

## ***Rabbi Jehiel Jacob Weinberg on the Limits of Halakhic Development***

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**Biography:** Marc B. Shapiro holds the Weinberg Chair in Judaic Studies at the University of Scranton.

**Abstract:** What are the limits of halakhic development? This is the issue that Rabbi. Weinberg tackles in a fascinating letter published here for the first time. He also discusses his controversial student, Rabbi Eliezer Berkovits. Although Berkovits always believed that he was following in the path of his teacher, we see that R. Weinberg was distressed by some of his student's more extreme positions. Yet despite this, Rabbi Weinberg remained loyal to Berkovits and defended his student against those who vilified him and wished to exclude him from Orthodoxy.



# ***Rabbi Jehiel Jacob Weinberg on the Limits of Halakhic Development***

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I offer here a translation of sections of a very interesting letter of Rabbi Jehiel Jacob Weinberg, which gives some insight into his understanding of the limits of halakhic development. Unfortunately, the top two lines of the letter are unreadable, so we don't know to whom it is addressed or in what year it was written. The letter was occasioned by a controversy in Chicago over an article on the halakhic process written by Rabbi Dr. Eliezer Berkovits, one of Weinberg's most distinguished students.

The exact article is not identified, and from Weinberg's letter it appears that it was published in a newspaper, rather than a journal. Although we cannot identify the exact article, it no doubt was an early presentation of Berkovits' liberal understanding of the halakhic process, later expounded upon in his work *Not in Heaven: The Nature and Function of Halakha* (New York: Ktav, 1983). This article created a great deal of controversy, focusing on both Berkovits and the Hebrew Theological College, where he had been a member of the faculty since 1958.

Because Berkovits was known as a leading disciple of Weinberg, it was only natural that Weinberg's opinion was also solicited. In reply to his correspondent, who was in doubt as to whether he should sever his connection with Hebrew Theological College on account of the article, Weinberg stated: "I read the article that you sent me and was greatly troubled. It is impossible to deny that this

article contains harmful ideas that cannot be accepted." But Weinberg informed his correspondent that he had been assured by Berkovits that this was an old article and that in the meantime he had written against the non-Orthodox philosophies and was committed to the fight for traditional Judaism. In Weinberg's words, "I understood from his letter that he is embarrassed by this article and wants to forget it."

Weinberg informed his correspondent that he had also raised the matter with Rabbis Oscar Fasman, Chaim Fasman, Leo Jung, and Samson R. Weiss, all of whom agreed that Berkovits was contributing greatly to Orthodoxy. Rabbi Weiss particularly stressed Berkovits' great *yir'at shamayim*. Weinberg himself added that Berkovits was "a man of moral sincerity, a hater of hypocrisy and lover of sages."

Weinberg's confidence in Berkovits' halakhic learning is seen in Weinberg's response to Rabbi Jung's request that he come up with a halakhic solution for the agunah crisis. Weinberg claimed that he was too old to begin detailed investigations into this problem, and he recommended that Berkovits be given the job. Weinberg later wrote a letter of approbation for Berkovits's completed work, *Tenai be-Nisu'in u-ve-Get* (Jerusalem, 1967). Weinberg also included a lengthy responsum by Berkovits in *Seridei Esh*, his collection of responsa.<sup>1</sup>

<sup>1</sup> Vol. 3, no. 35.

How then was Weinberg to explain Berkovits's unconventional approach to *halakhah*? We pick up the letter here.

