

English Summary

A. Introduction

The subject of this book is whether and under what circumstances it might be permitted to violate one commandment for the purpose of fulfilling another, when one's motives are pure.

As the basis for the principle that preservation of life suspends almost all the commandments, the Talmud (*Yoma* 85b) cites: "Violate for him one Sabbath that he may keep many Sabbaths." Might it be possible, on the basis of this principle, to conclude that it is permitted to transgress not only to preserve life, but to prevent sin as well? Does the mutual responsibility that Jews have for one another, as expressed in the statement "All Jews are responsible for each other" (*Shebu.* 39a), have the power to authorize one Jew to transgress in order to rescue another from sin? If so, what are the limits of such authorization? What is permitted in order to rescue one who is already in violation? In addition to such questions, we must ask whether there is a difference between preventing one person from transgression and preventing many persons from transgression. This last question, in

particular, has implications with regard to the peaceful co-existence of observant and non-observant elements of the Jewish people, and obviously rulings on such matters will be influenced by the respondents' view of such co-existence.

Our question bears on issues of punishment as well: Is it permitted to suspend or modify penalties prescribed by law when there exists a possibility that their imposition could lead to consequences detrimental to the individual or to society?

Clearly, it will not be possible to give comprehensive answers to all such questions. We will, however, attempt to illuminate several aspects of the problem and present some of the fundamental issues.

B. A Transgression Performed with Good Intention

Gedolah Aveirah Lishmah

One text that could serve as an important authorization to transgress when the motivation is fulfillment of a commandment, is the statement in Tractate *Nazir* (23b), "A transgression performed with good intention (*lishmah*) is better than a commandment performed not for its own sake"—with the word *lishmah* taken as Rashi does, to mean "for the purpose of fulfilling a commandment."

The statement is a bold one, which seems to cut across all categories in one fell stroke and base everything on the nature of one's motivation. The case offered as proof of this principle is that of Yael, who, the Talmud tells us, had relations with the enemy general Sisera in order to slay him (see *Judg.* 4:17–22). Hence one cannot help but wonder if it is the Talmud's position that normally forbidden relations are totally permitted when their purpose is the fulfillment of a commandment?

Further light is thrown on our passage by the talmudic discussion in *Sanhedrin* (74b) of an act similar to that of Yael. The act under examination was performed by Esther, who had relations with

Ahashverosh in order to rescue the Jewish People from destruction. The Talmud wonders how Esther's act could have been permissible, keeping in mind that it was a matter of public knowledge (*befarhesiya*). In response, the Talmud explains that Esther was merely *terra firma* (*karka olam*), which Rashi explains to mean that she was merely the passive object of Ahashverosh (as land is the passive object of the farmer who tills it) and did not act herself.

On the basis of the passage in *Sanhedrin*, the *Tosafot* in *Nazir* (loc. cit., s.v. *veHa Mit'hanya*) explain that for the same reason, Yael's act was not one for which she would have been obliged to sacrifice her life. Thus, it is apparent that the passage in *Sanhedrin* defines what is permissible, while the passage in *Nazir* comes to establish the value of acts—their relative importance. The mere determination that an act is permissible does not yet establish that it represents the fulfillment of a commandment. Thus, the discussion in *Nazir* establishes that a transgression performed for the purpose of fulfilling a commandment (under circumstances in which the forbidden act is permissible) is greater in value than a commandment performed not for its own sake but rather for personal purposes of the performer.

In the literature that deals with the issue of transgression in order to fulfill a commandment, there is scarcely any mention at all of the principle, “A transgression performed with good intention is better than a precept performed not for its own sake.” What mention we do find, is exemplified by Rashba's use of the principle in response to a query on the proper policy concerning punishment of offenders (*Resp. Rashba* V:238). In the case before him, Rashba recommends moderation and adds, “These matters are determined by the intention of the heart, as you know what is said in *Nazir* (23b), that ‘a transgression performed with good intention is better than a precept performed not for its own sake.’” Rashba's responsum does not deal with punishment according to the prescribed law, but rather with punishment demanded by the exigencies of the hour. Such punishment is determined at the sole discretion of the judge. In such instances, then, the evaluation that must be made with regard to possible suspension of punishment has to take into account, among other

considerations, the legal system's view of the judge's "transgression" performed with good intention.

