

## LETTERS TO THE EDITOR

### Handshaking

**THIS LETTER** is in response to “Is Handshaking a Torah Violation?” published in the previous issue of *Hakirah*.

At the outset, I must state what the author does not: Most *poskim*, current and past, have always ruled that it is forbidden to shake a woman’s hand under any circumstances. Furthermore, the *poskim* see this as an *issur gamur*, not a mere *chumra*.

In his article the author

- a) seeks to prove that even affectionate touching is essentially permitted in halacha because there is a difference between *derech chiba* which is *muttar* and *derech ta’ava v’chibas biah* which is not, and
- b) says that the reason some do not shake a woman’s hand is because it is based on an opinion not accepted in halacha that even non-*chiba* touching is forbidden.

That’s not what most *poskim* say. Rather, they say that

- a) all *derech chiba* is *assur*,
- b) there is no halachic difference between *derech chiba* and *derech ta’ava v’chibas biah*,
- c) therefore shaking a woman’s hand and all intentional, affectionate or pleasant touching are forbidden.

Major *poskim* throughout the

ages unanimously hold these views. The author’s opposition is not supported in halacha. He fails to demonstrate otherwise.

It is troubling that an article so *halacha le-ma’aseh* involving *issurei de’oraisa* had no cautionary editorial note. A review of editorial policy, awareness and responsibility may be in order.

- 1 -

The author begins with a well-known, universally accepted halacha: “No touching at all” between husband and menstrual wife is unique to marital *nidda* and is *muttar* with other women.

Without explaining exactly what behavior is *muttar*, he moves quickly from describing it as “any touching at all” to “simple touching without intention of affect,” then on to “extended touching between men and a married woman.” By the end of that section, all casual touching is permitted by halacha. A pat on the back, hands around the shoulder, a comforting hug, and more, are not sufficiently *chiba* to be *assur* (except for unmarried couples who ought to adopt a policy of not touching).

By the end of the article, even affectionate or pleasurable touching, *derech chiba* (and even holding hands during forbidden dancing!) is permitted unless it “customarily” leads to or accompanies actual relations. Thus handshaking is permitted.

This is the author’s approach.

Sadly, it is faulty and misleads the reader.

Let's start at the author's beginning. What exactly is uniquely prohibited with marital *nidda*, and not forbidden with others? The examples the *poskim* give are:

- a) unintentional touching—evident from the *issur hoshata*, and
- b) detached, impersonal, “clinical” touching, as for medical need (pulse-taking, examinations), preventing injury, aiding the injured, etc.—see end of Y.D. 195.

These illustrations are given by the *poskim* throughout the ages. See, for one instance of very many, *Igros Moshe Even haEzer II, #14* (cited in the author's note 16).

There is nothing at all social, affectionate or friendly about medical-needs or accidental contact. That's why they are permitted. Any other physical contact is called *derech chiba* and is forbidden in order to distance us from a pattern of conduct that may, possibly and eventually, lead to *issur biah*. Not “probably,” certainly not “customarily.” Just: “possibly,” much like *yichud* in, say, a conventional “civilized” business setting, which is never permitted.

*Chibas biah* includes any physically pleasurable contact even without emotion, friendliness or affection because that, too, can eventually lead to relations, which are forbidden even with no emotional attachment. Many physical relationships exist without friend-

ship, especially short-term ones, and are driven by *chiba* for *biah*.

All of the above conduct is called, interchangeably, *דרך חבה*, or *דרך חבה ורעות*, or *דרך חבת ביאה*, or *תאוה*, etc. These are different descriptions, not different halachos. None of the classical *poskim* distinguishes between them as if they were distinct categories. (Even the *Ezer miKodesh* who mentions these different situations discusses only *de'oraisa* versus *derabanan* for non-marital touching, not *assur* versus *muttar*.)

This is why handshaking is forbidden.

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After mentioning the law of marital *nidda* the author writes:

Thus, while the *Shulchan Aruch* forbids numerous forms of interactions with *'arayot*, including winks and gestures and pleasurable gazing, simple touching without intention of affect is not one of them.

