

have directly experienced some form of religious practice in their lives. While many assume life styles organized around the secularized patterns of American culture, there are also, as in the Orthodox group, hallmarks of the calendar year—i.e. Yom Kippur, Passover, etc.; events of life—birth, death, Bar Mitzvah, marriages, divorces, etc.; and events of history such as the Six-Day War, Yom Kippur War, U.N. resolution against Israel and World Jewry, etc. which are constantly playing upon conscious and even vague religious sensitivities. The degree of impact varies according to religious and psychological variables. During the course of treatment, it is probable that for many families some such events will play a role in their daily life. These are periods of time when religion or religious identity comes to the fore of consciousness and becomes a key determinant of psychological functioning. Inter-marriage can affect families in such a way, and a separate paper is needed to deal with this phenomenon alone. Practitioners should be aware of the ebbing of such feelings within clients. However, a degree of comfort is necessary on the part of the practitioner to deal with these issues in the context of religious identity. It may very well

be that to be able to comfortably deal with these issues, workers themselves may need to understand this phenomenon and its effects on their own lives, while the field of social casework itself should attempt to probe into religious identity as a determinant to behavior.

This paper has attempted to develop a number of theses regarding the treatment of religiously oriented clients in a casework agency. The primary issues have been the influence of group pressures on identity, religious contention as a conduit for other impacted areas of development and its role in marital complementarity. Finally, there are my observations on how assessing religious practice can be a diagnostic tool for the skilled practitioner and how this practice can be used.

The continuous theme throughout this work has been the message that religion is a pervasive and ubiquitous force throughout life to some groups and individuals. It colors relationships with others, perception of self, and, like other ideologies, can be used in both positive and negative ways, dependent on innumerable variables. A worker treating religious clients, then, must come to grasp its very real and powerful influences, explicit and implicit, on personal, individual identity.

Psychiatric Hazard in the *Halachic* Disposition Towards Birth Control and Abortion: The Role of the Caseworker

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The entire area of psychological problems and severe emotional disturbances and their bearing on Halachic questions has not as of yet been adequately explored.

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The observant Jew guides action and decisions for action by the dynamic requirements of the institution of the *Halacha* in any specific regard. The observant Jewish social service client engaged in individual, family, vocational or marital counseling finds him or herself no less bound by the valences of the *Halachic* process even when the actions in question fall under the aegis of therapeutic necessity. That is, for example, assertiveness training needs to be instituted within the framework of the *Halachot* (laws) of *derech eretz l'horim u'morim* (respect for parents and teachers); sex therapy engaged in with respect to the laws of *taharat hamishpacha* (family purity); discussions of attitudinal and value change within the light of Torah and rabbinic understandings of *Torah*.

The approach to *Halacha* which bestows upon it such an all-encompassing power is that it is not a mere random collection of rules and rabbinic statements but rather is a system of thought and conduct based on the dialectic between the word of God and the latitude of personal initiative. "*Halacha* is a vast system of thought which extends over the limitless ranges of human experience, subjugating them to its critical scrutiny in the light of the principles, regulations and laws revealed at Sinai and unfolded in the rabbinic literature of subsequent millennia."²

Far from being a rigid structure, implicit in the fact that *Halacha* addresses itself to mundane reality is the notion that it must be

conditioned by the limitations of and changes in that reality. Historic circumstances may determine the application of a great many *Halachot*, commandments and practices,³ *Halachic* statements are not always absolute,⁴ some laws are contingent on the vicissitudes of human desires and personality factors can also effect *Halachic* decisions.⁵ Moreover, there is a legitimate place for and process of change in the *Halachic* system, one that is sensitive to both the exigencies of the individual as well as to the fluid realities of changing times. To be sure, there is disagreement in certain camps as to exactly how far *Halacha* may bend to meet these needs and about how fluid this process truly is; it suffices for this discussion that the particular *Halachic* understanding of the client surely plays a large role in determining the attitude taken by the counselor/therapist.⁶

The above notwithstanding, I will orient this study to deal specifically with the observant Jewish client for the following reasons: (1) His *Halachic* perceptions are usually the hardest

³ Talmud Erushin 29a; Sanhedrin 20b; Kiddushin 36b; Sotah 47a-b; Avodah Zara 8b; Zevachim 112b. (All future references to the Talmud may be followed according to the original pagination in the Soncino Edition Translation.)

⁴ Eduyut 1:15; Maimonides' *Yad haChazaka: Hilchot Mamrim*, 2:1. There is also the concept of 'times (or natures) have changed,' see Magen Avraham on *Shulchan Aruch, Orech Chaim* 179:6 and 173:1; Moed Katan 11a—Tosefot 'kavra'; Avodah Zara 24b—Tosefot 'parah'.

⁵ Kiddushin 21b; Sanhedrin 81b; Berachot 16b; Makot 7a; Nidda 61b; Deut. 19:6; 12:20; 17:14; Or *HaChayim* to Leviticus 11:3.

⁶ See R. Israel, "The Elusive Appeal to Authority in Rabbinic Counseling and Social Casework," *Journal of Jewish Communal Services*, 1969, 45, p. 303-311.

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¹ David Bleich, "Abortion in *Halachic* Literature," *Tradition*, 1968, 10(2), p. 101.

