

HAMEVASER

A Student Journal of Traditional Thought
Published by the Jewish Studies Divisions of Yeshiva University

Volume 31 No. 1

Kislev 5752, November 1991

CASTING THE MENORAH: A SHOT IN THE DARK

Dov Chelst

Building a *mishkan* can task anyone's ingenuity. If you find the cherubim perplexing, wait till you tackle the menorah. You face a *kikar* of solid gold, chock full of surprises: cups, knobs and flowers, and no biblical measurements. As an artisan, you must design a vessel to portray God's intended symbolism and then form its golden flesh.

Our sages teach that the menorah is the hardest vessel to construct. *Kli Yakar* states that due to its knobs, flowers and cups, the menorah's complexity distinguishes it from the other vessels. *Chizkuni* points out that, unlike the rest of the sanctuary, no measurements accompany the menorah. The Torah delineates no set height or width; its only requirements are seven branches with multiple ornamental designs. At the same time, the designer of the menorah is asked to adapt its design so that it embodies the menorah's deeper significance.

Rav Shimshon Raphael Hirsch, in *Terumah*, discusses the menorah's symbolism in detail. In the *mishkan*, the menorah functions as a light source. Contrasted with the bread-laden *shulchan*, which stands opposite it, the lamp signifies man's spiritual needs. "For not on bread alone does man live, but on all that emanates from the mouth of God does man live" (Deut. 8:3). But, according to Hirsch, the menorah does not depict solely the light of the Torah, nor the light of knowledge. The menorah represents "*ruach Hashem*," God's spirit. The Bible does not associate light exclusively with knowledge, but frequently with God's presence itself. Zechariah receives a vision of a menorah with its seven lights along with two olive trees (4:2-3). An angel explains this image, saying "Not by means of an army, nor by physical strength, but by my spirit," says the Lord of Hosts." Apparently, the menorah symbolizes the divine spirit. In addition, when Isaiah describes "*ruach Hashem*" (11:2), he delineates three pairs, which Hirsch associates with the three pairs of arms branching out of the lamp.

Pictorially, R. Hirsch portrays the menorah in the likeness of a tree, using the cups, knobs and flowers as biological imagery representing man's spiritual development. Rooted in a single *yerech*, or source, the menorah branches into various levels of spiritual activity and eventually matures into seven lights whose flames turn inward, toward a common goal for which they strive and from which they came.

A lamp depicting the divine spirit in a physical form would naturally challenge any artisan. You not only wonder how such a feat was accomplished, you cannot even tell from the *pesukim* who actually built the menorah. Did Betzalel make it, as *Vayakhel* (Ex. 37:17) would have you believe? The *pasuk* in *Beha' alotkha* (Num. 8:4) ambiguously states that "he built the menorah," referring either to Moshe or to God Himself. The *parsha* in *Terumah* (Ex. 25:31-40) also fails to tell who eventually built it.

In some midrashim and aggadot, Moshe meets this challenge squarely and, albeit with tremendous effort, successfully builds the menorah (*Menachot* 29a; one opinion in *Sifrei Beha' alotkha* 61). In others, Moshe fails, and either Betzalel comes to his rescue and builds the menorah (*Bemidbar Rabba* 15:7; *Sifre Zuta Beha' alotkha* 22), or God tells Moshe to throw the gold into the fire, and the menorah emerges complete (*Tanchuma Beha' alotkha* 3 and *Shemini* 8).

Whether Moshe eventually succeeds or fails, his attempt warrants scrutiny. In one set of midrashim, the complexity of the menorah causes him to forget its details (*Sifrei Zuta* and *Bemidbar Rabba*). In both these midrashim, God describes the menorah to Moshe four times and in different ways. First, He tells him orally and subsequently shows him an image. Then, the Lord brings out heavy graphics showing Moshe exactly how to build the menorah using multi-colored fire. In the *Tanchuma* (*Shemini*), God even prints the menorah on Moshe's palm. Maharal, in his commentary on talmudic aggadot (*Menachot* 29a), asserts that the menorah bewilders Moshe because of its high spiritual level. Through this entire tale, Moshe perseveres, seeking to comprehend, never complaining or giving up in humiliation.

Regardless of the final outcome, *Sefat Emet* (*Teruma* 5631, 5637) emphasizes the importance of Moshe's intellectual struggle. Whether he physically built the menorah does not matter. The fact that he eventually understood its construction and prepared to implement God's will is all that God asked of him. Instead of a superhuman "Rabbeinu," Moshe comes across as a simple prophet attempting to understand a complicated commandment from God. The Torah portrays the quintessential trial of man to understand God's law, and depicts a God, patient and ever-willing to aid His earnest student.

In Moshe's attempt, God's didactic perspective becomes evident. God handles Moshe's in-

ability to remember with understanding. Only after imprinting the menorah on Moshe's palm does God ask him, "*Mah kasheh?*" (from the word *mikshah*), "What is so hard?" (*Tanchuma Shemini*). In other midrashim, God sends Moshe to seek help from Betzalel (*Bemidbar Rabba*). Although Moshe doesn't succeed, God proves a very systematic teacher.

In *Bemidbar Rabba*, God only changes his directions to Moshe after he has failed to complete those before him. First, God repeats His oral commands. At that point, Moshe had only received a series of instructions, implying that God intended that he use his own imagination to build the menorah. Then, God shows him an image, demanding from Moshe no personal creativity, but merely his ingenuity in implementing a pre-

manded to hit it with a hammer at various points from which God would form a cup, knob, or flower. According to the *Tanchuma*, Moshe merely throws the *kikar* into the fire. This simple act proves sufficient, as the menorah emerges from the flames in its final form.

In the midrashim in which Betzalel builds the menorah, Moshe plays a minor role. He gives the instructions to Betzalel, who dutifully produces a menorah. Some commentaries find problematic the fact that Betzalel succeeds in the task in which Moshe has failed. *Yeshuot Ya'akov* on *Bemidbar Rabba* suggests that Moshe's failure stemmed from his enormous humility, rather than from a lack of ability, as he wouldn't rely on his own understanding of God's design. However, Betzalel trusted his leader's understanding and intuition and easily implemented Moshe's instructions.

Mizrachi solves this problem by incorporating two midrashim. When God sends Moshe to Betzalel, instead of building a menorah on his own, the crafty artisan places a *kikar* into the fire and waits for God's intervention. While this interpretation seems reasonable, the conclusion of *Bemidbar Rabba* depicts a puzzled Moshe, unable to understand Betzalel's success where he himself has failed. This forces *Mizrachi* to assume that Betzalel never told Moshe of God's intervention, thus misleading him.

A literal reading of the midrash has its own merits. If one accepts R. Hirsch's interpretation of the Lamp as a symbol of "*ruach Hashem*," Betzalel is the ideal candidate to build it. God fills him with "*ruach Elokim*" (Ex. 31:3, 35:31), the divine spirit, which he channels into the lamp and the other vessels that he builds. The midrash also then conveys an interesting message.

Yeshuot Ya'akov states that Betzalel, as a practical artisan, would naturally prove to be better equipped to build a menorah than Moshe, the mystical, intellectual leader. Every person possesses certain distinct qualities and capabilities that may allow him even to surpass the accomplishments of Moshe Rabbeinu.

Using Hirsch's understanding, the basic message of the midrashim blares aloud. Every Jew faces Moshe's dilemma — striving to comprehend God's own commandments and to fashion a divinely lit spirit from his own human flesh. Provided that he is earnest and unashamed, yet supplicant in his ignorance, the Midrash assures him that he will receive God's aid, either directly, or indirectly through an inspired helper, like Betzalel, to bring him success.



set design. When Moshe fails again, God graphically demonstrates how to construct a menorah. At this stage, God wants Moshe to physically translate His instructions, utilizing even less personal initiative. Each time, God allows him as much individual creativity as possible, and only after Moshe proves himself unable to complete the task does He do it Himself.

Although the fire ultimately accomplishes the task, Moshe's participation does not end. Maharal (*Gur Aryeh, Terumah*) notes that in order for God to build the menorah, He still requires a preliminary action from Moshe. Moshe must throw the *kikar* into the fire, for only then will He complete the menorah. Moreover, the *Tanchuma* in *Beha' alotkha* implies that while God shaped the menorah, Moshe was com-

IN THIS ISSUE:

- An Interview with Rav Gedalia Dov Schwartz.....p. 4
- Am Segulap. 3
- Prenuptial Agreementsp. 5
- David and Saul: When Friends are Forgottenp. 6
- History and the Tower of Babelp. 8

Editorials

If There Is No Bread...

It only takes one look at the operating budget of Yeshiva University to realize that money doesn't grow on trees. Over the past fifteen years, YU's operating budget has tripled in size, to its current figure of \$297 million. Unfortunately, the growth rate of our economy has, in recent months, failed to keep up with that of our university. As a result, in YU's current budget many programs were trimmed or downsized due to lack of sufficient funds, and some were eliminated from the budget altogether.

In civil government, we often view our legislators' decisions regarding which programs to cut out of their budgets as evidence of their underlying political and economic philosophies. We might choose, for example, to cast our votes in favor of a candidate who demonstrates a preference for education at the expense of defense. If such an approach is valid, however, its application to Yeshiva University casts a pall over our sense of priorities.

The *kollel* of any yeshiva should serve as its cornerstone. In this spirit, our *Kollel* serves as a beit midrash within the beit midrash, optimizing the atmosphere in which our future rabbis can study Torah. The customary provision of stipends relieves them of some of their practical worries, allowing them to immerse themselves

more fully in the world of halakha. One might think that the *kollel*'s invaluable contribution to the future of world Jewry would deem its budget sacrosanct, and its net worth priceless.