By contrast, we have a responsum on whether a married woman may engage in relations with a strange man in order to save the lives of others (*Resp. Noda biYehudah, Mahadura Tinyana, Yoreh De'ah* 161). It is R. Yehezkel Landau's opinion that this is forbidden, and that the principle of "*terra firma*" applied only where the actual relations occurred under duress. If, however, the actual relations do not transpire under duress, this is not an instance of "*terra firma*." Men and women are fundamentally equal in this; both are obliged to lay down their lives rather than transgress.

Violation of the law in order to preserve it seems to receive a somewhat broader interpretation in Hassidic literature. So, for example, R. Ya'akov Yosef of Polanah writes, "We find that the main purpose of God's commandments is that we cleave to His ways, and sometimes the value of a transgression with good intention is very great" (*Toledot Ya'akov Yosef, Pareshat Ki Tetze* 5). R. Tzadok haKohen of Lublin, in his *Tzidkat haTzadik* (25) mentions that sometimes love of God requires one to sacrifice his soul, as in the case of King David who sought to worship an idol, and the person who violated the Sabbath by gathering wood during Israel's sojourn in the desert (*mekoshesh*). Both transgressed with good intention (*leshem shamayyim*). With regard to a transgression performed with good intention, R. Hayyim of Tzanz distinguishes between ordinary persons and one who transcends human nature, abandoning all regard for his own bodily pleasure (*Divrei Hayyim, Pareshat Va'et'hanan*, ad init.).

The opposite approach is found in the writings of R. Hayyim of Volozhin, the leading pupil of the *Gaon* of Vilna. In his work, *Nefesh haHayyim* (additional notes following Part III, chap. 7), R. Hayyim notes the problematic nature of the statement "*gedola aveira lishmah*," which implies that it is permitted to transgress if one's intention is proper, a statement with potential to undermine all existing order. Therefore, R. Hayyim posits that permission to transgress with good intention applied only prior to the Sinai revelation, but since Sinai, we are bound by the categories of the Torah, and thus the principle has no practical application in our time. In the post-Sinai era, then, even

a person becomes convinced that the fulfillment of his legal obligation will cause damage, he is not permitted to abstain, since the reasons for the commandments were not revealed.

R. Elhanan Wasserman (*Or Elhanan*, Part II, p. 3) considered the issue of transgression with good intention when consulted about the possible use of force in the struggle for employment of Jewish workers (“*avodah Ivrit*”) in *Eretz Yisrael*. In his response, R. Elhanan writes that “it is clear that the authority to permit transgression with good intention was given only to the Sages and not to us... and that if such authority is granted to all who wish to use it, there will remain no room for our holy Torah. Indeed, the communist Bolsheviks also claim that their tactics are for the good of society. But the tactics of terror can only destroy; they can never build, as is written, ‘*melekh bemishpat ya’amid eretz*—The King by justice upholds the country...’ (*Prov. 29:4*). From here we learn that the world can be upheld only by justice, and that without justice, it is impossible to remain in the world. For if one side employs terror, the other side will certainly use this method as well.”

C. Considerations on Permitting Transgression with Good Intention

It is not our purpose here to present an exhaustive analysis of the question of violating the law in order to preserve it, but rather to set forth a number of the most fundamental considerations. We now turn to one of the basic talmudic discussions of the subject. The discussion appears in Tractate *Shabbat* (4a) and leads us to consider two fundamental dilemmas: the first, whether a person is permitted to commit one transgression in order to avoid committing another transgression; the second, whether a person is permitted to commit a transgression in order to spare another person from committing a transgression.

