

## Harmful Communication

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**Question:** What forms of communication does Judaism prohibit as harmful?

**Answer:**

In our rabbinic ruling on providing references for schools and jobs,<sup>1</sup> Marc Gary and I described several forms of speech that can harm others and that the Jewish tradition forbids, in large part, no doubt, because of that harm:

- Lies (*sheker*).<sup>2</sup>
- Slurs (*lashon ha'ra*), and its derivative, *avak l'shon ha-ra*, “the dust of slurs.”
- Slander (*motzi shem ra*), and
- Oppressive speech (*ona'at d'varim*).

Other Jewish publications do the same thing in other ways.<sup>3</sup> In this rabbinic ruling I will not repeat the discussion of those prohibited categories of harmful speech but rather discuss other

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<sup>1</sup> Elliot N. Dorff and Marc Gary, “Providing References for Schools and Jobs,” <https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/2011-2020/providingreferences.pdf>.

<sup>2</sup> Research seems to indicate, however, that “kids who know how to deceive are smarter and better adjusted” than those who do not. Such children, however, need to be taught *not* to use their abilities to lie to others or deceive them in other ways – and why they need to restrict themselves in those ways – as part of their moral education and development. For a good summary of this research, see Alex Stone, “Is Your Child Lying to You? That’s Good,” *New York Times*, January 7, 2018, p. C-7 (Sunday Review), <https://www.nytimes.com/2018/01/05/opinion/sunday/children-lying-intelligence.html> (accessed January 7, 2018).. Research also indicates that lying is much more common than one might expect. See, for example, Seth Stephens-Davidowitz’s book, *Everybody Lies: Big Data, New Data, and What the Internet Can Tell Us Who We Really Are*. The cases in which lies are acceptable among adults (e.g., “white lies”) and the proper responses on the part of individuals and institutions to lies are both discussed in the Dorff/Gary responsum.

<sup>3</sup> For example, Elliot N. Dorff, *The Way Into Tikkun Olam (Repairing the World)* (Woodstock, VT: Jewish Lights, 2005), Chapter 4; Alyssa M. Gray, “The Ethics of Speech,” in *The Oxford Handbook of Jewish Ethics and Morality*,

forms of harmful communication that were either outright prohibited or at least discouraged by the Jewish tradition.

It is important to note one matter of context at the very outset. As Marc Gary and I delineate in our responsum on providing references for schools and jobs, the Jewish tradition attributes great power to speech, and not all of that is bad. This latter point is important to note because that rabbinic ruling, my companion ruling to this one on modest communication, and this one on harmful communication all focus on negative forms of communication. Some of the many positive forms of speech and other forms of communication include using our power to communicate in order to think,<sup>4</sup> to plan, to create, to share ideas, to bond together, to express love and support, to express remorse for a harm one caused others, and to praise and thank God. So this responsum is intended as one piece of the Jewish ethics of communication, not the whole of it.

Furthermore, the Jewish tradition, like the Western liberal tradition embedded in the laws of most Western countries, values freedom of speech as an expression of the uniqueness and divine value of each one of us. This is similar to the freedom that we value with regard to dress, as articulated in the CJLS responsum on Modesty in Dress by Rabbis David Booth, Baruch Frydman-Kohl, and Ashira Konigsburg.<sup>5</sup> In both communication and dress, that freedom exists within some bounds, and the point of their responsum on modesty in dress, this one on harmful

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Elliot N. Dorff and Jonathan K. Crane, eds. (New York: Oxford University Press, 2013), Chapter 25; and Joseph Telushkin, *Words That Hurt, Words that Heal: How to Choose Words Wisely and Well* (New York: William Morrow and Company, 1996).

<sup>4</sup> For a discussion of how the Midrash and a number of medieval Jewish thinkers refer to a human being as *ha-midabber*, the speaker, indicative also of the human power to think, see David Mevorach Seidenberg, *Kabbalah and Ecology -- God's Image in the More-Than-Human World* (New York: Cambridge University Press, 2015), Chapters 1-3, esp. pp. 61-66, in which the human power to speak and, for some, also to think are the meaning of being created in God's image.

<sup>5</sup> Rabbis David Booth, Baruch Frydman-Kohl, and Ashira Konigsburg, "Modesty Inside and Out: A Contemporary Guide to Tzniut," <https://www.rabbinicalassembly.org/sites/default/files/Modesty%20Final.pdf>

speech, and its companion on modest speech is to articulate those bounds. They are bounds, however, to a fundamental freedom of people to express themselves in their own unique way.

Like its companion responsum on “Modest Communication,” this responsum is designed to spell out Jewish law on its topic. At some point, these two responsa, together with portions of others noted in their exposition, including especially “Providing References for Schools and Jobs” by Marc Gary and me and “Privacy on the Internet” by Elie Spitz and me, will, I hope, become the basis of a Rabbinic Letter on Communication and/or other educational materials, such as discreet units on specific topics or cases. The task of these responsa is to articulate Jewish law on these matters, while the task of a Rabbinic Letter or other educational materials is to educate people about Jewish law and its implications in our lives today, including some specific cases and questions for further discussion. The tasks, audiences, and level of discourse (especially what the author assumes about the Jewish knowledge of the audience) of these two types of literature are different. Furthermore, educational materials about an aspect of Jewish law clearly depend on that area of the law being clearly defined; hence my effort in these responsa to clarify the law first, before one or more people (possibly, but not necessarily including me) writes educational materials on these topics. In light of the current cultural crisis on these matters generated by people in political office and in many forms of social media, I would hope that these responsa and subsequent educational materials would be used in many educational settings for both teenagers and adults, including materials for USY, Camp Ramah, schools, and Conservative synagogues as well as for the broader Jewish community.

In both of these responsa and in future educational materials, legal and moral norms will interweave, such that sometimes what is being discussed is clearly legal in character, sometimes clearly moral, and sometimes ambiguously one or the other. That is a reflection of my own view

of Jewish law, in which legal and moral norms, together with Jewish theological convictions, regularly do and should organically interact with each other.<sup>6</sup> When appropriate, however, I will indicate when the norms I am discussing are clearly legal, or, in contrast, when they are clearly beyond the requirements of the law and therefore moral or even aspirational.

### **What Constitutes Communication?**

It is important to clarify at the outset that the concept of communication as it is used in this responsum is intended to be understood expansively. Although the media by which we communicate have evolved over time, the principles discussed in this paper can be easily applied to all modern forms of communication. This includes communications that are spoken in person or written, whether face-to-face, behind someone's back, or posted online. "Communication" also includes what philosophers call "speech acts," such as hand signals and the clothing one wears; such speech acts can be benign or even positive (such as a hug to comfort someone, or a "high five" to congratulate someone); but they can also be immodest and even harmful if the intent is to demean others. Saying things; writing remarks on paper; speech acts; and posting photos, videos, written comments, texting, messaging, and any other form of virtual communication all fall under the category of communication – or what I will sometimes call "speech" -- as the topic of this responsum and its companion responsum, "Modest Communication."<sup>7</sup>

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<sup>6</sup> Elliot N. Dorff, *For the Love of God and People: A Philosophy of Jewish Law* (Philadelphia: Jewish Publication Society, 2007), esp. Chapters Two, Three, and Six. I would like to thank Rabbi David Booth for calling my attention to speak to the last two points – on freedom of speech and on the nature of this responsum as a legal document that involves moral and theological concerns.

<sup>7</sup> I want to thank Rabbi Ashira Konigsburg for alerting me to the need to make clear that the principles and rules developed in this responsum apply to a wide range of modern techniques of communication and for her help in a number of the following sections in specifying the increased harm that social media and other modern techniques of communication, in contrast to older forms of communication, can cause when used to deceive, insult, shame, or bully others. I also want to thank Dr. Toby Schonfeld for alerting me to include speech-acts, such as hand signals and clothing, in this definition of the kinds of communication that this responsum and its companion, "Modest

## The Theological Convictions and Moral Values Underlying Judaism's Prohibitions of Harming Others

Because I believe that Jewish law is embedded in Jewish theology and moral convictions and that all three of those aspects of the Jewish tradition affect each other organically,<sup>8</sup> it is important at the outset of this responsum briefly to delineate the foundational Jewish views and values that are relevant to the legal topics of this responsum:

1. *The human being is created in the image of God and thus deserves respect.* There are many ways in which this biblical concept that human beings were created in the image of God can be interpreted and applied,<sup>9</sup> but surely one is that human beings deserve respect. This does not mean that everything that a person does should be condoned, let alone praised, for Jewish law spells out many actions that a person should and should not do; but fundamental respect for each person is required. Conversely, disrespect of human beings amounts to disrespect of God:

רבי עקיבא אומר (ויקרא יט, יח): וְאֶהְבֶּתָּ לְרֵעֶךָ כְּמוֹךָ, זֶה כָּלֵל גָּדוֹל בַּתּוֹרָה, שְׁלֹא תֹאמַר הוֹאִיל וְנִתְבַּזְּיִתִי יִתְבַּזֶּה חֲבֵרִי עִמִּי, הוֹאִיל וְנִתְקַלְלִיתִי יִתְקַלֵּל חֲבֵרִי עִמִּי. אָמַר רַבִּי תַנְחֻמָּא אִם עָשִׂיתָ כֵּן דַּע לְמִי אַתָּה מְבַזֶּה בְּדַמוֹת אֱלֹהִים עָשָׂה אוֹתוֹ.