² D.S. Shapiro, "The Ideological Foundations of the Halakha," *Tradition*, 1967, 9(1-2), p. 100.

for the non-religious practitioner to understand; (2) the concepts of "mental adjustment" or "balance" to such clientele will always be secondary in relation to a primary concern of what one is *Halachically* allowed to do to achieve such adjustment and balance, and (3) certain *Halachic* matters which appear on the surface to be the sole concern of rabbinic authority often require consultation with a trained professional in order for such rulings to be valid. Thus, for example, in determining the *kashrut* of certain synthetic foods, biochemical input is necessary; in arbitrating a euthanasia decision, medical and technical information is required, etc.—in all such situations, the *Halacha* recognizes the professional status of experts-in-the-field to provide relevant information on natural phenomena which may come to bear on a *Halachic* decision.

At the moment, however, very little work has been done on the application of this flexible process in Jewish life to the specific dilemmas which can occur, from the *Halachic* standpoint, in the socio-psycho-therapeutic setting.⁷ The concern of this paper will be with one such interface between *Halacha* and social work or psychological intervention: abortion and birth control counseling. The issue at hand, pressing both in terms of the high incidence of such cases currently brought before the Jewish family service institution or private practicing caseworker as well as to the rabbi, involves the *Halachic* opinion on the

⁷ See my "Critical Review of the Literature in Psychology and Judaism: Introduction," *Journal of Psychology and Judaism*, 1976, 1(1), pp. 15-36.

⁸ For a basic discussion of the prohibition of abortion and birth control when not *Halachically* permissible, see F. Rosner, "The Jewish Attitude Toward Abortion," *Tradition*, 1968, 10(2), p. 48-71; Bleich, *op. cit.*, 1968; I. Jakobovitz, *Jewish Law Faces Modern Problems*, New York: Yeshiva University Press, 1965 and Jakobovitz, "Abortion and Embryotomy," p. 170-191, *Jewish Medical Ethics*, New York: Bloch, 1959; and D. Feldman, *Marital Relations, Birth Control and Abortion in Jewish Law*, New York, Schocken, 1974, p. 251-268.

appropriate occasion for dispensing with otherwise strong prohibitions against birth control and abortion.⁸ The increased awareness and availability of medically supervised abortion and prenatal disease testing (such as amniocentesis), coupled with the general heightened fear in this country of being a carrier of a Tay-Sachs, PKU or otherwise genetically inferior fetus, has not been without strong effect on the formerly fervent anti-abortion stance of young married religious and non-religious but scrupulous couples.⁹

Ostensibly, the caseworker does not enter the decision-making process in this regard at all. That is to say, while *Halacha* does not recognize "social inconvenience" alone as a sufficient warrant for relaxing said prohibitions, it very clearly recognizes threat to the mother's physical well-being, when caused by the pregnancy,¹⁰ as a lenience factor (so long as the infant's head has not yet extruded into the world¹¹) in abortion and, *mutatis mutandis*, in permitting birth control through acceptable means.¹²

Physical dangers include general risk to mother's life, other specific medical catastrophe which could leave the mother permanently or temporarily endangered—again, where the cause is nothing external but the

⁹ One study indicates a 15% anxiety-reaction to the discovery of one's carrier status. See E. Beck, S. Blaichman, C. Sriver and C. Clow, "Advocacy and Compliance in Genetics Screening: Behavior of Physicians and Clients in a Voluntary Program of Testing for the Tay-Sachs Gene," *New England Journal of Medicine*, 1974, 291, p. 1166-1170.

¹⁰ Mishna Ohlot 7:6; Maimonides' *Yad: Hilchot Rotzeach* 1:9; I. Unterman, *Shevet Miyehudah*, Jerusalem, 1955, p. 26; M. Zweig, *Noam*, 1964, 7, p. 49-53.

sanhedrin 72b; Shabbos (Palestinian Talmud) 14:4; *Yad: Hilchot Rotzeach*, 1:9.

¹² The condom, for example, being the least acceptable means and the Pill, spermicidal and diaphragm being the most acceptable. Determination of means of contraception is a question involving rabbi, physician and individual. For an excellent review of the discussion on birth control, see F. Rosner, "Contraception in Jewish Law," *Tradition*, 1971, 13(1), p. 90-103.

pregnancy if carried to term—such as deafness¹³ or excruciating and debilitation (though not even life-threatening!) pain.¹⁴

Clearly, this is the physician's and rabbi's territory, where the final ruling is a *Halachically* composed issuance of the rabbi who, from the theoretical standpoint, is the final arbiter of action.¹⁵ There is, however, another leniency factor in the rabbinic disposition towards birth control and abortion: psychiatric hazard. How this is defined and by what criteria measured is no small problem and will be the central focus of the continuing discussion—but it is here that the caseworker/therapist plays a significant role in the *Halachic* process. Before illustrating the nature of this clinical-*Halachic* intervention, a brief overview of the past will be enlightening and useful.

Psycho-social Anguish as Grounds

The generalized form of the consensus position in regard to the abortion issue is provided by I. Jakobovitz, the Chief Rabbi of Great Britain, "The (*Halachic* opinion on) the destruction of an unborn child is that it is not murder. But it is a grave offense, except where indicated by some hazard to the safety of the mother, whether for physical or psychological reasons."¹⁶ The basic leverage for lenient

¹³ B. Uziel, *Resp. Mishpetai Uziel*, 3, #46; 47; Tel Aviv, 1935.

¹⁴ I. M. Mizrahi, *Resp. Peri Haaretz*, Yoreh Deah, #21, Constantinople, 1721; N.Z. Friedman, *Resp. Netzer Mata'ai*, 1, #8, Benai B'rak, 1958.