Confronted with the realities of budget cuts, our yeshiva has chosen to withhold stipends from new *kollel* members until new monies can be raised to ease the deficit. Many of those affected, particularly married couples, relied upon that stipend for income. The necessity to compensate for it has drawn many students away from the beit midrash, forcing them to trade in hours of seder time for hourly wages earned elsewhere. Instead of strengthening our cornerstone, the present situation could potentially precipitate its erosion.

The yeshiva office has invested countless hours in an as yet unsuccessful appeal to the University to raise the necessary funds. Regardless of the severity of the budget deficit, *Hamevaser* finds it inexcusable that such an essential component of the yeshiva cannot receive adequate support from within. We urge the university and its supporters to reassess the value of our *kollel*. If there indeed is one item Yeshiva University cannot afford, it is a proof of our Rabbis' lesson that if there is no bread, there is no Torah.

Choosing The Right Weapon

Since its inception in 1948, Israel has fought to keep its independence. While the United Nations affirmed Israel's right to exist before she declared herself a state, all but one of her hostile Arab neighbors continue to deny her that right. They abuse her borders, endanger her citizens, and destroy her property on a regular basis as a constant reminder that they believe we do not belong.

The regularity of such abuse has apparently engendered a very pessimistic attitude in our community regarding the immediate prospects for a peaceful solution in the area. This pessimism, in turn, has translated into an apathetic disinterest in the potential peace process. While innumerable articles have been informed us of the technical proceedings of the Madrid peace conference, they fail to convince us that peace is even a remote possibility, let alone a desirable, immediate goal. Some simply dismiss the notion that the Arabs will ever compromise on their stance regarding a recognition of Israel's right

to exist. Others take the argument a step further, maintaining that if our current struggle will culminate in the final redemption, we should be willing to fight our battles now rather than compromise.

Hamevaser finds it quite disheartening to note how far peace has fallen on our wish list. Granted, Israel must, given its neighbors, fight for its right to exist. However, in such a fight, no decision is more important than our choice of weapon. The fight at a table in the conference room intends to accomplish the same end as the fight on the battlefield: the security of our state. If we have been granted the opportunity to wield a pen with the same effect as deploying a platoon, why should we risk lives as long as we have some ink left?

In concluding the silent *amida* every time we pray, we express our desire for peace. *Hamevaser* hopes that the current peace process realizes the manifestation of that blessing.

HAMEVASER

500 West 185th Street, New York, NY 10033

The views of signed articles are those of the individual authors and do not necessarily reflect the opinions of *HAMEVASER* or Yeshiva University. Editorial policy is determined by a majority vote of the members of the governing board. Subscription rate: \$10 per year. All material herein copyright *HAMEVASER* 1991.

Mitchel Benuck
Editor-in-Chief

Eli Schick
Executive Editor

GOVERNING BOARD

Seth Berkowitz Simi Chavel Ari Ferziger
Yitzchak Hollander Chaviva Levin Sammy Levine

ASSOCIATE BOARD

Yakov Blau Shani Feiner Michael Segal
Steven Buch Joshua Fogel Steven Usdan
Dov Chelst Shoshana Levine

STAFF

Mali Adler Aliza Dworken Aliza Levin
Miriam Bacon Matthew Harris Chavie Levine
Cheryl Bermam Avraham Husarsky Sally Rosen
Ari Blech Pearl Kaplag Rivky Shuchatowitz
Bena Bradwein Sara Klein Reuven Spolter
Naomi Wadler Esther Wolf

ART

Judy Dick Simma Krames Aharon Fischman

Editor

Benjamin Samuels, *editor emeritus*

Letters

To the Editor,

It disturbs me greatly to find that some of my fellow Semicha students are either indifferent or hostile towards prenuptial agreements for themselves. In the absence of *batei dinim*, which have the power of coercion, the prenuptial agreement is the only solution to most of the *Agunah* problem. It is quite clear that Chazal displayed incredible sensitivity to the plight of a woman unable to marry, to the point that they pushed the halakha (*Yevamos* 88a, *Gittin* 88b with *Yevamos* 106a) to its limits to protect women from being victimized by circumstance or by their husbands.

It would seem to me, then, that rabbinical students who represent the leadership of the future have a responsibility to carry on this tradition by recognizing the importance of this vexing issue, and preparing themselves to deal with it. It would also seem appropriate for those Rabbinic students getting married to set an example for *Klal Yisrael* by signing a prenuptial agreement themselves.

K. Jeremy Wieder
YC.BRGS '91
RIETS '94

BS"D

OHAVEI SHALOM TSEDAKAH FUND

Dedicated since 1977 to the memory of

RABBI SOLOMON P. WOHLGELERNTER zt"l

(1901-1976)

Distributes, through devoted agents all manner of help, material and monetary, to needy families in Israel.

Judah Wohlgelernter

Rabbi Eliyahu P. Rominek

Pollack Library, Y.U.

Chairman

Campus Representative

611 Beach 8th Street

Far Rockaway, N.Y. 11691

We are most grateful to the previous Editor-in-Chief, Benjamin Samuels, and his staff, for their generous support.

Anyone
interested in
submitting artwork for
Hamevaser covers
should please
contact
Simma Krames at
532-5978.

The Chosen People... or the Choosing People

Shani Feiner

The idea that the people of Israel are God's chosen nation lies deeply embedded in the cornerstones of Jewish philosophy. Over time, two distinct understandings of the unique, "segula" relationship between God and Israel have emerged from the writings of Jewish thinkers. The ramifications of this debate reach not only the nature of our spiritual connection to God, but often affect our attitude toward Gentile neighbors as well.

This debate first receives mention in Tannaitic literature. Rabbi Akiva (*Avot* 3:14) and Rabbi Meir (*Sifre Deut.* 308) maintain that the election of Israel expresses an unconditional bond with which God holds the Jewish nation close to Him. He established this bond before the creation of the world, thereby barring Israel's actions from playing any potential role in sustaining the strength of this bond. As part of God's universal plan, it can never be severed. However, Rabbi Elazar ben Azariah (*Chagiga* 3a) and Rabbi Yishmael (*Sifre Deut.* 97), disturbed by the arbitrary nature of a preconceived selection, explain instead that Israel chose God before God chose Israel, thereby placing the burden of maintenance on Israel's shoulders.

This dichotomy stems from two possible readings of the verse "Ki Ya'akov bachar lo Kah, Yisrael lisgulto" (Ps. 135:4). While Rabbi Akiva interprets the verse to mean "For the Lord has chosen Jacob," Rabbi Elazar ben Azariah prefers "For Jacob has chosen the Lord."

While the verse can support both opinions, neither reading offers concrete evidence of the possible unique components of the "segula" relationship. However, an examination of the biblical verses which first describe this exceptional relationship may reveal the different understandings of the relationship, as well as what this relationship entails.

Was It Our Destiny?

Just prior to His revelation at Sinai, God declares: "Vihyitem li segula mikol ha'amim, ki li kol ha'aretz" (Ex. 19:5). Interestingly, the plural form, *vihyitem*, is used, suggesting a number of individuals as opposed to a single, united nation. Furthermore, the words *mikol ha'amim* imply that God had indeed chosen the people of Israel from amongst other peoples. From this verse alone, it seems that each member of the Jewish people as an individual shares an intimate kinship with God, unknown to members of other nations.

God gives a reason for singling out the Jewish nation: "because the entire land belongs to Me." Just as God remains the ruler of the world, so the nation of Israel will remain God's chosen people. The relationship, as presented here, hinges solely on God's eternality. While He does reveal Himself to His people at Mount Sinai, the endurance of the relationship bears no connection to Israel's acceptance of the Torah.

Rabbi Yehuda Halevi, among others, bases his interpretation on this verse. He explains that this relationship began prior to creation. The use of the plural form *vihyitem* may thus be understood to refer not only to the Jewish nation post revelation, but to the ties that existed between God and the righteous individuals, primarily Abraham, Isaac, and Jacob, who preceded the formal giving of the Torah.

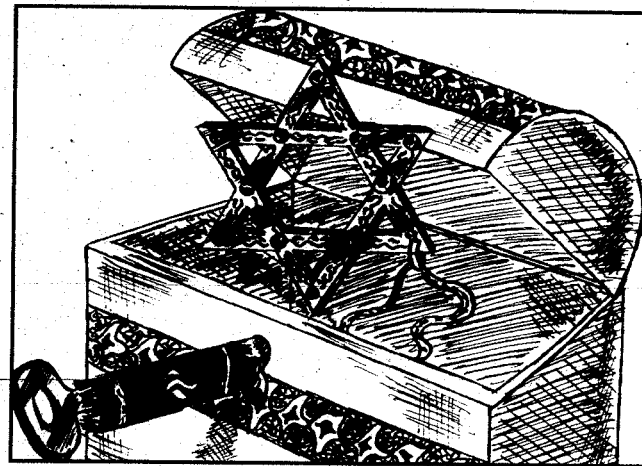
Or Was It Our Decision?

Others arrive at an alternate understanding of

the *segula* relationship, from an analysis of the syntax of Deut. 7:6, 14:2, and 26:18: "Ki Am Kadosh ata laHashem elokheka, ubekha bachar Hashem lihyot lo le' Am Segula mikol ha'amim" Here, the Torah uses a transitive verb - *bachar*, in contrast to the intransitive *vihyitem*. This connotes not a passive election, but a conscious selection, one not arbitrary in nature.