The basis of the discussion is the question raised by R. Beivai, son of Abbaye, concerning one who has placed dough in an oven on the Sabbath. Baking on the Sabbath is a biblical prohibition, but the

transgression occurs only when the bread is actually baked. Therefore, if dough has been placed in an oven on the Sabbath, if it is removed before it has reached the critical stage, the initial act does not result in a violation. Removing dough from an oven, however, is also forbidden (where a special utensil is used to scrape it off), but only by rabbinic enactment and not by biblical law (*Shab.* 117b). R. Beivai's question, then, is whether one who has placed dough in an oven on the Sabbath is permitted to remove it, in violation of the rabbinic enactment, in order to terminate the baking process before it reaches the stage at which he will be in violation of the biblical prohibition of baking on the Sabbath. In the Talmud's attempt to clarify whether the question concerns a person who acted with full intention and awareness of the biblical prohibition (*mezid*), or one who acted in ignorance (*shogeg*; either of the prohibition or of the fact that the day is Sabbath), two possibilities emerge. The first is that the individual acted in ignorance, and that R. Beivai's question is whether someone else would be permitted to remove the dough in order to spare the perpetrator from transgression. The Talmud dismisses this as a possible formulation of the problem with the simple question, "Do we say to an individual, transgress so that your fellow man may benefit?!" In response to this dismissal, R. Ashi raises the second possibility, according to which the case under discussion concerns one who acted with full awareness. Thus, the question is not whether it is permitted for another person to remove the dough, but whether the perpetrator himself is permitted to do so, in order to avoid transgression.

Before we analyze this discussion and see how it has been interpreted and applied by various authorities, it is important to note that it closes with the citation of a different tradition. According to this tradition R. Beivai's remarks were not a question at all, but rather a ruling, that one who places dough in an oven on the Sabbath in full awareness of the forbidden nature of his act is permitted to remove it. (Perhaps the most striking aspect of this ruling is that, although an individual has performed a forbidden act in full awareness [*mezid*], it does not foreclose the possibility of committing a transgression in order to be spared the consequences of his original act.)

Two conclusions can be derived from the talmudic discussion. The first is that, as mentioned, one who places dough in an oven on the Sabbath is permitted to transgress in order to avoid the consequences of his original act. The second is that no one else is permitted to transgress in order to spare the perpetrator from the transgression.

Both of these conclusions, however, are subject to qualification. The obvious qualification that applies to the perpetrator himself is that he is permitted to commit *only* a less serious transgression in order to avoid committing a more serious one. This, after all, is the case of removing dough from an oven, which is forbidden only by rabbinic enactment and thus involves violation of a prohibition less severe than that which will be incurred if the bread is baked.

An even more significant qualification applies to the case of one who would spare another person from transgression. From the Talmud's rhetorical question, "Do we say to an individual, transgress so that your fellow man may benefit?!", it appears more or less self-evident that we do not say to a person, "transgress that your fellow man may benefit." But here, the *Tosafot* create a real revolution!

By comparing the discussion with other talmudic discussions, the *Tosafot* (*Shabbath* 4a, s.v. *veKhi Omrim*), alter the ostensible meaning of our passage considerably. First, on the basis of a discussion appearing in Tractate *Erubin* (32b), the *Tosafot* conclude that if A was instrumental in B's transgression, A is permitted to violate a lesser prohibition in order to prevent B from a more severe violation. Accordingly, the reason one is not permitted to remove dough on another's behalf is that he did not cause the other person to transgress. Only one who has some causal relationship with another person's transgression is permitted to violate a lesser prohibition in order to spare him.

In passing, it is interesting to note the suggestion of Rav Kook (first Chief Rabbi of the Land of Israel) that the relationship between son and father is considered equivalent to the relationship between a transgressor and the one who was instrumental in his transgression, since the father is responsible for his child's education and the child's

behavior is a function of the education he has received (*Hevesh Pe'er*, chap. 14).

R. Yehudah heHasid (of the late twelfth century and early thirteenth century), in his *Sefer Hasidim* (ed. *Mekitzei Nirdamim*, 125), cites the talmudic discussion under analysis in connection with Moses's dramatic act of casting the tablets of the Law to the ground. Moses, he explains, threw down the tablets in order to save the Jewish People, reasoning, "It is better that I be guilty than that the entire people of Israel be guilty." R. Yehudah heHasid goes on to explain that since Moses caused Israel to sin by tarrying on the mountain, it was proper for him to sin in order to save the people in whose sin he was instrumental.