It is perplexing and disheartening to see the halacha presented in this manner. Here is the language of the *Shulchan Aruch*:

**סימן כ: באיזה ביאה חייב הבא על הערוה.** סעיף א: הבא על אחת מן העריות דרך איברים או שחבק ונשק ונהנה (=א) נהנה, בית שמואל) בקירוב בשר הרי זה לוקה.

**סימן כא: להתרחק מן העריות.** סעיף א: צריך אדם להתרחק מן הנשים מאד מאד ואסור לקרוץ בידי או ברגליו ולרמוז בעיניו לאחת מהעריות ואסור לשחוק

עמה להקל ראשו כנגדה או להביט ביופיה  
ואפילו להריח בבשמים שעליה אסור

This is patterned after the Rambam:

א כל הבא על ערוה מן העריות דרך  
אברים או שחיבק ונישק דרך תאוה ונהנה  
בקירוב בשר הרי זה לוקה מן התורה  
ב ואסור לאדם לקרוץ בידיו וברגליו או  
לרמוז בעיניו לאחת מן העריות וכן לשחק  
עמה או להקל ראש ואפילו להריח בשמים  
שעליה או להביט ביופיה אסור ומכין  
המתכון לדבר זה מכת מרדות

It is the first halacha—the more stringent one—from which the *poskim* learn that touching is forbidden. (ונהנה בקירוב בשר), “enjoys physical contact”; see section 1 above.) This is *de’oraisa*. The other halacha describes the *harchakos*, laws instituted *miderabanan* as a “fence” to protect us from the core *aveiros*.

Yes, touching is not mentioned among the *harchakos derabanan*. That is because it is already forbidden as *de’oraisa* in the previous paragraph.

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Although I generally have no problem understanding the usage of the word “Torah,” I must admit my confusion with the author’s phrase “Torah violation.” Does he mean an *issur* that is specifically *de’oraisa*, or does he mean a violation of halacha?

This is a recurrent theme in the article, beginning with the title “Is Handshaking a Torah Violation?” The apparent meaning is “Is it a violation according to *Din Torah*?” or, simply: “Is it *Assur*?”

However, the author writes, and I excerpt: “Rambam applied a Torah prohibition to behavior such as hugging and kissing ... Kissing etc. is an infraction of a negative commandment punished by the lash. This proviso precludes social handshakes from being subsumed under the *lo ta’aseh*. This is so even if the handshake includes an element of affection or pleasure; affection alone without the feature of desire is not a Torah violation ... Rambam stresses that the *lo ta’aseh* proscribes activities that customarily lead to relations. Handshaking is not one of these.” He notes the *Lev Chaim* who excludes simple touching from *de’oraisa*.

This seems to be his basis for saying—*Halacha leMa’aseh*—that handshaking is permitted. Even his reason for those who prohibit handshaking is based on an opinion that “all *kreivah* is forbidden by the Torah.” Accordingly, the interrogative title means only “Is handshaking *de’oraisa*?”

This is hard to believe, but, unless I am very much mistaken, the author—who is writing a practical article, not a theoretical one—ignores the role of *issur derabanan* in this *p’sak*. (That would certainly render moot some of the problems posed in this letter.)

What happened to *issur derabanan*? Why is handshaking automatically permitted if we can show it’s not *de’oraisa*?

Confused though I am, I will nevertheless describe those problems, laboring under the assumption that *issur derabanan* is relevant to *halacha le-ma’aseh*.

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After noting that the unique *issur negiah* of marital *nidda* (“any touching at all”) does not apply elsewhere, the author continues

Thus ... simple touching without intention of affect is not [forbidden]. As our generation’s [Rabbi Vozner] writes: [He may] not touch her [i.e., his *nidda* wife]: that is to say, even without intention of desire and affection, while [in their absence] even a rabbinical prohibition does not apply in [touching other] *‘arayot*.

As stated in section 1, the fact that marital *issur negias nidda* is permitted with other *arayos* allows only for totally non-*chiba* contact such as taking the pulse. In no way does it permit “simple touching.” To most readers, saying “simple touching is permitted between the sexes” conveys something more than taking the pulse.