Rabbi Akiba said: “Love your neighbor as yourself” (Leviticus 19:18) is a fundamental principal of the Torah. You should not say that inasmuch as I am despised, let my fellow human being be despised with me, [or] inasmuch as I am cursed, let my fellow human being be cursed with me. Rabbi Tanhuma said: If you act in this manner, know Who it is you despise, for “God made the human being in the image of God” (Genesis 1:27; 9:6).<sup>10</sup>

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Communication,” cover. In the same vein, I want to thank Rabbi Gail Labovitz for suggesting that because all these forms of communication are part of what I am addressing, the titles of both this and its companion responsum should use the word “communication” rather than “speech,” the latter of which is too easily understood to be restricted to vocal forms of communication.

<sup>8</sup> Elliot N. Dorff, *For the Love of God and People: A Philosophy of Jewish Law* (New York: Jewish Publication Society, 2007), esp. Chapters Three and Six.

<sup>9</sup> The doctrine: Genesis 1:27; 5:1; 9:6. For a thorough examination of the range of interpretations of this doctrine in rabbinic and kabbalistic literature, see Seidenberg, *Kabbalah and Ecology* (at note 3 above, Parts I and II).

<sup>10</sup> *Genesis Rabbah* 24:7.

2. *As Creator of the world, God owns everything in it, including all human beings.*

הוּ לַיהוָה אֱלֹהֵינוּ הַשָּׁמַיִם וְהָאָרֶץ וְכָל־אֲשֶׁר־בָּהֶּן:

Mark, the heavens to their uttermost reaches belong to the Lord your God, the earth and all that is on it. (Deuteronomy 10:14)

לַיהוָה הָאָרֶץ וּמְלוֹאֶתָהּ תִּבְּל וְיֹשְׁבֵי בָהֶּן:

The earth is the Lord's, and all that it holds, the world and its inhabitants. (Psalms 24:1).

3. *God requires us to care for others.* As Owner of everything, God can and does insist that

we use what we have to help others in need, both their physical needs and their emotional needs.<sup>11</sup>

4. *God requires that we not harm others.* Caring for others clearly also involves avoiding harming them. This includes their physical bodies, as evidenced by laws banning murder, assault, and exposing people to danger, but it also involves harming the psychological and social aspects of their beings through words or actions that would undermine their self-respect or respect in society.

### **Gossip: *Rehillut***

Gossip differs from the other prohibited forms of speech discussed in the Dorff/Gary responsum on providing references for schools and jobs – in particular, from slurs (*lashon ha-ra*) and slander (*motzi shem ra*) – in that it does not necessarily involve negative information about a

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<sup>11</sup> For a discussion of the relevant laws, see Dorff, *The Way Into Tikkun Olam* (at note 2 above), Chapters 4, 8, 9, and 10.

person. It rather is wrong because it divulges information about someone else that is and should remain private. Maimonides defines it in this way and sees it as a lesser offense than negative, true talk about others (*leshon ha-ra*), yet a prohibited form of speech:

אי זהו רכיל. זה שטוען דברים והולך מזה לזה ואומר כה אמר פלוני כה וכך שמעתי על פלוני. אף על פי שהוא אמת  
 הרי זה מתריב את העולם. יש עון גדול מזה עד מאד והוא בכלל לאו זה והוא לשון הרע. והוא המספר בגנות חברו אף  
 על פי שאומר אמת. אבל האומר שקר נקרא מוציא שם רע על חברו. אבל בעל לשון הרע זה שיושב ואומר כה וכך  
 עשה פלוני וכך וכך היו אבותיו וכך וכך שמעתי עליו ואמר דברים של גנאי. על זה אמר הכתוב (תהילים יב ד) "יכרת  
 ה' כל שפתי חלקות לשון מדברת גדולות":

Now what is the character of a tale bearer (*rakhil*)?—He that carries about news from one to another, and says: such and such a man said so and so; of such and such a man I have heard so and so.—Though it be true, yet it is pregnant with incalculable mischief to society (literally, destroys the world). Now there is still another sin which is even much greater than this, and which is also comprehended in this negative commandment, namely that of calumny (*leshon ha-ra*), which is, when one relates anything disgraceful of his fellow, though he speak the truth. In contrast, he who speaks falsehood (*sheker*, lies), may be called: *one who maliciously spreads false reports against his fellow-man*; whereas by “a man of an evil tongue” (*ba'al leshon ha-ra*) we understand him who sits down and says: such and such a man did so and so, or his parents have been so and so, using at the same time disgraceful [but true] expressions. Of such a one Scripture says: *The Lord shall cut off all flattering lips, and the tongue that speaks proud things*, (Ps. 12:3).<sup>12</sup>

Retaining a healthy sense of respecting one's own privacy and that of others is rooted in a series of Jewish theological, moral, and legal concerns discussed in the responsum previously approved by the Committee on Jewish Law and Standards by Rabbis Elliot Dorff and Elie Spitz

<sup>12</sup> M.T. *Laws of Dispositions (De'ot)* 7:2. In the following sections (7:3-6) he discusses the severe penalties for engaging in calumny (*leshon ha-ra*) and the nature of “the dust of calumny” (*avak leshon ha-ra*). As the Kesef Mishneh, citing Rabbi Abraham ben David of Posquierres, points out on 7:1, Maimonides is taking a stringent position here, claiming that this severe penalty applies even if nobody dies as a result. Maimonides also takes a more stringent position than the Talmud does on other types of verbal infractions in 2:6, where the Kesef Mishneh expresses surprise. I want to thank Rabbi Noah Bickert for pointing this out to me. This may be because Maimonides' philosophical training, combined with his Rabbinic training, made him especially sensitive to the misuse of language.

– namely, “Computer Privacy and the Modern Workplace”<sup>13</sup> – in which all the relevant sources and theological and moral values demanding that we respect other people’s privacy and our own are discussed. For this context, suffice it to say that the Torah itself, at least as interpreted by the Rabbis, specifically prohibits the spreading of gossip when it says, “Do not go about talebearing among your people” (Leviticus 19:16).<sup>14</sup>

As we will see below with regard to the ban in Jewish law on shaming people, there are some circumstances in which both gossip and shaming serve important social purposes, so that the prohibitions of these forms of speech need to exclude such circumstances. In particular, gossip can reassure people that they are not the only ones with a given problem and give them information about how to help with their problem, and it can also enforce group norms. As Benedict Carey reported in the *New York Times*,

"There has been a tendency to denigrate gossip as sloppy and unreliable" and unworthy of serious study, said David Sloan Wilson, a professor of biology and anthropology at the State University of New York at Binghamton and the author of "Darwin's Cathedral," a book on evolution and group behavior. "But gossip appears to be a very sophisticated, multifunctional interaction which is important in policing behaviors in a group and defining group membership."

When two or more people huddle to share inside information about another person who is absent, they are often spreading important news, and enacting a mutually protective ritual that may have evolved from early grooming behaviors, some biologists argue.

Long-term studies of Pacific Islanders, American middle-school children and residents of rural Newfoundland and Mexico, among others, have confirmed that the content and frequency of gossip are universal: people devote anywhere from a fifth to two-thirds or

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<sup>13</sup> Elliot N. Dorff and Elie Kaplan Spitz, “Computer Privacy and the Modern Workplace,” [https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/19912000/dorffspitz\\_privacy.pdf](https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/19912000/dorffspitz_privacy.pdf). See also Elliot N. Dorff, *Love Your Neighbor and Yourself: A Jewish Approach to Modern Personal Ethics* (Philadelphia: Jewish Publication Society, 2003), Chapter Two, “Privacy.”

<sup>14</sup> As the New Jewish Publication Society translation of this verse indicates, the meaning of the Torah’s phrase here is uncertain, and it may mean “do not deal basely with your countrymen.” Either way, the Rabbis interpreted it to declare a prohibition on gossip (J. *Pe’ah* 1:5) as well as to require that if two judges acquit a defendant and one votes to convict him or her, the court as a whole must say that he or she is innocent (B. *Sanhedrin* 30a), to prohibit disclosing which judge voted to convict (B. *Sanhedrin* 31a), and to warn people not to engage in slander (*motzi shem ra* – B. *Ketubbot* 46a).

more of their daily conversation to gossip, and men appear to be just as eager for the skinny as women.<sup>15</sup>

Sneaking, lying and cheating among friends or acquaintances make for the most savory material, of course, and most people pass on their best nuggets to at least two other people, surveys find.

This grapevine branches out through almost every social group and it functions, in part, to keep people from straying too far outside the group's rules, written and unwritten, social scientists find....

"We're told we're not supposed to gossip, that our reputation plummets, but in this context there may be an expectation that you should gossip: you're obligated to tell, like an informal version of the honor code at military academies," Dr. Wilson said.<sup>16</sup>

The discussions of gossip in Jewish sources that I have found do not talk about these exceptions. As Marc Gary and I discuss in our responsum, "Providing References for Schools and Jobs," however,<sup>17</sup> the *Hafetz Hayyim* specifically allows the communication of private and even negative information about people when it will have the practical value of protecting someone or aiding someone. So although revealing private information about others is generally a violation of the Torah's commandment and prohibited as such, when that information can help someone in the same situation or when it can enable a society to identify rule-breakers and enforce communal norms, communicating it does not fall within the Torah's ban.