I do not believe that Dr. Berkovits' intention was to uproot the Oral Law, God forbid, or to destroy the foundation of *halakhah*, which is based on the Talmud and decisors. However, he was grabbed by the spirit of the screamers in Israel that there is a vital necessity to bring the *halakhah* in line with the life of the State [of Israel] and the new conditions of life in Israel and the Diaspora. Therefore, if the rabbis follow the path of the early sages who took into account the necessity of the times.<sup>2</sup>

The first who began the rebellion was Dr. Isaiah Leibowitz, who published a series of articles and also a book entitled "*Ha-Mashber be-Dat ve-ha-Yahadut ha-Datit*."<sup>3</sup> He argued that the *halakhah* has become frozen and the rabbis have become rigid and do not take into account the new conditions that have arisen in Israel. [He further claims] that in opposition to them the *tannaim*, *amoraim* and Babylonian *geonim* considered the social conditions that naturally developed. They say that Dr. Leibowitz is also God-fearing and punctilious in the performance of *mitsvot*, and his son studies in *Yeshivat Kol Torah*. He himself says that he does not identify with the Reformers who wish to break down the separation between Israel and the nations. On the contrary, he wishes to fulfill the Written and Oral Torah. Therefore, he does not advocate Reform but rather a new spiritual-religious movement and a new attitude towards contemporary questions. For example, the acceptance of women as

witnesses, since the "old" *halakhah*, as it were, insults them and this causes them to rebel against the religion. The same is true for *halitsah*, which modern women intensely resent. They claim as follows: They force us to speak falsely, "So shall it be done unto the man [that doth not build up his brother's house (Deut. 25:9)]," and yet it is forbidden to perform *yibbum*.<sup>4</sup> The point is that according to the Torah (Deut. 25: 5-10) if the levir refuses to marry his brother's wife, the woman is to go before the leaders and declare that her brother refuses to do his duty. After this the *halitsah* ceremony is performed and she recites the declaration referred to in the letter. However, contemporary Ashkenazim do not permit *yibbum*, so how can the woman make the declaration "So shall be done..." when the husband is not even permitted to perform *yibbum*?

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And what reason is there for removal of the shoe and spitting? And many such questions....

A young woman from Israel recently wrote me that if the rabbis do not abolish *halitsah* by means of conditional marriage<sup>5</sup> or in some other fashion, then the women will abolish *halitsah* themselves. At the end of her letter she wrote: "This wound called *halitsah* has already filled up with pus and is ready to burst by itself, and this type of

<sup>2</sup> This last sentence is not complete.

<sup>3</sup> This is only a chapter of his book, *Torah u-mitsvot bi-zeman ha-zeh* (Tel Aviv, 1954), pp. 101-134. The actual title of the chapter is "*Mashber ha-dat ba-medinah*."

<sup>4</sup> The point is that according to the Torah (Deut. 25: 5-10) if the levir refuses to marry his brother's wife, the woman is to go before the leaders and declare that her brother refuses to do his duty. After this the *halitsah* ceremony is performed and she recites the declaration referred to in the letter. However, contemporary Ashkenazim do not permit *yibbum*, so how can the woman make the declaration "So shall be done . . ." when the husband is not even permitted to perform *yibbum*?

<sup>5</sup> Various types of conditional marriages to prevent *yibbum* or *halitsah* are indeed attested to by earlier authorities. See R. Isaac Lampronte (1679-1756), *Pahad Yitzhaq* (Jerusalem, 1962) vol. 1, col. 417, (s. v. *ah*); Isaac Klein, *Responsa and Halakhic Studies* (no

bursting certainly won't be to the liking of the leaders of traditional Judaism." Unfortunately, those rabbis who are faithful to Torah have not responded to the serious arguments of Dr. Leibowitz in an intelligent and convincing manner. On the contrary, there are young rabbis who agree with him in the depths of their hearts but are afraid to publicize their thoughts....

In truth, there are matters concerning which it is possible and necessary to reform [*she-efshar ve-she-tsarikh le-taqqenem*]. One example is non-Jewish milk in countries where the government supervises its purity and cleanliness. The *Hazon Ish* in his book showed reasons to permit it,<sup>6</sup> but there were zealous rabbis who protested this. [Another example is] shaving with an electric razor on *hol ha-moed*. Rabbenu Tam<sup>7</sup> and the *Noda bi-Yehudah* [R. Ezekiel Landau]<sup>8</sup> permitted [shaving], and the *Hatam Sofer* [R. Moses Sofer] absolutely forbade it.<sup>9</sup> *She'elot u-Teshuvot Hatam Sofer, Orah Hayyim*, no. 154.