On these words, the author quotes Rabbi Vozner as if he supported this. He does not. Rabbi Vozner says nothing more than the original halacha: touching that is unintentional or similar to taking the pulse is permitted.

It is most interesting that the author chose Rabbi Vozner, of all *poskim*. Rabbi Vozner vigorously opposes the author’s views, and even applies *issur negiah* to prohibit pregnant women from visiting male obstetricians for standard and regular physical-contact examinations unless there’s an acute, seri-

ous need (Responsa *Shevet haLevi* vol. 3, sec. 186). This is certainly not in line with the author’s concept of *issur negiah*.

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The author then brings the Taz to support this view:

So, too the Taz mentions “his friend’s wife [with whom] he is forbidden to sleep in bed, but touching is permitted.”

The author found these words in the laws of Yom Kippur, where the *Shulchan Aruch* says: ואסור ליגע באשתו כאילו היא נדה, it is forbidden to touch one’s wife, as if she were a *nidda*. The Taz simply mentions the same well-known halacha: only marital *nidda* has non-*chiba issur negiah*; there is no restriction “with his friend’s wife” for accidental or medical-needs touching. There is nothing new in this Taz.

This simple halacha mentioned by the Taz permits nothing more than touching that is similar to taking the pulse. Using this Taz or this halacha to infer that anything more than this is permitted is unfounded.

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Nevertheless, the author is now up to permitting extended touching:

A graphic example of rabbinic permission for even extended touching between men and a married woman, in circumstances not reflecting “desire and affection,” can be found, according to a number of *ris-*

*honim*, in *Beitzah* 25b. There R. Nachman permitted his wife to “go out on an *Alonki*.” Rashi explained that a man placed his hand on his partner’s shoulder and his partner placed his own hand on the first’s shoulder, thus forming a place for a third person who sat “on his chair on their arms,” and according to this it is at least possible that Yalta sat on a chair carried by men without direct physical contact between them.

Meiri, however, explained that he sat directly on their arms without a chair, and such is the implication of R. Chananel who explained *alonki* as being a “shoulder saddle” without mention of a chair.

This is untrue. There is no “extended touching” in this *Gemara*, nor any touching at all. Furthermore, Meiri absolutely does not say “he sat directly on their arms.” Based on the *sugya* of the *Gemara*, he *couldn’t* have said it.

That *Gemara’s* topic is the dignity of *Yom Tov*. Though most carrying outside is allowed, *Chazal* prohibit certain items because they are *derech chol*, “weekday” activity not in accord with *kavod Yom Tov*. They are: a walking stick, a shepherd’s pouch, and a chair for carrying a person. See *Shulchan Aruch* 522.

One *amora*, asked about the case of the chair, replies *ובלבר שלא יתקר*, [it is permitted] so long as they don’t “shoulder” (as the author explains in the above quote), which the *Gemara* then calls *alonki*.

The *Gemara* asks how this is compatible with R. Nachman’s permitting his wife Yalta to be carried via *alonki*, and answers that she felt unsafe without the firmer base of the extended arms.

Now, according to the author that this was without a chair, what does *alonki* have to do with this *Gemara*? The only rule mentioned in the *Gemara* is: don’t take out a chair. There is no opinion mentioned anywhere that carrying a *person* on *Yom Tov*, without a chair, is *assur*. Nor can there be such an opinion in the *risbonim*, as the Bais Yosef cites a *Gemara* in *Yerushalmi* that there is no such *issur* without a chair. This “Meiri’s explanation” is simply impossible.

Furthermore, Meiri never says that he sat “directly” or “without a chair.” The closest he comes to saying this is not in his halachic *Bais haBechira*, but in his commentary to *Beitzah*. After describing the placements of the men’s arms, he writes *והיה הזקן יושב על אותן זרועות ויוצא*, the sage would sit on those arms. But even these words don’t say “without a chair”; they used at least a “shoulder saddle,” a leather seat, as the author quotes from Rabbeinu Chananel.