### **Purposely Misleading Others (*Geneivat Da'at*)**

Although this could be seen as a form of telling lies, Maimonides and others treat it separately because this kind of wrongful speech involves deliberately deceiving others in ways that can cause them harm. Beyond being a lie, then, this type of speech involves fraud and its

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<sup>15</sup> This is especially noteworthy, for the Mishnah asserts that women were much more likely than men to spread gossip: *M. Avot* 1:5.

<sup>16</sup> Benedict Carey, "Have You Heard? Gossip Turns Out to Serve a Purpose," *New York Times*, August 16, 2005, <http://www.nytimes.com/2005/08/16/science/have-you-heard-gossip-turns-out-to-serve-a-purpose.html>.

<sup>17</sup> See note 1 above.

associated injuries or damages. Here is how Maimonides defines it, bringing together, as he often does, Talmudic precedents that will be noted in the footnotes:

אָסוּר לְאָדָם לְהִנְהִיג עֲצָמוֹ בְּדַבְרֵי חֲלָקוֹת וּפְתוּי. וְלֹא יִהְיֶה אֶחָד בְּפִהוּ וְאֶחָד בְּלֵב אֲלֵא תוֹכוֹ כְּבָרוּ וְהֶעֱנִין שְׂבֵלֵב הוּא הַדְּבָר שְׂבִפְּהוּ. וְאָסוּר לְגַנֵּב דַּעַת הַבְּרִיּוֹת וְאֶפְלוּ דַּעַת הַנְּכָרִי. כִּי־צַד. לֹא יִמְכַר לְנִכְרִי בְּשָׂר נְבִלָה בְּמָקוֹם בְּשָׂר שְׁחוּטָה. וְלֹא מְנַעֵל שָׁל מֵתָה בְּמָקוֹם מְנַעֵל שָׁל שְׁחוּטָה. וְלֹא יִסְרֶהֱב בַּחֲבֵרוֹ שְׂיֵאֱכַל אֲצִלוֹ וְהוּא יוֹדֵעַ שְׂאִינוֹ אוֹכֵל. וְלֹא יִרְבֶּה לוֹ בְּתַקְרָבָת וְהוּא יוֹדֵעַ שְׂאִינוֹ מְקַבֵּל. וְלֹא יִפְתַּח לוֹ חֲבִיּוֹת שְׂהוּא צָרִיד לְפִתְחוֹ לְמַכְרוֹן כְּדִי לְפִתּוֹתוֹ שְׂבִשְׂבִיל כְּבוֹדוֹ פִּתַּח וְכֹן כָּל כִּי־צִיא בּוֹ. וְאֶפְלוּ מִלָּה אַחַת שָׁל פְּתוּי וְשָׁל גְּנֵבַת דַּעַת אָסוּר, אֲלֵא שְׂפִת אֲמַת וְרוּחַ נְכוֹן וְלֵב טָהוֹר מְכַל עֲמַל וְהוֹדוֹת:

It is forbidden for a person to accustom himself/herself to flattering others (literally, “smooth talk”) or seductive language; nor ought one to be otherwise in speech than one is in one’s heart<sup>18</sup>; instead, the inner person ought to be like the outer person,<sup>19</sup> so that the thoughts of one’s heart are identical with the words of one’s mouth. Moreover it is not lawful to deceive (literally, “steal the mind of”) another, not even on the mind of a non-Jew. For instance, a [Jewish] person should not sell to a non-Jew the meat of a beast that died of itself as if it were the meat of a [kosher] slaughtered beast; or a shoe made of the hide of a beast that died of itself as if it were a shoe made of the hide of a [kosher] slaughtered beast.<sup>20</sup> Neither should a person press a friend to eat with him or her, when one well knows that the invited person will not eat with him or her<sup>21</sup>; nor may one try to force gifts on someone, when the giver well knows that the intended recipient will not accept them;<sup>22</sup> nor may one break open a barrel [of wine], which he actually needs to break open for sale, in order to persuade someone that he has opened it out of respect for him;<sup>23</sup> and similar matters. Even to utter one single seductive or deceptive expression is not lawful; but a man ought to have true speech (literally, “a lip of truth”), an upright soul, and a heart pure from evil designs and mischief.<sup>24</sup>

The biblical book of Proverbs waxes eloquent on the destructive ramifications of communicating deceitfully through words<sup>25</sup> or body language,<sup>26</sup> and the Tosefta maintains that “stealing a person’s thought” is the worst kind of theft.<sup>27</sup>

<sup>18</sup> B. *Pesahim* 113b.

<sup>19</sup> B. *Yoma* 72b.

<sup>20</sup> B. *Hullin* 94a.

<sup>21</sup> T. *Bava Batra* 6:4; B. *Hullin* 94a.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> M.T. *Laws of Dispositions (De’ot)* 2:6. Our colleague, Shai Cherry, has written a penetrating article about how this type of speech can harm family relationships: see Shai Cherry, “Death by Deception,” *Conservative Judaism* 61:3 (Spring, 2009), <https://www.rabbinicalassembly.org/cj/death-deception>

<sup>25</sup> Proverbs 3:2; 4:24; 6:12-19; 8:13; 10:10-11, 14, 19-21; 11:11-13; 12: 6, 13-14, 17-22, 25; 13:2-3, 5; 14:5, 25; 15:4; etc.

One particularly common and insidious example of this occurs when someone articulates an idea and does not acknowledge that the source of the idea was someone else. This happens in all cases of plagiarism, whether in schools or elsewhere, but it also happens when someone of a higher rank in a company takes credit for an idea suggested by someone of lower status. Although this can happen in any gender combination, women often report that their male employers or bosses do this.

Purposely misleading others, however, must be distinguished from persuasive speech, in which someone is trying to convince someone else to buy something, as it is the very job of salespeople to do, or to see a particular event in a particular way, as it is the job of lawyers to do for their clients before a judge or jury, or to elect him or her to a political office. Such persuasive speech does not constitute prohibited misleading speech (*g'naivat da'at*) as long as the salesperson, lawyer, or politician does not outright lie about the product or situation or the politician's intentions or hide relevant facts from the consumer, jury, or public.

The reason why the persuasive speech of a salesperson, lawyer, or politician does not constitute prohibited misleading speech is because of their *context*, which is critical in understanding both the meaning of words and the degree to which the hearer should trust them. It is clear, for example – or should be – that the salesperson or lawyer is urging a particular result and that the person needs to hear the other side. In adversarial legal systems, such as those in the

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<sup>26</sup> See especially Proverbs 6:12-19.

<sup>27</sup> T. *Bava Kamma* 7:3. Deception is forbidden in both the quantity of what is being sold – and hence the Torah's requirement for honest weights and measures (Leviticus 19:35-36) and the Mishnah's requirement that each Jewish community appoint inspectors of the weights and measures of Jewish businesses (B. *Bava Batra* 89a). The Talmud says that a Jew may not deceive a Gentile about the quality of an object either (B. *Hullin* 94a), even though the Torah's ban (Leviticus 25:14) refers to "his brother" (*ahiv*) or (Leviticus 25:17) "one another" (*ish et amito*), both of which are usually understood to apply only to Jews. (The Torah at Leviticus 19:33 also prohibits oppressing the stranger [*ger*] "in your land," but that was not understood to refer to Gentiles among whom Jews lived in other lands.) Similarly, Jews are forbidden to defraud Gentiles (as well as fellow Jews) in terms of the quantity of what is being bought or sold (B. *Bava Kamma* 113b).

United Kingdom and former English colonies, such as the United States and Canada, the advocate can rely on the other side's duty to present the opposing side, as long as each side does not hide evidence from the other and tells the truth about what the culprit or litigant did. In inquisitorial legal systems, including Jewish law and the laws of the nations on the European continent, it is up to judges to unearth the facts from the testimony presented to them, knowing that each side is trying to "gild the lily" for its own claim. It is also clear to anyone with any experience listening to politicians running for office that what they promise is subject to many caveats, clearly including the politician's ability to get other members of the government to agree with his or her goals and to fund the steps necessary to achieve them. As long as politicians do not intentionally mislead the public as to what they intend to try to do, they are not deceiving anyone with regard to their limited ability to achieve their goals in light of the fact that decisions taken by governments in democracies are not the will of one person alone.

One very troubling practice in law enforcement that is legally acceptable in the United States allows police officers to deceive culprits in trying to extract confessions from them. The *Miranda* decision of the U. S. Supreme Court (384 U.S. 436 [1966]) requires police to inform those whom they arrest that anything they say can be held against them, that they have a right to a lawyer and that one will be provided free of charge if they cannot afford one, and that they have a right not to incriminate themselves. Presumably lawyers will seek to protect their clients from such deception; but many people begin talking without a lawyer present and are then subject to these deceptive techniques. Furthermore, in *Berghuis v. Thompkins* (June 1, 2010), the U.S. Supreme Court held that criminal suspects who are aware of their rights to silence and to an attorney but choose *not* "unambiguously" to invoke them may find any subsequent voluntary statements treated as an implied waiver of their rights and used as evidence against them. At

least one scholarly article has argued that *Thompkins* effectively gutted *Miranda*,<sup>28</sup> thus making this police practice of deliberately misleading culprits more likely and more troublesome. In any case, Jewish law would see such tactics as *genaivat da'at* and would ban them as such.

