial rulings in most other locations follow suit.

In any case, rabbis and teachers everywhere have a legal responsibility to be on the alert for instances of family violence and to report such cases to legal authorities when civil law requires it. Failure to do so may subject rabbis or teachers personally, as well as the religious or educational institution for which they work, to both civil and criminal prosecution. Insurance companies are increasingly restricting their coverage so that they can avoid liability, for such suits, thus making the rabbis and educators and their institutions all the more legally exposed.

4. *Protect your congregation or school from potential abusers.* People who prey on children often seek positions that will give them access to, and authority over, children. Potential molesters cannot, of course, be identified by appearance alone. Synagogues, schools, youth groups, and camps, though, should, as part of their hiring policies and procedures, take measures to screen out those likely to molest the children under their care. This is important not only for the institutions and its charges, but also for the molester, for we are mandated not to "put a stumbling block before the blind" (Lev. 19:14) – in this case, the morally blind who would be tempted to use their position of authority to abuse those in their care.<sup>118</sup>

This, of course, is easier said than done, for as much as institutions must prevent molesters from being part of their staff, they also must avoid making unfair and unwarranted judgments of applicants. They certainly must not base their decisions on prejudices – say, against males, or against homosexuals (the overwhelming majority of convicted child molesters are heterosexual). At the same time, though, background checks should include attention to this aspect of a person's history.

5. *The abuser may be a colleague.* The recent, highly-publicized cases of child abuse perpetrated by a small number of Catholic priests illustrate that religious or educational professionals are unfortunately not beyond suspicion in these matters. As indicated above, due process must be applied in any investigation of such allegations, and the presumption of innocence must be preserved. If child or spousal abuse by a rabbi or educator is confirmed, however, other Jewish professionals on the staff and in the vicinity must be prepared to respond to the scandal and the public outrage. As the California pamphlet puts it, "While the needs of the victim are primary, compassion needs to be extended to the injured religious community and the perpetrator as well." We would undoubtedly add

<sup>118</sup>See n. 40 and n. 113 above for the meaning of this expression.

that steps must be taken to heal the community, help it avoid such incidents in the future, and bring the perpetrator both to justice and to the process of teshuvah.

6. *Clergy and educators can take specific steps to prevent and alleviate this problem.* In addition to the steps described above, the California booklet mentions the following:

(A) *Provide child and spousal abuse services and support other communal efforts to do the same.* To quote the California booklet, with additions for the case of spousal abuse,

Anything that your community of faith does to strengthen families is child abuse [and spousal abuse] prevention. For some at-risk families, participation in religious services is their only real support system. You can reach out to families in isolation and turmoil by addressing parenting [and spousal] issues through sermons, study groups, or by sponsoring public forums.

Such discussions may well center on our new *Rabbinic Letter on Intimate Relations* because that provides a safe forum for opening up on all issues of human intimacy, including these troubling ones, and it does so in the context of Jewish conceptions, laws, and values. In addition, Mother's Day or Father's Day, or the story of the binding of Isaac read on Rosh Hashanah or during the year, may be used as the occasion for a worship service, forum, sermon, or readings on these subjects.

In addition, synagogues and Jewish federations should support efforts, typically by Jewish Family Service agencies, to establish safe houses with kosher facilities for victims of abuse. As a joint effort of synagogues and Jewish Family Service, synagogue services should be made available to residents in such facilities, and, conversely, experts in this area from Jewish Family Service should be called upon for preventive and educational programs within our synagogues and educational institutions.

(B) *Use the power of the religion and the community to deter abuse.* Rabbi Simhah, cited above, speaks of excommunicating a wife-beater from the congregation, and, in the case of the child abuser who wanted to rejoin a Conservative synagogue without doing full teshuvah, that congregation did just that – and rightly so. Where there is a reasonable expectation that continued membership within the community will more likely bring a change in behavior, the synagogue can and should still express its disgust for such behavior by, for example, refusing to give honors or positions of leadership to those known to physically or verbally abuse others. Rabbis should not hesitate to use theological language in explaining to abusers that such behavior is not only a violation of a Jewish communal norm, but a transgression of God's will as embedded in Jewish law and lore.