¹⁵ I. Jakobovitz, "Introduction: Review of Recent Halachic Literature," *Tradition*, 1961, 4(1), p. 96-97.

¹⁶ "Recent Statements on Jewish Medical Ethics," *Proceedings of the Association of Orthodox Jewish Scientists*, 1976, 3-4, New York: Feldheim, p. 6. Throughout the following discussion, I am not concerned with situations wherein the physical or psychological danger to the mother is caused by extraneous causes which the pregnancy happens to exacerbate; e.g., if a woman is threatened with mental illness due to some organic brain syndrome—and happens to be pregnant. In such a case, many authorities would not permit (*Resp. Pahad Yitzchak*,

rulings in the case of abortion rests upon (1) the fact that an unborn fetus is considered less than human by *Halacha* and (2) that in any circumstance of physical or psychological danger to the pregnant mother, the fetus assumes the legal status of a *rodef*, a pursuer, which, although innocent and not as of yet a person, may be sacrificed when a *Halachically* valid warrant exists to save the life of the mother; after birth, the neonate has equal claim to life.¹⁷

The operative in this regard is not a matter of punishing the aggressor but saving the victim in time. One insightful commentary on this topic notes that when circumstances demand, the concept of *rodef* implies that abortion is *required* rather than *permitted* such that even if out of love for her unborn child a mother chooses to die so that it may live, her choice is not *Halachically* acceptable.¹⁸ In these sorts of cases, the mother falls under the ukase: "Do not pity the pursuer,"¹⁹ based on the Divine fiat: "Do not stand idly by your brother's blood."^{20*}

Ereck Nefalim, 79b, Lyck, 1846; C. O. Grodzensky, *Ahiezzer*, II, #72, New York, 1946; I. Schor, *Resp. Koach Shor*, #20, Kolomea, 1888; R. Weinberg, *Sereidi Eish*, III, #342, Jerusalem, 1966.

¹⁷ *Yad: Hilchot Rotzeach*, 1:9; *Shulchan Aruch; Choshen Mishpat*, 425.

¹⁸ M. Zweig, *Noam*, 1964, VII, p. 49-53.

¹⁹ Sanhedrin 73a.

²⁰ Leviticus 19:16.

* The matter of *rodef* is a difficult one. Maimonides rules that the fetus is "like a *rodef*," such that it may be sacrificed, leading many glosses to question why the child may not be sacrificed even after its head has extruded; it is still a "pursuer." Numerous answers on Maimonides' behalf have been offered—the central thesis of almost all of them (21-25) is that Maimonides only intended to stress that the endangering fetus, like the real *rodef*, may be sacrificed; once born however, it has full-human status and therefore equal claim to life (given the absence of aggressive, homicidal tendencies on the part of the infant).

The law of pursuit (Maimonides, *Yad: Hilchot Rotzeach*, 1:6) is that a bystander is required to disable the aggressor, by a fatal blow if necessary, in order to spare the victim.

The late Chief Rabbi of Israel, Rabbi I. Unterman, viewed killing a fetus when necessary in a very stringent light, practically speaking. In a responsum-article, he writes that the fetus *cum* pursuer loses its claim to our protection and the status which makes its killing ordinarily murder. However, he adds that an "unintentional pursuer," viz., one following a natural course of child-birth processes which always involves struggle, would not forfeit the status which makes its killing permissible. Thus, only in life-saving situations could a fetus be aborted.²⁷ Accordingly, if we examine other of R. Unterman's responsa we find his definition of life-saving circumstances to include "mental anguish only if suicidal tendencies prevail" which then obviously constitutes an everpresent possible threat to life.²⁸ Insanity alone, he opines, is not sufficient warrant for abortion "for even the insane have an instinct for self-preservation." In relation to Tay-Sachs disease, Dr. F. Rosner writes, "If a woman who suffered a

Some say that this is why Maimonides likened the fetus to a *rodef*; i.e., even though ordinarily one should first try to disable the aggressor; in the case of the fetus, it may even be killed if necessary. (26) However, when intra-uterine amputation of a limb would suffice to save the mother's life without recourse to an embryotomy, destruction of the fetus could not be sanctioned—strictly from Maimonides' standpoint.

21 Y. Bachrach, *Havvot Yair*, #31, Lemberg, 1896; Resp. *Koach Shor*, 1888, #20; J. Teomim, *P'ri Megadim to Shulchaan Aruch: Orach Chaim*, 328:1.

22 Y. Landau, *Noda B'Yehudah, Choshen Mishpat*, #59, Vilna 1904.

23 Y. Eibeschutz, *Urim V'Tumim*, 30:103.

24 Y. Teitelbaum, Resp. *Avenai Tzedek, Choshen Mishpat*, #19, Seiget, 1886.

25 S. Zalman of Lublin, Resp. *Torat Chesed*, II, #42, Jerusalem, 1909. I.Z. Meltzer, *Even HaAzel*, to *Yad: Chovel U'Maxik* 8:15 (1935).

26 Y. Teitelbaum, 1886, *op. cit.*

27 *Shevet MeYehudah*, Jerusalem, 1955, p. 26; and *Noam*, VI, 1963, p. 6-7.

28 "Mitzvat Pikuach Nefesh U'g'dareha," (The Law of Saving a Life and its Definitions) *HaTorah v'Hamedinah*, IV, 1952, p. 22-29.

nervous breakdown following the birth (or death) of a child with Tay-Sachs disease becomes pregnant again, and is so distraught with this knowledge...that she threatens suicide, Jewish law can allow amniocentesis... and rabbinic consultation should be obtained regarding the decision to abort" (italics mine).²⁹ Obviously, in cases as described, Rosner has in mind the availability of permissive rulings such as R. Unterman's noted above.

