



# Dealing with criminals in our community (2)

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## רמ"א יורה דעה הלכות נידוי וחרם סימן שלד סעיף א

ומנדין למי שהוא חייב נידוי ואפילו יש לחוש שעל ידי כן יצא לתרבות רעה, אין לחוש בכך (פסקי מהרא"י סימן קל"ח).

**ובט"ז שם ס"ק א:** ואפילו יש לחוש שע"י כן יצא לתרבות רעה. תמיה לי האי מילתא טובא דהיאך נחוש לאיסור שעושה זה ונביאהו לידי תרבות רעה ח"ו אשר כל באיה לא ישובו והנה מקור דין זה בפסקי מהרא"י סי' קל"א וז"ל וראיה ממה שמצאתי בקובץ שהוכיח מהא דאמר באגודה פרק הנושא שאמר רבינו הקדוש בעת פטירתו בדרך נבואה דרב אחא בר יאשיה שמתנינו להנהו דאקפו פירי בכורא וחללו שבת ואשתמוד משום דשמתנינו וקשה מאי קמ"ל תלמודא בהאי מילתא ורבינו הקדוש גופיה למאי הלכתא ניבא דבר זה אלא לאשמועין דאפילו אם נראה לחכמים שמפני שהן מנדין מאן דהו שבשביל כך יצא לתרבות רעה לא יניחו עבור זה מלעשות כהלכה עכ"ל. ומ"ש בשם פרק הנושא הוא ט"ס אלא האי נבואה דרבי היא בפרק עשרה יוחסין (דף ע"ב) ולעד"נ דמהא אין ראיה כלל דהתם משמע שרבינו הקדוש בא להזהיר את השומעים שידעו שיש פסולים בבבל כמו שאמר התם טובא דיש מקום שכולם ממזרים ויש מקום שיש ב' אחים שמחליפים נשותיהם זה לזה וע"ז אמר ג"כ שיש מקום בבבל שסרו היום מאחרי המקום ברוך הוא דשמתנינו רב אחא כו' ועל כן יש להתרחק מהם וא"ל הלא המפורסם א"צ ראיה ולא דמי לשאר המקומות שהזהיר שיש ממזרים שהם אינם ידועים משא"כ בזה שהמיר ובודאי בלאו הכי יפרשו מהם לזה אימא לך דמכ"ש לק"מ דכוונתו של רבי היתה להוכיח שהנבואה דבר בו בשאר הדברים שאמר אף שלא היו מבוררי' בעיני השומעים ויביאו ראיה מדבר זה שיראו שהוא יודע בא"י מה שנעשה היום בבבל מהנך דשמתנינו רב אחא וזה א"א כי אם בדרך נבואה מזה ידעו שגם בשאר הדברים רוח ה' דבר בו כנ"ל ברור כוונת נבואה זו ויש לי להביא ראיה איפכא מתלמוד ערוך פ"ק דקדושין (דף כ') במי שנמכר לעבודת אלילים עצמם דהיינו לחטוב לה עצים ושאר צרכים לא לשם אלהות ואמרה תורה שצריך לגאול אותו דתנא דבי ר' ישמעאל הואיל והלך זה ונעשה כומר לעבודת כוכבים אימא לידחי אבן אחר הנופל כלומר שלא תהא לו גאולה ת"ל גאולה תהיה לו והנה ק"ו יש כאן דמה התם שכבר נעשה כומר לעבודת כוכבים ואפ"ה הזהיר' תורה בקום עשה שחייבין לפדותו ק"ו בזה שעדיין לא התחיל בעבודת כוכבים כלום פשיטא שצריכים אנו להיות נזהרים להיות לפחות בשב ואל תעשה ולא לעשו' מעשה להביאם לידי עבודת כוכבים ודאי זה דבר שאין

שׁוֹה עַל הַלֵּב לְהַנִּיחוּ וּרְאִיָּה עוֹד מִמִּשְׁׁשׁ הַגָּאוֹן מוֹהֲרֵר יוֹדָא מִיִּנְיָ ז"ל בְּתִשׁוּבָה סִי' ה' ז"ל וּבְרָאוֹתַי שֶׁאֵי אֶלְהִצִּיל שְׁתֵּי נַפְשׁוֹת מִיִּשְׂרָאֵל שְׁלֹא יֵצְאוּ לְתִרְבוֹת רַעָה ח"ו אִמְרַתִּי לְהַתִּיר מִיִּנְקַת חֲבִירוֹ כו'. וּמִבִּיא רְאִיָּה מִפִּי הַשּׁוֹלַח (ד' ל"ח) הֵיא אִיתְתָּא [אִמְתָּא] דְהוּה עֲבָדִי אִינְשֵׁי בְּהַ אִיסוּר' אִמְרַ אֲבִי אִי לֹא דֹאמֵר שְׁמוּאֵל כֹּל הַמְשַׁחֵרֵר עֲבָדוֹ עוֹבֵר בְּעֵשָׂה כו' ע"ש וְאֵכ"ו ק"ו בְּזֵה שְׁאִין לַעֲשׂוֹת מַעֲשָׂה שֵׁישׁ חֲשַׁשׁ מִמֶּנּוּ כִּנ"ל בְּרוּר שְׁאִין לַעֲשׂוֹת לַמַּעֲשָׂה כְּהַג"ה זֹאת אֶפֶס עַל פִּי שֶׁהִיא מֵהַלְכָה מִמְקוֹם קָדוֹשׁ בְּעַל אֲגוּדָה ז"ל וּבִאֲגוּדָה שְׁלֵנוּ לֹא נִמְצָא זֶה כֹּלָל וְעִיִּין מ"ש בִּס"ס זֶה בִּשְׁם רִש"ל:

### נְקוּדַת הַכֶּסֶף שֵׁם

... ..

### נְקוּדוֹת הַכֶּסֶף

(סִימָן שְׁלִיד בְּפִי ס"ק א')  
דְּקִשָׁה טַל מֵהַרְמַזִּי וִישׁ  
לְחַוֵּה כֹּל רְאִיוֹתַי זִכְרָא  
כִּיּוֹן דְּדִין כִּיֵּד כוֹף שְׁמַנְדִּין  
לְחוֹשׁ לִין לְחוֹשׁ דְּלִיכְ כְּטַל  
דִּין יִשְׂרָאֵל :

יְהוּדָה הַיְיִוֵּלָא

### פְּתַחֵי תִשׁוּבָה יוֹרָה דְעָה סִימָן שְׁלֵד ס"ק א

וּאִפִּי יֵשׁ לְחוֹשׁ כו' עֲבָה"ט וְעִיִּין (בְּתִשׁוּבַת רִשְׁב"ץ ח"ב סִי' מ"ז) שְׁדַעְתּוֹ ג"כ כְּדַעַת הַנְּהַ"כ וְכֵן כָּתַב בְּתִשׁוּבַת שְׁמַשׁ צְדָקָה חִי"ד סִימָן מ"ח ע"ש (וּבְתִשׁוּבַת חוֹת יֵאִיר סִי' קמ"א) ע"ש (וּבְשִׂאֵלֵת יַעֲב"ץ ח"א סִימָן ע"ט) בִּסּוּפוֹ וְכ"כ (בְּתִשׁוּבַת רַדב"ז הַחֲדָשׁוֹת סִימָן קפ"ז) וְסִיִּים וּמ"מ צְרִיךְ לְמַנְהִיג הַדּוֹר לְהִיּוֹת מִתּוֹן בְּדַבְרִים כְּאֵלֶּה לְפִי שְׁאִין כֹּל הָאֲנָשִׁים שׁוִים וְלֹא כֹל הָעִבְרִיּוֹת שׁוֹת וְיִהְיוּ כֹל מַעֲשֵׂיו לְשֵׁם שְׁמַיִם ע"ש. [וְכֵן הָעֵלָה (בְּתִשׁוּ' ח"ס סִי' שְׁכ"ב) וְכָתַב שֵׁם אִמְנָם יֵשׁ לְהַסְתַּפֵּק הֵיכָא דֵאִיכָא לְמִיחַשׁ שִׁמִּיר דְתָנוּ וְיִקַּח גַּם בְּנֵי הַקְּטָנִים עִמּוֹ מֵהוּ לְחוֹשׁ לְקְטָנִים שְׁלֹא חֲטָאוּ. וְדַעְתּוֹ דִּישׁ לְחַלֵּק דְּמִי שֵׁישׁ בּוֹ דַּעוֹת כּוֹזְבוֹת דְּקָרוֹב לּוֹדָאֵי שִׁלְמוֹד גַּם לְבְנֵי אַחֲרָיו וְאִזּוּ יִהְיוּ גַם הַבְּנִים בְּכֹלָל כֹּל בִּאִיָּה לֹא יִשׁוּבוּן אִין לְחוֹשׁ עַל הַבְּנִים וּמַה"ט נ"ל דְּהַכְּתָה הָאֲרוּרָה הַמֵּאֲמִינִים בְּש"צ יִמ"ש אִם ח"ו לֹא יִהְיֶה לְבַבָּם לְטוֹב רוֹדְפִין אוֹתָם עִם בְּנֵיהֶם וּבְנוֹתֵיהֶם כו' אֲבָל סִרְבָּן וְעִבְרִיִין בְּעַלְמָא מֵאֵן לִימָא לֵן שְׁלֹא נַחוּשׁ עַל בְּנֵי כו' וְהָאֲרִיךְ בְּזֵה וּמְסִיק עֲדִיִין הַדְּבַר צְרִיךְ עִיּוֹן וּמִתּוֹן ע"ש

### שׁוֹלַחן עֵרוֹךְ יוֹרָה דְעָה הַלְכוֹת נִידוּי וְחֵרֵם סִימָן שְׁלֵד סֵעִיף ו

אִם רָצוּ בֵּית דִּין לְמַעַט הַנִּידוּי מִל' יוֹם, אוֹ לְהוֹסִיף, הַרְשׁוֹת בִּידָם. הַגְּהָ: וִישׁ רְשׁוֹת לְבֵית דִּין לְהַחְמִיר עֲלֵיו שְׁלֹא יִמּוּלוּ בְּנֵי, וְשִׁלָּא יִקְבֵּר אִם יִמּוֹת (בְּנִימִין זָאב סִי' רפ"ט וְכ"כ הַב"י בְּשֵׁם הַרְמַב"ן סִי' רמ"ד), וְלִגְרַשׁ אֶת בְּנֵי מִבֵּית הַסֶּפֶר וְאִשְׁתּוֹ מִבֵּית הַכְּנֶסֶת, עַד שִׁקְבֵּל עֲלֵיו הַדִּין (נ"י פֶּרֶק הַגּוֹזֵל).

**ובט"ז שם ס"ק ג:** ולגרש את בניו מבית הספר כו'. כן כתב הר"ן בשם רב פלטוי גאון ורש"ל כתב ע"ז בפרק הגוזל בתרא סי' י"ג חלילה במה שהעולם אינו מתקיים אלא בהבל פיהם של תינוקות לבטלם בשלמא מילה שעיקר המצוה תלויה באב והיא כבודו וכן לקבור מתו עליו מוטל שלא להלין והיא כבודו כופין אותו עד שיקבל עליו תשובה ואח"כ מלין וקוברין אבל בת"ת של תינוקות שאין לו תשלומין ועליו נאמר אם תעזבני יום יומים אעזבך פשיטא דלית טעמא להא מילתא גם מה שכתב להוציא את אשתו מבהכ"נ לא נהירא אם הוא חטא היא מה חטאה כו' לא אאמין שיצאו ב' דברים אלו מפי הגאון עכ"ל ויש לתמוה על תמיהתו לפי דעתו היה לו יותר לתמוה על שלא יקברו לו מתו אם הוא חטא אותו נפש מה חטאה שתהא מוטלת בבזיון וכמ"ש הטור סי' שמ"א דבזיוני דכולי חיי הוא ונלע"ד דהאי גאון לא מיירי אלא מבניו הקטנים שאין בהם זכות מצד עצמן עדיין אלא תלויים ועומדים בזכות של אביהם אותם יש רשות לעכב הקבורה אבל לא גדולים שהם בני קבולי שכר או עונש מצד עצמם ומזה הטעם נתן הגאון רשות גם כן לגרש בניו מבית הספר והיינו הקטנים אבל באשתו ודאי אין שום טעם לבזותה דהיא עולה עמו ואינה יורדת עמו כנלע"ד:

### Is collective punishment permissible

#### שו"ת ריב"ש החדשות סימן ט

עוד שאלת שנים או ג' יהודים שהי' ממונים על בית המטבע של המלך ונמצא אחריהם פסול במטבע ויקצוף המלך מאוד וחתמו בערה בו לגרש את כל היהודים אשר בכל מלכותו ואחר העמל והטורח התפשרו עם המלך לבלתי שלחם מזה בכך וכך אלפי זהובים והקהל סנו ברורים לפסוק על כל איש ואיש מהיהודים כמה ראוי לפרוע. ויפסקו על ראובן חמשים פרחים ועל אפו וחתמו פרע כי אמר שלא הי' ממונו מספיק לכך. אחר ימים מעטים מסקו עליו עוד הי' פרחים. ויבך ויתחנן להם באומריו כי אין לאל ידו לתת עוד פרזסה ולא אבו שמוע ויסגרוהו ביד שוטרי המלך וידיו אסורות לאחרינו ויוליכוהו בתרסה ובח אל בית גזבר המלך הממונה לגבות מן היהודים מה שנתחייבו למלך ויאמרו לו ראובן זה חייב עשרים פרחים, כשמוע ראובן כך צעק במר נפש ויתן את קולו בככי ויאמר עד עתה בקשתם הי' פרחים. ועתה שמתם במי הנזכר שהם עשרים. עודנו מדבר עמם הפילוהו השוטרים ארצה למען ענותו ולמען הכותו מכת אכזרי. או בהיותו תחת השבט אמרו לו הברורים תנה לנו הי' פרחים וסדר קם צא מן העיר הזאת וקבל עליך להיות נזיר שמשון אם תשיב מה תוך עשר שנים ונפסוד אותך. וען ראובן על כרחו אמר. על הפרעון ועל (א) ותיכף צאתו מכם צעק במר נפש לעיני כל ישראל כי לא מלבו קבל הנזירות רק מפחד הנזירות והמכות. האם חייב לנהוג נזירותו אם אין:

