

BODY AND SOUL IN JUDAISM

**A collection of some of the presentations made
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**Edited by
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bi Moses Schick. The case of a woman whose husband was properly identified, with the husband remaining an *agunah*. The body be exhumed so that it be taken to the Beth Din be proven to be removed from the *agunah* state. The inspection of the deceased is to be a desecration of the body. This view and proclaimed actions that have no purpose or the sake of desecration. *Agunah*, the purpose of the law is that would no doubt satisfy the husband who would want his rights of an *agunah*.⁸

§ makes for far reaching legislation that the deceased was properly identified, or, in fact did so, and the body could become the means of the departed.

#210.
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32.

Medical Emergencies and the Non-Jew: Halakhah Adapts to New Realities

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Today, it is taken for granted that discrimination between individuals is unfair and illegal. This idea is clearly stated in the Constitution and laws of the United States. When we move to the field of halakhah, however, we are dealing with an alternate legal system where the concept of discrimination is understood differently. On many issues, the halakhah seems to treat Jews and non-Jews unequally. For example, the Torah prohibits us from charging Jews interest when we lend them money. When it comes to non-Jews, however, the Torah says that it is permissible to charge interest on a loan, and, according to some explanations, it is even a fulfillment of a positive commandment.¹ The Torah teaches that there is an obligation to save a Jew who is in danger. In the case of a non-Jew, however, there is no such obligation, and, in certain circumstances, we are actually prohibited from saving him.² Even the golden rule, "love your neighbor as yourself" does not extend to non-Jews, because non-Jews do not fall within the category of "neighbor."³

This "double standard" in Jewish law, whereby halakhah seems to discriminate against non-Jews, is an especially

problematic concept for those who were raised within the American system. Indeed, many great thinkers throughout the ages, both Jews and non-Jews, have struggled with this issue. Some scholars have attacked Judaism for its unfair treatment of non-Jews, while others have attempted to justify the "double standard" both legally and morally.⁴ It would be presumptuous to try to resolve this issue in one short article. Rather, I would like to discuss a specific example of this "double standard" and see how the rabbis throughout the ages have dealt with it.

The area that will be dealt with is whether a Jew is permitted to violate the laws of Shabbat in order to save the life of a non-Jew. A Jewish doctor, or a member of Hatzolah, receives a telephone call that a non-Jew is in need of his help and without his help he will die. Can the Jew violate the Shabbat to save that person? This question is not limited to medical workers. An automobile accident takes place in front of your house and a non-Jew is seriously hurt; can a Jew call an ambulance to help that person on Shabbat?⁵ Before we can assert that this is an example of the "double standard" in Jewish law, we must first examine what Jewish law has to say about saving other Jews when such behavior entails a violation of Shabbat. Interestingly, this question was first raised as a disagreement between Mattathias, the father of Judah Maccabee, and a group of Hasidim. The *Book of Maccabees* relates that these Hasidim were trapped by the Syrians in a cave on Shabbat and they refused to defend themselves since any defense would have necessitated the violation of the laws of Shabbat.⁶ They were slain by the Syrian army. Mattathias disagreed with the actions of these Hasidim, arguing that in order to save a Jewish life one must violate even the laws of Shabbat.

The Talmud (*Yoma* 85a-b), while not mentioning the story of Mattathias, concludes that saving a Jewish life takes precedence over the laws of Shabbat. The Gemara suggests seven biblical sources on which to base this law. Two of the Gemara's suggestions are well known. Rabbi Shimon ben Menasia uses a "cost benefit" analysis to justify the violation of one Shabbat, so that "this person will be alive to keep many Shabbatot in the future." Rabbi Yehudah

posits that Shabbat has the same status as all the other commandments (with the exceptions of idolatry, adultery, and murder) concerning which the Torah says, "you should live by them (i.e. the commandments), not die by them." The *Shulhan Arukh* (*Orah Hayyim* #329:1) rules that not only is a Jew allowed to violate the laws of Shabbat to save another Jew, he is obligated to do so.

The issue of violating the laws of Shabbat in order to save a non-Jew, however, is not as clear cut. The basis for the halakhic discussion of this topic is a complex passage (*sugya*) in Tractate *Avodah Zarah* (26a). There, the rabbis debate whether a Jew is permitted to assist an idolater⁷ in giving birth. The underlying premise of this discussion is that it is forbidden to give an idolater assistance in childbirth because this would result in an increase in the population of idolaters. The Gemara, however, draws a distinction between the situation where the Jew receives payment for the assistance and where he does not receive payment. If payment is given, the assistance is allowed because of the anti-Jewish animosity (*evah*) that could result if the assistance were not rendered. However, if no payment is given, the Jew could reasonably explain his refusal as a result of the non-payment and therefore no animosity would result.