But certainly there is a necessity [*hekhreh*] to permit something which so many people already avail themselves

of, and which from the standpoint of *halakhah* and clear logic needs to be permitted since it is the way of this generation to shave every day and there is no longer the fear "lest he enter the festival with a neglected appearance"<sup>10</sup>

I am now involved in a question that a rabbi has asked me, concerning a woman who ran away from her husband after it became known that he had apostasized before the marriage.<sup>11</sup>

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He does not want to give her a *get* under any circumstances. This is a young woman, and if she heeds the prohibition of the rabbis she will remain an *agunah* all her life. The *Noda bi-Yehudah* absolutely forbids releasing her without a *get*, but I think that there are reasons to be lenient due to there being an error in the creation of the marriage. The *Noda bi-Yehudah* says that we are afraid that perhaps the man repented at the time of the marriage

place, 1975), ch. 2. See also *Kitvei ha-Gaon Rabbi Jehiel Jacob Weinberg*, ed. Shapiro (Scranton, 1998), p. 48: "From the standpoint of *halakhah*, one can permit a condition [i. e., a conditional marriage] if there are specific conditions and in limited cases, such as apostasy, insanity of the husband, or *yibbum* and *halisah*."

<sup>6</sup> *Hazon Ish, Yoreh De'ah*, 41:3. Cf. R. Moshe Sternbuch, *Teshuvot ve-Hanhagot*, vol. 1, no. 441: "I heard from the *gaon* Rabbi Israel Weltz that he asked *the Hazon Ish*, and he replied that his words are not to be implemented in practice except for little children or a woman in the first thirty days after childbirth." See also R. Mordechai Jacob Breisch, *Helkat Ya'akov* (1992 ed.), *Yoreh De'ah*, pp. 46-47. See, however, R. Jacob Israel Kanevsky, *Karyana de-Igarta* (Bnei Brak, 1989), vol. 2, p. 130, that "during the war" (presumably the Israeli war of Independence), when Jewish milk was unavailable, *Hazon Ish* also permitted weak yeshiva students to drink non-Jewish milk.

<sup>7</sup> See *Tur, Orah Hayyim*, no. 531.

<sup>8</sup> *Noda bi-Yehudah, Orah Hayyim*, first series, no. 13.

<sup>9</sup> *She'elot u-Teshuvot Hatam Sofer, Orah Hayyim*, no. 154.

<sup>10</sup> See *Mo'ed Qatan* 14a. This is the reason given for prohibiting cutting one's hair during *hol ha-moed*, lest the haircut be deferred to then and the individual enter the festival ungroomed. The implication is that those who shave every day, and thus groom themselves before the holiday, are also permitted to shave during *hol ha-moed*. See J. David Bleich, *Contemporary Halakhic Problems* (New York, 1977), vol. 1, pp. 48-53. With regard to Weinberg's larger point, cf. *Kitvei ha-Gaon Rabbi Jehiel Jacob Weinberg*, p. 60: "Where there is a dispute among *rishonim*, the rabbis must decide against that view which is far from people's understanding and which will cause disrespect and derision to be directed against the holy Torah."

<sup>11</sup> See *Seridei Esh*, vol. 3, pp. 95, 115 and Weinberg's article in *No'am* 5 (1962), pp. 9-17 (these pages are not included in *Seridei Esh*). See also *Otsar ha-Poseqim*, vol. 13, pp. 231-235.

<sup>12</sup> See *Seridei Esh*, vol. 3, pp. 113-114.

(see *Noda bi-Yehudah* second series, *Even ha-Ezer*, no. 80). However, everyone knows that no Jewish girl will marry someone who apostasized even if he later repented in his heart and even if he exchanged his new religion for Judaism. Therefore, this marriage was created in error. But who would dare oppose a decision by the *gaon* R. Ezekiel Landau? However, if we had in our midst great sages of the level of the *rishonim*, it is possible that they would be lenient.