לירו על יד מי שיהיה, הנה איב אף לדעת רי' נאי מותר לידור להם במזכס העומד מאליו. כיש וכיש שקצבת המלך אשר קצב על כל היהודים היה נול נמור אצלינו וכי בשביל כי או נ' שקלקלו בענין המטבע וקצוף על כל היהודים וביד חוקה יגרשם מארצו עד שהוצרכו להתפשר בכמה אלפי זהובים ועל כיוצא בו אמר אברהם אבינו ע"ה להקביה (בראשית י"ח, כ"ה). חלילה לך וכו' ומשה רבינו ע"ה אמר (במדבר ט"ז כ"ג) האיש אחד יחטא וכו' ויצדק ניב על זה המאמר המורגל בלשון ארמי טוביה חטא וזונד נגד. איב זו הקצבה נול נמור. ומכל הצדדין זו היא

## **רמב"ם הלכות עבודה זרה פרק ד הלכה ו**

והיאך דין עיר הנדחת, בזמן שתהיה ראויה להעשות עיר הנדחת, בית דין הגדול שולחין ודורשין וחוקרין עד שידעו בראיה ברורה שהודחה כל העיר או רובה וחזרו לעבודת כוכבים אחר כך שולחים להם שני תלמידי חכמים להזהירם ולהחזירם אם חזרו ועשו תשובה מוטב ואם יעמדו באולתן בית דין מצוין לכל ישראל לעלות עליהן לצבא והן צרין עליהם ועורכין עמהן מלחמה עד שתבקע העיר כשתבקע מיד מרבין להם בתי דינין ודנים אותם, כל מי שבאו עליו שני עדים שעבד כוכבים אחר שהתרו אותו מפרישין אותו, נמצאו כל העובדים מיעוטה סוקלין אותן ושאר העיר ניצול, נמצאו רובה מעלין אותן לבית דין הגדול וגומרין שם דינם והורגין כל אלו שעבדו בסייף, **ומכין את כל נפש אדם אשר בה לפי חרב טף ונשים אם הודחה כולה, ואם נמצאו העובדים רובה מכים את כל הטף ונשים של עובדים לפי חרב**, ובין שהודחה כולה בין שהודחה רובה סוקלין את מדיחיה ומקבצין כל שללה אל תוך רחובה, אין לה רחוב עושין לה רחוב, היה רחובה חוצה לה בונין חומה חוץ ממנו עד שיכנס לתוכה שנאמר אל תוך רחובה, והורגין כל נפש חיה אשר בה ושורפין את כל שללה עם המדינה באש, ושריפתה מצות עשה שנאמר ושרפת באש את כל העיר ואת כל שללה.

## **מגדל עוז הלכות עבודה זרה פרק ד הלכה ו**

וכבר תמה ר"מ הלוי מטוליטולא עליו למה העניש הנשים והקטנים שאינן בני חיוב והשיבו חכמי לוניל ז"ל בראיה דגרס בספרי הכה תכה את יושבי העיר מכאן אמרו חכמים אין מקיימין את הטפלים כלל שהורגין אותן דדריש את רבויא ועוד דבכריתות פלוגתא דר' אליעזר ור"ע דר' אליעזר סבר קטנים בני רשעי ישראל נהרגין ור"ע סבר אין נהרגין ופסק כר' אליעזר משום דסתם ספרי ר"ש וקאי כר' אליעזר ועוד דאיכא למילף מעדת קרח ואנשי יבש גלעד שהרגו הנשים והטף אף על פי שהן לא חטאו נענשו בעבור הגדולים משני טעמים, חדא שהם סבה וגורמים לשיבת הגדולים ועוד לרדות הגדולים בהריגתן שהן חביבין עליה.

## **שו"ת חתם סופר יורה דעה סימן שכב**

אמנם יש להסתפק היכא דאיכא למיחש שיצא לתרבות רעה זה הרשע ויקח גם בניו הקטנים עמו ויטמעו בין העכו"ם מהו לחוש לקטני' שלא חטאו או דלמא כי צריכים אנו להעמיד דתינו ואין אנו חוששי' לשום דבר ולכאורה י"ל משו"ה מיייתי בקובץ ישן הנ"ל ראי' מנבואות של ר' בשעת מותו שהיא קצת ראי' דחוקה וכי נעלם ממנו כל הני ראי' ברורות וחזקות דמיייתי בחו"י הנ"ל אע"כ שרוצה לאתוי' ראי' דאפילו לבנים קטנים אין חוששי' שהרי כל העיר אשתמוד ולא היה שריד ומסתמא לקחו בניהם עמם.

אלא שהדבר נראה קצת כמו זר בעיני בשגם ידוע כי אין ראיות הקובץ מכרעת מנבואתו של רבי ובחו"י מראה פנים להיפך לומר שלא כדין עשה ועוד נ"ל דיש לחלק דודאי רשע שהוא מין ואפיקורס ופוקר בתורה אזי קרוב



לודאי שילמוד אמונתו המזויפת גם לבניו אחריו ואז יהיה גם הבנים בכלל כל באיה לא ישובו ולא ישיגו ארחות חיי' אז י"ל מן הסברא דאין לחוש על הבנים ובתוספ' דסנהד' מייתי פלוגת' בקטני בני עיר הנדחת ומייתי לה הרמב"ן פ' ראה וכן פסק רמב"ם פ"ד מהל' עכו"ם ה' וי"ו /ו' ע"ש מכ"ז נ"ל דהכת הארורה המאמינים בש"ץ ימ"ש הידוע תיפח רוחם וישחקו עצמותם אם ח"ו לא יהפך לבבם לטוב אותם יורדפו עם בניהם ובנותיהם כי כולם ארורים הם לה' והמינות תקועה בלבם ואין ע"ז בעולם שלא נכללו באמונתם המזויפת וטוב יותר אם יפרדו מקהל הגולה ויתערבו בעכו"ם הם ובניהם ולמצוה רבה יחשב וגם בהיותם עדיין בין היהודי' פתם פת כותי וינים יי"נ = יין נסך = וכל דבריהם ומחשבותם ועלילותם לע"ז וכה"ג אמרי' בנדה ל"ג ע"ב דבנות צדוקי' סתמן ככותי' לכל דבריהם והלכה כת"ק שם והני נמי להני דמי' וגריעי מיני' טובא וא"כ י"ל הנך בירתא דסטי' נמי היה כך שפקרו ופקפקו ע"ד חז"ל באופן דמשכו גם בנייהו בלצנותי' ואל תתמה שהרי להכ"מ בלא"ה אין מנדין אלא במפקפק ע"ד חז"ל אבל לא לעבריינ בעלמא ועפר"ח א"ח רסי' תצ"ו ע"ש ומה שהקשה עליו הש"ך בי"ד סי' של"ד סק"ע נ"ל ליישב דקו' הכ"מ הכי הוא דודאי אי נימא כחלוקו של הר"ן ז"ל דדבר שיש לו עיקור /עיקר/ מן התורה קיל טפי משום דאינו עוקרו לגמרי א"כ ה"ה וכ"ש דבר שאין לו עיקור /עיקר/ מן התורה ואינו עוקרו לגמרי פשיטא שאין לנדונו והשתא ק' הא נטילת ידים אין לו עיקור מן התורה דקראי אסמכתא בעלמא הוא ועיקור יסודתו הוא משום סרך תרומה ואלעזר בן הנדך שזלזל בנט"י = בנטילת ידיים = משמע שזלזל בנט"י סתם היינו לחולין ולא לתרומה וקדש ונמצא שהניח עיקרו של תקנת חז"ל ומ"ט נדוהו אע"כ משום שערער ופקפק וש"מ כל המערער ומפקפק אפי' בקל שבקלות מנדין אותו ומ"מ גם דינו של ר"ן אמת במי שאינו מפקפק רק עובר ע"ד חז"ל יש לחלק בין עוקר הכל אז מנדין אותו ואי לא עקר הכל מלקי' אותו והנה אין רחוק לומר דהני דצד כוורי בשבתא לא היה מלאכה דאורי' רק דרבנן ויש לו עיקור מן התורה ומ"מ נידם הואיל שפקפקו וערערו ומשו"ה לא חס על בניהם אחריהם.

אבל סרבן ועבריינ בעלמא מאן לימא לן שלא נחוש על בניו שיהיה צדיקים ואיך נגרשם מהסתפח בנחלת ה' והנה מהרש"ל ביש"ש פ' יו"ד /י' /דב"ק סי' י"ג השיג על תשובת רב פלטוי גאון שיש לגזור על אשת המוחרם שלא לילך לבה"כ ולגרש בניו מבית הספר וכ' חלילה במה שכל העולם אינו מתקיים אלא בהבל תינוקת שב"ר = של בית רבן = וכו' גם מ"ש להוציא אשתו מב"ה אם הוא חטא היא מה חטא וכו' ומסיים בסוף וז"ל אבל לעשות נזיפה לאשתו אם לא יצא עלי' שום בישא ולא שום סרבנות פשיטא ופשיטא דלא עבדינן לה מידי וכן להוציא בניו מן המדרש או מן הישיבה חלילה וחלילה וכן פ"א בא מעשה לידי שכל' לי חכם וזקן בדורו בעל הוראה שאוציא בני המוחרם מהישיבה ולא השגחתי בו כל עיקר עד כאן לשונו מהרש"ל והנה לפע"ד יש לי ליישב דברי הגאון רב פלטוי ז"ל דהרי ארור ונדוי ושמתא כולן לשון קללה ומיתה הם וכדאי' להדי' במס' מ"ק י"ז ע"ב ומהראוי שימות ויענש לאלתר מכיון שנתנו בו חכמים עיניהם אלא יש זכות תולה ואם כן מ"מ יש לנו לבטלו מהרבות זכיות שיגיבו עליו ויוסיפו לו כח ואומץ לעמוד ברשעו וסרבנותו וידוע כי יש זכי' רבה להאב במה שבניו הולכי' לבית הספר וגם לכל בעל הבית אם בני ביתו שומרים דרך ה' ע"כ עלינו לבטלם מבית הספר ולגרש אשתו מבה"כ כדי שלא יהיה לו להרשע שום זכות המסייעו ומ"מ אין בזה שום הפסד לבניו ולאשתו וגם לקיום העולם

העומד על הבל תינוקות שב"ר דכל המחשב לעשות מצוה ונאנס ולא עשאה מעלה עליו הכתוב כאלו עשאו נמצא שכר האשה והבנים ושל כל העולם הוא ממש כל כך כאלו נכנסו הבנים לבית הספר וכאלו התפללה האשה בבה"כ ורק אך הוא הסרבן מפסיד שכרו ואדרבא הקולר תלוי בצווארו כי הוא הגורם להם זה הביטול אבל הם לא יפסידו כי אנוסים הם עפ"י ב"ד וכה"ג כ' תוס' בשבת ד' ע"א קודם שיבא לידי איסור סקילה וא"ת מאי בעיא היא זו פשיטא שלא ישמע לנו אם נאסר לו ותני' ריב"א דאם לא התירו לא מחייב סקילה כיון שמניח לרדות ע"י מה שאנו אוסרים לו ומייתי ראי' נמי ממה שהעמידו דבריהם במקום כרת גבי פסח ומ"מ לא יתחייב הלה כרת כיון שהוא אנוס עפ"י ב"ד וה"נ דכוותי' ולק"מ ק' מהרש"ל הנ"ל מ"מ מיני' יש לדון בנדון דידן שיש לנו לחוש על בנים קטנים דבהא לא שייך לומר שלא יפסידו אם יטמעו בין הנכרים ח"ו.

ואין להביא ראי' מהא דפ' השולח מ"ו ע"ב דהמוכר עצמו ובניו לנכרים ושנה ושילש שאין פודין גם הבנים דאדרבא משם ראי' להיפך דהרי שם /גיטין/ מ"ז ע"א אמרי' אבל פודין את הבנים משום קלקולא פירש"י וז"ל שלא יטמעו בין העכו"ם וילמדו מעשיהם ובחיי אביהן ליכא למיחש להכי דמנטר להון אבוהון עכ"ל ובש"ך י"ד סי' רנ"ב סק"ה מסיים על זה משמע שאביהם הוא עמהם בשביה אבל כל שא"א שישמור אותם פודים אותם מיד עכ"ל הרי קצת ראי' להיפוך שצריכי' לחוש על הבנים קטנים אלא לפ"ז הדרא לדוכתא מ"ש בחו"י א"כ בטלת דינינו כי כל מי שיש לו בנים יהי' סרבן כי יסמוך עצמו שנרא מלנדותו שלא יוציא בניו מן הכלל.