In sales situations, most countries in one way or another incorporate the Latin proverb, *caveat emptor*, “Let the buyer beware.” Jewish commercial law limits that to where the communal custom should make the buyer know that, for example, wine is regularly mixed with water, so that the buyer should expect that; otherwise, the Torah’s ban against oppressing others (*ona'ah*) in both commerce and speech is interpreted to mean, that, for example, one may not make something look better than it is by cosmetic improvements, and grain of both inferior and good quality may not be mixed together and the total sold as if it all were of the higher quality.<sup>29</sup>

Although one may present one’s product or the client one is defending in the best possible light without actually lying about the product one is selling or the actions of the client one is defending in court, one may not tell outright lies. The prohibition against lying is discussed in the responsum mentioned earlier, “Providing References for Schools and Jobs,” by Marc Gary and me; but in this context one should note that deliberately spreading what one knows to be “fake news” in the media, a social platform, or anywhere else is prohibited by both the Torah’s prohibition of lying and the further Rabbinic prohibition of deceiving others. Even sharing suspicious information must be avoided; we have the duty to tell the truth, and that

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<sup>28</sup> Charles Weisselberg and Stephanos Bibas, *The Right to Remain Silent*, 159 U. Pa. L. Rev. PENNumbra 69 (2010), Available at: <http://scholarship.law.berkeley.edu/facpubs/2181> (Retrieved January 26, 2018). The article suggests that undermining *Miranda* is actually good because so many culprits waived their rights or were seen to have done so that the warnings required really did not protect culprits from self-incrimination and that videotaping all police interrogations would be a more effective way to protect them from self-incrimination.

<sup>29</sup> M. *Bava Metzi'a* 4:11-12.

requires checking to see if an assertion is in fact true if one knows, or should know, that it is likely not true.

### **Insulting Others: *Pi'gi'ah B'khvod Aharim***

Insulting others directly violates the Jewish imperative to respect people, as described above. That is the direct meaning of the Hebrew phrase in this section's subtitle to describe what an insult is: *Pi'gi'ah b'khvod aharim* literally means, harming the honor of others.

This section of this responsum will discuss insult, which is different from the topic of the next subsection, *boshet*, shaming others. Insult is an attack on someone's honor in one particular respect but still leaves most of it intact, while shaming is a direct attempt to dishonor someone totally. They are clearly related in that both seek to diminish a person's honor, but insult does that by piercing the positive sense of self-worth and even pride that the victim of the insult has in order to make the person seem less honorable or accomplished than he or she might at first seem both to him/herself and to others, while shaming goes further in that it seeks to paint the whole person as downright dishonorable. This is certainly a difference in degree, but in some respects it is a difference in kind as well, for the response to an insult, if one is to mount one, is to address the specific issue that the insult raises to try to correct the record on that point in relevant people's minds, while the response to shaming is either to strike out vigorously to defend one's honor, maybe even by counter-shaming the perpetrator of the original shaming ("The best defense is a good offense"), or to go and hide.

Special care should be taken when interacting online. Insults delivered anonymously or hidden behind an account name are still insults and are forbidden. Some platforms have

developed cultures that have enabled insulting others, and on those platforms particularly special care must be taken to avoid engaging in insults, whether the person with whom you are interacting is using his or her real name or a pseudonym.

Insulting a person must be distinguished from constructive criticism of a person. The latter is not only permitted but required:

לֹא־תִשָּׂא אֶת־אָזְנוֹךָ בְּלִבְךָ הוֹכַח תּוֹכִיחַ אֶת־עַמִּיתְךָ וְלֹא־תִשָּׂא עָלָיו חָטָא:

You shall not hate your kinsfolk in your heart. Reprove your kinsman but incur no guilt because of him.<sup>30</sup>

As the Rabbis develop this law, rebuke must be in private and constructive. Nobody likes to hear criticism, but if it is done correctly, it can be understood not as an insult to the party being criticized, but as help in becoming a better person or employee. One must also refer to specific acts that the person has done and could do better rather than insult the person as a person. So to follow the dictates of Jewish law, the rebuke should not take the form of “X is a terrible person,” but rather be in the form of “X did something wrong and needs to learn to behave in a particular way or do a particular task better.” Some of the laws of how to do this are discussed in the responsum on Providing References for Schools or Jobs by Marc Gary and me, previously approved by the CJLS.<sup>31</sup>

Why is insulting another wrong? In part, it is because the Torah says so. In the New Jewish Publication Society translation, the Torah itself prohibits insulting the deaf:

<sup>30</sup> Leviticus 19:17.

<sup>31</sup> Rabbi Elliot N. Dorff and Marc Gary, “Providing References for Schools and Jobs,” <https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/2011-2020/providingreferences.pdf>, esp. pp. 9-20.

לֹא-תִקְלַל חֵרֵשׁ וְלִפְנֵי עִוֵּר לֹא תָתִן מְכַשָּׁל וַיִּרְאֵתָ מֵאַלְהֵיךָ אֲנִי יְהוָה:

You shall not insult the deaf, or place a stumbling block before the blind. You shall fear your

God; I am the LORD.<sup>32</sup>

The Hebrew word in question, *t'kallel*, could mean “You shall not curse the deaf,” but whether it means “insult” or “curse,” the result is the same: we are banned from insulting the deaf. One might say that the Torah is here protecting the most vulnerable; for presumably the deaf person could not hear the insult, and therefore the perpetrator could rest assured that there would be no retaliation. But then, all the more so, as part of your duty to protect yourself, one should refrain from insulting those who do hear the insult and might harm you in response, for, as the Talmud makes explicit, our duty to protect ourselves takes precedence over our duty to protect others (*hayyekha kod'min*, “your life comes first”).<sup>33</sup>

That said, the Talmud is well aware of the human penchant to insult others. The Rabbis even generalize this to say that the Israeli Jews (and perhaps the Israeli rabbis) actually hated the Babylonian Jews (rabbis), and so they would call anyone they wanted to insult “Babylonian” as an epithet:

וכבש עשו לו כו' אמר רבה בר בר חנה לא בבליים היו אלא אלכסנדריים היו ומתוך ששונאים את הבבליים היו קורין אותן על שמן תניא רבי יהודה אומר לא בבליים היו אלא אלכסנדריים היו אמר לו רבי יוסי תנוח דעתך שהנחת את דעתי

It was taught in the mishnah that they made a ramp for the goat due to the Babylonian Jews in Jerusalem. Rabba bar bar Ḥana said: They were not actually Babylonians, rather they were Alexandrians from Egypt. And since in Eretz Yisrael they hate the Babylonians, they would call all foreigners who acted inappropriately by their name as an insult. Similarly, it was taught in a *baraita* that Rabbi Yehudah says: They were not

<sup>32</sup> Leviticus 19:14.

<sup>33</sup> B. *Bava Metzi'a* 62a.

Babylonians, rather they were Alexandrians. Rabbi Yosei, whose family was from Babylonia, said to him: May your mind be at ease, since you have put my mind at ease.<sup>34</sup>

This, of course, does not mean that insulting others is acceptable; it just indicates that this problem is long-term and not easily resolved.

How should one respond to insults? The Rabbis advocate forgiveness rather than insulting the perpetrator back. Thus Rabbi Meir's description of the rewards for studying Torah for its own sake includes the ability for one who does so to *mohel al elbono*, "forgive an insult to him."<sup>35</sup> Similarly, the Talmud says this:

ת"ר עלובין ואינן עולבין שומעין חרפתן ואינן משיבין עושין מאהבה ושמחין ביסורין עליהן הכתוב אומר ואוהביו כצאת השמש בגבורתו

The Sages taught: About those who are insulted and do not insult, who hear their shame and do not respond, who act out of love and are joyful in suffering, the verse says: "And they that love Him are as the sun going forth in its might"(Judges 5:31).<sup>36</sup>

Maimonides later describes a Torah scholar who is insulted but does not insult back and who honors even those who insult him as winning friends and influencing people as well as sanctifying God's Name.

וכן אם דקדק הַחֲכָמִים עַל עֲצָמוֹ וְהָיָה דְבוּרוֹ בְּנִחַת עִם הַבְּרִיּוֹת וְדַעְתּוֹ מְעַרְבֶת עִמָּהֶם וּמְקַבְּלֵם בְּסִכָּר פְּנִים יְפוֹת וְנִעְלָב מֵהֶם וְאִינוֹ עוֹלְבָם. מְכַבֵּד לָהֶן וְאֵפְלוּ לְמַקְלִין לוֹ ... עַד שֶׁיִּמְצְאוּ הַכֹּל מְקַלְסִין אוֹתוֹ וְאוֹהֲבִים אוֹתוֹ וּמְתַאֲוִים לְמַעֲשָׂיו. הַרְיָ זֶה קִדְשׁ אֵת ה' וְעָלְיוֹ הַכְּתוּב אוֹמֵר וַיֹּאמֶר לִי עַבְדִּי אֶתְהָ יִשְׂרָאֵל אֲשֶׁר בָּךְ אֶתְפָּאֵר ...":

<sup>34</sup> B. *Yoma* 66b.