(C) *Counsel adult survivors of abuse.* Adults who abuse others were often abused themselves as children. If they are going to be able to break the cycle of abuse, they will need considerable counseling, instruction in good patterns of family interactions (since, by hypothesis, they never saw first-hand while growing up how families can handle their tensions in a healthy way), and reinforcement in acting differently from how their abusive parents did. Synagogues can, for example, form support groups for adult children of abuse, with opportunities to express their rage and to learn how to create a healthy family life; Jewish Family Service may be of aid in establishing and staffing such groups.

(D) *Address the spiritual aspect of healing.* We rabbis all too often underestimate the role of religious conviction in aiding the healing process. Virtually all of the Twelve-Step programs place heavy reliance on faith in God, not only because historically such programs emerged from Christian faith communities, but also because they have found that healing is assisted greatly when a person feels that she or he is being aided both by others who have the same

problem and by God. We need to cease to be embarrassed by such religious language. We should unselfconsciously invoke the religious tenets of our tradition to help people who have been abused to heal the wounds of the past and to reconstruct and redirect their lives.<sup>119</sup>

### ***Conclusions of the Response to Part IV***

1. Jewish institutions, and Jews individually, must take every precaution from jumping to conclusions of guilt merely because someone is accused of perpetrating abuse. Jewish law ascribes a strong presumption of innocence to each person, and so the burden of proof is on the accuser. Furthermore, any and all evidence must be carefully weighed by communal authorities and a formal determination of guilt must be reached before any action against an alleged abuser is taken. Allegations alone are not sufficient to justify that.

2. The process of return (teshuvah) described in our sources for other offenders is open to a person engaged in family violence too, but it must be complete to warrant reinstatement in the community. Where full teshuvah does occur, Jews are not permitted even to mention the former abuse in general conversation, but they may use that information in making practical decisions about what may tempt the abuser and/or pose a danger to others.

3. Where full teshuvah does not occur, synagogues may deem it appropriate to use the religious and communal power at their disposal to express their disgust at the abusive behavior and to motivate the abuser to change his or her ways. This may include suspension or refusal of membership and denial of honors in worship and in leadership. The rabbi may also use theological as well as communal language in explaining to the abuser why her or his behavior is unacceptable. The specific sanctions should be tailored by the rabbi and lay leaders in charge to the particular situation with the goals of preventing future abuse and of motivating the abuser to make amends and to change his or her ways. In some cases, full teshuvah may be impossible for the abuser because of the community's decision to protect itself from future abuse of the same nature by the perpetrator; in such circumstances, the community should reinstate the abuser, even absent full teshuvah, once she or he has completed all of the steps of teshuvah that the community will allow him or her to do.

4. Jewish professionals and institutions can prevent and ameliorate cases of abuse by:

- A. Learning to recognize the signs of abuse;
- B. Bringing in other professionals within the community who have expertise in this area to help the institution take steps to avoid abuse, identify likely instances of abuse, and heal it when it occurs;
- C. Knowing and obeying the relevant civil laws requiring reports of abuse or suspicions of abuse to civil authorities;
- D. Taking steps to avoid hiring individuals with abusive behavior in their backgrounds, especially vis-à-vis the population whom the person now seeks to serve, while simultaneously avoiding prejudice about groups of people whom one thinks are likely to abuse;

<sup>119</sup>The entire Fall 1994 issue of *Religious Education* (vol. 89, no. 4) was devoted to the cover topic, "Religious Education and Child Abuse." That issue includes important articles on how religious educators (and presumably rabbis and cantors among them) can recognize child abuse when it happens, help victims to extricate themselves from the abuse, and help to prevent child abuse in the first place. Marian Wright Edelman of the Children's Defense Fund, James Fowler, and Nel Noddings are among the writers.

- e. Understanding that professionals and laypeople entrusted with positions of leadership within the synagogue or educational program are not automatically above suspicion in these matters and, where abuse is confirmed, by immediately removing the abuser from the position, pulling the community together to heal its pain and wounds, and taking steps to avoid abuse in the future;
- f. Including multifaceted efforts to strengthen the family in addition to programs that directly discuss the unacceptability of family violence and the alternative ways to deal with tensions within the family; and,
- c. Unselfconsciously and forthrightly using the religious, as well as the communal, bases of authority available to religious institutions to teach people the Jewish imperative to recognize and avoid abuse and to prod abusers to change their behavior.