מצאתי בס' ברכי יוסף חי"ד סי' רנ"ז מייתי ת"כ פ' בהר ופירושו בשם ראב"ד שאם אמר לקרובו הריני מוכר עצמי לע"ז אם לא תתן לי כדי דמי וכו' יכול יהיה נזקקים לו ת"ל אחרי נמכר גאולה וכו' ולא קודם ע"ש ומשמע דלא פלוג אפי' אם ימכור עצמו ובניו ועדיין צ"ע דהתם שב ואל תעשה ליתן לו דמיו אבל הכא לדחות בידי אבן אחר הנופל לגרום רדת שחת לבניו לא ועוד התם יד ישראל תקיפה ואחרי דנמכר גאולה תהיה לו ולבניו אבל הכא עדיין הדבר צריך עיון ומתון למעשה וה' ישמרנו מעזי פנים כתבתי פה ק"ק מ"ד יום ה' ז"ך מנחם תקס"א. משה"ק סופר מפפ"דמ.



## Maryland — Mr. “A” Moves to Baltimore\*

Dec 31 2009

Well, Mr. “A” is now ordering pizza at the local kosher pizza shops in Baltimore, according to a report in Baltimore Jewish Times. Indeed, he was seen at Tov Pizza on Reisterstown Road.

He is here in Baltimore apparently with the knowledge of the rabbinical Vaad. They knew he was coming, but we, the community they supposedly serve, were supposed to find out when he showed up in public.

Is it possible that his very presence poses a risk to the Jewish community? Is it over the top to even think that?

But Mr. A is bringing the baggage of his fraud conviction and even his informant status to Baltimore.

It just seems as if our rabbinic “leadership,” has acted on this community’s behalf without checking the pulse of the very people they serve. Or maybe the leadership doesn’t care what you think or what I think.

It doesn’t take much imagination to see how a person with Mr. A’s status could cause collateral damage in terms of pure personal safety to the members of our community.

\* This article originally appeared in a Baltimore Jewish Times blog. This post was not online as of January 2, 2017. Vosizneias re-published this post on December 31, 2009. The name of the alleged criminal has been omitted.

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## Criminals in Shul: Should Convicted Felons be Welcomed in Our Communities?

One of the most tragic phenomena plaguing contemporary Orthodox Jewry, without question, is that of highly publicized crimes committed by members of our communities. Tragically, and shamefully, we are no longer shocked to see news broadcasts showing *yarmulke*-clad men in handcuffs or on the defendant's stand in court. To our disgrace, Orthodox Jewry has produced in recent years a significant number of high-profile criminals convicted of molestation, rape, drug trafficking, money laundering, bank fraud, Ponzi schemes, and all kinds of other serious offenses. Each and every incident on its own, not to mention their cumulative effect in the aggregate, has created a grave חילול ה' that must concern all of us.

As part of our community's effort to properly and effectively respond and put an end to the disturbing trend, we need to address the difficult question of how to treat convicted criminals after their prison terms are completed. Should they be accepted and granted the opportunity to prove themselves again worthy of respect and the benefits of communal membership, or should they be shunned? On the one hand, we might assume that once a prison sentence has been served, and the offender has received his due punishment as deemed appropriate by our country's justice system, there is no longer any need or justification for imposing additional suffering upon the criminal and his family. On the other hand, it could be argued that the Orthodox community has the responsibility to send a loud, clear and unequivocal message rejecting criminal behavior, and accepting former convicts as congregation members could easily be interpreted as accepting their misdeeds, as well.

This question can also be asked with regard to non-prosecutable moral failings, such as instances of a consensual extramarital affair and the like. If a prominent figure has been disgraced by revelations of illicit behavior, should he be reaccepted to his congregation and community, or should he be banished as a statement of condemnation of his wayward conduct?

It must be emphasized that this entire discussion relates specifically to situations where the convict can be assumed not to pose any sort of public threat. Violent criminals may reasonably be considered dangerous even after serving

prison sentences, and thus communities would do well to contact their local law enforcement officials for guidance and direction when these offenders move back into the community after serving their sentences. This essay will address the status of wrongdoers whose past offenses do not give us any reason to fear that associating with them compromises our safety, such as violators of white collar crimes, or those who had engaged in illicit but consensual sexual relationships, regarding whom the sole concern is the vital communal need to take a strong, unrelenting stance of rejection of such behavior.

One example is the widely-reported case of a prominent Orthodox Jewish businessman who was arrested on serious charges of bank fraud, and reached an agreement whereby his sentence would be lightened in exchange for his services as a government informant. This man proceeded to ensnare numerous fellow Jews, including prominent figures, by pressuring them to commit white collar crimes and then producing evidence to incriminate them. After his release from prison, this felon was not welcome in the synagogue where he wished to pray, and his daughter was not accepted into the local Beis Yaakov school. Was this rejection appropriate? And even if it is proper to deny the criminal synagogue membership, is it justifiable to punish his children by denying them entry into community schools?

We must also address the concern that failing to welcome a felon back into the community could push him away from observance altogether. Even if we conclude that rejection is warranted for the sake of broadcasting a vehement repudiation of the offender's criminal conduct, would this apply even if the result would be his complete estrangement from Jewish practice?

## I. Excommunication That Will Lead to Defection

This final question was already debated centuries ago by leading halachic authorities. The Rama, in his glosses to the *Shulchan Aruch* (Y.D. 334:1), cites the ruling of the *Terumas Ha-Deshen* that a person deserving of excommunication should be handed this punishment even if this would result in his estrangement from Jewish practice.<sup>1</sup> The *Terumas Ha-Deshen* drew proof from the story told in *Maseches Kiddushin* (72a) of Rabbi Yehuda Ha-Nasi, who made several pronouncements before his death about certain developments taking place in the Jewish communities of Babylonia. One incident he noted is that Jews in a certain Babylonian town were found fishing on Shabbos, for which they were excommunicated by Rabbi Achi ben Rabbi Yoshiya. As a result of the

1. The Rama's formulation is: מנדין למי שהוא חייב גדוי ואפילו יש לחוש שעל ידי כן יצא לתרבות רעה, אין לחוש בכך.

excommunication, the violators abandoned Judaism. Presumably, Rabbi Achi had reason to anticipate this outcome, yet he decided upon excommunication in order to make a public statement about the severity of Shabbos desecration. Accordingly, the *Terumas Ha-Deshen* ruled that excommunication is declared regardless of legitimate concerns of the offender's consequent estrangement.

The *Taz* (Y.D. 334:1) strongly objects to this ruling, arguing that this incident told by Rabbi Yehuda Ha'nasi was not intended as a halachic prescription authorizing the excommunication of an offender who will likely abandon Jewish practice as a result. As counterproof, the *Taz* notes a passage earlier in *Maseches Kiddushin* (20b), where Rabbi Yishmael establishes that when a Jew sells himself as a servant to an idolater due to financial straits, knowingly putting himself in a position where he would have to work on behalf of idol-worship, there is an obligation to redeem him. Based on the Torah's command in *Sefer Vayikra* (25:48 — אחריו נמכר גאולה תהיה לו), Rabbi Yishmael asserts that we do not allow the slave to suffer the consequences of his wrong decision and remain in the service of pagans for the rest of his life. Rather, we must spend the money needed to redeem him from his master so he can rejoin the Jewish community and return to a religiously observant lifestyle. The *Taz* reasons that if the Torah commands us to redeem a fellow Jew who knowingly brought himself into the service of idol-worship, then certainly we must avoid any action that would lead a fellow Jew to defect.

The *Shach*, commenting briefly in his *Nekudos Ha-Kesef*, dismisses the *Taz's* rationale, noting that a formal decision by *beis din* to excommunicate is legitimate regardless of the result. Otherwise, the *Shach* contends, בטלה דין ישראל — *beis din* has no real authority at all. The *Shach* appears to distinguish between the general responsibility to help ensure that our fellow Jew does not abandon Judaism even if he has knowingly begun heading in that direction, and the official responsibilities of *beis din*, which include taking strong action against certain violators.

Rav Yair Bachrach, in *Chavos Yair* (141), likewise refutes the *Taz's* argument. He contends that the concern of the offender's defection cannot possibly override the need to make a strong public statement condemning wayward behavior. The concern of קלקול הדור — widespread abandonment of Torah — outweighs the concern of a particular's Jew disaffection, and thus when excommunication is warranted, it should be issued even if it will lead the violator to distance himself further from observance. Rav Bachrach advances this position in reference to the case of a person who was found neglecting the prohibitions against drinking non-Jewish wine. The community demanded that the man be fined and excommunicated until he repented, but the local rabbi refused, out of concern that harsh measures would only push the violator further away from halachic

observance. Rav Bachrach opposed the rabbi's decision, insisting that punitive measures should be taken against the violator.

This is also the view of the *Chasam Sofer* (responsa, vol. 2, Y.D. 322), who refutes the *Taz's* proof from the case of one who sold himself into the service of idolatry, noting that the Gemara there in Kiddushin deals with a person facing dire financial straits who felt compelled to undertake this drastic measure. Although he acted incorrectly, his guilt is mitigated by his circumstances, as he did not intend to distance himself from Torah observance, and thus there is an obligation to redeem him. This provides no proof, the *Chasam Sofer* writes, with regard to a violator deserving of excommunication. The *Chasam Sofer* further notes that to the contrary, the Gemara in *Maseches Gittin* (46b) establishes that if a person sold himself into the service of gentiles several times, the community is no longer required to ransom him, and he is left to continue the process of spiritual deterioration which he knowingly triggered. By the same token, somebody who is guilty of a violation that warrants excommunication should be excommunicated even if this leads to his estrangement from Judaism.

The *Taz* suggests drawing proof also from a different source. The Mahari Mintz wrote a responsum (5) in which he permitted a couple to marry despite the fact that the woman was at the time nursing a baby from a different man. Although *halacha* generally forbids a woman to marry while she has a child under the age of two from a different man (E.H. 13:11), the Mahari Mintz permitted this particular couple to marry because they would have otherwise lived together without halachic marriage and abandoned Jewish practice. The *Taz* argued that if the Mahari Mintz allowed suspending a rabbinic enactment to prevent Jews from slipping away from observance, then we should certainly not proactively undertake measures that will have the effect of distancing a Jew from observance.

The *Chasam Sofer* dismisses this proof, noting that *Chazal* enacted the prohibition of מינקת חבירו (marrying a woman with an infant from another man) for the benefit of the infant, as a means of guaranteeing that the woman could continue nursing and caring for him or her. If, however, the woman threatens to abandon Jewish practice if she is not permitted to halachically marry at that point, then it is to the child's benefit for the woman to remarry, so that he or she will be raised in an observant Jewish home. This ruling, then, has no bearing whatsoever on the case of a violator who will be led to abandon observance if he is excommunicated.<sup>2</sup>

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2. In a letter addressed to Rav Azriel Hildesheimer (published in his responsa, 252), the writer refuted this proof differently, noting that in the case addressed by the Mahari Mintz, the woman would not only have lived with the man without marrying him, but



This view is also accepted by the *Chasam Sofer's* son, the *Kesav Sofer* (responsa, Y.D. 168).

This question was addressed already much earlier, by the Radbaz (1:187), in reference to a situation where an offender openly threatened to convert to a different religion if he was reprimanded by the Jewish community. The Radbaz writes, *זה, כל ימי אני מצטער על זה* — that he was troubled by this question his entire life, torn between the threat of losing a Jewish soul and the need to strictly uphold Torah law. After briefly considering the possibility of refraining from punishing sinners in such cases, the Radbaz concludes that to the contrary, religious authorities have the responsibility to enforce Torah law even at the expense of a violator's defection from Judaism. He writes:

אם באנו לחוש לזה, תתבטל התורה לגמרי, כיון שיתפרסם הדבר שבשביל חששא זו אנו מעלימים עינינו מהרשעים, בני עולה יסיפו לחטוא, וירבה הגזל והחמס והניאוף וכיוצא בזה, ולא מתקיים התורה אלא בשרידים.

Once we concern ourselves with this [the prospect of the violator's defection], the Torah will be annulled altogether, because once it becomes known that out of this concern we turn our eyes away from the wicked, evildoers will continue sinning, and theft, violence, adultery and the like will abound, and Torah will be fulfilled only by a remnant.<sup>3</sup>

The Radbaz adds, however, that a great deal of thought and consideration must be invested before reaching a decision in such cases:

ואע"ג שכתבתי כל זה להלכה, מ"מ יש למנהיג הדור להיות מתון בדברים כאלה, לפי שאין כל האנשים שוין ולא כל העבירות שוות... אדם שהוא רגיל בעבירות ובוטח בעצמו בטענתו, אין חוששין לו, ויהיה מה שיהיה, ונעמיד התורה. ואם אינו רגיל, וקרוב הדבר שישמע, ממשיכין אותו בדברים עד שישוב מעט, ואין ממהרין להענישו, מפני התקלה... והכל לפי ראות עיני הדיין המנהיג, ובלבד שיהיו כל מעשיו לשם שמים.

But although I've written all this as *halacha*, nevertheless, the leader of

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would have likely engaged in illicit relations with other men, as well. This situation thus posed a spiritual danger to the public at large, and for this reason the Mahari Mintz felt that she should be allowed to marry the man. That case is quite different, then, from a situation where shunning the offender is necessary to maintain appropriate standards of conduct in the community.