The Gemara then raises the related question of childbirth assistance to an idolater on Shabbat. All agree that, without payment, assistance on Shabbat is forbidden. However, if payment is given there is a disagreement. Rav Yosef believes that the situation on Shabbat is the same as on other days, and if payment is rendered because of the fear of arousing animosity, assistance may be given. Abaye, on the other hand, believes that on Shabbat assistance is always prohibited. Since the Jew could explain his refusal to assist on the grounds that "we are allowed to violate Shabbat only for the sake of those who keep Shabbat," this refusal would not cause animosity.

There is a further disagreement among the commentators (*rishonim*), on the interpretation of the portion of the *sugya* relating to Shabbat. The "plain meaning" of the text would suggest the following line of analysis:

1. We must understand the discussion of the *sugya*

regarding giving childbirth assistance to a non-Jew⁸ on Shabbat as involving the question of Shabbat desecration, that is to say, that the assistance would violate Shabbat. This follows, for if the assistance did not involve Shabbat desecration, the situation would be identical with assistance rendered on a weekday, the first case discussed in the Gemara.

2. Since the Gemara makes no distinctions, we may assume that the desecration of Shabbat involves either violations of Torah injunctions or rabbinical injunctions.
3. The disagreement between Rav Yosef and Abaye hinges on the question of whether there is a danger of animosity in not rendering assistance to a non-Jew on Shabbat. Rav Yosef believes that if payment is made there is such danger. Abaye, on the other hand, maintains that the Jew can always explain his refusal to violate Shabbat and that the non-Jew will accept this excuse. If, however, the non-Jew would not accept the explanation, even Abaye would allow for violation of the laws of Shabbat.

This line of reasoning presents a serious problem to the *rshonim*. According to both Rav Yosef and Abaye, where the danger of animosity exists, one may assist a non-Jew in childbirth and thus desecrate Shabbat. But the *rshonim* note that there is no precedent for the principle that anti-Jewish animosity can justify violation of the laws of Shabbat. Therefore, *Tosafot* (*Avodah Zarah* 26a) argues that the instance of childbirth assistance in the Gemara was a case where only rabbinical injunctions were violated on Shabbat.⁹ *Tosafot*, thus, distinguishes animosity as justifying only rabbinical violations on Shabbat and not Torah violations.

Ritva (*Avodah Zarah* 26a) understands the *sugya* in a radically different way. In his opinion, animosity would never justify desecration of Shabbat, even of rabbinical injunctions. He understands the situation of assisting an idolater in childbirth as not involving any desecration of Shabbat at all.¹⁰ The only issue is whether the assistance is permitted, because of the issue of increasing the population of idolaters, just as on weekdays. If this is so, why does the Gemara

pose the additional case as taking place on Shabbat? According to Ritva, Abaye's view is that although on a weekday, payment for childbirth services would justify assistance to avoid animosity, this is not so on Shabbat. On Shabbat, the Jew could avoid the animosity by explaining that the assistance is not permitted because "we are allowed to violate Shabbat only for those who keep Shabbat."¹¹ Rav Yosef, on the other hand, believes that if there is payment, the danger of animosity would allow for assistance even on Shabbat, as long as no violation of Shabbat is involved.

To summarize, there are three views on whether the danger of anti-Jewish animosity allows for the desecration of Shabbat.

1. The straightforward understanding of the Gemara that animosity always justifies violation of the laws of Shabbat (even though this explanation is not suggested by any of the *rshonim*).
2. The view of *Tosafot* that animosity justifies violation only of rabbinical injunctions on Shabbat.
3. Ritva's view that animosity is irrelevant to the discussion of desecration of Shabbat and would not permit any violation of the laws of Shabbat at all.