Tosafot make two other qualifications, relating to the "benefit" (if that term can be used) that is expected to result from the transgression. On this dimension, *Tosafot* offer the novel ruling that if the purpose of the violation is to enable someone else to fulfill an important commandment (*mitzvah rabbah*), or a commandment that relates to the many (*mitzvah derabim*), the violation will be permitted. According to this opinion, then, transgression is permitted not strictly for the purpose of preventing another transgression but also for the purpose of fulfilling a commandment, provided the commandment meets one of the two criteria mentioned.

Tosafot reach this conclusion on the basis of the discussion in Tractate *Gittin* (41b) regarding one who is half slave and half free. Due to his unique status, such an individual can never marry: because he is part free, he may not marry a bondswoman, while his slave side prevents him from marrying a free woman. Accordingly, the Talmud rules that the master of such an individual is to be compelled to free him (although freeing a slave involves a prohibition) in order to enable the person to fulfill the commandment to "be fruitful and multiply" (*periyah urviyah*). *Tosafot* explain that the master is permitted to transgress, because the commandment to have children is an important one.

As mentioned, *Tosafot* rule that the same principle applies when the commandment in question is one to be fulfilled by many people. This principle may serve as a source for permission for a leader to violate

a commandment in order to spare the community from sin. Such a consideration may be permitted also by virtue of the fact that the leader bears some measure of responsibility for the behavior of the members of the community (perhaps in the way that Rav Kook suggests that a father bears responsibility for the behavior of his son).

The principle that it is permitted to violate one commandment to enable fulfillment of a greater commandment immediately raises the issue of establishing a hierarchy of commandments and violations. This, of course, is no simple matter (particularly when we note that the prohibition of baking on the Sabbath is not considered important enough to permit another person to violate the rabbinic prohibition of removing dough from an oven). But before discussing this issue, we return to our *Tosafot*.

While, until now, we have seen from *Tosafot* that the Talmud's prohibition of violating a commandment in order to prevent another person from transgressing is the main rule, subject to a number of qualifications, *Tosafot*, further on, reverse our basic premise. *Tosafot* now explain that our basic principle, that we do not say "transgress so that your fellow man may benefit," applies only in a case wherein your fellow man has already done wrong (*pasha*), a case such as that of an individual who has placed dough in an oven on the Sabbath. In other words, the rule becomes the exception! The rule, then, is not that we do not say "Transgress so that your fellow man may benefit". The rule is that we do say this—unless your fellow man has himself already begun the transgression.

When applying "Transgress so that your fellow man may benefit," the question becomes, Who is considered as having negligibly done wrong (*poshe'a*)? On one hand, we have seen that in the case of one who placed the dough in the oven, regarding which we are not permitted to transgress to save him, the dough was placed there *beshogeg*, in ignorance. This shows that full awareness of the sinful nature of the act is not required in order to establish the individual as being negligent.

On the other hand, *Tosafot* make an extremely interesting innovation: that the definition of negligence does not include one who

is “seduced” into transgressing. One who is seduced into transgressing is not considered negligent, but rather to have acted under duress.

Tosafot infer this from the case cited in *Gittin* (38b) in which the Rabbis compelled a man to free his bondswoman who engaged in immoral actions because of her low status. *Tosafot* explain that it was her practice to approach men and offer herself, and therefore those who were “seduced,” as it were, are considered as having acted under duress. Therefore it was permitted to free the bondswoman, although this involved a prohibition, in order to rescue those who were seduced to sin. (Such “duress,” of course, is not duress in the full sense of the term. On the contrary, if this were an instance of true duress, there would be no grounds to permit the transgression of freeing the bondswoman, since those involved would not be considered transgressors. Nevertheless, it is considered duress for the purpose of permitting a transgression on behalf of those involved.)