3. The Radbaz proceeds to draw proof from the story told in the Gemara about the fishermen in Babylonia, as noted by the *Terumas Ha-Deshen*. He also adds that in most cases, a person who has already committed grievous sins and threatens to abandon Judaism altogether will likely follow through on his threat regardless of whether his demands are met.



the generation must be very cautious in regard to such matters, because not everybody is the same, and not all sins are the same... A person who is accustomed to sinning and feels confident with himself in his claim, we do not concern ourselves with him, and we uphold the Torah, come what may. But if he is not accustomed, and he will likely listen, we draw him close with words until he returns somewhat, and we do not rush to punish him, because [this can lead to] negative outcomes... Everything must be done as the judge and leader sees fit, provided that all his actions are done for the sake of Heaven.

The consensus<sup>4</sup> among the *poskim* seems to be that a violator may be shunned when this is deemed necessary for the sake of upholding Torah law and values, even if this will cause that violator to abandon Judaism. However, as the Radbaz warns, this decision must be made only after careful and cautious consideration, to ensure that the situation indeed warrants shunning the offender. When such situations arise, then, the community leaders must very carefully consider whether the criminal's actions are severe enough to necessitate barring him from our communities as a statement of condemnation of his crimes.

## II. Expelling an Offender's Children From School

The right to expel a criminal's children from school is explicitly codified by the Rama (Y.D. 334:6), who writes the following regarding a person placed into excommunication:

יש רשות לבית דין להחמיר עליו שלא ימולו בניו ושלא יקבר אם ימות ולגרש את בניו מבית הספר ואשתו מבית הכנסת עד שיקבל עליו את הדין.

*Beis din* has the authority to enact that his sons not be circumcised and he not be buried if he dies, and to expel his children from school and his wife from the synagogue, until he accepts the judgment upon himself.

The source of the Rama's ruling is the *Nimukei Yosef* (Bava Kama 39b in the Rif), where this ruling is cited in the name of Rav Paltoy Gaon.

The Maharshal, in *Yam Shel Shlomo* (Bava Kama 10:13), strongly objects to this ruling, and expresses astonishment over the prospect of denying innocent children a Torah education on account of their parent's misdeeds. He is likewise baffled by the notion that the offender's wife, who committed no wrongdoing, should be barred from the synagogue. In his amazement, the Maharshal writes,

4. See *Sdei Chemed* (*Ma'areches Hei*, 37), who shows that the consensus among the *poskim* follows the Rama's view.

לא אאמין שיצאו ב' דברים אלו מפי הגאון — “I cannot believe that these two things left the mouth of the Gaon.”<sup>5</sup> How, he asks, can we deny an evildoer’s wife and children the opportunity to pray in the synagogue and receive a Torah education on account of his sinful conduct?

We find among the *poskim* three approaches to defend Rav Paltoy Gaon’s ruling. The first is suggested by the *Taz*, who distinguishes between older and younger children. The Torah learning of younger children, the *Taz* writes, is credited solely to the father, and they have no merit of their own. Therefore, it is legitimate and appropriate to deny them the opportunity to learn on account of their father’s wrongdoing. Older children, however, who have already reached the age of *mitzva* obligation, earn their own merit for Torah study, and they may not be denied this opportunity simply because their father deserves excommunication. The *Taz* does not defend Rav Paltoy’s position permitting barring the offender’s wife from the synagogue, and accepts the Maharshal’s view forbidding such a measure.<sup>6</sup>

A second, particularly creative, approach is taken by the *Chasam Sofer* (Y.D. 2:322). He asserts that when a sinner commits a grave offense warranting excommunication, he should be denied the opportunity to earn merits through which he could continue living his wayward life. Therefore, the community should bar members of the violator’s household from communal prayer and Torah study, as their involvement in *mitzvos* is a source of merit for the offender. And while this might seem unjust to the family members, who forfeit the benefits of these *mitzvos* for no fault of their own, the *Chasam Sofer* invokes the rule that a person who genuinely aspires to perform a *mitzva* earns the merits of that *mitzva* even if circumstances prevent him from fulfilling his wish (אפילו חשב אדם לעשות מצוה, ונאנס ולא עשה מעלה עליו הכתוב כאילו עשה — Shabbos 63a). The excommunicated violator’s family members do not forfeit the merits of the *mitzvos* they are barred from performing on his account, because their inability to perform these deeds results from circumstances entirely beyond their control. Thus, the violator loses the merits of his family members’ *mitzvos*, which they are prevented from performing due to his sinfulness, but they forfeit nothing, because they desire to perform these *mitzvot* but are prevented from doing by external factors.<sup>7</sup>

5. The Maharshal accepts Rav Paltoy Gaon’s ruling regarding circumcising the offender’s sons, noting that these are obligations cast upon the offender himself, and thus refusing to perform these rituals is a valid punishment.
6. This distinction drawn by the *Taz* between older and younger children is made as well by the Maharal, in *Gur Aryeh* (*Vayikra* 20:20), in reference to the punishment of *kareis*: דכרת הוא ובניו נכרתין ר”ל בבנים קטנים, דאין להם זכות עצמן, אבל בבנים גדולים לא איירי.
7. The *Chasam Sofer*’s approach reflects a literal understanding of the rule of מעלה עליו הכתוב כאלו עשה, such that one who is prevented by circumstances from performing a *mitzva*

A much simpler approach is taken by Rav Yechiel Epstein, in his *Aruch Ha-Shulchan* (Y.D. 334:6). Rav Epstein cites the Rama's ruling and then adds the words, *אם יראו שבזה יכוף ראשו* — “if they see that he will thereby submit.” In other words, punitive measures against the wife and children are acceptable only as threats that will likely achieve the desired result of coercing the violator into submission. Rav Epstein continues:

אבל בלאו הכי אין להעניש בנים בשביל אביהם ואשה בשביל בעלה, ואפילו בנים קטנים.

Otherwise, however, children should not be punished on account of their father, nor a wife on account of her husband, even young children.

Rav Epstein rejects the distinction drawn by the *Taz* between older and younger children, and maintains that children of any age may be banned from school as part of their father's punishment only if the community leaders have reason to believe that this will force the father into submission. Indeed, the Rama permitted barring an offender's children from school *עד שיקבל עליו את הדין* — “until he accepts the judgment,” suggesting that this may be done to force the delinquent parent into compliance, but not as a *post facto* punitive measure.

This approach was also taken by the *Chasam Sofer's* son, the *Kesav Sofer*, in a responsum (Y.D. 168) addressing the situation of a man who married his aunt (his mother's brother's wife), and they refused to separate.<sup>8</sup> The concern arose that punitive measures against the couple would cause them to abandon Jewish practice entirely, together with their children. The *Kesav Sofer* wrote that although the prospect of their defection from Judaism is not a factor, in light of the generally accepted ruling of the Rama noted above, the community must take into account the impact that sanctions will have upon the couple's children. After referencing his father's explanation of the Rama's ruling permitting banishing an offender's children from school, the *Kesav Sofer* appears to reach a different conclusion, significantly limiting the scope of this ruling:

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receives all the rewards and benefits of that *mitzva*. This premise can be found elsewhere in the *Chasam Sofer's* writings, as well. In his commentary to *Maseches Sukka* (31b), for example, the *Chasam Sofer* explains the principle of *מצוות לאו ליהנות ניתנו* by asserting that one receives no benefits from the actual performance of a *mitzva*, since all benefits offered by a *mitzva* can be gained simply by genuinely desiring to perform it. See also the *Chasam Sofer's* responsa, C.M. 1. For a comprehensive treatment of this topic, see Rav Chaim Eisenstein, *Peninim Mi'bei Midrasha, Vayikra*, pp. 157–161.

8. Marrying the wife of one's biological uncle is forbidden by force of rabbinic enactment. In the case addressed by the *Kesav Sofer*, the couple cohabited while the woman was still married to the man's uncle, and thus they were forbidden to marry due to the law that those who committed an adulterous act may not engage in relations subsequently.

ולא דמי למ"ש ברמ"א סי' רל"ד סעי' וי"ז דיש רשות לב"ד לגרש בניו מבית הספר ולגרש אשתו מבה"כ עד שיקבל עליו הדין... דאין לדמותו לנידון דידן כי שם אשרי לבנים כשהאב יקבל הדין ושב ורפא לו... ויש תקוה שע"י שמגרשין הבנים מבית הספר ישוב כי גדול בושתו, ומוטב שיהיו בטלים מדברי תורה על זמן מה כדי שיזכה האב וישוב והבן ג"כ זוכה, משא"כ בנידן שלפנינו שע"י הכפיה יש לחוש ששניהם האבות והבנים יצאו לתרבות רעה ח"ו, בוודאי טוב לנו למשוך ידינו...

This is not similar to what the Rama writes (334:6), that a *beis din* has the authority to expel his children from school and his wife from the synagogue until he accepts the law... because in that case, fortunate are the children whose father accepts the law and returns and is [spiritually] healed... and there is hope that by banishing the children from school he will return due to his great embarrassment. It is thus preferable that they miss Torah learning for a period of time so that the father will have the privilege of returning, which is beneficial also for the child. In the case before us, by contrast, where there is concern that coercion will lead both the parents and the children to a wayward lifestyle, Heaven forbid, it is definitely preferable for us to abstain...

Like Rav Epstein, the *Kesav Sofer* understood that the Rama permits expelling the children from school only as a means of effecting a change of heart in the parent. Such measures are not legitimate, however, as a *post facto* response intended to send a strong message of condemnation. As the *Kesav Sofer* explains, there is no reason to be more concerned with the religious commitment of the greater community than with that of the offender's children. It is wholly illogical, he argues, to risk religiously alienating the children for the purpose of conveying a message and seeking to prevent violations by others. Although it is legitimate to risk alienating the offenders themselves through strong condemnation for the sake of maintaining our religious and moral standards, there is no sense in risking the alienation of their children for this purpose.

The *Kesav Sofer* draws proof from the Gemara's ruling in *Maseches Kiddushin* (81a) that no punitive measures are taken against a married woman who goes into seclusion with a man other than her husband. Punishing a woman for such conduct might lead people to question her children's status, and to suspect that they were not fathered by her husband, suspicions which must be avoided. The *Kesav Sofer* reasons that if punishment is withheld out of concern for the reputation of the offender's children, it goes without saying that punishment is withheld if the children's spiritual future is at stake.

We thus find three views among the *Acharonim* regarding the permissibility of expelling a student from school as a punitive measure against a parent:

1. According to the *Taz*, younger children may be expelled, but older students may not.
2. The *Chasam Sofer* permits expelling children of any age in order to deny the offender the merit of his children's Torah education.
3. The *Kesav Sofer* and *Aruch Ha-Shulchan* allow expelling a sinner's children from school only in the rare case when this drastic measure will be effective in causing the sinner to submit to authority. This may not be done as a statement of condemnation.

An important distinction is drawn in this regard by Rav Menashe Klein, in *Mishneh Halachos* (17:96), in reference to the unfortunate case of a bitter conflict that arose between a parent and his child's school. The school summoned the father to *beis din*, and the father refused and proceeded to report the school to the government authorities, causing the school a great deal of damage. Rav Klein permitted the school to expel the child as a means of censuring his father, noting that since other suitable institutions were available, all opinions would approve of such a measure in this case. The aforementioned debate revolves around the question of denying the offender's child a Jewish education altogether. However, if a school sees fit to expel a student because of his or her parent's crimes, and the student can be enrolled in a different institution, this measure is acceptable according to all opinions.

### III. Collective Punishment

We might suggest a different perspective on the issue of barring children from schools on account of a parent's crimes, by examining the broader question of collective punishment in Jewish law. Let us first step back and ask, does *halacha* recognize the legitimacy of punishing innocent people due to their association or relationship with an evildoer? Is it ever acceptable to punish one person for another person's wrongdoing, and, if so, when?<sup>9</sup>

The Torah explicitly warns against punishing children for their parents' wrongdoing (*Devarim* 24:16):

לא יומתו אבות על בנים ובנים לא יומתו על אבות, איש בחטאו יומתו.

Fathers shall not be put to death on account of sons, and sons shall not be put to death on account of fathers; a person shall be put to death [only] for his sin.

9. For an extensive discussion of the Torah's approach to collective punishment, see Rav Meir Batist's article published in *Techumin* (vol. 12).



This prohibition is emphatically reiterated by the prophet Yechezkel (18:2):

הנפש החטאת היא תמות, בן לא ישא בעון האב ואב לא ישא בעון הבן, צדקת הצדיק עליו תהיה רשעת הרשע עליו תהיה.

The soul that sins — it shall die; a son shall not bear the iniquity of the father, and a father shall not bear the iniquity of the son; the righteousness of the righteous shall be upon him, and the evil of the evildoer shall be upon him.

These verses make it clear that the Torah's justice system, as a rule, precludes the possibility of punishing one person for the crimes of another.

This fundamental axiom was expressed by Moshe and Aharon in response to God's declaration of His intent to annihilate *Am Yisrael* in the wake of Korach's revolt. Moshe and Aharon exclaimed, האיש אחד יחטא ועל כל העדה תקצוף — “Shall one man sin, and Your wrath shall be upon the entire congregation?!” (*Bamidbar* 16:22). Rashi, citing the *Midrash Tanchuma*, writes that God agreed with Moshe and Aharon's claim, and informed them that He would punish only the guilty parties.<sup>10</sup>

We do, however, find in the Torah several instances of punishments endured by people associated with the perpetrator or perpetrators of an offense, who do not seem to have been guilty of any wrongdoing themselves. One striking example is the law of עיר הנדחת, which the Torah introduces in *Sefer Devarim* (13:13–19). This law refers to the case of a city whose inhabitants were lured to worship idols, and requires killing all the town's residents and destroying their property. The Rambam, in *Hilchos Avodas Kochavim* (4:6), explains that a city becomes an עיר הנדחת when the majority of its men worship idols, and once the city has been declared an עיר הנדחת, all those who worshipped idols are put to death, along with their wives and children. The same Torah that strictly forbids killing innocent people for offenses committed by their family members requires killing innocent women and children for the pagan worship of their husbands and fathers. How do we explain this law?