On the surface, this appears as progress towards a definition of psychiatric hazard, yet closer reflection reveals that this description reduces to no more than the old leniency factor of "physical danger" inasmuch as the potential threat of *suicide* is the lever, rather than the mental anguish *sui generis*. Although R. Unterman's ruling recognizes psychiatric phenomena ("suicidal tendencies," "attacks of hysteria"), the leniency in such cases for therapeutic abortion emerges not due to the particularly *psychiatric* element but rather from the *physical danger* that may come about because of the former. This, in a sense, is not a very meaningful way to operationalize psychiatric hazard. Nonetheless, it appears in several responsa in different applications. In order to prevent *tiruf da'at*, mental damage or unbalance, Rabbi Moshe Feinstein, the dean of most of the orthodox rabbinate, permits eating on Yom Kippur,³⁰ permits a contraceptive.³¹ Rabbi Israel M. Mizrahi (18th century) permitted eating non-Kosher broth,³² and Rabbi Issac Lamprenti³³ and R. Unterman³⁴ both have permitted the violation of the Sabbath in order to forestall a mental breakdown. Yet, in all the cases cited here apparently making use of some psychiatric

29 F. Rosner, "Tay-Sachs Disease: To Screen or not to Screen," *Tradition*, 1976, 51(4), p. 108.

30 M. Feinstein, *Iggrot Moshe, Even HaEzer*, I, #65; E. H., III, #22.

31 *Iggrot Moshe, Even HaEzer*, III, #22.

32 Resp. *P'ri HaAretz*, III, Yoreh Deah: #2, Jerusalem, 1899—based on TB Yoma 82a-b.

33 Resp. *Nachalat Shevah*, #83.

34 *HaTorah v'Hamedinah*, IV, 1952, p. 29.

*hazard principle, the psychiatric hazard itself is not considered as dangerous as the possible life-endangering acts which the affected individual might commit.*³⁵

However, in order for the concept of psychiatric hazard to have full meaning over the broad range of mental aberrations which fall under its rubric, some precedent must be found which treats the particularly psychiatric aspect of certain states of mind as *a class in itself* rather than having recourse to the long-term, potential *physical* threat which may come about because of the psychiatric aspect. Prima facie, it would appear that many of today's emotional anxieties surrounding pregnancy or the desire to conceive are based on very rational, reality-oriented fears: fears of monster-births, of genetically inferior children, or inability to balance economic demands with those of healthy emotional demands, of delivering and raising a child resulting from rape, etc. Indeed, how would one classify the psychic trauma some persons may experience upon learning that they are disease carriers or carrying a defective fetus.³⁶ Common to all of these examples is the fact that while not all persons would become "insane" under the influence of such fears, in still other cases, these fears may be sufficient to have a disastrous emotional effect on one's general *joi de vivre* and ability to lead a peaceful existence. What then becomes invaluable to both caseworker and rabbi is evidence of the *Halacha's* sensitivity to just this type of what I will call "psychiatric distress" (vs. *hazard*) and

35 See, for example, *Iggrot Moshe*, E.H., III, #22, where R. Feinstein speaks of a mother threatened by *nervenbrachen*, or "nervous breakdown"; he makes it clear that "insanity threatens the life to the mother and of the people around her." see also *IM* on E.H., I, #65; Resp. *P'ri HaAretz*, III, Yoreh Deah, #2, Jerusalem, 1899; M. Mizrahi, *Admat Kodosh*, Vol. 1, #6, Constantina, 1742; M. Winkler, *Levushai Mordechai*, Choshen Mishpat, #39, Budapest, 1922. That the laws of *Pikuach nefesh* apply to mental-health danger as well as to physical risk has been reconfirmed by N. Friedmann, *Netzr Mattai*, #8, Bnai Brak, 1957.

36 See note 29 *Supra*.

its legitimacy as a leniency factor in abortion and birth control rulings.

Such precedent, I believe, can be found. First, we note Maimonides' ruling that the psycho-physical pains of a nursing mother; viz., her cravings for food, despite her husband's protestations that eating what she desires to eat may kill the child, come before all other considerations.³⁷ There is also apparently no danger here of the woman going insane! In other responsa, R. Jacob Emden (d. 1776) uses the notion of "great need:" (in a question of permitting abortion for the resulting conception from an adulterous relationship, the woman was currently fully contrite), R. Emden finds numerous reasons to be lenient in principle, then adds: "With legitimate fruit, too, there is room to allow abortion for 'great need,' so long as the birth process has not yet begun, even if the reason is not to save her life—even if only to save her from 'great pain' it may cause her. But the matter requires further deliberation...(italics mine)"³⁸ In response to a similar query, R. Yosef Hayim ben Eliyahu answers, "Evidently there is room to permit (abortion: quoting R. Emden and other permissivists) when *disgrace* is involved, which can be called a matter of 'great need.' But I have already said that I am issuing no ruling, merely placing the above before you for consultation with another rabbinic authority."³⁹ Of great interest are the responsa of former Chief Rabbi of Israel Ben Zion Uziel (d. 1954)⁴⁰ where he compares leniency in abortion for a now contrite adulterous woman to the rabbinic law demanding the abortion of a fetus in a woman found guilty and about to be executed so as to prevent accidental extrusion of the fetus during the execution, thereby sparing her *nivvul* (disgrace); i.e., psychiatric distress, clearly not a threat to physical life or sanity, serves to legitimate leniency.