It is also mystifying how the author finds support for “direct touching” in Rabbeinu Chananel’s writing “shoulder saddle, without mention of a chair.” In what way is a leather seat different from a chair?

The author’s example of rabbinically permitted extended touching does not exist.

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The author's concepts such as

This proviso precludes social handshakes... since a handshake is not a preliminary to relations. This is so even if the handshake includes an element of affection or pleasure; affection alone without the feature of desire is not a Torah violation (p. 117).

—presented as self-evident logic—are his own opinions. They are not the opinion of the *poskim*. *Chibas biah* is not limited to “preliminary to relations or accompaniment of sexual relations” or what would “customarily lead to sexual relations,” just as *chiba* is not limited to “fondness.” Rather, it means: expressions that are physically pleasant or are meant to convey acceptance and civility that can, in some circumstances, lead to friendship or affection, which in turn can lead to desire and much more. *Issur negiah* intends to short-circuit this path.

Thus, when the author continues that ...

The Shach already wrote this when he stipulated “the way of desire and affection of intercourse” (*derech taavah v'chibat biah*) rather than simply “affection” [*chiba*]

he is mistaken. דרך תאוה and דרך חבה are the same halacha. The Shach did not write “this” distinction, a distinction that is non-

existent.

His “clear proofs” of such distinction from Rambam's phrases such as *mipe'ulot bazenut* have no basis. Touching a woman intentionally and in a pleasant manner is *mipe'ulot bazenut*. The only consideration is the act itself—the *pe'ula*—not the surrounding social circumstance.

Furthermore, in repeatedly broadening the definition of what touching is permitted, the author contradicts himself. In the second sentence of the article he says “simple touching without intention of affect” is permitted. Here he says “even if the handshake includes an element of affection or pleasure” it's fine, as “affection alone is not a Torah violation.”

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In support of his contention that conduct that is “not a preliminary to relations” is permitted, the author quotes responsa *Lev Chaim* (note 10) as having said simply: נגיעה בעלמא לא שמענו.

This is not so. Here is the *Lev Chaim's* language:

הגם כי איסור קריבה שאסרה תורה היא קריבה של הנאה כגון חיבוק ונישוק כמבואר מדברי הרמב"ם, אבל נגיעה בעלמא לא שמענו, עם כל זה נראה דאיסורא איכא, ובזה יש לזוהר הרבה להתקרב לנערות בתולות, לא מיבעיא בחיבוק ונישוק דיש איסור תורה ומלקות לדעת הרמב"ם ודעימיה, אלא אפילו נגיעה בעלמא דבר ההווה ורגיל כנשיקת ידים שנושקים הבתולות והפנויות לבני אדם הגדולים מהן, צריך לזוהר שלא ליגע בבשרה וכל שכן אם תהיה אשת איש כי אמרו במדרש רבה סדר בשלה

"כל הנוגע באשה שאינה שלו מביא מיתה  
על עצמו."

“Although the Biblical prohibition of touching is one of pleasure such as hugging and kissing as is clear from Rambam’s words, and a mere touch is not included, nevertheless it appears that this is forbidden, and one must be very careful not to touch girls. Not only hugging and kissing, where there is a Biblical prohibition and *malkus* according to the Rambam and others who rule similarly, but even a mere touch, something that is common and perfunctory, such as kissing on the hands that the young girls do to their elders, one must be very careful not to touch her skin. And certainly a married woman, for it says in *Midrash Rabbah Parshas Beshalach* that one who touches a woman who is not his [wife] brings death upon himself.”

By lifting a phrase wholly out of context, the author crafts support for his *better*. *Lev Chaim* actually says the exact opposite, that נגיעה בעלמא is not permitted.

Furthermore, in presenting this *Lev Chaim* as seemingly uncontested, the author omits that the *S’dei Chemed* he cites, which contains this reference along with the entire above-quoted paragraph, vehemently disagrees with even the one point made, that a mere touch is *derabanan* and not *de’oraisa*.

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The author then finds that ...