This question is discussed in the *Migdal Oz* commentary to the Rambam's *Mishneh Torah*, which relates that the Ramah (Rabbi Meir Abulafia of Toledo) questioned this ruling in his letters to the rabbis of Lunel protesting portions of the Rambam's writings. How, the Ramah asked, could the Rambam require the execution of innocent women and children for the idol-worship of their husbands and fathers?<sup>11</sup>

10. אמר הקב"ה יפה אמרתם, אני יודע ומודיע מי חטא ומי לא חטא.

11. In the next passage, the Rambam writes that when a city is declared an עיר הנדחת, all

The rabbis of Lunel, as cited in *Migdal Oz*, gave two explanations for the Rambam's ruling:

חדא שהם סבה וגורמים לשיבת הגדולים, ועוד לרדות הגדולים בהריגתן שהן חביבין עליהן.

First, they are the reason and cause for the adults' residence [in the city], and also, [this is done] in order to threaten the adults with their execution, for they cherish them.

The first explanation attempts to assign a degree of culpability to the children, by claiming that they are somehow to blame for the adults' decision to reside in the sinful city. Clearly, this explanation seems very difficult to accept, as there appears to be no reason to hold young children accountable — to the point of being worthy of execution — for their parents' choice of a place of residence.

In their second answer, the scholars of Lunel seem to suggest that the execution of the wives and children is legislated only as a warning and threat. Perhaps drawing upon the well-known tradition that the law of עיר הנדחת is introduced in the Torah as a hypothetical model, and can never be actually implemented,<sup>12</sup> the rabbis of Lunel assert that the Torah does not wish for the wives and children to die, and this punishment is prescribed purely for deterrent purposes, to discourage the men from worshipping idols.<sup>13</sup>

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the town's property, including the possessions of those who did not worship idols, is destroyed. Once again, the innocent minority is, seemingly, being punished for the crimes of the majority. However, the Rambam himself briefly explains the reason for the destruction of these residents' property, writing, הואיל וישברו שם ממנום אבד — they lose their property as punishment for choosing to live in a wicked city. The Rambam's remark is likely based upon Rabbi Shimon's comment in the Tosefta (*Sanhedrin* 14:1) that the innocent residents of an עיר הנדחת lose their possessions "because they caused the righteous to reside with the wicked." The decision to live among evildoers was likely made out of financial considerations, and thus the innocent townspeople are punished by losing their possessions.

12. The Gemara in *Masechet Sanhedrin* (71a) cites the Tosefta which notes that there never was or will ever be a situation of עיר הנדחת. *Halacha* imposes so many conditions upon the applicability of this law that it is all but impossible for such a situation to ever arise.
13. In their response, the scholars of Lunel note two precedents to wives and children being punished for the crimes of the husbands and fathers: the deaths of the family members of Korach, Dasan and Aviram (*Bamidbar* 16:32), and the execution of all residents of Yaveish Gilad, who ignored the order to arrive in Mitzpa following the civil war between Binyamin and the other tribes (*Shoftim* 21). Curiously, however, neither answer suggested by the sages of Lunel to explain the Rambam's ruling concerning עיר הנדחת is applicable to these incidents, and thus it is difficult to understand why they invoked these examples. Moreover, the story of Korach can easily be discounted in light of the fact that the punishment was brought by God, and it therefore cannot serve as

A different explanation was offered by Rav Aharon of Lunel, who wrote a response to the Ramah's objection to the Rambam's ruling. He writes:

חומר הוא שהחמיר הקב"ה בעבודה זרה ושבועה וחילול ה' להחרים ולהשמיד הכל למען  
ישמעו ויראו הנשארם...

This is a measure of stringency enacted by the Almighty with regard to idolatry, [false] oaths and defamation of God's Name — to eradicate and destroy all so that those who remain will listen and see...<sup>14</sup>

Rav Aharon of Lunel here asserts that there are rare instances where the Torah calls for punishing innocent people affiliated with wrongdoers for the purpose of underscoring the severity of the offense.

Another example might be the Gemara's discussion at the end of *Maseches Sukka* (56b) regarding the story told of Miriam bas Bilga, a Jewish woman who married a Greek official and joined the Greeks in defiling the *Beis Ha-Mikdash* during the period of Greek oppression. Miriam belonged to one of the twenty-four families of *kohanim*, and the Sages penalized her entire family by imposing special restrictions upon the *kohanim* from that family serving in the *Mikdash*. This was done, presumably, as a reminder of Miriam's betrayal and a warning to those who might seek to repeat her actions. The Gemara justifies these measures, which penalized Miriam's family for her act of treason, by invoking the rabbinic adage, *אוי לרשע אוי לשכנו* ("Woe unto the wicked, woe unto his neighbor"). In other words, people affiliated with a wrongdoer — even for no fault of their own — will sometimes suffer the consequences of this association, and will

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a precedent for protocols followed by human authorities. As for the execution of the women and children of Yaveish Gilad, we might note that the stories told at the end of *Sefer Shoftim* are intended to demonstrate the state of dysfunction and anarchy that existed during this period, when *Bnei Yisrael* had no centralized authority. Therefore, policies implemented and followed during this period do not necessarily reflect the halachic ideal that we are to embrace.

Rav David Tzvi Hoffman, in his commentary to *Sefer Devarim*, offers a much different explanation for why the wives and children in an עיר הנדחת are killed, claiming that the city's destruction is ordained as a Divine punishment, much like the destruction of the world in the time of Noach, and the destruction of Sodom and Amora during the time of Avraham. The situation of עיר הנדחת is extraordinary in that *Bnei Yisrael* are commanded to carry out the Divine retribution. This execution, unlike all other instances of punishments administered by *beis din*, is carried out in the capacity of God's messengers, and not by the authority invested by the Torah in the court. God, in His infinite wisdom and justice, can determine who lives and who dies, and we cannot question His decisions. As such, we cannot question the justice of the requirement to kill the women and children of an עיר הנדחת.

14. *Iggeros Ha-Ramah*, letters 26–27.



need to be penalized as part of the collective effort to forcefully denounce the wrongdoer's actions.

Indeed, the Gemara in *Maseches Bava Kama* (92a) records the ancient proverb בהדי הוצא לקי כרבא — “The cabbage is ruined together with the thorns.” In the process of eliminating the “thorns” from our communities, it may occasionally be necessary to harm even the “cabbage” — the innocent affiliates of the offender.

A modern example of this concept appears in a responsum of Rav Avraham Yitzchak Kook (*Da'as Kohan*, 193) addressing the case of a synagogue that honored a prominent member who had heartily eaten on Yom Kippur by calling him for the coveted *aliya* of *maftir Yona* that same afternoon. The congregation's rabbi instructed the leadership to deny this individual the rights to receive an *aliya* for the next several years, and he threatened to never again speak or teach in the synagogue if they failed to comply. Rav Kook approved of this measure, despite the fact that it punished the entire congregation for the disobedience of one or several of its leaders. In light of the grave חילול ה' that transpired, Rav Kook felt that an especially strong response was warranted even if this meant punishing innocent congregants. Among the sources cited by Rav Kook to support his ruling is the Gemara's discussion in *Maseches Yevamos* (79a) of the story of King David, who acceded to the demand of the Givoni tribe to hand over members of King Shaul's family. Shaul had unlawfully executed seven members of this tribe, and the *Givonim* demanded revenge. The Gemara explains that although the Torah forbids punishing children for their parents' crimes, King David nevertheless granted the *Givonim*'s request to avoid the grave חילול ה' that would result from allowing King Shaul's crime to go unpunished. This discussion demonstrates that in situations of a grave חילול ה', a harsh response is warranted even if this requires punishing innocent people affiliated with the offender.

All this hearkens back to the extraordinary law of עיר הנדחת, where even innocent women and children are killed along with the idolaters, a requirement which Rav Aharon of Lunel attributes to the especially grievous nature of idol worship.

### Declaration of War

It would seem, however, that there is also a different explanation for the extraordinary provision requiring the execution of innocent residents of an עיר הנדחת.

One of the most shocking instances of collective punishment found in the *Tanach* is the massacre perpetrated by Shimon and Levi on the city of Shechem after the city's prince abducted and defiled their sister (*Bereishis* 34). Although Yaakov vehemently censured his sons' violent actions (*Bereishis* 34:30, 49:5–7),

many commentators and *poskim* presumed that Shimon and Levi must have felt — albeit perhaps incorrectly — that their assault was halachically appropriate. The Rambam (*Hilchos Melachim* 9:14) famously asserted that the townspeople deserved execution for failing to maintain a proper justice system whereby Shechem would be tried and punished for his grievous crime. Rav Pinchas Horowitz, in his *Panim Yafos* commentary, suggests that Shimon and Levi's objective was to rescue their sister from Shechem's home. It was clear to them, however, that Shechem and his father would kill them if they tried to take Dina, and that if they killed Shechem and his father, the townspeople would all arise to avenge their leaders' deaths. Shimon and Levi thus had no choice but to kill all the men of Shechem as part of their just and noble effort to rescue Dina from the clutches of her abductor. As such, the deadly assault was necessary as a means of self-defense.

According to these approaches, the townspeople of Shechem deserved to be killed, either for their own crimes, or because of the threat they posed to Shimon and Levi, and thus they were not killed as a form of collective punishment.

A different approach is taken by the Maharal of Prague, in his *Gur Aryeh* (*Bereishis* 34:13), where he writes that collective punishment is acceptable in the context of warfare, when a battle is waged between nations, as opposed to individuals. The Maharal postulates that Yaakov's family and Shechem were essentially two "nations," and Dina's abduction legitimately warranted a strong military response. This was a conflict between two nations, not between individuals, and thus Shimon and Levi felt authorized to assault not only the perpetrator, but also the entire city. This approach is also taken by Rav Zalman Sorotzkin, in his *Oznayim La-Torah* commentary.

Indeed, warfare, almost by definition, entails a degree of collective punishment. In war, the parties to the conflict are large, diverse groups of people, not all of whom are necessarily culpable in the wrongs or perceived wrongs that precipitated the hostilities, and yet they all suffer the effects of the war. If a legitimate war is being fought against an aggressor nation, some sort of pain will be inflicted upon the general population. Even if civilians are not intentionally targeted, it is all but inevitable for the civilian population to suffer, either as a result of blockades and sanctions, or as collateral casualties of combat. In World War II, of course, thousands of civilians in places like Dresden, Hiroshima and Nagasaki were targeted in an effort to force the Axis powers to surrender. More recently, Israel has been compelled on numerous occasions to attack Hamas military assets and installations in densely-populated areas in the Gaza Strip during wars waged to protect against rocket fire on Israeli civilians. And while Israel has come under relentless criticism for these measures, the legality of exacting civilian casualties in the course of pursuing a legitimate military objective during

war — provided that the civilian casualties are not the objective — has never before been questioned. Likewise, economic sanctions against rogue regimes are standard in the modern world, despite the “collective punishment” imposed on the country’s entire populace for the crimes committed by its government, which may even be ruling them against their will.

The context of warfare, then, marks a significant exception to the rule forbidding inflicting punishment on somebody for a different person’s crime.

This concept may help explain the other contexts in which we find collective punishment being sanctioned. The situation of an עיר הנדחת is unique in that the majority of a city, and not merely a random assortment of individuals, embrace idolatry. When a city becomes pagan, it essentially declares war against the Jewish nation. We view the city not as a place where many people have abandoned Jewish belief, but rather as an entity that has arisen against the collective of Israel. The עיר הנדחת seeks to secede, in a sense, from *Am Yisrael*, and thus the Torah requires waging a fierce and relentless battle against the town. This is why even innocent inhabitants are killed. Since this response falls under the category of warfare — a military operation against a rogue regime, as opposed to the execution of a group of violators — it is legitimate to punish even innocent townspeople.

This theory can be applied also to other situations of collective punishment. In *Sefer Bamidbar* (16:32), we read that although God heeded Moshe and Aharon’s plea on behalf of the people during Korach’s revolt, He nevertheless killed the revolt’s leaders as well as their family members. Korach’s followers were spared, but his wife and children — and those of his primary cohorts, Dasan and Aviram — were killed. The explanation, perhaps, is that Korach launched an all-out “war” against Moshe and Aharon. This was not a case of several people acting wrongly, but rather a rebellion against the establishment, and thus even innocent lives were not spared.

Another example is the story of Yaveish Gilad, a community that ignored the call to convene with the rest of the nation after the civil war waged between Binyamin and the other tribes (*Shoftim* 21). The entire town — including the women and children — were killed (21:10). It would seem that this refusal constituted an act of secession, a declaration by the people of Yaveish Gilad that they did not see themselves as part of the Jewish nation. Once the townspeople declared war against the nation, an extraordinary circumstance arose whereby even innocents were allowed to be killed.