37 *Yad: Hilchot Ishut* 21:11.

38 Resp. *She'elat Ya'avetz*, #43, Altona, 1739.

39 Resp. *Rav P'alim, Even HaEzer*, I, #4, Jerusalem, 1905.

40 Resp. *Mishpetai Uziel, Choshen Mishpat*, III, #46, 47, Tel Aviv, 1935.

Indeed, R. Uziel writes, "Abortion is not permitted in our law for no reason; that would be destructive of the possibility of life. But for a reason, even if it is a weak reason (*ta'am kalush*), such as to prevent a woman's disgrace, then we have precedent and authority to permit it."⁴¹ Also, Rabbi Moshe Zweign, who rules permissively, agrees in principle with this line of reasoning.⁴² And R. Feinstein, responding to a case where a mother would experience great pain and anguish (more than the normal wear and tear involved in raising children) if she were to bear more children, given her past two births of deformed children, notes that if her anguish is indeed so great, then perhaps a woman is not so bound to her husband to need to have intercourse in a fruitful manner. Thus, with a provisional limit of three years to his dispensation, he allows the couple to avail themselves of an acceptable method of birth control.^{43*}

Further examples exist: one rabbinic authority writes of a case concerning a mother's fear that her unborn child may be epileptic, "How can we kill based on doubt ... whatever the author of the Responsa *L'vush Mordechai* wrote in order to permit abortion was only because of the mental anguish of the mother. But for a fear of what *might* be the child's lot, (we cannot permit)."⁴⁴ That is, though, that for the mother's psychological distress, leniency would have been forthcoming. In yet another, we read that a thalidomide baby cannot be aborted for the sake of protecting it from its fate. A fear, however, that continuation of the pregnancy would have such debilitating psychological effects *on the mother* would justify an abortion.⁴⁵⁻⁴⁷ Sum-

marizing the tone of these rulings in the words of R. Moshe Sofer, "No woman is required to build the world by destroying her own."⁴⁷

The general *Halachic* position that emerges from the first section of this paper is that while the rabbinic authorities would tend not to permit abortion on grounds of a mother's feelings or fears for the unborn child, on the other hand, psychiatric and medical hazards *and psychiatric distress (due to fear) of the mother* could stand as bona fide leniency factors.

It has been established that there is rabbinic precedent allowing psycho-social anguish (psychiatric distress) to stand as grounds for abortion and birth control, all things being equal. It remains to be seen, however, how "anguish" and "distress" are to be characterized and diagnosed. And there is little doubt that the caseworker/therapist is in the class of *mumcheh*, the expert, referred to by those who recommend consultation with the professional in mental health prior to the issuance of the rabbinic ruling.⁴⁸ The caseworker in this sort of situation confronts two dilemmas: that of his or her own discipline's immaturity in predicting many sorts of characterological reactions to stresses and trauma and, second, the *Halachic* imprecision about what exactly constitutes "mental anguish," "great need," or "psychiatric distress." In this part of my analysis, I will attempt to delineate various elements constitutive of psychiatric distress, which I think the *Halacha* would subscribe to, in the effort to enhance the caseworker's ability to interact with concerned rabbinic parties.*

⁴⁶ S. Yisraeli, Resp. *Amud HaYemini*, #32, 1966, (Jerusalem Court of Appeals); R. Zweig, "Al Hapalah Mela'akhutit," *Noam*, IX, 1966, p. 193-215.

⁴⁷ Resp. *Chatam Sofer, Even HaEzer*, #20, Vienna, 1855.

⁴⁸ See *Iggrot Moshe, Yoreh Deah*, II, #57, New York, 1974.

* The Talmud (Haggiga 36a; Shabbat 105b; Sanhedrin 65b; Nidda 17a) forms a composite picture of *shtus*, insanity, with these definitions: violent temper, breaks vessels, rips cloths, goes out alone at night and walks

We have already noted that evidence of a potential psychotic break is not relevant to this discussion inasmuch as the latter enters into the rabbinic notion of *physical* danger and, as such, readily augurs for a lenient ruling. A second definition of psychiatric distress might be *disgrace*, say of the type following rape, or, as noted by R. Zweig, perhaps "shame" is the greatest pain?⁴⁹ While these definitions do have their crucial *Halachic* implications; intuitively, they do not satisfy our need for greater detail.

Some assistance may be found in a totally different *Halachic* arena of determining psychiatric status of suicide victims (*ma'abed atzmo b'da'as*). In order to be legally culpable for having sinned by committing *suicide*, the self-murder must have been committed in *compos mentis*; any slight indication that the suicide was the product of an unsound mind is quickly mobilized in the interests of removing stigma from the deceased. Should we, in fact, be able to say that a death was not the product of a sound mind, then *Halachically* that death is *not* a suicide. The element of "duress" is utilized to full capacity—defined as ranging from depression to full-blown psychosis—and this disposition enjoys majority *Halachic* support.⁵⁰

Duress has been defined by the existence of any one of the following in the personality of

through cemeteries. Maimonides notes, however, that these are not to be construed as definitions of insanity but rather as examples of insanity. Generally speaking, *shtus* might denote one who has lost the ability to reason or make reality-based judgments. Hence, it is largely left to us to speculate as to whether these 'examples' are indicative—or were meant to be indicative—of neuroses or psychoses.