The Torah prefaces this verse with a description of the children of Israel as an *Am Kadosh*, a holy nation. While in Exodus the relationship between God and Israel seems firmly rooted in God's immortality, here the responsibility of maintaining the relationship is clearly

placed upon the *am*, the Jewish nation. Moreover, the verse in Exodus does not include a description or condition of the lasting selection; here, in Deuteronomy, the Torah ties the selection of Israel to Israel's ability to remain a holy nation.



to accept the Torah unconditionally, with the irrational answer of "na'ase venishma." God proclaims that the *segula* relationship will be unconditional as well. The relationship is therefore portrayed as a predestined and eternal one.

In Deuteronomy, however, Moses departs with words of rebuke. After forty years of learning Torah in the desert and continuously challenging God's word, the people hear from Moses that they can only maintain the title *Am Segula* if they remain an *Am Kadosh*. Moses warns them not to become too self-assured, for their relationship in fact depends on their level of holiness and their performance of *mitzvot*. If the Jewish na-

tion fails to meet these terms, its constituents become like those of the other nations, no longer deserving to be chosen as God's precious people.

Two famous problematic aggadic passages can now be explained based on the two interpretations of Israel's election. According to one midrash, prior to the giving of the Torah, God lifted Mount Sinai above the nation, threatening them to accept the Torah or be buried underneath the mountain (*Shabbat* 88a). This midrash implies that the people of Israel could not accept God solely through will, because their lives were jeopardized. In contrast, a second midrash relates that God first went to the other nations of the world, offering them the Torah. After being refused by all nations, it was willingly accepted by the Jewish people (*Mekhilta de-R. Yishmael*).

These passages may be explained based on the two possible understandings of the origin of Israel's election. The first midrash mentioned supports the thesis of Rabbi Yehuda Halevi, revealing lack of active choice by the people. Since Israel was destined to be the chosen nation, God had to ensure their acceptance of the Torah. As they were newly-freed slaves, He had to resort to lifting the mountain in order to "assuage" the nation to face their predestined selection.

The second midrash reflects Rambam's position. The Torah could not automatically be given to the people of Israel as a sign of a special covenant; the people first had to earn it. This allegory openly praises Israel's virtue in choosing God and consenting to live by Torah ideals to retain its "segula" status.

The Place of the Proselyte

These diametric perceptions of this relationship have extensive ramifications for Rambam's and Halevi's philosophies, which cannot be overstated. We can begin to appreciate their scope by analyzing each philosopher's position regard-

ing the status of proselytes.

In his *Kuzari*, Halevi indicates that the Khazars, following their conversions, honored the native-born Jews in their midst. The two groups of "Old Jews" and "New Jews" in Khazaria apparently did not mix socially, nor did they intermarry. It seems that Halevi did not consider the Judaism of the proselyte equal to that of the born Jew.

In Section 1:27 of the *Kuzari*, the chaver informs the king of the Khazars of the inequality of proselytes. Halevi states: "Someone who joins us completely from among the nations will enjoy the good which we have but will not be equal to us." Furthermore, in 1:115, he tells the king that only a native-born Jew can achieve proph-

ecy. Throughout the *Kuzari*, Halevi emphasizes the inequality of the Gentile proselyte with respect to the born Jew. He expresses the differences between "Jewish Judaism" and "Proselyte Judaism" through a number of literary and contextual devices. First, he implies that the convert cannot fully participate in the Jewish religion. He conveys this message by having the king of the Khazars address the Jewish nation in second person despite his conversion. Second, the proselyte does not share the fate of the people of Israel. Halevi illustrates this with the chaver's one-sided account of Jewish history: "We have suffered this degradation without any benefit."

In addition, Halevi claims that the native-born Jew and the convert have a different relation to the Land of Israel and the duty to live there. The chaver explains to the King that "The Land of Israel is necessary for the perfection of the divine service of native-born Jews; obviously a convert, who is not perfectible anyway, has no need for this country." (1:115)

Interestingly, Rambam, approaching each of these topics in separate areas of his *Mishneh Torah*, views the proselyte from a perspective completely different from that of Halevi with regard to these issues. Rambam asserts (*Bikkurim* 4:3) that the proselyte is indeed a full participant in the Jewish religion. He may bring the *Bikkurim* to Jerusalem and recite the appropriate Scriptural passage. The oration of this passage, which includes a historical synopsis of the Jewish people, indicates that the proselyte shares the history and fate of the people of Israel. A proselyte is thus considered a descendent of Abraham, is part of the covenantal community, and may legitimately repeat such passages as *parash habikkurim*. He further expresses this view in his letter to Obadiah the proselyte, serving what Isidore Twersky considers "a conscious or unconscious rebuttal of R. Judah Halevi - that converts to Judaism enjoy complete equality and are in fact objects of special love" (*Introduction to Code of Maimonides*, p. 485). Similarly, in his treatise on prophecy, Rambam maintains that anyone may achieve a state of divine revelation based solely on his level of knowledge and ability to control his thoughts. Whereas Halevi feels that there exists a hereditary superiority of the Jewish people, warranting them to be singled out by God as His Chosen People even prior to Creation, Rambam views genealogical factors as insignificant.

Sticking To Their Guns

Upon close examination of Rambam's and Halevi's convictions concerning the definition and meaning of a *segula* relationship, the basic principles underlying both their philosophies come into view.

Halevi, a Spanish philosopher of the thir-

Continued on page 8

Justice, Justice Shall You Pursue

COURTING THE MASSES: THE RCA BEIT DIN

Yitzchak Hollander

The origins of the RCA *Beit Din* lie in inter-denominational negotiations of the late 1950's. At that time, the RCA met with the Rabbinical Alliance, an organization of Orthodox Rabbis ordained in seminaries such as Yeshiva Torah V'Da'at, and with the Conservative Rabbinical Assembly, to discuss the creation of a joint *Beit Din*.

Rabbi Louis Bernstein, based on minutes of the meetings, writes that the *Beit Din*'s formation came primarily in response to the Conservative Rabbinical Assembly's plans to form their own *Beit Din* dealing with family matters. The Orthodox groups were concerned with difficulties that might arise in the future involving people improperly divorced in a Conservative *Beit Din* (Rabbi Louis Bernstein, *Challenge and Mission: The Emergence of the English Speaking Orthodox Rabbinate*. New York: Shengold Publishers, 1982, p. 64).

Rabbi Fabian Schonfeld, a former president of the *Beit Din*, adds that the need for a non-profit *Beit Din*, unconnected to any organization, also necessitated the RCA *Beit Din*'s formation. Towards this end, the RCA and the *Beit Din* are actually two separate, independent organizations (Interview, November 9, 1991).

According to Rabbi Bernstein, the discussions with the Rabbinical Alliance broke down because of the RCA's previous unwillingness to recognize their legitimacy, feeling that another Orthodox rabbinical organization was unnecessary. In addition, some Rabbinical Alliance members were not inclined to participate in the joint *Beit Din* because they regarded the RCA as less Orthodox than themselves (Bernstein, pp. 65-67).

Though negotiations with the Conservative Rabbinical Assembly in the *Beit Din* achieved tangible progress, ultimately these too proved unsuccessful. The RCA and the Conservative Rabbinical Assembly reached a measure of understanding in January, 1956, writing in a memorandum that "it was necessary and desirable to form a *Beit Din* to act and supervise under Jewish religious law" the matters of *gittin*, *chalitzot*, *heter meah rabbanim*, and questions of marital status and eligibility to marry. The memorandum also detailed the incorporation of the proposed *Beit Din*, financial matters, and appointment of judges (Bernstein, p. 68).

On January 11, 1956, an RCA Executive meeting debated the participation of the Rabbinical Assembly in the proposed joint *Beit Din*. Those in favor of cooperation argued that it would be a

Hamevaser wishes a heart felt mazel tov to all the following couples upon their engagements:

Marni Balter and Mitchel Benuck
Shani Feiner and Kevin Taragin
Chaviva Levin and Jeremy Weider
Meira Shulman and Ari Ferziger
Annick Tannenbaum and Lowell Abrams

"potent deterrent to anarchy in the area of marital law." Those opposed insisted that the *Beit Din* would be "a partnership with non-Orthodox groups and thus detract from the individual authority of the Orthodox group" (Bernstein, p. 69).

The Halakha Commission of the RCA met on January 18, 1956 and voted 11-6 to reject the national *Beit Din*. Rabbi Joseph B. Soloveitchik, chairman of the Halakha Commission, stating the majority position, asserted that "the gap between Rabbinical Council and the Rabbinical Assembly is wide and unbridgeable," and that "a cooperative effort... would be tantamount to the recognition of the Rabbinical Assembly as a full-fledged rabbinat" (Bernstein, pp. 69-70).

Following the conclusion of the negotiations, the structure of the RCA *Beit Din* began to take shape. Rabbi Emanuel Rackman proposed an associate board to handle finances, a rabbinic coordinator, and a counseling panel for psychological problems. The *Beit Din* formally commenced operations in early 1961 with Rabbi Rackman as President and Rabbi Benjamin Bak as coordinator (Bernstein, pp. 70-71).