In light of this theory, we may perhaps explain the Rama’s ruling permitting the exclusion of an offender’s children from Torah educational frameworks. The circumstances that warrant excommunication are those involving a sinner who poses a direct threat to the Jewish community. It does not apply to a person

who failed in a moment of weakness, or who makes an occasional mistake. Excommunication was declared when somebody showed disdain or disregard for the community, such as by flagrantly and unabashedly violating basic communal norms, by brazenly opposing its leadership, or by tainting its reputation. In essence, *cherem* is a response to a declaration of “war” against the Jewish community. It is the way a community or the establishment fights back when it comes under assault, and returns fire to those who threaten it. Therefore, as in the cases of Korach and עיר הנדחת, innocent affiliates may be harmed in the process. As part of the community’s efforts to defend itself against those who wage war against it, causing harm to the offender’s family becomes a legitimate option to consider.

In the view of this author, this perspective ought to inform our response to perpetrators of heinous crimes who arise from our community. When dealing with a serial pedophile, a financier who for years ran a fraudulent Ponzi scheme, or other high-profile criminals, it could legitimately be argued that such people have declared war on our community. If an Orthodox Jew is discovered to have molested dozens of children, cheated dozens of clients, or evaded millions of dollars’ worth of taxes, and his crime is widely reported throughout the world, bringing shame and humiliation upon the entire Orthodox Jewish community, he causes irreparable damage to us all. Therefore, it is entirely reasonable, and appropriate, to respond by shunning that individual along with his family members. When somebody declares war against the Jewish people, his innocent family members may, tragically, need to be harmed as part of our response.

If a Jew was discovered working in support of Hamas or the Islamic Jihad, and he wished to enroll his children in one of our community schools, the community would, in all likelihood, unanimously demand that the school reject the application. If this individual was planning his son’s bar-mitzva, it is hardly conceivable that any Orthodox synagogue would open its doors to host this celebration. Serial and high profile criminals should not be treated any differently. They place a nearly indelible stain upon us all, and need to be openly and forcefully opposed. While their spouses and children certainly cannot be blamed for their nefarious acts of treason against the Orthodox community, the war we are compelled to wage against criminals produced by our communities will sometimes result in unfortunate “collateral damage,” affecting the innocent family members.

#### **IV. Accepting a Penitent Criminal**

Let us now turn our attention to the case of an observant Jew who, after having been found guilty of grave crimes or moral indiscretions, expresses what appears

to be genuine remorse and a sincere desire to make amends and return to the Orthodox Jewish community. What sort of penitence would suffice for us to welcome him back? (As mentioned earlier, we raise this question only in regard to criminals who cannot be assumed to pose any sort of risk.)

The *Shulchan Aruch* (C.M. 34:22) rules that apostates and מוסרים — those who betray their fellow Jews by disclosing information about them to hostile gentiles — are not accepted as witnesses until they repent. The Rama clarifies that a מוסר regains his eligibility after his victims grant him forgiveness and he formally repents. Importantly, the Maharam of Rotenberg (4:1022) ruled that a מוסר must also compensate all those who lost money because of the information he disclosed.

Similarly, with regard to social sanctions against a wrongdoer, the Ramban writes in his *Mishpat Ha-Cherem* that a writ of excommunication is annulled when the offender repents:

אם עשה תשובה...ובא לב"ד או לפני טובי העיר במעמד אנשי העיר, יכולים הם בעצמם  
להתיר לו...

If...[he] repented and came to *beis din* or before the town's leaders in the presence of the townspeople, they themselves can annul it for him.

We might add, however, that when it comes to the particular sin of מסירה, the bar of *teshuva* is raised especially high. *Chazal* teach in *Maseches Kalla Rabasi* (3:18), כל המלשין אין לו רפואה, — whoever disseminates negative information about his fellow cannot be “cured” of his sin. Once the negative reports — whether true or false — have been disseminated, their effects are no longer under the disseminator's control, and their impact cannot possibly be measured in any sort of quantitative terms. As such, rectifying such a sin is all but impossible. Accordingly, Rabbi Elazar of Worms, in his *Sefer Ha-Rokei'ach* (*Hilchos Teshuva*, 27), prescribes the following “program” for repenting for this sin:

יהא לו כעבד עולם, ויבקש ממנו מחילה בפני כל העולם, וילקה ויתענה ויתוודה כאלו הרג כל בניו ובנותיו וכל בני ביתו...יהיו חטאיו נגדו, וישוב וישבור רוחו בכל כחו...ואם אין לו לשלם ירבה עליו ריעים ויבקש מחילה למי שהפסיד טרם ימות, וכאשר ירויח, יצמצם ויפרע למי שנתחייב או ליורשו, כי למלשין אין לו רפואה, אם לא יסור חלאה, ויתוודה חובו וישוב בכל לבבו.

He shall be like an eternal servant to him [his victim], and publicly request his forgiveness. He should be whipped and should fast and confess as though he killed all [of the victim's] sons, daughters and household members... His sins should be in front of him, and he should repent and break his spirit with all his might... If he does not have with what to repay, then he should bring many friends and ask forgiveness



from the one to whom he caused a loss, before he dies. And when he earns money, he should limit [his own expenditures] and repay the one he owes or his inheritors, for the informant has no “cure” unless he removes the illness, confesses his guilt, and repents with all his heart.

In cases where a person’s actions result in the incarceration of fellow Jews, it is all but impossible to speak of any kind of compensation for the pain and humiliation caused to the victim and his family. As such, one could argue that such an offender has no possibility of regaining his eligibility to rejoin the Orthodox Jewish community.

It seems reasonable to assume that the same basic principle would apply to other forms of criminal activity that caused harm to a great number of people, such as large-scale Ponzi schemes, or the highly-publicized case of a respected rabbi who was found secretly video recording prospective converts in his synagogue’s *mikveh*. Although these kinds of violators can, in principle, regain acceptance into the community through repentance, their repentance must include reparations and a sincere apology accepted by their victims, something which seems all but impossible.

Thus, while in principle a sincerely penitent offender deserves the right to resume communal life, it is very difficult to determine what kind of penitence would suffice in the case of a person who caused a great deal of pain and suffering to many fellow Jews.

### Erasing a Lifetime of Piety

In discussions regarding the handling of high-profile Orthodox Jewish criminals, advocates for welcoming such figures back into the community often point to the fact that they are, when all is said and done, not much different from the rest of us. Just as we all have our share of faults, we sometimes hear, these convicted offenders, too, are generally decent, hard-working, God-fearing Jews with flaws that landed them in trouble with the law. If a person is a devoted, loving, hard-working spouse and parent, a devoutly observant Jew, and an active community member who has made meaningful contributions — financial or otherwise — to the Jewish nation, then why, some people ask, should he be ostracized because of one grave mistake, severe as it may be?

The answer can be found in a famous story told by the Gemara (*Berachos* 28b) about the final moments of the life of Rabban Yochanan ben Zakai. As his students gathered around, they noticed their revered rabbi crying, and they asked him why he wept. He explained:

יש לפני שני דרכים, אחת של גן עדן ואחת של גיהנום, ואיני יודע באיזו מוליכים אותי, ולא  
אבכה?

I have before me two paths — one to *Gan Eden*, and one to *Gehinnom*,  
and I know not in which I will be led. Shall I not cry?

Remarkably, Rabban Yochanan ben Zakai, the great sage who led the Jewish people during one of the most tumultuous periods in our history — before, during and following the fall of the Second Commonwealth — and who established the academy in Yavneh which ensured the renewed flourishing of Torah scholarship following the destruction, feared that he might be condemned to *Gehinnom*. We can only wonder, what could he have possibly done that would have sentenced him to eternal suffering? While we understand that no human is perfect and free of spiritual blemish, and that even the most righteous among us have stains on their record for which a reckoning will be made, what could have made Rabban Yochanan fear that he would be led away from *Gan Eden* and towards the suffering of *Gehinnom*?

Rav Yosef Dov Soloveitchik boldly suggested that Rabban Yochanan was plagued by a fateful decision he had made years earlier, on the eve of the fall of Jerusalem.

The Talmud in *Maseches Gittin* (56b) tells of the dramatic events that unfolded as the Roman army besieged Jerusalem and the Jewish zealots persisted unrelentingly in their ill-conceived and ill-fated revolt. Rabban Yochanan's disciples secretly brought him outside the city, and he managed to secure a meeting with the Roman general and future emperor, Vespasian. During this meeting, Rabban Yochanan earned the general's trust and affection, and Vespasian invited him to make a request. Rabban Yochanan asked that the general spare the academy in Yavneh, as well as the scholarly family of Rabban Gamliel, and arrange for medical care for Rabbi Tzadok who was gravely ill. Generations later, the Gemara tells, there were those who wondered why Rabban Yochanan stopped there, and did not request that the general leave Jerusalem and the Temple intact. Once Vespasian offered to grant a request, why did Rabban Yochanan not plead on behalf of the city and the *Beis Ha-Mikdash*? The Gemara explains that Rabban Yochanan feared that such a bold request would be denied, and the Jews would then be left with nothing after the failed revolt. A modest request, he figured, would be granted, but requesting that Jerusalem be spared would be met with fierce rejection.

We can only imagine, Rav Soloveitchik noted, how this controversial decision weighed on Rabban Yochanan's mind after Jerusalem and the Temple were set ablaze and thousands of Jews were slaughtered by the marauding Roman legions. He must have been haunted for the rest of his life by the nagging voice

in his mind asking the excruciating question of “what if?” There was no way of knowing for certain that the tragedy of the *churban* was unavoidable. Maybe he was wrong? Perhaps at that moment, when Rabban Yochanan earned Vespasian’s favor, he could have prevented the destruction, if he just had a bit more courage. These were the questions that tormented Rabban Yochanan for the rest of his life, even as he breathed his final breaths.

And thus he told his students with overwhelming dread, “I know not in which direction I will be led.” Rav Soloveitchik explained that when a leader makes a wrong, fateful decision that yields especially grave consequences, his mistake could potentially outweigh on the heavenly scales a lifetime of religious devotion. Rabban Yochanan recognized that if his decision was, in fact, incorrect, then his life of Torah, *mitzvos* and invaluable leadership would not necessarily suffice to save him from *Gehinnom*. Even if this were his only mistake, it was a mistake with such devastating consequences that it could not be cancelled by his life of unequalled piety and Torah scholarship.

When we hear the question, “Should one serious crime erase a lifetime of religious devotion,” the answer, in many instances, must be an unequivocal and resounding “Yes.” When a clearly identifiable Orthodox Jew commits a crime that brings shame upon our entire community, lending credence to the cruelest stereotypes about our people, this crime cannot just fade away into the background of this person’s otherwise noble life. Rabban Yochanan made a controversial decision using his best judgment, and was still worried until his dying day. When far lesser people than Rabban Yochanan make the inexcusable decision to commit a crime, and their decision causes irreparable harm to the entire Orthodox Jewish world, this mistake cannot simply be overshadowed by the upstanding life they otherwise lead. And thus a strong, harsh communal response is not only appropriate, but a matter of vital importance for us all.

#### INTERVIEWS

### **Rav Ron Eisenman** ***on Headlines with Dovid Lichtenstein\****

There was a Reform rabbi in the Washington, DC area who spent time in prison for — I think — allegedly trying to prey on a minor via the internet. When he came back to his Reform congregation, they actually had a vote, and they voted to deny him access — even though he claimed to be a “*baal teshuva*” already.



They voted about such a person, ובערת הרע מקרבך. I think this is something we should consider. Obviously, we should speak to the person, and he could make a public plea explaining that he is totally repentant and following *hilchos teshuva*, regretting everything he did. When we are dealing with sexual molestation, you have the idea of recidivism of crime, which involves a mental health issue. As Rabbi Abraham J. Twerski would say, “How do you know when an addict is lying? When his lips are moving.” I think you would find that despite their promises to the contrary, they are people we can no longer trust. But if it’s a financial issue, and he’s totally repentant, and he says he will do whatever it takes to allow him back into shul, then maybe there is room [to accept him]. But if he comes defiantly, with his head up, saying, “I never did anything wrong,” of course I would never allow such a person to be part of the *kehilla*. I’ve asked people to leave for less.

\* Broadcast on 5 Marcheshvan, 5776 (November 5, 2016).

### **Rabbi Zvi Weiss** **on Headlines with Dovid Lichtenstein\***

This is a complicated and sensitive issue, and not a *shayla* from today, or even from the last fifty or one hundred years. It’s come up throughout history. *Baruch Hashem, Klal Yisrael* from its inception until today has had multitudes — רובא דרובא — of *Yidden* who are *ehrllich*, who did the right thing, and who created קידוש ה’, both as individuals and as part of a community. But unfortunately, in the world we live in, people have free will and face all kinds of challenges, and there have been individuals who have behaved in horrific, harmful ways both to themselves, spiritually, to their families, or to their communities. There have been people who are חוטא ומחטיא (who sin and lead others to sin), who pose danger to society. These *shaylos* came up regarding the followers of Shabtai Tzvi who went out recruiting and pulling *Yidden* away from doing the right thing, and it’s a complicated *shayla*.

A single cookie-cutter answer will not work, so we are talking theoretically. Every individual and every case must be judged on its own and examined with all kinds of emotions — compassion for the individual who went off the path, compassion for the people around him, and compassion for the *tzibur*...

Unfortunately, for a community rabbi, these kinds of issues are going to present themselves, and our responsibility, the way I understand it, is not to run away from these situations, and to instead address them head-on.