⁴⁹ In *Noam*, VII, 1964, p. 47-48, based on the Tosefot 'bishvil,' Shabbat 50b. Rabbi Jakobovitz, in a more recent article, writes that rape does not qualify as sufficient warrant for abortion, because this tendency would remove a necessary deterrent to sin—"Jewish Views on Abortion," chp. 6, in D. Smith, *Abortion and the Law*, Cleveland: Case Western Reserve Press, 1967.

⁵⁰ J. M. Tukachinsky, *Gesher HaChayim*, I, Chp. 25, Jerusalem, 1960. cf. *Yad: Sanhedrin* 18:6.

the individual in question: (1) compulsion—such as the necessity to kill oneself rather than surrender to an enemy or violate God's laws; (2) despair of life; (3) pathological identification with a loved one who has recently died; (4) self-inflicted punishment for real or imagined sinfulness or guilt; e.g., R. Hiyya bar Ashi caused his death by worry over a sin he intended to commit and thought he did, but in reality did not—his pathological worry removed the stigma of suicide.⁵¹ Most revealing are the words of an eminent authority on the subject, Rabbi J. M. Tukachinsky: "Notice the Resp. *B'samim Rosh* (#345) holds that all who kill themselves under the influence of their great anguish and despair are not considered *ma'abed atzmo b'da'as* (suicides). Yet, I have already verified that his words cannot be taken literally for if so, the concept of sui-cide (sic) would be obviated as all suicides come out of personal anguish. Nonetheless, when possible, one should try to utilize his (the author of the *B'samim Rosh*) theory when circumstances are even slightly indicative to allow for leniency."⁵²

While, as a rule, *Halachic* categories do not flow readily across circumstances, there is in this discussion of suicide a good, working description of psychiatric distress and it would also seem probable that the same sorts of criteria might serve as guidelines of psychiatric distress in the application to abortion and birth control. That is, if becoming pregnant or carrying to term might result in (1) self-inflicted punishment, e.g., due to introjected guilt for having brought a deformed child into the world and ruining the lives of significant others; (2) despair of life, depression and melancholia; (3) any one of the so-called situational adjustment-reactions where a.) the mitigating factor is the pregnancy or concep-

⁵¹ Kiddushin 81b.

⁵² Tukachinsky, *op. cit.*, 1960, p. 273.

* Based on the story of Sarah's laughter when informed of the birth of Isaac to two oldsters such as they (Genesis 18:12) and the 'Ordeal of Jealousy' (Numbers 5:11), for the unfaithful wife, where the Tetragramaton may be erased in the 'bitter waters' in the interests of preserving marital harmony.

tion and b.) the individual's premorbid state indicates general characterological inadequacy, personality disorder, mood lability, etc., the caseworker might consider these as symptomatic of psychiatric distress and so inform the consulting rabbinic authority.

The caseworker must be on guard for inauthentic appeals to this principle by certain individuals. For example, one client of mine (and of another rabbinic authority) appeared to me to harbor independent, latent hostility towards her husband and, in extension, towards her unborn child. The mother claimed that she was extremely concerned that this child was genetically defective—a battery of medical examinations and amniocentesis revealed no cause for such anxieties—yet in reality she was clearly interested in punishing her husband. While it concerned me that should the child be born to this woman, predisposed as she appeared to be with hostility to it, it might want for a better caretaker; there was still insufficient warrant, from the standpoint of her psychiatric distress, to advocate the abortion. Thus, the caseworker must differentiate the pathological use of the psychiatric principle from the genuine usage and inform the rabbi of the presence of either usage.

Another notion which may significantly clarify the role of the caseworker in determining the presence of psychiatric distress is that of *shalom bayit*, marital or domestic harmony. *Shalom bayit*, besides its ethico-moral implications, has its own *Halachic* function in the justification of continued marriage or of seeking marital counseling to restore a marriage's damaged union and balance, when contraception is made necessary and even when childlessness is the lot of a couple. Based on the principle "Great is peace for even God tampered with the truth to preserve it,"⁵³ the Talmud and later rabbinic responsa derived that *shalom bayit* can serve as a leniency factor in various legal circumstances. For example, R. Feinstein concludes a discussion of *Halachic* problems surrounding contraception,

⁵³ Y'vamos 65b; Nedarim 66b; Hulin 141a; Shabbos 116b; Makot 11a; Sukah 53b.

"Who am I to enter the discussion...but since preserving peace between husband and wife is so important that the *Torah* allows the Divine name to be erased..."⁵⁴ In yet another case, R. Feinstein considers the cause of peace so great so as to allow an individual to marry, in the first place, a woman who would need to practice birth control temporarily because of medical reasons.⁵⁵

Another element of marital life crucial to *shalom bayit*, besides healthy interpersonal understanding and communication, is the quality of sexual satisfaction⁵⁶—one sage considered his loss of sexual interest the cessation of the instrumentality of domestic peace.⁵⁷ Moreover, *onah*, the actual marital aspect of sex in Jewish life, is *Halachically* distinct from the procreative aspect, *p'ru u'r'vu*,⁵⁸ *onah* deals directly with "the fulfillment of her yearnings."⁵⁹ So powerful is the *shalom bayit* factor that, when *Halachic* discretion warrants, it can obviate the many difficulties inherent to the concept of birth control.⁶⁰ Indeed, we frequently find the following as characteristic of the rabbinic viewpoint: "Not the physical hazard (*sakanas nefashot*) concept was needed to set aside the

⁵⁴ *Iggrot Moshe, Even HaEzer*, I, #63, New York, 1974, p. 152.