<sup>35</sup> M. *Avot* 6:1.

<sup>36</sup> B. *Shabbat* 88b.

And so [too], if the sage is exacting with himself and his speech is calm with the creatures and his way is pleasant with them and he greets them with a pleasant countenance and is insulted by them but does not insult them [back], honors them - even those that belittle him - ... [This will end in] all praising him and loving him and desiring his actions. Behold, [such a one] has sanctified the Lord; and about him the verse states (Isaiah 49:3), "And He said to me, 'My servant are you, Israel, so that through you I will be glorified.'"<sup>37</sup>

Why would the Rabbis advocate forgiving those who insult you? Undoubtedly one of the reasons in their minds is that “two wrongs do not make a right.” Moreover, as the passage from Maimonides suggests, forgiveness is good for the victim, for society generally, and even for God. It is also fulfillment of the Torah’s command not to take vengeance but rather to love our fellow humans, even when they do something unlovable:

לֹא־תִקֶּם וְלֹא־תִטֹּר אֶת־בְּנֵי עַמֶּךָ וְאֶת־בְּנֵי לְרֵעֶךָ כַּמֹּד אֲנִי יְהוָה:

You shall not take vengeance nor bear a grudge against your countrymen. Love your fellow as yourself: I am the LORD.<sup>38</sup>

That said, forgiveness is warranted only if the perpetrator went through the process of *teshuvah*; it is not to be given without such remedying action on the part of the one who insults another. So insulted person need not and maybe should not forgive the perpetrator automatically

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<sup>37</sup> M.T. *Laws of the Foundations of the Torah* 5:11.

<sup>38</sup> Leviticus 19:18.

but rather should seek to repair the relationship until the person who uttered the insult makes amends as defined in our codes as the process of *teshuvah*.<sup>39</sup>

### **Shaming Others: Prohibited *Boshet* and *Halbanat Panim* in Contrast to Acceptable and Even Desirable Political Parody and Satire**

In a rightfully famous passage, the Rabbis use a Hebrew phrase for shaming, *halbanat panim*, literally, “turning the face white,” to assert that shaming other people is akin to killing them because in both cases their blood drains from their faces and they turn white:

תני תנא קמיה דרב נחמן בר יצחק כל המלבין פני חבריו ברבים כאילו שופך דמים א"ל שפיר קא אמרת דחזינא ליה דאזיל סומקא ואתי חוורא

The *tanna* [who recited *mishnayot* and *baraitot* in the study hall] taught a *baraita* before Rav Nahman bar Yitzhak: Anyone who humiliates another in public, it is as though he were spilling blood. Rav Nahman bar Yitzhak said to him: You have spoken well, as we see that after the humiliated person blushes, the red leaves his face and pallor comes in its place, which is tantamount to spilling his blood.<sup>40</sup>

As such, the penalty for shaming others is very severe. Not only is the person who does so liable for paying damages,<sup>41</sup> but he or she is among those who are permanently condemned to hell, however one understands that :

הכל ס"ד אלא אימא כל היורדין לגיהנם עולים חוץ משלשה שיורדין ואין עולין ואלו הן הבא על אשת איש והמלבין פני חבריו ברבים והמכנה שם רע לחבריו מכנה היינו מלבין אע"ג דדש ביה בשמיה

<sup>39</sup> For an extended discussion of this process and its limits, including a discussion of Maimonides' *Hilkhot Teshuvah* (*Laws of Return*) and the differences that differentiate pardon, reconciliation, and forgiveness, see Elliot N. Dorff, *Love Your Neighbor and Yourself: A Jewish Approach to Modern Personal Ethics* (Philadelphia: Jewish Publication Society, 2003), Chapter Six.

<sup>40</sup> B. *Bava Metzi'a* 58b.

<sup>41</sup> M. *Bava Kamma* 8:1, 6, and the Talmud thereon.

[The Gemara asks:] Does it even occur to you that everyone descends to Gehenna? Rather, say: All who descend to Gehenna ultimately ascend, except for three [categories of people] who descend and do not ascend, and these are they: A man who engages in intercourse with a married woman [other than his wife, as this transgression is a serious offense against both God and a person]; and one who shames another in public; and one who calls another a derogatory name. But the one who calls another a derogatory name is identical to one who shames him, [so why are they listed separately?] Even if the victim grew accustomed to being called that [derogatory] name [in place of his actual name, and he is no longer humiliated by being called the derogatory name, the penalties for shaming a person apply because the perpetrator intended to insult the victim].<sup>42</sup>

Exactly what constitutes shaming others? The Talmud has a nuanced discussion of this, including the possibility that it is the person him/herself who must feel shamed for the perpetrator to be liable for paying damages (and so shaming a person who is used to the shaming comments and no longer responds to them as shameful, or a sleeping person, or a mentally incompetent person would not bring such penalties), to the possibility that penalties must be paid whenever the incident included what the public would see as a disgrace, to the possibility that it is the family of the shamed person who feels shamed (and therefore the penalties apply) even if the person did not experience shame.<sup>43</sup>

As is often the case, Maimonides summarizes the laws against shaming others, bringing together a number of Rabbinic passages that will be identified in the footnotes:

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<sup>42</sup> B. *Bava Metzi'a* 58b.

<sup>43</sup> B. *Bava Kamma* 86b. See also B. *Bava Metzi'a* 58b.

המוכיח את חברו תחלה לא ידבר לו קשות עד שיכלימונו שנאמר (ויקרא יט יז) "ולא תשא עליו חטא". כן אמרו חכמים יכול אתה מוכיחו ופניו משתנות תלמוד לומר ולא תשא עליו חטא. מכאן שאסור לאדם להקלים את ישראל וכל שכן ברבים. אף על פי שהמקלים את חברו אינו לוקה עליו עון גדול הוא. כן אמרו חכמים (גמרא סנהדרין קז א) "המלבין פני חברו ברבים אין לו חלק לעולם הבא". לפיכך צריך אדם להזהר שלא לבייש חברו ברבים בין קטן בין גדול. ולא יקרא לו בשם שהוא בוש ממנו. ולא יספר לפניו דבר שהוא בוש ממנו. במה דברים אמורים בדברים שביני אדם לחברו. אבל בדברי שמים אם לא חזר בו בסתר מקלימין אותו ברבים ומפרסמים חטאו ומחרפים אותו בפניו ומבזין ומקלליו אותו עד שיחזר למוטב כמו שעשו כל הנביאים בישראל:

He who rebukes his friend should at first not use harsh expressions, so as to put him to shame; for it is said: *But incur no guilt because of him*, (Lev. 19:17). Thus the Sages say: lest it should be supposed that the rebuke may be carried so far as to make his face change [turn white or red out of embarrassment], Scripture warns us: "But you shall incur no guilt because of him."<sup>44</sup> Hence we know that it is not lawful for a person to put an Israelite to shame, and least of all in public; for although exposing a fellow person to shame is not an offense punished with the infliction of stripes, it is still a great sin. Thus the Sages say; He who makes the face of his fellow man turn white in public forfeits his claim to the world to come.<sup>45</sup> A person should therefore be very careful with regard to this matter, not to put his fellow creature to shame in public, whether the victim be a person of importance or insignificant,<sup>46</sup> one should not call the other person by any name of which he or she may be ashamed, and one should not relate in someone else's presence anything that may cast reproach on that person.<sup>47</sup> This however, applies only to relationships among people; but as regards offenses against Heaven, if the offender has turned his back to private rebuke, we may put him to shame before a multitude, make his sins public, reprove him in his presence, abuse and denounce him until he turn for the better, as all the prophets did in rebuking Israel.<sup>48</sup>

The underlying problem with shaming other people is, of course, that it undermines the respect that we are supposed to have for others. It also is akin to killing them in their own eyes and in the estimation of others, as the Talmud says in the previously cited source. In many cases, it kills the person's respect in his or her community, and that kind of social excommunication is

<sup>44</sup> B. *Arakhin* 16b.

<sup>45</sup> M. *Avot* 3:11 (3:15 in some versions).

<sup>46</sup> B. *Bava Kamma* 86a.

<sup>47</sup> B. *Bava Metzi'a* 58b.

<sup>48</sup> M.T. *Laws of Dispositions (De'ot)* 6:8.

really a social death, often with terrible consequences for the person so shamed. In some cases it actually leads the shamed person to commit suicide. In our times, it is especially easy to shame someone publicly to their entire social media network. This is expressly forbidden. All of these factors make shaming someone else a gross violation of the Jewish tradition's demands that we exercise modesty in communication.

Often, especially on social media, the shaming is made possible by a previous act of intrusion on one's privacy by individuals, by the press, or by governmental agencies and then disclosure of the private information obtained and possibly the use of it to harm the person in other ways. Such intrusions and disclosures of private information also constitute violations of Jewish law (and moral norms and theology), as explained in the rabbinic ruling that Rabbi Elie Spitz and I wrote for the CJLS, "Computer Privacy and the Modern Workplace,"<sup>49</sup> in which we delineate the theological, moral, and legal grounds for the Jewish concern for respecting and protecting people's privacy.