Another example: A man married a woman and it was later learnt that he was completely impotent.<sup>12</sup> The *Havvot Ya'ir* [R. Ya'ir Hayyim Bachrach] permits [the marriage to be annulled], but only in theory, not in practice.<sup>13</sup> However, the *gaon Be'er Yitzhaq* [Rabbi Isaac Elhanan Spektor] of Kovno absolutely forbids it.<sup>14</sup> Can it be said that there is no room for a *heter*?<sup>15</sup> I have clear proofs that the marriage can be annulled, but I am also one of the fearful<sup>16</sup> and will not under any circumstances rule leniently against the opinion of the *gaon* R. Isaac Elhanan [Spektor] of blessed memory, for I am worthless compared to him. There are indeed many difficult problems which have not found a solution simply because we do not have the strength to rule against the authorities who have been accepted by the nation. I do not wish to justify the views expressed by Dr. Berkovits in his article. I only wanted to clarify the difficulties of the situation....

The question that is before us, that of educating rabbis and leaders, is very serious. The old-fashioned rabbis are full of Torah and fear of God but they have no influence on the surrounding Gentile environment in which American Jewry is immersed. Their work is centered primarily in slaughterhouses, butchers, *matsah* factories,

kashrut supervision, and arranging *gittin*. I saw here rabbis from America and they told me that their souls are torn and their hearts are split between the two approaches, that of Judaism in the traditional fashion and that of [Judaism as part of] public life. They have not yet found the secret of their combination. The older rabbis do not have the strength to bring near those removed [from Torah] and to return the children to the Torah of the fathers.

It is true that recently there has been felt a strengthening of the religion due to the influence of the *yeshivot* that were uprooted from Europe and exiled to America, and through the influence of the Hasidic rebbes. But I do not believe that the way of thought has changed much. Confidence in one's own strength, independence, the desire for a pleasant and well-off life, the sense for practicability and for proficiency in business are still to be found, even among the Orthodox. In America they don't fight against the religion and they don't belittle religious leaders; with a polite nod of the head they simply offer a pleasant "*shalom*."

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Our brothers in America, who saw the distress of their nation, the great destruction of our world, and the wickedness of the supposedly enlightened nations, long for exalted values that improve life and redeem the spirit from feelings of despair and doubt. They seek spiritual salvation and this cannot be found in the science that cre-

<sup>13</sup> *Havvot Ya'ir*, no. 221.

<sup>14</sup> *Be'er Yitzhaq*, *Even ha-Ezer*, nos. 3-4, *Ein Yitzhaq*, *Even ha-Ezer*, no. 24. See also *Otsar ha-Poseqim*, vol. 13, pp. 330-339.

<sup>15</sup> See *Seridei Esh*, vol. 3, p. 114: "We must not make the daughters of Israel *agunot* because of mere opinions (*sevarot be-alma*) which have no basis in logic and are not reasonable." R. Moses Feinstein indeed concluded that a marriage entered into by an impotent man can be voided without a *get*. See *Iggerot Moshe*, *Even ha-Ezer* I, no. 79, IV, no. 52. 16 I. e., one of those who fear to make halakhic decisions.

ated the world-destroying atom bomb, nor in business endeavors that can go under at any time. Even community service, which indeed gives one honor and fame, does not offer spiritual tranquility. With certainty, they seek to be brought under the wings of the holy tradition that has raised up among us great, holy, and pure men. In this spiritual state there is a place for young rabbis, equipped with knowledge of the world and society, to achieve things. They are able to give the younger generation,

which studies in secular schools, both knowledge of Judaism and feelings of esteem for it. They can open their eyes to the light-filled gates of God's Torah. The old-fashioned rabbis should not look with anger upon the young rabbis who have been trained in the modern *yeshivot*. They should join together and work as one for the holy purpose of building the life of the nation from the inside, and reinvigorating the life of Torah and faith throughout Jewish communities.