Presently, a hierarchy consisting of Rabbis and lay people controls the operations of the *Beit Din*. The *Beit Din* Committee oversees the work of the *Beit Din*, and reports once or twice a year. Members of the *Beit Din* Committee are elected at the RCA annual convention. The President of the *Beit Din*, currently Rabbi Raphael Grossman of Memphis, Tennessee, and the Administrator, currently Rabbi Herbst, direct the hands on running of the *Beit Din*, including such projects as fund raising and personnel hiring. The *Rosh Beit Din*, currently Rabbi Gedalia Dov Schwartz (see interview), oversees halachic and spiritual matters pertaining to the *Beit Din*. A lay Board of Directors advises the *Beit Din* on financial and logistical matters (Interview, Rabbi Fabian Schonfeld, November 9, 1991).

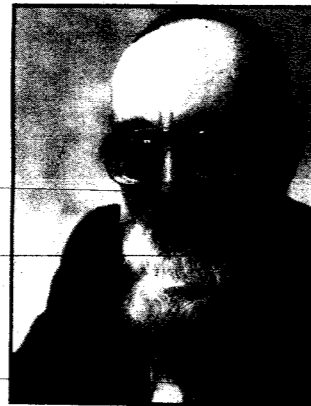
The RCA *Beit Din* primarily deals with the laws of *gittin* and *chalitzot*. Rabbi Bernstein estimates that approximately thirty cases of *gittin* per month are referred to the RCA *Beit Din* from all over the world. (Interview, November 11, 1991) Only after marital counseling for the couple has proven unsuccessful, does the *Beit Din* execute a *get*.

Rabbi Schonfeld stated that the *Beit Din* does not ordinarily become involved in cases of *heter meah rabbanim* because of potential complications that can arise if the available information is incomplete. Recently, the *Beit Din* has become involved in commercial *dinei Torah*; however, the *Beit Din* avoids cases of *Gerut* (Interview, November 9, 1991).

An Interview with Rav Gedalia Schwartz

Rabbi Gedalia Dov Schwartz has been recently appointed as the *Rosh Beit Din*, the Chief Presiding Judge, of the National *Beit Din* of the Rabbinical Council of America. Since 1972, he has been a member of the R.C.A. *Beit Din* and is the editor of the R.C.A. Torah journal "Hadarom." Rabbi Schwartz is a graduate of Yeshiva University, and was ordained by the Rabbi Isaac Elchanan Theological Seminary. This week, Rabbi Schwartz discussed many of the halachic issues confronting Jewry today with Hamevaser's Mitchel Benuck and Eli Schick. Excerpts from the interview follow.

Hamevaser: Having recently been appointed as the head of the *Beit Din* of the Rabbinical Council of America (RCA), can you please tell us what you perceive to be the primary function of the RCA *Beit Din*?



Rabbi Gedalia Dov Schwartz.

Rav Schwartz: The primary function is, first of all, to deal in all sorts of matters *batei din* historically deal with, above and beyond the *siddur gittin*, which has been a constant function of the (RCA) *Beit Din*. In addition, the *Beit Din* should be involved in a large scope of *dinei Torah* that need processing, which people can settle within the framework of the *Beit Din* rather than going into the [civil] courts. The RCA has been involved in this in the past, but hopes to broaden its effectiveness in serving the general Jewish community in this area... Although other *she'elos* are addressed — especially to the *Rosh Beit Din* — and other areas of the *Shulchan Arukh* are covered, actual *Beit Din* procedure deals with areas of *Choshen Mishpat* and *Even Ha'ezer*.

Hamevaser: It seems that, in the past, the RCA *Beit Din* has chosen to concentrate mainly on cases of *gittin*. Do you consider this one area of exclusive importance to the *Beit Din*?

Rav Schwartz: Actually, we deal with a variety of matters in [marriage-related] areas. Sometimes there are conflicts in family matters... that might not necessarily lead to a *get* but that have certain overtones such that a *Beit Din* is needed, while sometimes these cases are preliminary to [divorce proceedings]...

Hamevaser: Does the RCA *Beit Din* actively choose which cases it hears regarding *hilkhot ishut*?

Rav Schwartz: If the people agree to come before the RCA *Beit Din*, the RCA *Beit Din* will handle it. [However,] as far as *batei din* outside

of Israel are concerned, people have the right, even if they are called to come to *Beit Din*, to say, "I'm not coming to your *Beit Din*, I prefer to go to another *Beit Din*." That is their privilege; there is no way of enforcing that they come [specifically] to our *Beit Din*.

Hamevaser: In addition to the *Beit Din*, the RCA also has two other halachic entities: the Va'ad Halakha — the Halakha Committee, and another committee called the RCA Round Table. Could you please clarify the role of the Halakha Committee vis-a-vis the *Beit Din*. Does the Halakha Committee have any input in determining decisions of the *Beit Din*?

Rav Schwartz: First of all, you should understand that the Halakha Committee is not a *Beit Din*. [It] is a committee of rabbis who have been selected by the administration or the president [of the RCA] to advise on halachic matters. When the Halakha Committee meets it does not meet as a *Beit Din*. Perhaps the rabbis will arrive at a certain consensus of opinion, but [their view] is not something which is adopted as an absolute *pesak*. They give input, perhaps recommendations, as requested by the executive committee and by the organization on halachic matters, but... not as an absolute *pesak* as a *Beit Din*. [On the other hand,] the RCA does not consult with the *Beit Din* per se as to halachic matters. If an halachic matter comes up... within the forum of the *Beit Din*, while the *Beit Din* is sitting to handle the *pesak*, then it becomes a *pesak*. That's the difference.

Hamevaser: In dealing with issues of *ishut*, it seems as if one of the most basic priorities of the *Beit Din* should be the prevention of the occurrence of *agunah* by regulating *ketubot* and *gittin*. One of the most powerful tools that a *Beit Din* is granted in this regard is the power to issue a *shetar siruv* (a citation of contempt which attempts to force a recalcitrant litigant to appear in court by calling for a community-wide social and religious boycott of the litigant). In the past, it seems that the RCA *Beit Din* has been very reluctant to issue such documents.

Rav Schwartz: The most I can tell you, without giving a complete explanation, [is] that if a situation arises in which a *shetar siruv* would have to be issued, it will be issued, whether it is [a matter of] *ishus*... or *choshen mishpat* or *dinei mamonos*. That is... if a due process takes place which allows a *shetar siruv*... there is no reason for it not to be issued. That's quite clear. I can tell you that with authority as a *Rosh Beit Din*.

Hamevaser: Can you try to estimate for us, in general, how effective a *shetar siruv* is when issued by a *Beit Din*?

Rav Schwartz: In Chicago, when our *Beit Din* (the *Beit Din* of the Chicago Rabbinical Council) has issued a *shetar siruv*... the entire community has honored the *shetar siruv* by ostracizing that person. He's not allowed to be called to an *aliyah*; he's made unwelcome in any shul. It creates a tremendous amount of pressure on the person so it brings things to a head.

Hamevaser: Does the *shetar siruv* have any strength within the court itself?

Rav Schwartz: In monetary matters, a litigant who wasn't able to be paid — [sometimes because] the defendant didn't even come to the *Beit Din* — is free to take the case to civil court. If no *Beit Din* procedure took place... the whole matter is handled in the courts. But if the matter was already decided by the *Beit Din*, and the *shetar siruv* was issued because of non-payment, then we've had cases where the litigants have gone

into the civil court... and collected their money because the judge looked at the *pesak* of the *Beit Din*, as well as at the *shetar siruv*; and they affirmed it. We had two cases that were affirmed by the court system. This shows that the *shetar siruv* was effective... But only if you follow the due process.

Hamevaser: It would seem, to a large extent, that the strength of the *shetar siruv* depends upon the strength of the issuing *Beit Din*.

Rav Schwartz: And on your community. Maybe Chicago is a little easier, but in New York, where you have so many groupings, maybe one would say, "...that *Beit Din* is not worth anything, we don't have to pay attention to it." That's liable to happen.

Hamevaser: Given that possibility, do you think the RCA should attempt to establish itself as the authoritative *Beit Din* on a national level, in particular with regard to *hilkhot ishut*?

Rav Schwartz: The RCA *Beit Din*, because of the reputation of Rav Steinberg, z"l, has established itself as a recognized authoritative *Beit Din* on this continent and internationally. [including] all of the *batei din* in Eretz Yisrael. It is reckoned with. So I don't think it's a matter of trying to establish it; it is already established. It merely needs to keep up that reputation and to continue to better and enlarge the scope of [its influence].

Hamevaser: In that case, would you take any steps to encourage other *batei din* to work jointly with the RCA?

Rav Schwartz: All *batei din* that want to work with us [are encouraged to do so]. In the past, the RCA has worked with *batei din* even in the Hasidic community, and international *batei din*, as well as in the charedi community in Eretz Yisrael. To my knowledge, we're connected with all of the *batei din*. We work with any [group] which is considered a legitimate representation of a *Beit Din*... whether it's a *Beit Din* in London or Johannesburg, or any other country where there is a legitimate *Beit Din*.

Hamevaser: Another effective tool which *Beit Din* could potentially use to prevent the occurrence of *agunot* is the prenuptial agreement. There are several existing prenuptial agreements which try to guarantee the ability of a woman to receive a *get*. None of these have yet been recognized by the RCA *Beit Din*.

Rav Schwartz: Which is definitely... on the agenda of the RCA *Beit Din*. As to how it will come about, I couldn't give any details. It involves a lot of... investigation and planning in order to [formulate] a type of prenuptial agreement that will be acceptable to halakha and also to the court system. There is a very delicate balance between prenuptial agreements that have been suggested and [those that] qualify as a contract in law. That is one problem. Then there are certain statements that might fall within the area of what we call a *get me'usa*, a forced *get*, which is not allowed. It is... just a matter of straightening out this particular matter, of striking that delicate balance.