In cases of a sexual predator, in my opinion and in the opinion of experts

I've spoken to, it's almost impossible to say he's been cured and is no longer a danger to society. And therefore, those cases have to be looked at that from that standpoint. And though the question comes up about the innocent children of the perpetrator, we have to look at it from the standpoint of protecting our children, the innocent children who are unrelated to the story.

The *Shulchan Aruch* (Y.D. 334) talks about a case where a fellow was put into *nidui* because he was an *avaryan* [sinner] — he didn't behave properly. He did not necessarily entice others, or cause harm, he didn't pose a threat and he wasn't a predator. Within his own *amot* 'ד, in the privacy of his home, he was not following halacha. Back then people understood that just like we have a responsibility for each other's wellbeing... there is also a concept of being responsible for their spiritual wellbeing. *Chazal* understood that sometimes, when other means don't work, when *מקרבת ימין* ["the right hand drawing close"] does not bear fruit, then unfortunately, for the benefit of the *avaryan* to motivate him, we need to... [declare] *nidui*, which *beis din* is empowered and obligated to do. It means he cannot come to shul, one cannot be within his *amot* 'ד or have anything to do with him, he cannot be incorporated into a minyan, and there's even a *shayla* if you can have a *minyan* while he's there... Right there in the first *se'if* of 334, the Rama quotes that we put into *cherem* somebody who deserves *cherem*... even if he will go off the *derech*. The preponderance of *poskim* hold like the Rama. The *Taz* argues very strongly, but the *Shach* in *Nekudos Ha-Kesef*, after a whole litany of proofs from the *Taz*, simply says we don't have to worry about what the *Taz* is saying, because if so, then *בטלה דין ישראל* [there would be no possibility of judgment in the Jewish community].

The *nidui* is not only to stop the *avaryan* from his behavior, but it's also *למען יראו* — people need to know that you have to behave and do the right thing. We try to do it by exciting people, and by giving them the beauty and sweetness of Yiddishkeit, and showing them the privilege of being able to have an intimate relationship with the *Ribono Shel Olam* based on Torah and *mitzvos*. But if this doesn't work, we have to start thinking about the people he might be influencing, even if he is not trying to influence anybody. We have to protect the people.

The *Chasam Sofer* says a fascinating thing... This fellow whom we put into *cherem* — what's keeping him around is that he has some merits, perhaps that his children are having a Jewish education. Perhaps this is why he is not gone and off the scene. Therefore, as part of our obligation to take away his merits, we do not let him have children in school so they do not receive a Jewish education and thus do not bring him merits. As for their souls — we don't have to worry about it, the *Chasam Sofer* says, because they are innocent. The *Ribono Shel Olam* will look upon them as *אנוסים*. They would have done the right thing, but they were

not given the opportunity, so their souls are protected. This is an unbelievable *teshuva* of the *Chasam Sofer*.

However, the *Chasam Sofer* says at the end that we have to be very patient and look through the situation carefully. It has to be done with trepidation and fear, he writes, “and Hashem will protect us” so we should know what the right thing is.

So as for the question of the criminal’s children, if it’s an outsider coming into the community, we can tell him before he comes that he should not come, because his children will not be allowed into the school...

\* Broadcast on 12 Marcheshvan, 5776 (November 12, 2016).



## Panel Assembles To Discuss Sex Abuse Cases In Brooklyn

June 10, 2012 10:02 pm

by WINS reporter Sonia Rincon

NEW YORK(CBSNewYork) — Brooklyn District Attorney Charles Hynes and a panel of community leaders met to discuss sex abuse cases within the Ultra-Orthodox Jewish community.

DA Hynes and civil rights attorney Norman Siegel appeared at a public town-hall meeting in Brooklyn on Sunday, along with child advocates, rabbis, and molestation victims.

1010 WINS reporter Sonia Rincon was in Crown Heights...

Hynes has come under fire in the past for his handling of sexual assault allegations in the community.

The District Attorney defended his policy and said that it was unacceptable for anybody with knowledge of sex abuse to fail to report it to the authorities.

Siegel told the assembly that the community could not stop at reporting abuse to rabbis.

“For too long the community’s response to sexual abuse was to tell the victim to go talk to a rabbi,” he said.

Siegel praised the District Attorney for his work on the issue and pledged his continued assistance. He also advised parents that they should never hesitate to report suspected abuse cases to the authorities.

### **Leaders emphasized the need to involve secular authorities...**

Hynes emphasized the need to prevent victims of sexual abuse from becoming victims of retribution within the community.

“We have to protect the victims and not the perverts,” he said.

Rabbi Yousef Blau made it clear that the policy of the community was to involve the authorities if abuse was suspected.

“If one is aware of someone abusing children, one must go to secular authorities,” he said.

Siegel told the assembly that he looks forward to participating in similar meetings in the future.

**Does Brooklyn need to change the way it handles sex abuse cases? Let us know in our comments section below...**

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## Reporting Child Molesters: מסירה or Obligation?

In recent years, the Orthodox Jewish community has been shaken by numerous tragic revelations of otherwise respected educators who have taken criminal advantage of their role to molest children under their charge. Amid the collective efforts to formulate a proper response to this most unfortunate phenomenon, the question has arisen as to the propriety of reporting abusers to the relevant authorities, such as the police or municipal child welfare services. Jewish tradition has always regarded מסירה — relaying to gentile authorities information about a fellow Jew or his assets — as among the harshest crimes a Jew can commit. When exploring whether or how this prohibition applies in the case of a child molester, we must consider the parameters of מסירה, on the one hand, and on the other, the precise halachic classification of molestation and the long-term danger posed to the victim.

Specifically, we will examine the following questions:

- 1) Does a molester have the halachic status of a רודף (“pursuer”), whom others are allowed to stop through any necessary means?
- 2) Irrespective of the law of רודף, is it permissible to summon the authorities to apprehend a Jew who threatens the wellbeing of other Jews?
- 3) Does the prohibition of מסירה apply to modern-day democratic governments?
- 4) In a case in which someone is suspected of molesting a young boy or girl, how much credence can we halachically give to the child’s testimony?
- 5) Assuming that, in principle, a suspected molester can or must be reported to the authorities, may this decision be reached by anyone, or must one receive a formal *pesak* from a rabbi or *beis din*?

### I. Is a Molester a רודף?

We will begin by examining the possibility of assigning to a molester the status of רודף — literally, “pursuer.” Under certain circumstances, one who threatens another person may be stopped through any necessary means, including even by killing him. If a molester, who threatens children, is considered a רודף, then certainly he may and must be stopped through any available means, which, in

contemporary society, would translate into summoning the authorities who have the legal and physical power to arrest and imprison criminals.

The Mishna in *Sanhedrin* (73a) lists three cases in which people are licensed to kill someone who pursues another person: if he is attempting to kill, to engage in forced homosexual relations with another man, or to engage in forced sexual relations with a נערה המאורסה (betrothed girl). The Gemara clarifies that this license is given in all cases in which the person endeavors to commit a capital sexual offense; it is not limited to cases of homosexuality or relations with a נערה המאורסה. This includes an adulterous relationship with a married woman, as well as situations of incest. The *Acharonim* address the question of whether this *halacha* would also apply to one seeking to have forced relations with a *nidda*.<sup>1</sup>

Accordingly, some have claimed that a molester should be regarded as a רודף, insofar as he seeks to commit capital sexual offenses. However, this would be true only if the molester commits the sexual act of intercourse with a boy, but not if he engages in other kinds of inappropriate behavior.<sup>2</sup> Furthermore, in the case of a young girl who has yet to reach adolescence and is thus not considered a *nidda*, even the act of intercourse would not constitute a capital sexual offense, and thus the status of רודף would not apply. (The situation of an adolescent girl would depend on the aforementioned debate concerning one who seeks relations with a *nidda*.) Moreover, when dealing with youngsters who have reached the age of halachic adulthood, the possibility of considering the molester a רודף is limited to forced relations. The law of רודף does not apply to one who seeks to seduce an adult (*Sanhedrin* 73b), and thus in the case of teens, the molester cannot obtain the status of רודף if he entices his victims to engage in relations without coercion.

Others claim that molesters should be treated as a רודף not due to the intent

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1. The *Avnei Neizer* (Y.D. 461) infers from Rashi's comments in *Sanhedrin* (73b, ד"ה אפגמה, רבה) that the status of רודף applies to one pursuing a woman only if the relationship would render the resultant child a *mamzer*, and thus it would certainly not apply to the case of a *nidda*. Rabbi Akiva Eiger, in his notes to the Rambam (*Hilchos Rotzei'ach* 1:11), also makes this inference from Rashi's comments, noting that the Rambam there appears to disagree. See also *Minchas Chinuch*, *mitzva* 600.
  2. One could argue that a molester should be regarded as a ספק רודף (a person who *might* be seeking to commit a capital offense), as it is possible that he seeks full intercourse, even if most molesters engage in other forms of inappropriate contact. However, the *halacha* regarding a ספק רודף is itself subject to debate. The *Minchas Chinuch* (296:33) writes that such a person is regarded as a רודף and may be killed, whereas Rav Chaim Ozer Grodzinsky rules that the status of רודף is reserved for those who are clearly bent on committing the forbidden act (*Achiezer*, vol. 3, 72:3). The Tosefta in *Sanhedrin* (11:5) appears to support Rav Chaim Ozer's position. See also the comments of Rashi, Tosfos, and *Kovetz Shiurim* regarding הבא במחותרת, *Pesachim* 2b.



to commit a sexual offense, but rather because of the potentially fatal effects of molestation. Victims of sexual abuse often suffer from psychological disorders such as depression and the like, which can often last for many years and can sometimes lead to suicide, God forbid. Given the possible deadly result, it has been argued that a molester is no different from someone attempting to kill another person, as he seeks to inflict upon the victim emotional trauma that can result in suicide.

It should be noted, however, that the aforementioned Mishna listing the sexual offenses included under the law of *רוֹדֵף* makes no mention of one who seeks to engage in forced relations with an unmarried girl. Despite the traumatic psychological effects of rape, the Mishna does not include it in its list of crimes that may be prevented by killing the prospective offender. It thus seems difficult to extend to the status of *רוֹדֵף* to those seeking to commit crimes that inflict emotional pain on the victim, an extension that is never made by the Mishna.

## II. Molesters as a Threat to the Public

Even if a molester does not have the status of *רוֹדֵף*, might it still be permissible or obligatory to report him to the authorities for the sake of protecting potential victims? More generally, what halachic means are available to a community when one of their own threatens the public welfare?

The *poskim* address this question in the context of the *Shulchan Aruch's* ruling (C.M. 388:12) allowing communities to report to the gentile authorities one who causes harm to the public:

כל המיצר<sup>3</sup> הציבור ומצערן מותר למוסרו ביד עובדי כוכבים אנשים להכותו ולאסרו ולקנסו,  
אבל מפני צער יחיד אסור למסרו.

Whoever causes harm or distress to the public — it is permissible to hand him over to the gentile authorities to beat him, imprison him or fine him; on account of distress caused to a single individual, however, it is forbidden to hand him over [to the authorities].

According to the *Shulchan Aruch*, a distinction is drawn between one who threatens the public welfare, who may be reported to the authorities, and one who causes harm to an individual, whom the community is not authorized to report.

The *Sema*, however, commenting on this ruling, establishes an important

3. In the prevalent editions of the *Shulchan Aruch*, this word is written *המוסר*, but the *Shach* and *Vilna Gaon* note that the text should read *המיצר*.



qualification, claiming that the *Shulchan Aruch* refers here only to *צער בעלמא* — a general disturbance or annoyance. In such a case, a community may not report an offender who disturbs only one individual. If, however, the offender causes actual monetary or physical harm, even to one person, then he may certainly be reported to the authorities. The *Sema* refers us to the *Shulchan Aruch*'s earlier ruling (388:7): "Some authorities maintain that one who is beaten by his fellow may go and submit a complaint to the gentiles, even though this will cause the beater great harm..." The *Shach* adds that if one beats other people, it is permissible to petition the authorities to intervene and prevent him from causing further harm, even if the authorities will confiscate the offender's property as a result.<sup>4</sup>

It is clear from the rulings of the *Sema* and *Shach* that one is entitled to report to the authorities a felon who threatens the public welfare, even if he poses a physical or monetary risk only to individuals, and not to the general public.<sup>5</sup>

This ruling also appears in a responsum of the Maharach Or Zarua (*Teshuvos Chadashos* 4):

If the beater is someone who frequently beats, and has repeated [the crime] several times and continues to act freely, and it is clear from his conduct that he plans to beat whomever does not comply with his wishes, it is a *mitzva* for every Jew to notify the judges and authorities and petition them to stop him. And if as a result they would conspire against him and confiscate all his property, the informer has not committed any sin.

It seems clear that a child molester is no different in this regard from one who

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4. The *Darchei Moshe*, as cited by the *Shach*, records this ruling in the name of the Maharam Mei-Rizbork and disagrees, noting that a community is not permitted to confiscate the property of even a *מוסר* — someone who reports his fellow Jews to the authorities. If a community does not have license to confiscate a *מוסר*'s property, the *Darchei Moshe* argues, then certainly this may not be done to one who causes other, lesser forms of harm. The *Shach* notes, however, that the Maharam was speaking of petitioning the authorities to prevent further criminal activity, and not of taking punitive measures against an offender. Regardless of the accepted punitive measures for a *מוסר*, a community is certainly entitled to summon the government authorities to prevent someone from causing people harm.