The various distinctions made in the question of when we may say “sin so that your fellow man may benefit,” have important practical implications, one of which we shall examine briefly. Rashba (*Resp. Rashba* VII:267) was asked whether a man is permitted to violate the Sabbath to save his daughter who was taken from her home and who, it was feared, would be frightened into converting to another faith. May the Sabbath be violated in the case of such a possible danger as it may be violated in the case of a possible danger to human life? Rashba responds that in such a case it is not permitted to violate the Sabbath in order to prevent transgression, since it is permitted for one to transgress in order to prevent another person from sinning, only if he was instrumental in the other person’s potential sin.

R. Yosef Karo, however, disagrees with Rashba’s ruling. R. Yosef Karo (*Beit Yosef, Orah Hayyim* 306) bases his opinion on the ruling of *Tosafot* that it is permitted to transgress in order to spare another person from violating an important commandment, or when the other person has not been negligent. Accordingly, he argues, there is no more “important commandment” than rescuing a Jew from conversion, and in this case, the man’s daughter was not negligent. In comparison to conversion which will cause the violation of the Sabbath for an entire lifetime, a one-time violation of the Sabbath is considered

a mild violation. Therefore, R. Yosef Karo concludes that it is permitted to violate even the biblical prohibitions of the Sabbath in order to save the girl.

Is the prevention of conversion comparable to the saving of human life? It may be that Rashba's questioner wished to make just this comparison. What is clear, however, is that Rashba himself does not think so, since he refuses to permit violation of the Sabbath in order to prevent conversion. Moreover, even R. Yosef Karo does not base his permission to violate the Sabbath on danger to human life, but rather on the principle that the violation is for the sake of an "important commandment."

Nevertheless, another authority does make the analogy, and he does so in quite a novel fashion. R. Mordekhai Yafeh argues that since one is required to sacrifice his life rather than violate the prohibition of idolatry, we are obliged to rescue one compelled to convert, in order to save him from having to sacrifice his life (*Levush, Orah Hayyim* 306:14).

A further step was taken in this direction by R. Shemuel ben David, in a responsum that discusses saving a person about to convert voluntarily to another faith (in the responsa printed at the end of *Nahalat Shivah*, responsum 83). In such a case, there is no question of saving human life. Since the person is converting voluntarily, clearly, he will not sacrifice his life rather than engage in idolatry. Furthermore, he is clearly negligent. Like the person who placed his dough in an oven on the Sabbath, he is already involved in a wrongdoing. May it yet be permitted to violate the Sabbath to save him?

R. Shemuel's response is that here too, it is permitted to violate the Sabbath to save the person from conversion. R. Shemuel gives a number of reasons for this. We will mention two. First, if it is permitted to violate the Sabbath in order to save the body, *a fortiori* it must be permitted to do so in order to save the soul from "eternal death." Second, even with regard to the voluntary nature of the conversion, the person's wrongdoing might not be considered negligence, since he is the victim of instigation, and once the act is done, he will come to regret it.

Equating rescue from conversion to the saving of human life, as R. Shmuel ben David does in his ruling, seems to be quite revolutionary. Clearly, neither Rashba nor *Beit Yosef* accepted such a parallel, for if they had, they would simply have permitted violation of the Sabbath in the case over which they disagreed, without having to consider it in terms of when it is permissible to violate one commandment in order to fulfill another.

D. Offenses Against Fellow Man

Another important question is whether the guidelines for permitting transgression for a higher value are applicable when someone stands to be injured by the transgression.

Tur Hoshen Mishpat (359) prohibits theft even if the purpose is to save human life, unless the thief intends to repay the victim. R. Yehudah Ayash (an eighteenth century Algerian authority) suggests (*Resp. Beit Yehudah, Yoreh De'ah* 47) that under such circumstances, it may be permitted to steal even if the thief is unable to pay but intends to do so at a later date, after he has earned the money. R. Ayash is not certain of this, however, and concludes that the question requires further study.

An incident in which someone slandered others for the purpose of bringing peace to a community, is discussed in an instructive responsum included in the collected responsa of Rema, R. Moshe Isserles (*Resp. Rema* 11).