Hamevaser: Is this an area in which the RCA would attempt to establish a general policy which would cover all cases involving prenuptial agreements?

Rav Schwartz: I'm quite sure, either [the RCA] will establish its own general policy or it will modify or add or adapt the existing prenuptial agreements to satisfy halachic authority within the *Beit Din*. Again... the matter is up for serious consideration.

Hamevaser: The RCA *Beit Din* is recognized as the Orthodox *Beit Din* to issue a *get* in the context of some of the existing prenuptial agreements. If a case were to come up for discussion involving those existing agreements, would a decision on such a case have to wait for a formulation of general policy?

Rav Schwartz: I don't know of any cases that have come up directly as a result of the prenuptial agreements that have been referred to the RCA *Beit Din*. If any have, I think the matter [would have been] adapted in such a way that you didn't have to force it because of the pressure of a prenuptial agreement... I don't know whether many of the prenuptial agreements have ever been brought to Orthodox [*batei din*] directly. I'm not aware of any particular statistic in that direction.

Hamevaser: Would the Va'ad Halakha play any role in determining RCA policy on this issue?

There has to be a conscious effort made to clarify or to reduce the number of situations that involve agunot...

Rav Schwartz: The Va'ad Halakha, at one of its last meetings... was presented with the idea of investigating a proper prenuptial agreement according to halakha... I presume that when they meet again, whenever that will take place, they will pursue the matter. It will of course be done in conjunction, I am quite sure, with the RCA *Beit Din*, because I myself am a member of that Va'ad Halakha; one will know what the other is doing.

Hamevaser: To what extent is the *Beit Din*, in individual cases, bound by previous decisions of the Va'ad Halakha?

Rav Schwartz: The *Beit Din* is really not bound by a decision... Generally in these things, one is not transposed on the other; I don't know of cases where these things have crossed lines. The *Beit Din* deals in... specific areas, and I don't think the Va'ad Halakha has been given these areas to deal with so far.

Hamevaser: Regarding this relationship between the *Beit Din* and the Va'ad Halakha, we would like to ask about one particular issue that has stirred up much popular interest. We refer to the brain death issue, which seems to involve both the *Beit Din* and the Va'ad Halakha. Has the *Beit Din* ruled on cases concerning a criterion of death?

Rav Schwartz: The RCA *Beit Din*, what we call the *Beit Din* of America, was not even approached with that at all... To my knowledge, there has been no such decision.

Hamevaser: Is that topic being discussed by the

Continued on page 7

PRENUPTIAL AGREEMENTS: Why Can't We Agree?

Chaviva Levin

One of the most pressing issues confronting the Jewish community today is the plight of the *agunah*. The traditional *agunah* is a woman who does not know with certainty whether her absent husband is dead or alive. She remains chained to her husband, unable to remarry, until her husband's death is conclusively proven.

Today's *agunah*, however, is faced with a vastly different predicament. The contemporary *agunah* has frequently received a civil divorce, yet her husband refuses to grant her a *get*, a religious divorce, which will enable her to remarry. The *agunah* problem is sufficiently serious to warrant the founding of an organization, G.E.T. (Getting Equitable Treatment), to aid women whose husbands have refused to grant them a religious divorce.

Once a woman becomes an *agunah*, she has little recourse within the community or within halakha. According to Jewish law, a man must grant a *get* to his wife of his own volition. While in previous centuries authoritative Jewish communities could impose social pressures such as ostracization on the recalcitrant husband, to prevail upon him that it really is in his best interest to grant a *get*, this is no longer the case. Today's Jewish communities lack the autonomy and centralized authority that made these pressures effective, and are frequently powerless in their attempts to impose negative social consequences on the recalcitrant husband. Once a woman becomes an *agunah*, her future remains bleak.

In seeking a solution to the problem of the modern-day *agunah*, some suggest that, rather than dealing with each *agunah* only after the fact and on an individual basis, the most effective approach lies in obviating the scenario which creates the possibility of the recalcitrant husband. A viable means of achieving this goal lies in the use of a binding ante-nuptial agreement providing that in the event of a civil divorce, the husband agrees to grant a religious divorce and the wife agrees to accept it. Many believe that incorporation of such a document into the standard wedding procedure would prevent the development of new *agunah* situations in the future.

Since the issue of *agunah* and prenuptial agreements began to occupy a prominent position on the agenda of the Jewish Community, several ante-nuptial documents have been proposed. Judah Dick, Rabbi J. David Bleich and Irwin Haut have all composed forms to be signed by marrying couples, and the R.C.A. is in the process of drafting a pre-nuptial agreement. While each form is unique with respect to the technical aspects of the agreement, all address the same issues. Each document tries to create a civilly enforceable obligation on the part of both husband and wife to either grant or accept a *get* in the event of a civil divorce, while at the same time avoiding the secular issue of separation between Church and State and dealing with the halachic issues inherent in such a proposal.

First Amendment considerations impede the effort to thrust the state into the role of ensuring that a husband grants a religious divorce by withholding a secular divorce until he removes all

impediments to his wife's remarriage, as Agudath Israel has suggested. Insertion of a clause into the *ketubah*, as the Conservative Movement has tried to do, raises similar problems since the court might view the *ketubah* as a religious document. Thus, for this reason, as well as others, it is preferable to draft a separate civil document addressing the obligations of each party subsequent to the dissolution of a marriage.

An halachic impediment which must be surmounted in any ante-nuptial agreement is that of *issur get*. According to halakha, a *get* issued under coercion is invalid in most circumstances. It is therefore necessary to compose a text which binds the husband to his agreement to grant his wife a *get* without coming under the halachic rubric of coercion.

The insertion of a penalty clause obligating the recalcitrant husband to pay a specified sum if he refuses to grant his wife a *get* in the event of divorce is an appealing option; however, it must be worded in a manner which avoids the halachic problem of *asmakhta*. According to Jewish Law, in order to create a binding contract, *gemirat da'at* must exist. The person signing the agreement must believe that the situation may arise in which he would be required to pay the penalty specified in the pre-nuptial agreement. If the person signing the agreement does not believe that he will ever be called upon to pay the stated penalty, he does not have *gemirat da'at*. This lack of *gemirat da'at* constitutes an *asmakhta*, and invalidates the contract. Therefore, the problem with a straightforward penalty clause is that at the time of his wedding, no groom seriously entertains the possibility that he will divorce his bride and withhold her *get*, and consequently does not believe that he will ever be bound to pay the penalty. (For more on this topic, see J. David Bleich, "Survey of Recent Halachic Periodical Literature", *Tradition*, Vol. 22 #3, Fall 1986.)

Nevertheless, the authors of the aforementioned pre-nuptial agreements are cognizant of these issues and have written their contracts in a manner which ensures that the documents are binding and enforceable according to both secular law and halakha.

Once workable pre-nuptial agreements have been authored the onus of preventing the creation of more *agunot* falls upon the Jewish community, particularly two elements which are well represented among the readership of Hamevaser. Young marrying couples comprise the first group who should be at the forefront of the movement to demand the incorporation of an ante-nuptial agreement into every Jewish marriage. If each couple who marries decides to sign a pre-nuptial agreement, the procedure will hopefully spread, and become standard procedure at Jewish weddings. In this manner, not only will these couples be protected should one of the husbands or wives refuse to grant or accept a *get*, but, more importantly, one of the major avenues for the creation of modern *agunot* will be closed.

The second element which can be instrumental in the implementation of a pre-nuptial agreement in every Jewish marriage is composed of

Continued on page 8

David and Saul: Friends Before the Fray But Strangers In The Night

Joshua Fogel

"And as David returned from slaying the Pelishtian...Saul said to him, 'Whose son art thou, lad?'" These words, found in Samuel I, chapter 17, verses 57-58, are the subject of great controversy amongst the Tanaim, Rishonim and modern scholars. The problem stems from their apparent contradiction with chapter 16, verses 18 and 21, "Then answered one of the servants, and said, 'Behold, I have seen a son of Jesse the Bethlahhamite, that knows how to play'...And David came to Saul and stood before him. And he (Saul) loved him greatly, and he became his armorbearer." Whenever G-d sent evil spirits upon Saul, David would play the lyre, and it would calm him. Chapter 16 clearly states that Saul loved David, so how is it possible that Saul, in chapter 17, does not even remember him?

The commentaries offer a host of solutions for us to explore and examine. While some assume the question of "Whose son art thou lad?" to be an inquiry of David's identity, others read it more literally, assuming that Saul knew David but simply forgot his father's name. Selecting the latter view, *Metsudat David* explains that the evil spirits plaguing Saul caused him to forget the name of David's father. Although it is not explicitly written that the spirits were with him at that specific time, those circumstances seem likely in light of the fact that David, the musician responsible for curing Saul's ills, had been away at the time fighting Goliath. Perhaps the pressures of impending war, compounded by the absence of his favorite musician, had caused the evil spirits to return.