5. On the basis of this ruling, Rav Yosef Efrati rules that if someone is trying to steal, the prospective victim may immediately notify the authorities and does not have to first summon the thief to *beis din*. Rav Efrati applied this ruling to the case of a person who uploaded the entire Artscroll Talmud onto the internet and made it available for free viewing. According to Rav Efrati, Artscroll was entitled to go straight to the police to avoid financial loss.

beats other people. It would thus be permissible — and, in fact, a *mitzva* — to notify the authorities in order to stop the molester from his criminal activity, and this would not constitute מסירה. Indeed, Rav Yosef Shalom Elyashiv, in a responsum printed in the *Yeshurun* journal (vol. 15, p. 641), rules that where there is a legitimate reason to suspect a person of molesting children (ראגלים לדבר), he may be reported to the authorities.<sup>6</sup>

### III. Applying מסירה to Democratic Governments

Thus far, we have worked under the assumption that the prohibition of מסירה would, in principle, forbid reporting fellow Jews to the gentile government authorities, and the only question is whether in practice this would be permissible for the purpose of public safety. However, this assumption itself — that the law of מסירה is theoretically applicable in contemporary Western society — is far from clear.

One basis for questioning this assumption is a passage in the *Aruch Ha-Shulchan* (C.M. 388:7):

As anyone familiar with history knows, in ancient times people in distant lands had no protection over their bodies or property from bandits and thieves, even those in official positions of power. Even today, as we know, there are several countries in Africa where government officials wantonly rob and steal. But the European monarchs, and especially our lord, the Russian Czar, and his predecessors, as well as the kings of Britain, should be commended for extending their governance over the distant lands so that every person would enjoy protection over his body

6. Rav Elyashiv bases his ruling upon a responsum of the Rashba (3:393) in which the Rashba authorizes community leaders to impose penalties and even administer corporal punishment to felons when they deem such measures necessary for the public welfare (לתיקון המדינה וצורך השעה). Thus, Rav Elyashiv rules, the sages of every generation are licensed to take the measures they deem necessary to protect the public from criminals such as abusers.

I asked Rav Elyashiv's disciple, Rav Yosef Efrati, why Rav Elyashiv resorted to this responsum of the Rashba, when it is clear from the *Sema* and *Shach*, as cited above, that one who poses a threat may be reported to the gentile authorities. Rav Efrati replied that Rav Elyashiv was reluctant to issue a blanket ruling allowing all individuals to notify the authorities about a suspected abuser, which could lead to widespread false accusations. He therefore cited the responsum of the Rashba, which authorizes specifically the *batei din* to take the necessary measures to rein in on dangerous criminals. As we will see later, however, there is halachic basis for allowing even ordinary citizens to report molesters, without obtaining a *pesak* from a rabbi or *beis din*.

and property, such that the wealthy do not have to hide to avoid being robbed and murdered. This is the basis of all the laws of *מסירה* found in the Talmud and halachic literature, as we will, with God's help, explain, for one who informs or reports his fellow to these thieves is indeed pursuing him both physically and financially, and he may therefore be saved [from this sin] by having his life taken.<sup>7</sup>

According to the *Aruch Ha-Shulchan*, the prohibition of *מסירה* applies only to reporting fellow Jews to rogue governments who have no regard for the basic rights of its citizens. Even Czarist Russia, the *Aruch Ha-Shulchan* writes, granted its citizens enough rights to render *מסירה* inapplicable. It goes without saying that this would be true of modern democracies, which guarantee their citizens due process of the law before punitive measures are undertaken, as well as protection of life, limb, and property.

Moreover, several sources indicate that the license to kill a *מוסר*, even if he only informs authorities about a fellow Jew's money,<sup>8</sup> stems from the clear and present danger that he poses to human life. The *Sema* (388:29), for example, writes that a *מוסר* may be killed because once a Jew's property is exposed to the gentile authorities, he becomes subject to false charges to the point at which, in many cases, he is killed, and thus the *מוסר* has the status of a *רודף*. This is also the implication of Rashi in his commentary to *Bava Kama* (117a), and this point is made explicitly by the Rosh in one of his responsa (17:1):

One who seeks to expose his fellow's property to a thief is compared by the Sages to one who pursues his fellow physically to kill him... Once one falls into the trap, he is shown no mercy; and a Jew's money, too — once it falls into the hands of the thieves, he is shown no mercy. Today they take some, tomorrow they take it all, and in the end he is handed over and killed, as they hope he will confess that he has additional money. He [the *מוסר*] is therefore considered a *רודף*, and may be saved [from his crime] by taking his life.

Accordingly, even if we do not accept the *Aruch Ha-Shulchan's* sweeping claim that *מסירה* does not apply to governments of civilized societies, we would still restrict the prohibition to situations in which conveying information would pose a direct threat to life. In contemporary societies, even if a court makes a wrong

7. This passage is omitted from the most recent edition of the *Aruch Ha-Shulchan*, likely because the printers assumed it was added only to satisfy the censors and does not reflect the author's actual views. Significantly, however, Rav Eliezer Waldenberg (*Tzitz Eliezer* (vol. 19, 52:5), cites this passage, evidently assuming that it was written wholeheartedly.

8. This license is codified in the *Shulchan Aruch* (C.M. 388:10).

conviction, the defendant's life is not put at risk, and it thus stands to reason that the grave prohibition of מסירה does not apply in today's circumstances.<sup>9</sup>

In an oral conversation, Rav Yosef Efrati noted that even if the prohibition of מסירה does not apply to modern democratic governments, reporting Jews to the authorities would nevertheless be prohibited for a different reason. The Gemara in *Gittin* (88b) establishes the prohibition of לפניהם ולא לפני עכו"ם, which forbids resorting to non-Jewish courts to resolve legal conflicts. Aside from the issue of מסירה, reporting an alleged criminal to the gentile authorities essentially amounts to putting him on trial before a non-Jewish court, in violation of לפניהם ולא לפני עכו"ם.

One may, however, dispute this contention on several grounds. First, the rule of לפניהם ולא לפני עכו"ם applies to bringing financial disputes to non-Jewish courts. In the case of a criminal such as a molester, the court system is being used to protect people from harm, not to settle property disputes. Second, in our times, when *batei din* do not have the authority to punish criminals, it is legitimate to resort to the general court system for the vital purpose of reining in criminals. This cannot be compared to situations of financial disputes, which *batei din* are authorized to adjudicate, such that bringing the matter to a gentile court would dishonor Torah law. If a criminal threatens the public, a community's only recourse is the general court system, which has the authority to convict and imprison offenders, and this should thus certainly be permissible.

Moreover, reporting an offender to the police is not the same as summoning another party to court. Even though the accused criminal will likely be prosecuted and put on trial, the Jew who reports him is not bringing him to court. He merely summons the authorities to intervene for the sake of public safety, and they then decide to prosecute. Calling the police thus does not violate the law of לפניהם ולא לפני עכו"ם.

#### IV. Accepting the Testimony of a Minor

Based on what we have seen, it is permissible, and even obligatory, to report a suspected molester to the authorities once there is sufficient reason to suspect that he indeed poses a danger to other people. The question then must be addressed as to how a credible suspicion is established. If a child claims he or she

9. The Mordechai (*Bava Kama* 9:117) offers a different reason for the prohibition of מסירה, writing that it is "repugnant" (מכוער) to hand over one's money to a gentile ruler. As cited, however, the *Sema* gives the reason that מסירה threatens a person's life, and for this reason the *Shulchan Aruch* allows even killing a מוסר.

was molested, does this complaint suffice as “testimony” to warrant summoning the authorities?

This precise question was addressed by Rav Yosef Shaul Nathanson in his work of responsa, *Sho'el U-Meishiv (Mahadura Kama, 1:185)*:

In 5613, rumors were spread in a certain town about a certain teacher who had been living there for eight years, and the children who studied with him as youngsters are now thirteen years old and older. They now testify that as children, when they learned with him, he defiled them through homosexuality, *Rachamana litzlan...* Two young men — one who is now fifteen years old and the other thirteen — testified that as children, when they studied under him, when they were around nine years old or younger, he would defile them through homosexuality, for they would lie with him in bed in the room where he lived. There is a lot more to the incident that is not suitable for printing.

This was my response. The truth is, I have already elaborated in a responsum that two valid witnesses are required to disqualify a person, and I cited the comments of the *Peri Chadash* and the *Ritva* requiring two valid witnesses to disqualify someone, as it is treated as *דיני נפשות* [a trial for the purpose of corporal or capital punishment]. In this case, then, since they were minors at the time of the incident, they are not accepted as witnesses to testify as adults about what they saw as minors, as stated explicitly in *Choshen Mishpat* (35)... However, according to what the *Maharik* and *Terumat Ha-Deshen* wrote and was codified by the *Rama* in the *Shulchan Aruch*, that in situations where valid witnesses are not needed, even women and minors are accepted as witnesses, in this matter, where certainly there is no possibility of having adults [testify], and there is no possibility of having testimony — because undoubtedly, this person, although he is evil and malevolent, conceals his conduct and plays only with small boys... — it is clear that they are accepted as witnesses. Moreover, it is not as though we are trying to disqualify him from serving as a witness or from taking an oath...

In my view, then, it is proper [for the people] to remove from his head the crown of demagoguery and to protect themselves until he fully repents with appropriate means of self-affliction. He should then return and accept the words of the rabbis, and this should serve as atonement for his sins. But we cannot speak of repentance unless there is a confession.

The *Sho'el U-Meishiv* explicitly allows accepting testimony given by adolescents about events they experienced as children. It seems clear, however, that this



ruling would apply even to the testimony given by children before they reached adolescence. The *Sho'el U-Meishiv* based his ruling upon the Rama's comments regarding a situation in which there is no possibility of finding valid witnesses (C.M. 35:14):

All those who are disqualified — they are disqualified even in a situation in which it is not common to find valid witnesses to testify. All this applies only according to the strict law. Some maintain, however, that there was an ancient provision enacted to accept women's testimony in places where men are not normally found, such as in a women's restroom, or regarding other matters in which women are involved and men are not, and to which men do not normally pay close attention, such as to testify that certain clothes were worn by such-and-such woman and they belong to her.

Therefore, there are those who say that even one woman or a relative or minor is accepted to testify about the beating and degradation of a Torah scholar or about other fights...because it is not customary to summon valid witnesses for this, and there is no time to summon...

Clearly, then, complaints made by a child who claims to have been molested, as long as they sound credible, can be accepted as sufficient grounds for suspicion that warrant appropriate action. Since molesters make sure to commit their crimes in seclusion, and there is thus no chance of their being seen by valid witnesses, a child's testimony may be accepted as grounds for suspicion.

## V. Must a Rabbi or *Beis Din* be Consulted Before Reporting a Molester?

In a case in which a person has verified knowledge of a molester, may he notify the relevant law enforcement agency himself, or must he first consult with a rabbi or *beis din* to receive an official *psak halacha*?

The *Yam Shel Shlomo* (*Bava Kama* 3:9) discusses at length the topic of לאִפְרוּשֵׁי מְאִיסוּרָא, the license to use corporal punishment in order to enforce compliance with Torah law. After citing several sources that affirm the right to utilize physical force against Torah violators, the *Yam Shel Shlomo* emphasizes that this applies only to an אָדָם חָשׁוּב וּמוֹפְלָג — a distinguished person who is renowned for his piety, who can be assured to act genuinely *le-sheim shamayim*. The *Yam Shel Shlomo* then proceeds to draw a distinction in this regard between personal religious matters and interpersonal offenses:

But this applies specifically to distancing [people] from other



prohibitions, between a person and God. However, regarding interpersonal matters, such as if one beat his fellow, it is permissible for any person, even a simple man, to rescue his fellow, and he may beat the assailant in order to save the victim.

According to the *Yam Shel Shlomo*, all people are authorized to intervene in order to rescue a victim of crime.<sup>10</sup> This is also the ruling of the Maharam Mei-Rizbork, cited by the *Shach* (C.M. 388:45): “There is a *mitzva* for every person to inform the judge that so-and-so beat so-and-so.”<sup>11</sup> This license would certainly apply to molestation, which often involves physical assault that is no different from beating and also inflicts psychological damage that requires professional treatment, and whose effects are often more severe than physical harm.

Accordingly, it would seem that any person who is aware of a molester is authorized, and indeed obligated, to intervene by notifying the relevant government authorities, and he does not have to first consult with a rabbi or *beis din*. To the contrary, consulting with a rabbinic authority could delay the process and expose additional children to risk, Heaven forbid. It seems clear that once a credible suspicion has been established,<sup>12</sup> anyone aware of the situation is required to immediately report the matter to the appropriate law enforcement agency, without any delay and without any consultation, so that offenders can be apprehended and our precious children can be spared the physical and emotional trauma of molestation.

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10. Unfortunately, there are those who cite the first section of this passage in the *Yam Shel Shlomo* as a source for requiring consultation with a rabbi or *beis din* before reporting a criminal to the authorities, ignoring the latter segment, where the *Yam Shel Shlomo* rules explicitly that anyone is allowed to intervene to rescue a victim of assault.

11. See above, n. 4.

12. In the absence of רגלים לדבר — credible grounds for suspicion — it would seem that one may not report a suspected offender, as this would undermine his reputation and cause him humiliation without sufficient cause. It is possible, however, that if one can ascertain that the investigation would be done in complete privacy and confidentiality, then even without רגלים לדבר, one may report a suspected abuser, although this issue requires further study.