The *Shulhan Arukh* (*Orah Hayyim* #300:2) rules that it is forbidden to violate any law of Shabbat in order to save a non-Jew. It seems from here that the *Shulhan Arukh* follows the opinion of Ritva, that even a violation of rabbinical injunctions is forbidden in order to save a non-Jew. The decision of the *Shulhan Arukh* is seconded by the *Mishnah Berurah* (*Orah Hayyim* #330:8).¹² Following this decision, the author of the *Mishnah Berurah*, R. Yisrael Meir Hakohein, makes a dramatic statement about the practice in his time regarding this issue:

The reader should note that nowadays even the more upright doctors are not careful about this at all and there are cases every Shabbat where doctors travel several miles to heal non-Jews and they write and grind drugs personally despite the fact that they have no halakhic basis on which to rely for this Shabbat desecration. Even if we assume that it is permitted to desecrate Shabbat by transgressing a rabbinical prohibition in order to prevent animosity between non-Jews

and Jews (even though this is also not certain), it is definitely forbidden, according to all authorities, to transgress a Torah prohibition because of fear of animosity. These doctors are therefore guilty of a willful desecration of the Shabbat, may heaven preserve us.

The *Mishnah Berurah*, while originally following the view of the *Shulhan Arukh*, is willing to entertain the possibility that it is permissible to violate a rabbinical prohibition in order to save a non-Jew on Shabbat. However, even if this were true, he claims that the doctors of his time are violating Torah prohibitions for the sake of a non-Jew and this is prohibited according to everyone. The *Mishnah Berurah* seems to appreciate the danger of anti-Jewish animosity and therefore he entertains *Tosafot's* understanding that it is permissible to violate rabbinical injunctions on Shabbat for the sake of a non-Jew. However, even the danger of animosity does not allow for the violation of Torah injunctions, and it is for this reason that he considers the doctors of his day to be Shabbat violators.

Rabbi Moshe Feinstein, writing on this topic, brings new insight into the application of the Gemara's term *evah*, animosity, in contemporary society. In a responsa written in 1979 (*Iggerot Moshe, Orach Hayyim, IV:79*), Rav Moshe discusses the permissible conduct for doctors in treating non-Jews on Shabbat. After discussing the fact that Jewish doctors should try to organize their schedules so that they are not on call on Shabbat, he says that there are always situations in which a doctor, or even a non-medical person, may be put in a position in which they cannot pass the responsibility of saving this person on to somebody else. In such a situation, Rabbi Feinstein says, it would be permissible for the Jew to save the non-Jew on Shabbat even if his actions will require him to violate a Torah prohibition. Rav Moshe writes:

With regard to the situation in our communities today, even in countries in which Jews are allowed to live freely according to the laws of the Torah, due to *evah* a potentially dangerous situation could result if the Jew were to refuse to save a non-Jew on Shabbat. . . . In our times, where there is immediate publicity of events throughout the world via the

newspapers, there is great fear that anti-Jewish feeling could lead to the murder of many Jews throughout the world.

Rav Moshe adds that he does not understand how the author of the *Mishnah Berurah* could have reprimanded the doctors of his time.

It is astonishing what was written by the sage Hafez Hayyim. . . . In Russia, in the small towns where there was only one doctor for the entire vicinity, it is clear that if this Jewish doctor did not go and save the non-Jew, the doctor would very likely be killed by the relatives of the non-Jew who was allowed to die. And, if these relatives were to kill the Jew, they would not have been punished by the Russian authorities.

Rav Moshe does not disagree with the *Mishnah Berurah* about the meaning of the term *evah*. Both agree that it refers to the danger of animosity and anti-Jewish feeling. However, Rav Moshe feels that this fear must be approached differently than it was in the past. In the small towns of Europe, the fear of animosity was not general or serious enough to permit the blanket violation of Torah injunctions on Shabbat. Rather, each case had to be evaluated individually and the level of violation permitted depended on the amount of danger involved in that particular instance. The only question remaining was whether even rabbinical violation on Shabbat could be permitted. Rav Moshe argues that in our society, where information is transferred instantaneously, this fear of animosity is not limited to the locale in which the incident occurred. The refusal on the part of the Jew, living in a specific town, to do everything in his power to save a non-Jew on Shabbat, even if anti-Jewish animosity is not a problem in that town, could put Jews throughout the world in danger. Therefore, Rav Moshe writes, in our time, the violation of Shabbat based on the fear of *evah* cannot be evaluated on a strictly situational basis, as it was in the times of the Hafez Hayyim. Rather, the worldwide fear of animosity and repercussions against Jews requires that they be allowed to save non-Jews on Shabbat even if it involves the violation of a Torah injunction. The opinion of Rav Moshe is accepted almost universally

by Jewish doctors and also is the policy of many Hatzolah units in various communities.¹³

We began our analysis with the observation that the rules of Jewish law are inconsistent with American ideology prohibiting discrimination. Regarding the question of saving a non-Jew on Shabbat, the present position, as espoused by Rav Moshe, is that a Jewish doctor may, and accordingly should, treat seriously ill non-Jewish patients even if it means desecrating the Shabbat. Therefore, as a practical matter, discrimination against non-Jews in this respect is no longer mandated by the halakhah. However, this position is not based on the theoretical principles of equality as it is in the American system. Thus, the "double standard" remains unresolved. The Jewish position is analyzed in terms of *evah*, the fear of animosity. This preoccupation with *evah* demonstrates the Jewish need to show sensitivity in our relations with non-Jews and is a compelling factor in the resolution of legal issues. It took an authority of the stature of Rav Moshe to interpret expansively the principle of *evah* and thus, in this instance, to require equal treatment for Jews and non-Jews under the law.