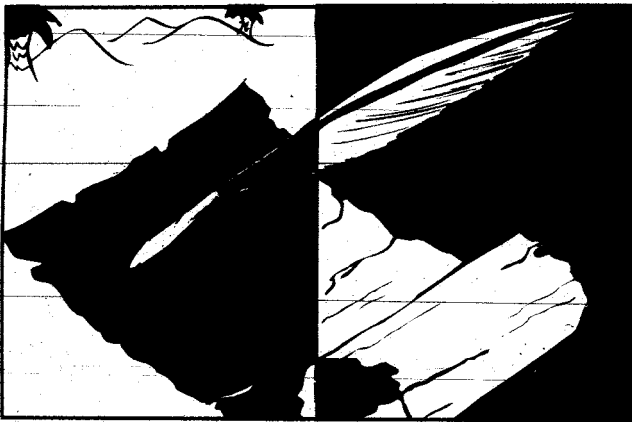
Taking a similar approach, Ralbag explains that as king of a country Saul certainly had a very busy schedule and met with many people. Consequently, he would not remember such trivial details as David's father's name. Still, David was his armorbearer and musician, and "[Saul] loved him greatly," so he was not merely another visitor passing through Saul's court. In light of these details, perhaps *Metsudat David's* "spiritual" explanation is necessary.

The *Mahare Krah* offers a different approach, concentrating on the fact that David divests himself of the armor that Saul provided him for the battle. He explains that Saul must have assumed that David would not fight without the armor. Seeing a lad going to fight Goliath, Saul has no idea who it is, and even asks his general, Avner, who also does not know. The *Mahare Krah* adds that Avner is actually startled to see this youth at the front, for even he and the other generals fear accepting Goliath's challenge.

A careful reading of the text shows two difficulties in the *Mahare Krah's* understanding of the events. First, David has already convinced Saul that he is able to fight Goliath without armor, telling Saul that he has slain both bear and lion while protecting his father's flock. He even boasts that "...Pelishtian shall be as one of them, seeing as he has defied the armies of the living G-d..." Having gained his fighting experience as a simple shepherd, David probably has no training with the equipment of a soldier. Therefore, when offered Saul's armor, David refuses, stating that "I cannot walk with these for I have not tried them." David still intends to confront Goliath, only without the armor offered by Saul. He has already convinced Saul that he is not afraid, so Saul would probably infer that he still plans to fight, only without the equipment, as he has been trained since childhood. Second, if we assume that Saul infers from David's statements that he does not plan to fight, it seems strange that Saul would then ask "Whose son is this youth?" If he does not even know who the

"new" youth is, would it not be more natural to ask "Who is this youth?" (Of course, one might argue that a youngster's identity is usually linked to that of his father.) Thus, one could more plausibly assume in this context that Saul still assumes that David intends to fight. In fact, the Midrash assumes this and understands Saul's question to be regarding David's lineage.

The Talmud (*Yebamoth* 76b), quoted by both Rashi and Radak, poses a similar question: why would Saul ask about David's father if his servant had previously informed him of " (David) a son of Yishay the Bet-hallahamite...?" The Midrash suggests that because it was said about Saul that "From his shoulders and upward he was higher than any of the people," Saul saw greatness in David when his personal armor fit David. He then wondered whether David descended from Perez or Zerah, reasoning that if David descended from Perez he would be king, "for a king breaks (*poetz*) for himself a way and no one can hinder him." However, if he was an offspring of Zerah he would only be an important man. Essentially, the Midrash understands Saul's inquiry in light of his paranoid tendencies exhibited later in Samuel.



While the aforementioned Rishonim deal with the contradiction in differing ways (each with its textual and didactic advantages and disadvantages), they are similar in that they all deal with the problem locally, explaining away the difficulty by adding to the episode circumstances not clearly spelled out in the text. Additionally, there are also other difficulties which compound the contradiction between the two chapters. In Chapter sixteen David is depicted as an adult, as seen in verse eighteen, "Behold, I have seen a son of Yishay... and a fine warrior, and a man of war..." Conversely, Saul, in chapter seventeen, characterizes David as a boy who watches the flock stating, "Thou art not able to go against this Pelishtian to fight with him, for thou art but a youth..." Even David's brothers treat him as a child, reprimanding him for coming to the battlefield and leaving the sheep untended (verse 28). Furthermore, why is David's family described at length in chapter seventeen if it has already been described in chapter sixteen, when Samuel anointed David?

Rabbi Menachem Liebtag offers an alternative approach which both explains these difficulties with a perspective broader in scope, and also sheds light on a number of other seemingly problematic passages in Samuel. The basis for Rabbi Liebtag's explanation can be found in *Bava Batra* 15a, where the *Gemara* asks how Samuel could have written the book that bears his name, if he passes away in its twenty-fifth chapter. The

gemara answers that Gad the Seer and Nathan the Prophet also wrote some sections of the book. Assuming this concept of multiple authorship, R. Liebtag attempts to determine which sections of the book should be attributed to its respective author.

While it seems logical to assign the first twenty-five chapters to Samuel and the remainder to another prophet, this leaves us with the contradictions between chapters 16 and 17 discussed earlier. R. Liebtag advances a solution that not only resolves these difficulties, but also serves to clarify the structure of Samuel I. According to this explanation, chapters fifteen and sixteen are viewed as an independent section dealing with Saul's sin and punishment (as well as other details in his life), while seventeen begins the section on Saul's conflict with David. According to this solution, Samuel is identified as the prophet who writes about the reign of Saul, while Gad is linked to the events concerning David's reign. Gad, then, begins his section with David's rise in greatness, with his defeat of Goliath in chapter seventeen. Evidence for Samuel's link to Saul can be found in chapter fifteen, where Samuel cries all night, mourning

In chapter seventeen we return to an earlier moment in time, both at the initiation of David's rise to greatness, and at the beginning of Gad's writings. Gad describes David amongst his family, depicted as the youngest, following the flock. David then fights Goliath, and would later play music for Saul, as recorded by Samuel in chapter sixteen.

Two problems arise in this understanding of authorship. First, chapter nineteen relates how David came to Samuel in Rama to tell him of all that transpired with Saul, after which they traveled together to Nayot. If Samuel has already retired from prophetic-political life, why does David visit him here? R. Liebtag's maintains that this portion is more readily understood as an historical event, recorded by Gad with few details. This answer centers around the fact that no conversation between David and Samuel is recorded, only the verse paraphrased above. One might assume that if Samuel himself had recorded the event, then at least some details of the conversation would have been mentioned. Similarly, Gad takes one verse to record Samuel's death, as an historical event, and its mention does not signify a change in authorship.

The second problem that R. Liebtag must solve is a bit more involved. Where in the chronology of Gad's section do we place David's invitation to play music for Saul? We know that it must come after chapter seventeen, because it deals with David's battle against Goliath and Saul's subsequent query as to David's identity. Also, it must come before chapter eighteen, verses nine and ten, "And Saul viewed David with suspicion from that day and onwards...And David played with his hand, as at other times." Here we already see David playing before Saul, so his hiring must have come somewhere in the first five verses of the chapter. In verses three through five, David is already active and popular in Saul's army and court and begins to strengthen his friendship with Saul's son, Jonathan. Thus, he was not in his father's home at that time, available to be called by Saul to play for him. In verse two, the Navi relates that "Saul took him that day, and would let him go no more to his father's house." The simple understanding has "that day" referring to the day of his battle with Goliath. If so, however, when does David return home before being called back to work as the king's musician?

R. Liebtag offers two solutions to this problem. One could argue that David indeed does not return home at this time. Rather, he remains in Saul's army and only after quite some time (during the war) does he return home. Then, when David is at home, Saul calls him to return and play for him. Alternatively, verse two could be read differently. "And Saul took him that day, and would let him go no more home to his father's house." Instead of meaning the day David defeats Goliath, "that day" could refer to the day mentioned in chapter sixteen, when the king selects David to perform. This could have happened later and still be referring to the story of chapter sixteen. (In fact, Saul's first attempt on David's life occurs while David performs for him. Thus it relates to the stories about Saul's chasing David, which begin in this very chapter — eighteen.)

If this understanding is correct, then we have solved a number of difficulties. We have proposed a thematic structure for Samuel I and, more importantly, attributed each theme to its appropriate author. Moreover, by sacrificing the chronological order of Samuel I and explaining the progression in terms of different *nevi'im*, we can propose a solution to the contradictions between chapters sixteen and seventeen.

G-d's decree to end Saul's reign. Having anointed Saul and guided him throughout, in chapter fifteen, verse twenty-eight, Samuel tells him that "The Lord has torn the kingdom of Israel from thee this day, and has given it to a neighbor of thine, that is better than thou." As Samuel was never to see Saul again "until the day of his death," his last action in Tanakh is the fulfillment of this prophecy to Saul, the anointing of David, followed by his return to Rama.

In chapter seventeen, David's rise to greatness begins, as chronicled by Gad. In chapter twenty-two, Gad guides David in his flight from Saul, indicating his role in David's life. Samuel remains in Rama, no longer playing an active part in political life; his role had ended at David's anointing.

According to this understanding, the events take place as follows: Samuel writes about the fulfillment of his final prophecy, the anointment of David, and also relates how the spirit of G-d came upon David, while this spirit left Saul and was replaced by evil spirits. Following this, Samuel recounts an event occurring long after the battle with Goliath but which belongs here notwithstanding, as it relates to the evil spirits that accompany Saul's fall. Saul, troubled by these spirits, calls for a musician to calm him. A servant (who remembers David as the man who had fought Goliath?) suggests that he hire David, a man of war who is also a fine musician.

Rav Gedalia Schwartz

Halakha Committee?

Rav Schwartz: There was [some discussion] last June, and I never heard of any particular decision, nor any she'e'la of exactly that matter being presented to the *Beis Din* entity for a *pesak*. It hasn't been done.