The responsum emphasizes the value of peace, and shows that the achievement of peace permits the violation of a number of prohibitions. So, for instance, it is permitted to deviate from the truth in pursuit of peace in spite of the prohibition “keep away from anything false” (*midvar sheker tirhak; Ex. 23:7*). Similarly, it is permitted to erase God’s name, an act normally forbidden, for the sake of peace, as is said (*Makk. 11a*) in the name of Ahitofel: “It is permitted, in order to bring peace between husband and wife, to erase the Holy Name in preparation of the water [to be ingested by the

suspected wife].” Hence, it is permitted to slander as well, if the intention is pure and it is for a good purpose—to make peace.

Next, the respondent discusses whether there exists a distinction in this respect between offenses against a fellow man and offenses against God (as Yom Kippur atones for offenses between man and God but does not atone for offenses between man and man). He rejects the distinction, however, basing his view on the manner in which the suspected wife (*sotah*) is encouraged to admit her sin in order to prevent the necessity of erasing God’s name in preparation of the water. The Talmud (*Sotah* 7b) says that in order to persuade the suspected wife to admit her offense, she is reminded of the biblical incidents in which Reuven and David sinned and confessed. In relating these examples, the biblical accounts are narrated in accordance with their plain literal meanings (see Maimonides, *M.T.*, *Sotah* 3:2), not as they have been interpreted by the Sages, who explained that Reuven did not sin. The respondent now argues *a fortiori*, that if the prohibition of slandering Reuven is suspended in order to prevent erasure of God’s name and the prohibition of erasing God’s name is suspended in the name of peace, it must certainly be permitted to use slander in order to achieve peace.

An apparent contradiction to this conclusion arises from the law formulated in the Jerusalem Talmud (*Terumot* 8:12), which establishes that if gentiles demand to be given one person on threat of killing all, it is forbidden to meet the demand (unless they have specified a particular person). According to this rule, we should conclude that it is preferable for relations within the entire community to be disrupted than for a single Jew to be exposed to public ridicule and scorn by the publication of falsehood.

The respondent rejects this line of reasoning, however, distinguishing between physical delivery of a person to gentiles and verbal denunciation. He concludes by stating, “We have demonstrated that it is permitted to slander for the sake of peace.”

Objections to this ruling have been expressed by one of Jerusalem’s authorities of the previous generation, R. Yisrael Ze’ev Mintzberg (*Resp. She’erit Yisrael, Orah Hayyim* 13). R. Mintzberg emphasizes at the beginning of his comments that the responsum does not bear

Rema's signature and that it may be the work of some other authority who wrote to Rema. In R. Mintzberg's opinion, the foundations of this ruling are quite weak.

We will not present here R. Mintzberg's rejection of the arguments that were based on the authorization to deviate from the truth and to erase the name of God for the sake of peace, but only his treatment of the respondent's dismissal of any distinction between offenses against man and offenses against God. Concerning this issue, R. Mintzberg disagrees with the respondent, arguing that there is not a single positive commandment that suspends a prohibition between man and man (not even when the positive commandment is itself a commandment between man and man). His conclusion: "The ruling of this responsum is beyond my understanding, and in my opinion, may in no way be applied in practice."

E. Penal Issues

A related issue arises with regard to punishment. Sometimes it is known that imposition of a prescribed penalty may result in the offender's complete alienation from Judaism. In such cases, might it be proper to suspend the penalty?

A ruling by Rema of relevance to this question may be found at the beginning of the Laws of Excommunication (*Rema, Shulhan Arukh, Yoreh De'ah* 334:1). Rema rules: "The ban is to be imposed upon whoever has incurred it, and even if there exists a possibility that this will lead to someone's alienation from Judaism, it makes no difference."

The source of Rema's ruling is a responsum of R. Yisrael Isserlein (*Terumat haDeshen, Ketavim* 138), which, in turn, is based upon an incident recounted in the Talmud (*Kiddushin* 72a). R. Yehudah haNasi, just before his death, related that R. Ahai ben R. Yishayah had imposed a ban of excommunication on certain offenders, who subsequently left the faith. Why, asks R. Isserlein, did R. Yehudah haNasi relate this incident? Certainly to inform us that even if the Sages see that the offenders may become alienated from Judaism if we

punish them, the Sages are not to refrain from punishing them in accordance with the law.