What, though, if the person involved is a political leader or someone else in power, and the purpose of the shaming (and the intrusion, if that is involved) is to make them seem less frightful? Or what if the person in power is doing real harm to society, and shaming him or her in public is a way to call attention to the harm, to protest it, and maybe even to stop it? Contemporary examples of this include the many programs on television that mock political and other leaders through comedy (e.g., *Saturday Night Live*, the opening monologues of the late night television shows, some of the programs on *Comedy Central*, etc.), sometimes in good humor but sometimes as satire with a serious critique in mind, as well as other programs that

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<sup>49</sup> Elliot N. Dorff and Elie Kaplan Spitz, "Computer Privacy and the Modern Workplace," [https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/19912000/dorffspitz\\_privacy.pdf](https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/19912000/dorffspitz_privacy.pdf). See also Elliot N. Dorff, *Love Your Neighbor and Yourself: A Jewish Approach to Modern Personal Ethics* (Philadelphia: Jewish Publication Society, 2003), Chapter Two, "Privacy."

express such objections through analysis and critique, such as the many political discussion shows on radio, television, and on the internet that range from right to left in their political orientations. Another set of examples includes the need to react to unfortunately increasing acts of anti-Semitism, racism, and other forms of discrimination and hatred, ideally not only to protest them and gain appropriate security from them, but also to educate and transform the perpetrators.

Even more direct and personal than the political and social ills that political satire and serious public discussions address are the injuries of those who have themselves been harmed and who then say something about it. Recent examples of many women and some men who are reporting past sexual abuse or discrimination by celebrities or companies are clearly part of this story, leading to the creation of the #MeToo movement, but also – and in far greater numbers -- individuals who have garnered the courage to escape from their abuser, report the abuse, and get help.<sup>50</sup> That includes not only sexual abuse, but – again, in far greater numbers – those who have

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<sup>50</sup> I would like to thank Rabbis Jane Kanarek, Amy Levin, and Daniel Nevins for calling my attention to this exception to the general rule to keep rebuke private. The vast majority of recent cases have featured women using shaming to get back at abuses by men – in politics (President Donald Trump, Senator Al Franken, Alabama Judge Roy Moore in his candidacy for the Senate), Hollywood (Harvey Weinstein, James Franco, James Toback, Louis C.K., etc.), television (Matt Lauer, Charlie Rose, etc.), sports (e.g., Dr. Lawrence Nassar, who abused female Olympic gymnasts), and other fields. As CJLS member Ms. Patricia Werschulz noted in the CJLS discussion of an earlier draft of this responsum, abused women are now using shaming as their weapon of choice against abusive men, in part because it is faster and more quickly damaging to the men involved than a lawsuit would be – although some pursue that as well. A contemporary example of that is the 2019 Israeli movie, “Working Woman,” about which Kenneth Turan, the senior film critic of the *Los Angeles Times*, said: “The #MeToo movement has found its film. It’s not a hot new Sundance item, but an Israeli feature in the works since 2012, and it will knock you out. Michal Aviad’s ‘Working Woman’ couldn’t be more relevant or contemporary, but to characterize it that narrowly is to do this fine film a disservice....” *Los Angeles Times*, April 12, 2019, p. E6, <https://www.latimes.com/entertainment/movies/la-et-mn-working-woman-review-20190411-story.html> (accessed 4/14/19). In the movie, the woman, who is sexually attacked by her boss, gets the letter of recommendation she needs from him to get another job, despite his initial refusal to provide it, by demanding it in front of his wife, with the clearly implied threat to tell her about his rape of “the working woman.”

In some cases, however, it is men who are publicly shaming and calling to account other men who abused them, such as those whom priests (and some rabbis) sexually abused when they were boys, some working in Hollywood (e.g., those abused by Kevin Spacey), and, as reported on the front page of an issue of the *New York Times*, male models abused by professional photographers (Jacob Bernstein, Matthew Schneier, and Vanessa

been harassed or bullied in school or at work. The legal liability, not only of the particular persons involved but also their institutions, may be another matter of concern here, depending on how the institution responds to reports of such abuse and whistleblowing, a topic thoroughly examined by Rabbi Barry Leff in his responsum on the subject.<sup>51</sup> As I explained in some detail in my responsum, “Family Violence,” victims of abuse of all these sorts have a hard time coming forward to report that abuse and get help, and we certainly want them to do that.<sup>52</sup>

In such cases, other Jewish sources come into play. In the extreme, the Torah demands that people causing public harm be executed:

כִּי יִסִּיתָ אֶת־יָדְךָ בְּ-אִמְךָ אוֹ-בְנֵךָ אוֹ-בִתְּךָ אוֹ אֶת־חֵילְךָ אוֹ רֵעֶךָ אֲשֶׁר כָּנַפְשְׁךָ בְּסִתְּךָ לֵאמֹר גְּלוּכָה וְנִעְבְּדָה אֱלֹהִים אֲחֵרִים אֲשֶׁר לֹא יְדַעְתָּ אַתָּה וְאַבְתָּיִךָ:

8

מֵאַלְהֵי הָעַמִּים אֲשֶׁר סְבִיבְתֵיכֶם הַקְּרִבִּים אֵלֶיךָ אוֹ הַרְחֲקִים מִמֶּךָ מִקְצֵה הָאָרֶץ וְעַד־קְצֵה הָאָרֶץ:

9

לֹא־תֹאכְלָה לוֹ וְלֹא תִשְׁמַע אֵלָיו וְלֹא־תִחַס עֵינֶיךָ עָלָיו וְלֹא־תִחַמַּל וְלֹא־תִכְסֶּה עָלָיו:

10

כִּי הָרַג תִּהְרַגְנוּ יָדְךָ תִּהְיֶה־כּוֹבֵד בְּרֹאשׁוֹנָה לְהַמִּיתוֹ וְיָד כָּל־הָעַם בְּאַחֲרָנָה:

11

וְסִקְלֵתוּ בְּאֲבָנִים וְגַם כִּי בִקֵּשׁ לְהַדְיֹתָ מֵעַל־הַ' אֱלֹהֶיךָ הַמוֹצִיאֶךָ מֵאֶרֶץ מִצְרַיִם מִבֵּית עֲבָדִים:

12

וְכָל־יִשְׂרָאֵל יִשְׁמְעוּ וְיִרְאוּ וְלֹא־יִוָּסְפוּ לַעֲשׂוֹת כַּדָּבָר הַזֶּה בְּקִרְבְּךָ: (ס)

Friedman, “I Felt Helpless: Male Models Accuse Photographers of Sexual Exploitation,” January 14, 2018, A-1 and A-20-21, <https://www.nytimes.com/2018/01/13/style/mario-testino-bruce-weber-harassment.html> [accessed 4/2/19]). Public shaming is rarely used by men reporting abuse by women, probably because of the shame that many men feel at not being strong enough to defend themselves against women. I was recently told by one of the staff of the shelters run by Jewish Family Service of Los Angeles for people victimized by domestic violence that statistically one in three women and one in four men in the United States have been abused (physically, sexually, psychologically, or verbally), but she told me that the statistics for men are especially underreported because of the shame men feel about admitting that they could not defend themselves against abuse.

<sup>51</sup> Barry Leff, “Whistleblowing: The Requirement to Report Employer Wrongdoing.”

[https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/20052010/leff\\_whistleblowin\\_g.pdf](https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/20052010/leff_whistleblowin_g.pdf).

<sup>52</sup> Elliot N. Dorff, “Family Violence,”

[https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/19912000/dorff\\_violence.pdf](https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/19912000/dorff_violence.pdf), especially Part III, pp. 31-33; reprinted with some additions in Elliot N. Dorff, *Love Your Neighbor and Yourself: A Jewish Approach to Modern Personal Ethics* (Philadelphia: Jewish Publication Society, 2003), Chapter Five, esp. pp. 190-192.

If your brother, your own mother's son, or your son or daughter, or the wife of your bosom, or your closest friend entices you in secret, saying, "Come let us worship other gods"—whom neither you nor your fathers have experienced— from among the gods of the peoples around you, either near to you or distant, anywhere from one end of the earth to the other, do not assent or give heed to him. Show him no pity or compassion, and do not shield him; but take his life. Let your hand be the first against him to put him to death, and the hand of the rest of the people thereafter. Stone him to death, for he sought to make you stray from the LORD your God, who brought you out of the land of Egypt, out of the house of bondage. Thus all Israel will hear and be afraid, and such evil things will not be done again in your midst. (Deuteronomy 13:7-12)

With regard to less serious harms, but nevertheless serious ones, we at least have the duty to protest:

כל מי שאפשר למחות לאנשי ביתו ולא מיחה נתפס על אנשי ביתו באנשי עירו נתפס על אנשי עירו  
בכל העולם כולו נתפס על כל העולם כולו

Anyone who had the capability effectively to protest [the sinful conduct] of the members of his household and did not protest, he himself is apprehended [and punished for the sins of] the members of his household. [If he is in a position to protest the sinful conduct of] the people of his town [and he fails to do so], he is apprehended [and punished] for the sins of the people of his town. [If he is in a position to protest the sinful conduct of] the whole world [and he fails to do so], he is apprehended [and punished for the sins] of the whole world.<sup>53</sup>

This would presumably include the kinds of public shaming in the contemporary examples mentioned above, making them not only permissible, but mandatory.