Hamevaser: Is this topic on the agenda of either body?

Rav Schwartz: There is a controversy now raging about the question of the acceptance of brain death as a criteria and there are some people on the Va'ad Halakha that are opposed to it. That's where it is now. That controversy is an on-going thing, outside of the RCA too, in the Agudah and elsewhere. I don't know whether politics can be removed from the entire situation or not. But the *Beis Din* is not involved at all as a *Beis Din* in this situation.

Hamevaser: We mentioned that there was a third halakhic entity within the RCA, the RCA Round Table (formerly the Orthodox Round Table). Do they play as important a role as the Va'ad Halakha in helping determine *Beit Din* policy?

Rav Schwartz: I really couldn't tell you, but the Round Table first started as a group amongst members of the RCA that had halakhic discussion on topics and came up with some type of [statement of] viewpoint or a paper, I don't think it approached the gravity of the Va'ad Halakha. Now that the Round Table is within the RCA organization, it's a group that meets and discusses halakhic problems. But it does not enter into... *hora'ah*, or a capacity where it plays a role in the decision-making process. The interplay of the rabbis, as I understand it, [merely involves] dealing with halakhic issues and trying to... clarify different matters that are on the *sefer hayyom* of the Jewish community, as far as halakha is concerned.

Hamevaser: Could you please illustrate with one particular instance, for clarification: The Round Table has recently issued a paper which forbids public smoking on halakhic grounds. What would it take for that sort of decision by the Round Table to reach the level of the law, so to speak, of halakha?

Rav Schwartz: It might be brought in as a recommendation to the Executive Committee. It's up to the Executive Committee to accept this or not, and then it would come before the full con-

vention. That particular recommendation was brought in as a resolution at the last convention (in June)... and the RCA is on record as accepting this principle. They probably did it on the basis of halakhic approach...

Hamevaser: You have been based in Chicago for a number of years with the Chicago Rabbinical Council and now you are also functioning as head of the RCA *Beit Din*, which is based in New York. Do you personally experience any difficulties serving as the *Rosh* of a *Beit Din* which is based elsewhere? How do you plan to structure the *Beit Din* to hear specific cases?

Rav Schwartz: In the past... before I even came to Chicago... Rav Steinberg [served as *Rosh Beis Din*], and he did not sit on the *Beis Din* for the majority of the cases that were brought into the *Beis Din*, whether in *dinei Torah* or even in *siddar gittin*. He served as an advisor on all these matters. Maybe there were... just one or two cases where he sat on an actual *Beis Din* and I was sitting with him, together with Rav Rifkin. But otherwise, the *Beis Din* functioned with the other *dayanim*, and he was more or less the overseer; he wrote the letters to the other *batei din*, he ruled upon major questions that came up, and so forth... So far, in the few months that I have been the *Rosh Beis Din*, I have already participated in a *din Torah* when I made my monthly visit to New York. The case was brought to immediate conclusion, with the *pesak* rendered at that time... On a case that would be an absolute emergency situation, I could always fly into New York in just a few hours, but that hasn't happened. I have a regular time when I visit, when there is a *Beis Din* [session scheduled], and before that time, I advise on other matters within the *Beis Din* framework...

Hamevaser: How are the *dayanim* chosen for the RCA *Beit Din*?

Rav Schwartz: In the past, they were chosen by the *Rosh Beis Din*, Rav Steinberg... not by any [committee] that chose the *dayanim*.

Hamevaser: And the members of the Va'ad Halakha?

Rav Schwartz: The Va'ad Halakha, I think, were chosen by the president or the administration, and were asked to be members of the Va'ad Halakha. This is because they served, not as a *Beit Din*, but mostly as halakhic advisors, to the Executive Committee, which is the functioning

body with whom the president and the top officers meet... on a regular basis.

Hamevaser: In the upcoming months or so, what do you personally consider to be the most pressing issues that should be on the agenda of the RCA *Beit Din* and of the Va'ad Halakha?

Rav Schwartz: I couldn't possibly tell you what is on the agenda as far as the Va'ad Halakha is

proceedings to be registered in the RCA registry. The same thing if people have *gerut*, things of that sort, they would send it in to be kept in the registry for posterity, [to avoid problems] later on... An individual rabbi cannot keep the records like they can in a central registry... There is something in the works as far as having a type of data bank... to straighten out all of these records... In several decades that [system] should be easily accessible, to know who received a *get*, and what the situation is...

Hamevaser: Is there anything that the RCA can do in terms of keeping records of marriages that take place within the Conservative and Reform movements?

Rav Schwartz: Well, that I don't know. They're not going to send us their records... When we do *get* cases, though, we make notes of possible *mamzerus* issues or possible *issurim* on the... records of the individual couples if it comes to a *get*... I think that the majority of *gittin* handled by the RCA *Beis Din*, and let's say a *Beis Din* like in Chicago, are for people that are not Orthodox. But somehow, they know the importance of an Orthodox *get*, so then in our discussions, and in the forms that are filled out, sometimes we become aware of *yuchsin* problems, ...and [we] keep that as part of their record. As to what is going on, there have already been *mamzerim*, or improper *gerut*, and things of that sort.

Hamevaser: Would you care to make any comments in conclusion?

Rav Schwartz: I think one of the important things that has to be done... is to broaden [the base of] those who participate in the RCA *Beis Din*. We have to train, within the scope of the *Beis Din*, *dayanim* who will, in addition to having halakhic knowledge, know how to deal with... people. That's a challenge for every *Beis Din*; not everyone who might be halakhically knowledgeable in a yeshiva or elsewhere is competent to deal with the actual cases in a *Beis Din*. The academic, many times, is not what is in the clinical area, and this is one of the things we have [to do], to sort of build a bridge and close that particular gap. A *Beis Din* is not just dealing with a *Shakh* or a *Taz* or a *Beis Shmuel* or a *Chelkat Mehokek* or a *Rambam*; it is dealing with people, how to relate, and how to adapt this within the halakhic framework, and deal with the personalities of the people that are involved. This is something that I would like to introduce more, or see about training people that should be able to fulfill these roles.

Hamevaser: Thank you very much.

A *beit din* does not just deal with a *Shakh* or a *Taz* or a *Beit Shmuel* or a *Rambam*; it deals with people...

concerned, but as far as the *Beis Din*, there has to be... a conscious effort made to clarify or to reduce the number of situations that involve [stranded spouses], whether the husband or the wife. A lot of people forget, and it's not in any way a question of being an anti-feminist, but there are a lot of situations in which there is a recalcitrant spouse that is a wife, and the husband [cannot remarry], and that could drag on for a couple of years, too. In all these cases, extra efforts should be lent to disengage the controversies that exist... If people don't bring their cases to the RCA, it's not within our jurisdiction, so to speak. But cases that are brought to us, we try to the utmost [to resolve them]. That's one of the things that is, as they say, on the *sefer hayyom*. It's very, very important.

Hamevaser: Some time ago, the RCA embarked on a project to try and keep a registry of all "kosher" marriages, so to speak, and "kosher" *gittin*, and it would seem that the project could have great potential for solving many problems of *yuchsin* that may arise a generation or two in the future. Is the RCA still pursuing this registry?

Rav Schwartz: This is not so much *Beis Din* per se, but there is a central registry to which all RCA rabbis, when they have a *siddar kiddushin* or something like that, can send a form for the

Yedidim
A year-old big brother program for Russian youths already serves over 3,000 participants throughout Israel and desperately needs your support!
For more information, contact Simeon Chavel at (212) 568-5350, 543-7856.

Prenuptials

Continued from page 5
 rabbi and *semikha* students. If every rabbi selects the pre-nuptial agreement with which he feels most comfortable and requires every couple that he marries to sign it, many potential *agunah* situations could be averted. Although some rabbis do require couples to sign pre-nuptial agreements, it has not yet been instituted as a standard public policy matter. While some may not require couples to sign an agreement due to an oversight, the problem of *agunot* is sufficiently serious to warrant correcting the omission. Rabbis cannot change the halakha requiring that the husband voluntarily grant the wife a *get*, but they can work within halakhic parameters to prevent abuse of the halakha by recalcitrant husbands.

In response to those who feel uncomfortable with blatantly raising the specter of divorce at a wedding, several points should be made. First, it is not necessary for the agreement to be signed at the wedding ceremony itself. It can be done in the rabbi's study at some time prior to the

wedding. Additionally, once signing pre-nuptial agreements become standard, it will raise eyebrows no more than the *ketubah* which discusses the sum the bride will receive from the groom in the event of his death or divorce. Finally, and most importantly, the prospect of solving the *agunah* problem far outweighs the minor discomfiture that signing an innovative ante-nuptial agreement might engender.

The issue of *iggun* is one of the most compelling concerns which challenges our community. While resolving the cases of those women who have already become *agunot* is exceedingly difficult, there are viable methods with which we can prevent the creation of more *agunot*. It is up to each individual to sign an pre-nuptial agreement when he or she marries, and it is up to rabbi and communal leaders to ensure that it becomes standard procedure in every Jewish wedding. It is in this manner that we can attempt to eradicate the problem of *iggun* from our community.

YESHIVA UNIVERSITY'S TORAH U'MADDA PROJECT
 Announces a series of shiurim and club hour presentations on
TORAH U'MADDA THROUGH THE AGES
RABBI TZVI FLAUM, MASHGIACH RUCHANI STERN COLLEGE

Monday, November 18, 1991 at 8:00 P.M.
 -and-
 Monday November 25, 1991 at 8:00 P.M.