R. David haLevi, author of *Taz*, challenges Rema's ruling, demonstrating that, on the contrary, one is required to make an active effort to rescue one who has become submerged in sin and not simply allow him to fall (*Taz, Yoreh De'ah*, *ibid.*, 1).

Shakh rejects all of *Taz's* arguments (*Nekudot haKesef* on *Taz*, *ibid.*). Once the law calls for a ban of excommunication, he asserts, we should not hesitate, for otherwise "you abolish all of Jewish law." That is to say, excommunication of an offender is not an individual matter but rather a question of imposing the authority of Jewish law on the entire Jewish people, and if the ban is suspended for fear that the individual offender will leave the faith, all of Jewish law will be undermined. In modern parlance, we would say that this is a complete negation of the "rule of law."

The position that the offender's possible alienation from Judaism ought not to deter authorities from applying various penal measures is well articulated in the writings of Radbaz, R. David ben Zimra (*Resp. Radbaz* 187). Radbaz argues that if it were to become public knowledge that the authorities were willing to turn a blind eye to offenders when there exists a danger of apostasy, transgressors would continue to sin; theft, extortion, and adultery would increase uncontrollably; and Jewish law would be observed only by a small portion of the Jewish people.

Therefore, he asserts, policies in these matters should not be rigid. Rather the leader of the generation should approach the issues with moderation: If the person involved is a habitual offender and defiant, he should not hesitate to impose punishment. If, however, the offender is not habitual, and it seems probable that he will listen, we must attempt to coax him to repent gradually, and we should not hasten to punish.

R. Ya'ir Hayyim Bakhrakh expresses an even stronger opinion against capitulation to offenders for fear that they may leave the fold (*Resp. Havot Ya'ir* 161). If this happens, he argues, all men will do as they please, judges will be afraid to issue proper rulings, and truth will be trampled in the dust. Our concern must be for the collective

welfare even if this conflicts with the individual welfare. The essence of punishment is that it function as deterrent to others.

F. Conclusion

The possibility of violating the law in order to preserve it is a matter of far-reaching and potentially dangerous implications. Due to its explosive nature, the principle has never become part of the mainstream of Jewish law, but has remained a relatively minor tributary.

Although exhaustive treatment of the topic would not be possible in one book, we have attempted to touch upon a number of central issues. These include, *inter alia*, whether and under what circumstances one is permitted to violate a commandment in order to prevent a violation by one's fellow man, distinctions between violations of individuals and violations of many people, and whether there is a distinction between offenses against man and offenses against God.

As we have seen, the interplay of factors which must be weighed when permitting one violation in order to prevent another is extremely complex, and it is therefore not surprising that no relevant guidelines are propounded in *Mishneh Torah* or *Shulhan Arukh*. The principle does appear, however, in specific rulings, which are best characterized as of an *ad hoc* nature.

Any decision to permit a violation of the law in order to preserve it, must certainly evaluate, among other factors, (a) the personality of the individual who would commit the violation, (b) the probable impact upon the community—whether permission to transgress could possibly lead to greater negligence in observance of the Torah, and (c) the relative weight of the commandment to be violated compared to the violation to be prevented.

A survey of the sources shows that authorities have exercised extreme caution in permitting one violation in order to prevent another, and this approach has been well formulated in a responsum of R. Naftali Tzvi Yehudah Berlin (Netziv of Volozhin; eighteenth century; *Resp. Meshiv Davar* I:44, ad fin.). His responsum reminds us of

Maimonides' analogy to the practice of medicine: "The principle of permitting violation of one prohibition in order to prevent violation of another must be applied with great moderation. It is similar to the practice of medicine, where, if the physician sees that a person's hand pains him greatly, in some cases he will decide to amputate the hand to prevent the pain from spreading throughout the rest of the body and endangering [the patient's life], whereas in other cases, he will decide that it is preferable to suffer the pain and not lose the hand. Such a decision can be taken only after careful consideration and consultation of several doctors together, since both possibilities are fraught with danger. The healing of the unhealthy soul must also be conducted in this manner, with much consideration and with consultation of Torah authorities, for God will help them to prevent damage."