### RECONNECTING WITH GOD'S IMAGE WITHIN US

While questions can sometimes arise about the legitimate use of corporal punishment as a form of discipline, most cases of abuse cannot be justified in any way as rooted in a concern for discipline. They are, instead, bald exercises of physical might for purposes of exerting power over someone and/or of expressing one's own aggressions on innocent victims. Judaism unequivocally sees these as forbidden. Jewish law specifies punishments for those who strike others and demands that the objects of such attacks do everything in their power to escape such situations, even if it means defaming the assailant or embarrassing oneself. Judaism also prohibits verbal abuse of all kinds, claiming that in significant ways it is worse than monetary fraud.

It is important to recognize that such an attitude on Judaism's part is deeply rooted in its theology, its overarching conception of the human being. In secular systems of thought, abuse is problematic because it violates the Golden Rule and more generous, humanitarian concerns. When the topic is abuse within the family, further matters arise, including the resultant inability of the family to provide the safety, warmth, and education on which society depends and the inherent violation of the sanctity of the family. Judaism shares all of these concerns, but it has more, for abuse of another represents a denial of God's image in every human being.

In conceiving of the situation in that way, Judaism also can provide a real source of strength for abused people struggling to escape from their situation and to rebuild their lives. No matter how much someone else has diminished your self-image, Judaism is telling us, you must recognize that ultimately you are created in the image of God. Among other things, that means that like God, you have inherent worth, regardless of what anyone else says or does. That divine value represents a challenge to us, for we must each strive throughout our lives to realize the divine within us. It is a challenge, though, that gives life meaning and hope.

The following High Holy Day Message of the Jewish Theological Seminary of America for 1992, published in *Newsweek*, the *New York Times*, and the *Wall Street Journal*,<sup>120</sup> summarizes these themes nicely:

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<sup>120</sup>Published in *Newsweek*, 28 Sept. 1992, in selected regions; and in the *New York Times*, 1 Oct. 1992, and the *Wall Street Journal* on the same date. The bold print indicated here is as it appeared in the published message.

“Know whom you put to shame, for in the likeness of God is (s)he made” (Genesis Rabbah 24:8).

Some people who are reading this were beaten yesterday, or terrorized, or kept in isolation. Some who tormented them are reading this now. And they are not strangers to each other; they are family. Intimates. People like us. Us.

Home should be a haven, the place where you can count on being valued and protected. If instead it is a place where the people closest to you beat you up, or keep you on edge with threats, or isolate and demean you – then what is safe?

Violence in the family is not love; it is not discipline; it is not deserved. It is an abuse of power, and it is wrong – because decent people don’t behave that way; because it is against the law, and for one more reason: we are all made in the image of God. To lash out in violence – especially against someone whose life is linked with yours – is to violate a likeness of God, and to degrade that likeness in yourself.

**Are you being hurt or humiliated by the person you are closest to? Believe that you do not deserve the abuse. No one has the right to tell you that you are worthless: your worth comes from God.**

**Have you been taking out your anger and frustration against the people who depend on you? Know that you are better than that; you are made in the image of God. You have the power to stop hurting and belittling them. God gives it to you.**

To all who read this, we ask:

- Look at yourself, at your partner, at your elderly parents, at your children, as images of God. Treat each of them with the respect which that demands.
- Make your home a haven. Instead of raising your hand or your voice, raise your own dignity and the self-esteem of the people who turn to you for love. You may not be able to perfect the world, but this much you can do.
- Help your religious community to face the fact of domestic violence and to offer active support to those who have been enduring abuse, threats, and humiliation. A house of God should be a place for teaching restraint, decency, and reverence; make yours that place.
- Behave as though God made you worthy: it is true. Behave as though the world depends on your humanity and decency. It does.

“. . .for the sin which we have committed before Thee, openly and in secret. . .” (High Holy Day Liturgy)