Topic:
PRIMARY SOURCES FOR THE UNDERSTANDING OF TORAH U'MADDA

Both Shiurim will be held in the SCW KOCH AUDITORIUM at 245 Lexington Avenue, and are open to YC students as well. A collation will follow.

The shiurim are sponsored by:
 The Yeshiva University TORAH U'MADDA PROJECT
 in cooperation with the Torah Activities Council of SCW

Me, Myself, and I... and God: Where Babel Went Wrong

Simi Chavel

Based on *shiurim* by Rabbi Menachem Liebtav

The Bible sandwiches the story of the Tower of Babel between two lists. The first one, in the tenth chapter of Genesis, describes the genealogy and geographical development of the nations which descended from Noah's sons after the Flood. Following the story of the Tower of Babel (11:1-9), the Bible lists the specific genealogy of Shem, bearer of Noah's special blessing (9:26-27), and closes with the family of Terah. Clearly this second list points to Avram, son of Terah and recipient of God's Word (12:1), as the focus and pinnacle of the record.

In effect, then, what began as a universal history, beginning with Noah and his sons and ending with the proliferation of man throughout the world, transformed into a particularistic account of the rise of Avram from the family of Shem. This shift of interest demands explanation. As the only recorded event bridging the gap between these two accounts, the story of the Tower of Babel explains this narrowing of focus in the historical process from the universal to the particular.

The Bible begins the story by declaring the unity of mankind: "And it was that the land was of one language, and of unified thoughts" (11:1). Mankind, the Bible continues, utilized its unity to industrialize, embarking on a project to build a city with a tower in its center. The purpose of this joint effort was to "make for ourselves a name" (11:4). God, seeing this, impedes their success by creating many different languages "so that they shall not hear each other's speech" (11:7).

This course of events may be viewed as a process of sin and punishment. Understanding the characters of the sin and punishment will clarify the significance of the story in relation to the lists surrounding it.

The nature of the unities of the universe and of God clearly differ. Whereas harmony characterizes the unity of the universe, the unity of God consists of His perfect consistency. Ultimately, though, the harmony of the universe depends on God and His unity. If many gods ruled the universe, their interests and values would constantly conflict with each other, and eternal strife would define the world. In such a universe, every human could declare his loyalty to a specific god and to the values of that god, and for-

ever deny the notion of compromise in human society. However, when only God rules the universe, all values emanate from a singular source, attributing themselves to Him. Thus the attainment of these values demands integration and oneness, not dominance and fractionation.

The goal of mankind, then, should be to engineer a physical, social, and religious parallel of God's unity, in both its complete harmony and its self-sufficiency. However, any celebration of the unity of the world and of humanity should emphasize that it relies on God and His unity; in other words, it should reflect and direct itself toward the unity of God. When the people of Babel build their tower, however, they explicitly express their desire to "make for ourselves a name," directing their unity toward themselves. By failing to recognize the role God's unity plays in the universe, they rebel against Him. Accordingly, God punishes their warped unity by creating utter confusion and disunity; He makes the people of Babel unintelligible to each other.

In a broader context, the story of the people of Babel parallels and continues another, earlier story in Genesis. The Bible implies that had Adam, in tandem with his wife, not rebelled against God, peace and complete harmony would have prevailed on Earth. Whereas before their sin there exists no evidence of tension between man and nature, man and his wife, or man and God, afterwards, friction and strife prevail. God confronts and exiles the first couple; He decrees that social inequality will characterize the relationship between man and woman; He even curses the land, limiting man's ability to coexist peacefully with his natural surroundings (3:17-20). Thus the stories that follow, of Cain and of Lamech, consist of the highest degree of social disharmony, murder: Cain also dominates the natural environment and builds a city. Because the first man and woman sinned, the attainment of paradise, or an historical parallel, requires a process, namely, history.

The events of the Tower of Babel closely resemble, in these terms, the story of the first man and woman. Had the people of Babel directed their unity toward God and lived a completely harmonious existence — physically, socially, and religiously — they would have attained that quality of life toward which human history strives. Furthermore, in doing so, they would have completed the process begun by the first man and woman. However, the rebellion against God by the people of Babel prevented the realization of that goal.

The text indicates and supports the connection between the two stories by utilizing the word "from Kedem" (11:2). After the first man and woman sinned, God banished them from the Garden, and they travelled eastward (3:24). The east, like the sun that rises from it, may symbolize dawn and birth; if so, travelling eastward would indicate an attempt at regaining the ideal existence which characterized the beginning of man.

The use of the word "from Kedem," though, has two connotations in 11:2. One links the people of Babel with the first man and woman and indicates the actual possibility of regaining the life of the Garden. The second reading,



though, foreshadows the sin of the people of Babel. The Garden was located in the east, again symbolizing light and God. When the Bible says that the people travelled "from Kedem," they travel away from God. The overall meaning refers to a failed attempt at regaining, or recreating, the Garden. The account explains that the failure to point to God as their source and focus of unity characterizes their sin. Ultimately, this sin, which roots values in a source other than God, serves as the foundation for paganism.

Consequently, as with the first man and woman, God needed a corrective tool in the universe to return the people of the world to the unity of the universe and to the unity of God. A new modified historical process would characterize that return. Since the world was fragmented into different nations, a universal approach could no longer succeed. Instead, a particular person or nation would have to lead the world back to God. Avram, the son of Terah, of the family of Shem, was that person, and he would build that nation. Thus prior to the events at Babel, the Bible con-

cerned itself with universal human history as its attempts to attain paradise. After the failure of Babel, when the new process of particularity begins, the Bible interests itself in focusing on Avram and the nation of Israel, who will lead that process.

Avram and the nation which arises from him, do not only replace universal humanity in shaping history; they correct the failures of Babel as well. First, in direct contrast with the people of Babel, Avram builds altars and offers sacrifices in the service of God: "And he built there an altar, to God Who appeared to him (12:7)... And he built there an altar to God and he called out in the name of God" (12:8). Furthermore, when the people of Israel arrive in the land of Israel, David and Solomon build a city with a tower in its center, namely, Jerusalem and the Temple. Clearly, this parallels the attempts of the people of Babel. In this circumstance, though, God serves as the focus. In the desert, God reminds the Israelites repeatedly that when they arrive in Israel they will build a Temple where God's name will dwell (eg., Deut. 11:11). Instead of constructing a city and tower for themselves, they will do it for the name of God. Once the Israelites reach this level of physical, social, and religious unity, the rest of the world will follow its lead.

The holiday of *Sukkot* and the dedication of the Temple by King Solomon on this holiday symbolize and, for a time, realized this relationship between Israel and the nations of the world. On *Sukkot* the *Cohanim* sacrifice seventy cows. Chazal relate these sacrifices to the seventy primary languages of the world, referring the seventy primary nations of the world (both of which, significantly, were born in the confusion of Babel). This indicates that in the Temple, all the nations of the world unite to serve God. Similarly, Zachariah declares (14:16) that all the nations of the world will come to Jerusalem to worship God on the holiday of *Sukkot*. Kings I, 8:10 relates that after King Solomon dedicated the Temple to God on the holiday of *Sukkot*, and prayed for the welfare of the Israelites and for the glorification of God's name throughout the world, there was international recognition of King Solomon's wisdom and homage to God as its source.

The people of Israel, then, and the Temple which they build for the name of God, serve to lead the world to a complete universal harmony — physical, social, and religious, which the people of Babel failed to achieve.

Am Segulah

Continued from page 3

teenth century, had an affinity to mysticism and kabbala. Throughout the *Kuzari* he refers to the metaphysical character of the Jewish nation, which is inherently different from all other nations. Halevi explains via the persona of the chaver that a special Godly element was given to Adam, passed down selectively to Seth, Noah, Shem, Abraham, and finally bequeathed to Jacob and his sons.

The Jewish nation was divinely chosen to inherit the Godly element contained within Adam's soul. God determined that an everlasting bond, manifested in the Godly element of the soul, should exist between Himself and the Jewish nation. This decision was independent of any action on the part of Israel or her forerunners. The soul of a born Jew, according to Halevi, therefore possesses greater spiritual capacity than that of a member of another nation, even of one who strives to be Jewish.

Rambam's halakhic and philosophic formulation naturally fits into his regular posture of thought as well. All rewards and punishments, he teaches, are based on man's actions. There-

fore, it is impossible for God to have chosen the Jewish people as His most beloved and precious nation without Israel first choosing Him. Any individual who goes through the intellectual thought processes of accepting the yoke of Torah and *mitzvot* is worthy of being considered a member of the *segula* pact. God developed an intimate relationship with Abraham because Abraham used his intellectual capabilities to find God. Only upon the Jewish nation's acceptance of the Torah and the responsibilities of holiness, however, was the enduring national "*segula* relationship" established between God and Israel.

In this conception, God established a unique covenant with the nation of Israel because at the time they alone were willing to submit to the dictates of divine will (as indicated by the midrash mentioned above). God chose Israel, but only after Israel chose God. When the people defile their holiness, and do not adhere to the laws of the Torah, they descend to the level of the other nations of the world, and the *segula* relationship may at that point be severed. However, should they or any nation choose to return to God, regardless of their origin, Rambam assures the world that God awaits with open arms.

HAMEVASER

Rabbi Isaac Elhanan
2540 Amsterdam Ave.
New York, N.Y. 10033

Non-Profit Org.
U.S. POSTAGE
PAID
New York, N.Y.
Permit No. 4729