So although shaming someone is generally seen within Jewish sources as a major violation of Jewish moral and legal norms – theologically, as a serious sin against both God and the human beings so shamed – in cases where it serves an important social purpose, such as to make leaders humble or to correct serious wrongs in society, it is not only permitted but required.

This raises an important caveat to the rules against shaming others discussed above. As Marc Gary and I discussed in our responsum on providing references for schools or jobs, one not

<sup>53</sup> B. *Shabbat* 54b.

only may, but must tell negative truths about the candidate because the school or employer has a practical need to know about the candidate's weaknesses as well as strengths. The same line of reasoning applies to political parody and even satire, where parody is defined as "an imitation of the style of a particular writer, artist, or genre with deliberate exaggeration for comic effect," and satire is defined as "the use of humor, irony, exaggeration, or ridicule to expose and criticize people's stupidity or vices, particularly in the context of contemporary politics and other topical issues."<sup>54</sup> Because politicians, judges, and other public officers determine policies that directly affect the welfare of society as a whole, parody and satire, like negative comments about a candidate for a school or job, are not only permissible but desirable, when done correctly, as ways of calling attention to what the speaker or writer, wherever he or she is on the political spectrum, construes as bad policies, demonstrating their harm, and seeking to change them. *So nothing in this responsum should be read to prohibit free speech that is designed to help people understand the strengths and weaknesses of the policies advanced by proposed laws or judicial decisions or the people running for office or in office that are promoting them.* Such speech is necessary for the people in society to evaluate what they are being told by officials or others in matters that concern their welfare, and so such speech, even if insulting and shaming, is permitted. Such speech, however, must be *truthful* to meet Jewish standards of law and morality, and it must be *specific* in its reference to the actions, decisions, policies, or people involved rather than be a blanket condemnation of subsets of the population, which can quickly become hate speech. It also should condemn in order to construct – that is, its criticism and even shaming should be motivated not by sheer hatred or bigotry but rather by an honest attempt to oppose particular policies and those who seek to advance them.

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<sup>54</sup> These are the definitions on Google. Similar definitions are in standard dictionaries.

**Bullying: *Iyyum***

Perhaps the most devastating form of shaming occurs in the form of bullying, where the shaming is constant and intended to isolate the victim from the community in order to enhance the reputation and power of the bully. Here the motive is not as much to show disrespect for the victim, although that certainly happens in bullying and is an important part of why it is wrong, but rather for the bullying party to gain prestige and power by showing that he or she can exert power over the victim by shaming him or her and socially excommunicating him or her. This is especially a problem among middle school and high school students, but it also affects college students and adults.

In all too many cases, this leads the bullied person to commit suicide. One example of that occurred on August 2, 2017, as I was writing the first draft of this section of this responsum, when the news reported that the parents of a suicide victim of bullying – Mallory Grossman in Rockaway Township, New Jersey – are suing her school district for not taking steps to stop the cyberbullying to which she was subjected.<sup>55</sup> Bullying, however, does not happen only among children; adults are equally prone to do it and to suffer from it, especially, but not exclusively, at work. This can easily produce liability not only for the individuals bullying, but also for organizations for which they work, and so synagogues and other Jewish institutions should take steps to rid their school or work environments of bullying not only for Jewish moral and legal reasons, but also for the pragmatic reasons of avoiding a lawsuit.

What is bullying? The United States Government website on bullying, [stopbullying.gov](http://stopbullying.gov), defines it as follows:

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<sup>55</sup> Gene Myers, “Family of 12—Year-Old Who Committed Suicide after Cyberbullying to Sue School District,” <https://www.usatoday.com/story/news/nation-now/2017/08/02/mallory-grossmans-parents-say-school-district-didnt-do-enough-save-their-daughter/532165001/>.

Bullying is unwanted, aggressive behavior among school aged children that involves a real or perceived power imbalance. The behavior is repeated, or has the potential to be repeated, over time. Both kids who are bullied and who bully others may have serious, lasting problems.

In order to be considered bullying, the behavior must be aggressive and include:

**An Imbalance of Power:** Kids who bully use their power—such as physical strength, access to embarrassing information, or popularity—to control or harm others. Power imbalances can change over time and in different situations, even if they involve the same people.

**Repetition:** Bullying behaviors happen more than once or have the potential to happen more than once.

Bullying includes actions such as making threats, spreading rumors, attacking someone physically or verbally, and excluding someone from a group on purpose.<sup>56</sup>

The U.S. Government further delineates three general types of bullying, each with its subtypes:

There are three types of bullying:

- Verbal bullying is saying or writing mean things. Verbal bullying includes:
  - Teasing
  - Name-calling
  - Inappropriate sexual comments
  - Taunting
  - Threatening to cause harm
- Social bullying, sometimes referred to as relational bullying, involves hurting someone's reputation or relationships. Social bullying includes:
  - Leaving someone out on purpose
  - Telling other children not to be friends with someone
  - Spreading rumors about someone
  - Embarrassing someone in public
- Physical bullying involves hurting a person's body or possessions. Physical bullying includes:
  - Hitting/kicking/pinching
  - Spitting
  - Tripping/pushing
  - Taking or breaking someone's things

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<sup>56</sup> <https://www.stopbullying.gov/what-is-bullying/definition/index.html>.

- Making mean or rude hand gestures<sup>57</sup>

That website reports that somewhere between 20 and 21 percent of students between ages twelve and eighteen experience bullying,<sup>58</sup> so this is a major problem in our society. Prominent and minority users of social media have reported being on the receiving end of bullying and threats as well. Furthermore, there are demonstrated connections between bullying and family violence, sexual harassment, and dating violence.<sup>59</sup>

All of the Jewish concepts and values delineated above make threatening someone with harm, doctoring photos of them or their family, doxing, outing, and all other ways of terrorizing and bullying anyone expressly forbidden. It is therefore imperative that Jews both learn how to create school, work, and social environments that condemn bullying and also develop the skills to recognize and combat it when it occurs. The same U.S. Government website, [stopbullying.gov](http://stopbullying.gov), has some helpful suggestions as to how to do both of those things. Many of the laws and values that I discussed in my responsum on Family Violence apply to this kind of social violence as well.<sup>60</sup>

Bullying is to be distinguished, however, from elements of every legal system that threaten punishment for violating the law. So, for example, as quoted in the last section, the Torah threatens severe punishments for following other gods so that “all Israel will hear and be

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<sup>57</sup> <https://www.stopbullying.gov/what-is-bullying/definition/index.html>

<sup>58</sup> <https://www.stopbullying.gov/what-is-bullying/definition/index.html#frequency>.

<sup>59</sup> Dorothy Espelage and Erin Reiney, “The Connections between Bullying and Family Violence, Sexual Harassment, and Dating Violence,” <https://www.stopbullying.gov/blog/2015/03/18/connections-between-bullying-and-family-violence-sexual-harassment-and-dating-violence.html>

<sup>60</sup> Elliot N. Dorff, “Family Violence,”

[https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/19912000/dorff\\_violence.pdf](https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/19912000/dorff_violence.pdf)  
See also Elliot N. Dorff, *Love Your Neighbor and Yourself* (Philadelphia: Jewish Publication Society, 2003), Chapter Five.

afraid, and such evil things will not be done again in your midst” (Deuteronomy 13:12).

Similarly, the Mishnah prescribes that witnesses should be made to fear the consequences of false testimony:

כיצד מאימין את העדים על עדי נפשות, היו מכניסין אותן ומאימין עליהן. שָׁמָא תֹאמְרוּ מֵאִמָּד, ומשמועה, עד מפי עד ומפי אדם נאמן שמענו, או שָׁמָא אֵי אַתְּמָם יודעין שסופנו לבדק אתכם בדרישה ובחקירה. הווי יודעין שלא כדיגי ממונות דיגי נפשות. דיגי ממונות, אדם נותן ממון ומתפפר לו. דיגי נפשות, דמו נדם ורעיותיו תלויין בו עד סוף העולם...

How do we threaten the witnesses in a capital case? We bring them in [to the court's chambers] and threaten them: "Perhaps what you say is [not eyewitness testimony but is rather] only your own assessment, or from rumors, or your witnessing an actual witness testify, or your reporting what a trustworthy person said. Or perhaps you were unaware that by the end we will interrogate you, with examination and inquiry. Know that capital cases are not like monetary ones. In monetary cases, [a false witness] can return the money and achieve atonement. But in capital cases, the blood of [the victim [and all his future offspring hang upon you until the end of time....<sup>61</sup>

In such cases, a legal system is using threats to motivate obedience to the law. Whether fear of God or love of God is the best motivation for obeying the law is a debate among Jewish philosophers, with parallel debates among philosophers of law about motivations for obedience to civil law; but such threats are intended for that socially beneficial purpose, in contrast to bullying, which is intended to undermine a person's reputation, dignity, and respect.<sup>62</sup>

<sup>61</sup> M. *Sanhedrin* 4:5.

<sup>62</sup> I want to thank Rabbi Daniel Nevins for reminding me to make this distinction.