⁵⁵ *Ibid*, #67; n.b. the man in question in this case already had a child by another marriage.

⁵⁶ *Kohelet Rabba* 12:5; Y'vamos 62b; *Eruvin* 100b; *Yad: Hilchot Deot* 5:4 and *Issurei Beah* 21:11; *Shulchan Aruch, Orech Chayim* 240:10 and *Even HaEzer* 25:2.

⁵⁷ *Shabbos* 152a; see *Rashi*.

⁵⁸ *Yad: Ishut* 15:1; *Iggrot Moshe, Even HaEzer* #102.

⁵⁹ Rabbi Abraham ibn David (RAVaD), *Ba'alei HaNefesh*, Shaar HaKedushah, Jerusalem, 1955, p. 131. see also *Menorat HaMaor*, Ner 3:4, Part V, Rav Kuk: Jerusalem, 1961, p. 372-373 and *Yad: Deot* 4:19.

⁶⁰ A. Sofer, *Resp. K'tav Sofer, Even HaEzer*, #26, Pressburt, 1873; Y. Berish, *Resp. Diverei Yissachar*; S. Schwadron, *Resp. Maharsham*, III, Intro., Brezany, 1910; A. Horowitz, *Resp. Tzur Yaakev*, #141, Jerusalem, 1955. The essential point is that *shalom bayit* (*Simchat onah*) rather than *sakanah* (hazard) is the operative in the cases cited.

prohibition (against birth control), it was annulled by the more important reason: not to separate the couple."⁶¹

The above establishes the case that a *substantial threat to shalom bayit* would need be a strong consideration in the diagnosis of psychiatric distress. That is, the caseworker should consider: (1) what would happen to the relationship between husband and wife if said child was born or if future childbearing was not forestalled; (2) how deeply would such a strain extend; (3) what would be the effects, if any, on the mother's ability to meet the needs of the rest of her family in an appropriate manner; (4) could there be eventual adjustment to this strain in view of previous coping ability with crisis; (5) is a possible change-for-the-better foreseen even when at present distress is highly indicated, or would relationships, etc. tend to get progressively worse? When the latter two are indicated, the caseworker must consider whether or not this woman (or the couple) might be able to change her or their views and perception of need for abortion or birth control if she or they undertook some immediate counseling...which might expose her to alternatives to abortion or birth control. In such cases, crisis counseling would be more *Halachically* appropriate than contraception or abortion.

In this regard, the issue of permitting birth control for the sake of "spacing" children comes to mind. The rabbinic disposition here appears to be a cautious one, to say the least. There was a time when becoming pregnant while still nursing could be a potential hazard to the existing child since the hormonal changes brought about by pregnancy apparently also curtailed the mother's milk production. Other authorities felt that this condition has changed.⁶² One authority permitted an abortion to a woman in such a case based on the assumed actual physical risk to the existing child.⁶³ R. Shimon Pollak (d.1919) of

⁶¹ *Resp. Maharsham, op. cit.*, 1910.

⁶² See Hai Gaon, *Teshuvot HaGeonim* (Harkavay, ed.), *Yevamos*, p. 167 (1887).

⁶³ Y. Ayyas, *Resp. Beit Yehudah, Even HaEzer*, #14, Leghorn, 1746.

Rumania permitted birth control during the nursing period on the grounds that the woman was "weak" and the physician said she needed rest, regardless of the issue of risk to the child.⁶⁴ On the other hand, R. Feinstein writes, "What you heard in the name of a rabbi in Lithuania that the rabbis there permitted contraception to women for two years after each childbirth, is simply not true. Only grave danger legitimates the use of contraception."⁶⁵

Although the issue here is complicated, one would like to see the *Halachic* response to the increased psychological lability and economically imposed psychological stresses of persons living in these times which beckon for leniency in permitting spacing when the occasion warrants.

Conclusion

The issue raised in this paper has been the problem of determining the parameters of "psychiatric hazard" for its use as a leniency factor in rabbinic dispensations of birth control and abortion for orthodox Jewish clients. The rabbinic literature reveals that the use of a "psychiatric hazard" principle and a lesser "psychiatric distress" consideration are firmly grounded in the *Halachic* tradition but suffer lack of definition. Despite this lack of definition, the caseworker may be called upon to assist the rabbinic authority in determining the potential existence of psychiatric distress.

First, the difference between "psychiatric hazard as a threat to life" and "psychiatric distress" was pointed out, showing that "mental anguish" and "great pain"—where both are neither life-threatening nor psychotic—have *Halachic* recognition as leniency factors. It was also observed that the psychiatric distress principle draws its legitimacy from our concern for the mother and not from any probability-based pity for the child. Diagnostic clues to psychiatric distress were obtained from an analysis of "duress" in

⁶⁴ S. Pollak, *Resp. Shem MeShimon*, #7, Satmar, 1932.

⁶⁵ *Iggrot Moshe, Even HaEzer*, I, #64 (p. 163), New York, 1974.

non-volitional suicide: (1) threat of self-inflicted punishment; (2) pathological despair of life and (3) prior personality disorders or inadequacies. The element of severe shame or disgrace as a factor was also noted. Finally, by introducing the concept of *shalom bayit* and its preservation, we added the elements of degree of marital and intrafamilial distress and the issue of future, potential adjustment.