NOTES

1. *Devarim* 23:21. Concerning the disagreement on whether charging interest to non-Jews is permitted or actually a *mitzvah*, see Rambam, *Mishneh Torah, Hil. Malveh ve-Loveh* V:1.
2. *Shulhan Arukh, Hoshen Mishpat* #425:5. See especially the comments of Rabbi M. Rivkes, *Be'er ha-Golah, Hoshen Mishpat* #525:21.
3. *Sefer ha-Hirukh, Mizvot* #243. For an interesting debate on the morality of such a position, see the articles by E. Simon, "The Neighbor Whom We Shall Love," and H. Fisch, "A Response to Ernst Simon," in *Modern Jewish Ethics*, ed. by M. Fox (Columbus, Ohio: 1975), 29-61.
4. See the above articles by E. Simon and H. Fisch as well as that by Walter Wurzburger, "Darkel Shalom," *Gesher* VI (1977-1978), 80-86, who argues that, according to the Rambam, the obligation for a Jew to give charity and to perform other acts of kindness for non-Jews is dictated not merely by pragmatic considerations but is an ethical religious norm.
5. This issue received much attention in 1965 when a Dr. Israel Shahak published a letter in an Israeli newspaper charging that he had

- witnessed an Orthodox Jew on Shabbat who refused to allow his telephone to be used to call for help for a non-Jew who had collapsed nearby. Dr. Shahak wrote that he approached the rabbinat for a ruling on this issue and that they confirmed that Shabbat could be violated only to save a Jew. When challenged to substantiate his story, Dr. Shahak was forced to admit that this Orthodox Jew with the telephone did not exist. For a discussion of this case and the actual ruling of the then Chief Rabbi Unterman permitting Shabbat violation for a non-Jew, see I. Jakobovits, "A Modern Blood Libel—L'Affaire Shahak," *Tradition* VIII: 2 (Summer, 1966), 58-65.
6. *I Maccabees* 2:27. See the notes concerning this episode in *The Anchor Bible, I Maccabees*, with Introduction and commentary by J. Goldstein (Garden City, NY: 1976), 235-37.
 7. For a discussion about whether contemporary non-Jews are considered idolaters, a point of contention throughout the ages, see Jacob Katz, *Exclusiveness and Tolerance* (New York, 1962), 24-36, 114-28, 162-68.
 8. When dealing with violation of Shabbat, there is no distinction between idolaters and other non-Jews. The only time that such a distinction applies is regarding helping an idolater give birth where we would be increasing the population of idolaters.
 9. Since a woman in childbirth is considered to be in a life threatening situation (*Shulhan Arukh, Orach Hayyim* #330:1), the case of childbirth can be used as a model for all cases of assisting a non-Jew who is in a life-threatening situation.
 10. For our purposes, a rabbinical injunction on Shabbat is defined as an act that is performed with a deviation from the normal fashion in which the act is usually done. For a complete discussion of rabbinical injunctions on Shabbat, see Shimon Eider, *Halachos of Shabbos* (Lakewood, N.J.: 1973), i:11-18.
 11. See *Hiddushet Ha-Ritva al Massekhet Avodah Zarah*, with notes by M. Goldstein (Jerusalem, 1982), 106, n. 126-27.
 12. *Ritva* allows this excuse to be given even though, legally, no Shabbat desecration is permitted.
 13. For an exhaustive analysis of all the sources that deal with this issue, see Rabbi Eliezer Waldenberg, *Ziv Eliezer* XII:15-6.
- Rav Moshe is not the only authority to follow this opinion. For a listing of all authorities who argue that it is permissible to violate even Torah prohibitions to save a non-Jew on Shabbat when the life of the Jew could be endangered, see the *Encyclopedia of Jewish Medical Ethics* (Hebrew), compiled and edited by A. Steinberg (Jerusalem, 1988), i:127, n. 38-39.