### Enticement/Incitement/Rabbleroxing: *hasatah*

Finally, both in the United States and Israel, as well as many other countries, political leaders and others both historically and currently have encouraged people to hate particular persons or subgroups of the population. This was undoubtedly part of what led Yigal Amir to assassinate Prime Minister Yitzhak Rabin, and it currently is a major factor in American politics. Even when agitators stop short of urging their listeners to take steps to harm the targeted people or groups, the upshot in practice of the hate they are encouraging through this rabbleroxing is all too well understood by their cheering audiences, and so such speech often leads to mayhem or death. In light of the history and current realities of anti-Semitism, Jews rightfully are particularly sensitive to the wrongfulness and dangers of this form of harmful communication, but we need to condemn it when it is directed to other groups as well, including groups like Muslims with whom we have differences with regard to many things involving the State of Israel but who certainly do not deserve to be the target of such provocation any more than we Jews do. To condemn a person or group, let alone expressly to urge people to harm them, just because they are who they are and without any basis in any moral or legal wrong they have done, is a violation of any sense of justice and mutual respect. It also undermines the very basis of civil society, leading to violence and insecurity for everyone.

The Torah anticipates this form of harmful communication when it punishes people who entice others to worship other gods:

כִּי יִסִּיתֶךָ אַחֲרַי בְּ-אֱמֹנָה אוֹ-בְנֵי אוֹ-בִתְּךָ אוֹ | אֲשֶׁת חֵילֶךָ אוֹ רַעַב אֲשֶׁר כִּנְפֹשֶׁה

בְּסִתְרָ לְאֹמֶר גִּלְזָה וְנִעְבְּדָה אֱלֹהִים אַחֲרָי אֲשֶׁר לֹא יָדַעְתָּ אֶתְּהָ וְאַבְתִּירָ: מֵאֱלֹהֵי הָעַמִּים

אֲשֶׁר סְבִיבְתֶיכֶם הַקְּרִבִּים אֵלָיךְ אוֹ הַרְחִקִים מִמֶּךָ מִקְצֵה הָאָרֶץ וְעַד-קְצֵה הָאָרֶץ לֹא-תֵאבְדָה

לֹא וְלֹא תִשְׁמַע אֵלָיו וְלֹא-תִחַס עֵינֶיךָ עָלָיו וְלֹא-תִחַמַל וְלֹא-תִכְסֶה עָלָיו: כִּי הָרַג תְּהַרְגֶנּוּ: וְדָבַר

תְּהִי־בֹ בְרַאשׁוֹנָה לְהַמִּיתוֹ וַיֵּד כָּל־הָעָם בְּאַחֲרֹנָה: וּסְקַלְתוּ בְּאֲבָנִים וּמָת כִּי בִקֵּשׁ לְהַדְיֹחַךְ  
 מֵעַל יְהוָה אֱלֹהֶיךָ הַמוֹצִיאֲךָ מֵאֶרֶץ מִצְרַיִם מִבֵּית עֲבָדִים: וְכָל־יִשְׂרָאֵל יִשְׁמְעוּ וַיִּרְאוּ וְלֹא־יִסְפוּ  
 לַעֲשׂוֹת כַּדְבָר הַרְעָה בְּקִרְבְּךָ:

If your brother, your own mother’s son, or your son or daughter, or the wife of your bosom, or your closest friend entices you in secret, saying, “Come let us worship other gods”—whom neither you nor your fathers have experienced— from among the gods of the peoples around you, either near to you or distant, anywhere from one end of the earth to the other: do not assent or give heed to him. Show him no pity or compassion, and do not shield him; but take his life. Let your hand be the first against him to put him to death, and the hand of the rest of the people thereafter. Stone him to death, for he sought to make you stray from the LORD your God, who brought you out of the land of Egypt, out of the house of bondage. Thus all Israel will hear and be afraid, and such evil things will not be done again in your midst. (Deuteronomy 13:7-12)

In this case, the enticement was to worship other gods. Rambam broadens this to any type of seduction:

אָסוּר לְאָדָם לְהַנְהִיג עֲצָמוֹ בְּדַבְרֵי חֶלְקוֹת וּפְתוּי.

It is forbidden for man to conduct himself by the use of the language of flattery and seduction...<sup>63</sup>

<sup>63</sup> M.T. Laws of Dispositions (De’ot) 2:6.

In some current cases, the problem is different from what the Torah in the above cited passage is concerned about – not that people try to convert fellow Jews to idolatry, but rather that demagogues lure people to strike out at people of other faiths. Jews and Muslims are the victims of this most commonly today in North America. In yet more cases, such rabble rousers induce people to harm people of skin colors or economic or ethnic backgrounds different from their own. We may no longer be stoning people for this transgression, but enticing or inciting people to do something blatantly wrong, such as to hate and harm other people who have done nothing wrong, and thus to produce violence in society against innocent people is roundly condemned by this passage of the Torah, by Maimonides, and by the underlying theological and moral concepts described at the beginning of this responsum, whoever the target person or group of such enticement is.<sup>64</sup>

This emphatically *does not* include publicly calling out wrongful acts and the people who do them. That is not only permitted; it is required as part of our duty to rebuke people who violate legal and moral norms, as first articulated by Leviticus 19:17 and then spelled out in the ways one should do that by later Jewish legal and moral literature, described briefly above and more thoroughly in the responsum I wrote with Marc Gary, “Providing References for Schools and Jobs.”<sup>65</sup> What is prohibited in this section is inciting people to hate and harm those who have done nothing wrong simply because of who they are socially, racially, ethnically, or religiously.

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<sup>64</sup> I want to thank Rabbi Jeremy Kalmanofsky for alerting me to the need to include this form of harmful speech.

<sup>65</sup> See note 31 above and the part of this responsum that follows it.

### **Rulings (Piskei Halakhah):**

The words “communication” and “speech” in this responsum include interactions that are spoken in person or written, whether face-to-face, behind someone’s back, or posted online, as well as all forms of virtual communication, such as posting photos, videos, or written posts or comments, texting, and messaging. Those terms also include speech acts, such as hand signals and the clothing one wears if the intent is to convey a clear message.

In addition to the forms of speech that can harm others that are discussed in the responsum by Elliot Dorff and Marc Gary on “Providing References for Schools and Jobs,” previously approved by the Committee on Jewish Law and Standards -- namely, laws prohibiting lies (*sheker*), slurs (*leshon ha-ra*), the dust of slurs (*avak leshon ha-ra*), slander (*motzi shem ra*), and oppressive speech (*ona’at de’varim*) – Jewish law also prohibits the following forms of harmful communication:

1. Deliberately misleading others (*geneivat da’at*) through “smooth speech” or seductive language is a violation of Jewish norms governing speech and usually those prohibiting fraud besides. It is not misleading, however, if the context indicates that the speaker is trying to persuade the listeners, as in the case of salespeople, lawyers arguing cases in court, and politicians seeking to be elected, as long as what they say is true about their products or clients or intentions, for everyone should know from past experience the extent to which they should trust such assertions. On the other hand, we have the duty to tell the truth, and so deliberately spreading what one knows to be “fake news” or even what one suspects is incorrect without checking its veracity is forbidden as deceiving others.

2. Gossip (*rekhillut*) – that is, information about others that is and should remain private unless there is a need to know to protect someone from abuse or other harm.
3. Insulting others, for that is a breach of the respect that we are required to have for others as human beings created in the image of God. This does not mean that we must or should accept or condone everything a person does, but any justified rebuke should be done privately and in a constructive way so that the criticism is not an insult to the person as a person but rather a correction of a particular past action or set of actions. Because the Torah commands us not to take vengeance or bear a grudge (Leviticus 19:18), the proper response to an insult is not to insult back, but rather to seek to remedy the relationship, ultimately leading to forgiveness, if warranted.
4. Shaming others, which is, as the Talmud says, akin to murdering them, socially if not physically, and is forbidden as such. It is all the more prohibited when the shaming takes place publicly and thus spreads widely and quickly, as, for example, when the shaming is spread to a person's entire social media network. The one exception to this occurs when a person or people are doing real harm to specific people or to society as a whole, in which case they must be called out for the harm that they have done or are currently doing as part of our duty to protest such harms. Thus parody or satire of political figures or other people in authority is acceptable and even desirable as a form of free speech intended to evaluate and mold elections and public policy.
5. Bullying others, as a repeated form of shaming that includes exerting power over others for one's own self-aggrandizement, is forbidden even more strongly than shaming alone is. Threatening someone with harm, doctoring photos of them or their family for public ridicule, doxing, outing, and all other ways of terrorizing and bullying anyone is

expressly forbidden. Again, the one exception to this occurs on the societal plane, where both Jewish and civil law recognize that people need to be threatened with consequences if they disobey the law, as both law codes do, even if one would hope that people would obey the law for reasons other than avoiding punishment.

6. Enticing or inciting people to hate persons or groups, simply for who they are, with or without explicit urging to harm them. Such action is prejudicial, toxic for society, and prohibited in the strongest possible terms. This does not, however, apply to publicly condemning morally or legally bad conduct and the people who act that way; in such cases, we must reprove those who violate moral or legal norms in ways described by Jewish law.

None of this is to ignore or deny the existence and importance of positive uses of communication – among others, to share ideas, to cooperate on important projects, and to support others in moments of joy and sorrow.