I believe these guidelines to be appropriate ones for the caseworker from the standpoint of mental health and adjustment as well as from that of the *Halacha*. Guided in this fashion, the caseworker contributes positively to both of these spheres in the client's life.

Epilogue

As mentioned above, any acceptable variation in *Halachic* norms is itself no less an *Halachic* mode of behavior and, thus, when situation warrants opting for alternatives to birth and conception, such options may be assumed with clear conscience. Only the pious fool is stringent where such strictness may lead to *Halachically* undesirable states or conditions such as are hazardous to mental and physical well-being. On the other hand, there is a strong countercurrent; the time work and deeply etched tradition in Jewish life involving acceptance of *yesurin*, pains, and *nisyonot*, tests of faith, where such are deemed ineluctable aspects of the Divine-natural plan. An attitudinal instinct, if you will, is nurtured by many deeply observant Jews—not otherwise naive or given to superstitious speculation—that our faith in God the Provider needs overcome any fears we have over ability to support or care for children, no matter how logical the basis of the fear.

One author notes, for example, that the Malthusian specter of overpopulating the world is not a factor for the orthodox Jews to consider when debating need for contraception⁶⁶—true, insofar as the principle of “He who provided life will provide sustenance”⁶⁷ is concerned. However, when physical or psychological threats enter the discussion, a *Halachically* unique light is cast on “economic considerations,” which are then to be viewed as physical or psychological first and economic—if not *Halachically* implicative at all—only second. And here I think one cannot afford to proffer bromides about faith versus the sometimes extremely deep-seated and potentially destructive conception or pregnancy related fears—with all due respect to the proven wisdom of not promulgating generalized, lenient rulings before the lay public.

Finally, it would certainly be well and good if Jewish educators and *rabbanim* could make successful efforts to deal with the perhaps weak psychological, existential and religious frameworks which dispose many individuals today to maintain pessimistic views on the ability to raise children “in quality surroundings and conditions, etc.” Yet, this is preventative psychiatry and often little alters the degrees of pathological fears and anxieties that obtain and bear on the individuals who pose the sorts of questions to which this study was addressed. *Halachic* latitude is being suggested here for precisely those individuals who appear to be beyond the assistance of psycho-social and religious attitudinal counseling.

⁶⁶ M. Tendler, “Population Control—The Jewish View,” *Tradition*, (1966) 8, p. 5-14.

⁶⁷ Taanis 8b.

Strengthening Jewish Identity in a Residential Setting*

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It is necessary to become personally familiar with the inner workings and personalities of the agency, its responsibilities, methods and procedures, its problems, as well as the clientele served. This complete familiarity together with full access to the agency can maximize the impact of American Jewry's rabbinic and educational leadership upon the Jewish character of Jewish communal services.

Socio-psychological Concepts Relevant to Jewish Identification

As an introduction to the topic of strengthening Jewish identity, I should like to review some relevant socio-psychological concepts. Dashefsky and Shapiro asserted that the concepts of socialization and the interaction between social structure and personality are important factors in ethnic identification.¹ The term “identification” refers to both process of developing an identity as well as the product of that process.² Rosen pointed out three levels of identification.³ First, one may identify with some important person in one's life (in sociological terms, with a significant other). Second, the identification may be with a group from which one derives one's values, i.e. a reference group. Finally, one may identify with a broad class of people, such as an ethnic, socioeconomic, or political group. In short, “Jewish Identification” may be defined as “a generalized attitude indicative of a personal attachment to the Jewish people.”⁴

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¹ Arnold Dashefsky and Howard Shapiro, *Ethnic Identification Among American Jews*. Lexington, Mass.: D.C. Heath, 1974. P. 3.

² Arnold Dashefsky, “And the Search Goes On: The Meaning of Religio-ethnic Identity and Identification,” *Sociological Analysis*, Vol. XXXIII (1972), p. 242-3.

³ Bernard C. Kosen, *Adolescence and Religion: The Jewish Teenager in American Society*. Cambridge, Mass.: Schenkman, 1965, pp. 162-166.

⁴ Dashefsky and Shapiro, *op. cit.*, p. 9.

How is identity formed? Many sociologists and psychologists consider the family to be the basic agent of socialization. Marshall Sklare has written about the decline of the Jewish family as a system for identity formation.⁵ Despite its decline, the Jewish family is still the most important source of Jewish identification, in this writer's opinion. This contention has important implications for a child-care agency responsible for the residential treatment of emotionally-disturbed children. If these children are to become Jewishly-identified, as well as socially well-adjusted, adults, child-care agencies must find supplements, if not actual substitutes, for the family influence.

Another important influence in the identification process is the peer group. Rosen reflected the mainstream when he wrote that peer group influence is probably greatest for the adolescent. At this stage of life, it provides a sense of belonging when “conflicting loyalties, identification, and values make him unsure of himself.”⁶

Ackerman's review of the literature lead to the conclusion that there is an ambiguous relationship between Jewish education and identity.⁷ Nevertheless, the Dashefsky and Shapiro study showed that Jewish education had a “mild but lasting” effect on Jewish identification for members of the younger generation.⁸ They pointed to the interpersonal

⁵ Marshall Sklare, *America's Jews*. New York: Random House, 1971, p. 97.

⁶ Rosen, *op. cit.*, pp. 102-104.

⁷ Walter I. Ackerman, “Jewish Education—For What?,” *American Jewish Yearbook*, Vol. LXX (1969), pp. 3-36.

⁸ Dashefsky and Shapiro, *op. cit.*, p. 76.