Further evidence [of the distinction between *chibas biab* and *chiba*] comes from the *Trumat haDesben*, in explaining the Rambam, distinguishing between “other distances” (*perishot*) that he not touch her and “huggings and kissings” which people have pleasure from as from relations (*d’nehenin maibem k’mo metashmish*.)” A handshake is not in the category of *k’mo metashmish*.

In short, he sees sanction for handshaking in this *Trumas haDesben* because

- a) the *Trumas haDesben* is referring to the Rambam mentioned in the article, whose subject is *harchakos* between the sexes, and
- b) the wording of the *Trumas haDesben* excludes handshaking from those same *harchakos*.

Regarding point a)

In fact, these words of the *Trumas haDesben* do not refer to that Rambam. They do not even refer to his subject, which is separation of the sexes.

The *Trumas haDesben*’s subject is: ***harchakos* between husband and wife** *samuch le’vestab* where relations are permitted *min haTorah* and there is only an *issur derabanan*. Even if handshaking may be grouped with touching and other permitted romantic behavior, it

certainly is permitted **between husband and wife.**

Without disclosing this, the author uses the *Trumas haDesben* to permit the same conduct with other women, as if there were no difference.

Similarly, the *Trumas haDesben* is referring not to the Rambam presented in his article (on non-marital separation, mentioned by *Trumas haDesben* at the start of the essay), but to an entirely different ruling, one on *samuch le'vestab*.

In fact, the very word “Rambam” is a typographical error in the printed *Trumas haDesben*, obvious to anyone familiar with Rambam’s expressions. Sure enough, the *Hagabos Maimonios* (printed in *Rambam Issurei Biah* 4:12) that the *Trumas haDesben* quotes actually has “Ramban,” with a *nun*.

The *Trumas haDesben* is not explaining the author’s Rambam or even his subject matter. He’s not explaining any Rambam at all.

*Regarding point b)*

According to the author, the *Trumas haDesben* says that hugs and kisses are prohibited wherever *tashmish* is because their pleasure is like that of *tashmish*. Thus handshaking, which clearly does not provide such pleasure, is excluded from this category and permitted.

The *Trumas haDesben* does not say this. Here is the *Trumas haDesben*’s language:

שאר פרישות כגון שלא יגע בה או שלא  
יאכל עמה ומדינת הכוס וכה"ג דהן  
הרהקות ופרישות, לאפוקי חביקות  
ונשיקות דנהנין מהן כמו מתשמיש.

He lists five items that are *bar-chakos nidda*: unintentional touching, eating together, wife’s wine-pouring, hugging and kissing. For *samuch le'vestab*, he seeks to distinguish between the first three which he permits, and the last two which he doesn’t. His approach is to group the last two with *tashmish*.

This is not a grouping based on “how much pleasure.” Does anyone believe that they provide the same degree as *tashmish*? No. What does distinguish them is: pleasant, direct physical contact. The first three—unintentional touching, eating together and wine-pouring—are not pleasant physical contact. The first gives no pleasure and the others are not physical contact. Hugs are pleasant direct physical contact, just as *tashmish* is. *D’nebenin maibem—comma—k’mo [she’nebenin] metashmish*.

Handshaking, too, is pleasant physical contact, and is to be grouped with *chibuk ve’nishuk*. Wherever *chibuk ve’nishuk* are forbidden, so is handshaking.

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Following upon this *Trumas haDesben*, the author notes that holding hands during dancing does not violate *lo sikrevu*. He writes:

A handshake is not in the category of *k’mo metashmish*. Neither, apparently, is handholding in dancing... Among major early *achronim*... who forbade mixed dancing, none explained that dancing while holding hands can itself constitute a violation of *lo tikrevu*. Compare



the pamphlet *Geder Olam*... who wrote... “one also violates, as a result of the dance, the *lav* of *lo tikrevu*; sometimes they kiss and hug one another during the dance ... and violates this *lav*”; according to this, without the added factor of kissing and hugging the *lav* is not violated. (Note 19)

An astonishing approach: the author is apparently under the impression that when *poskim* address actual situations of *aveirah*, any detail omitted is *muttar*! He does not present the possibility that handholding isn’t mentioned because they didn’t hold hands during dancing. He does not present the possibility that *poskim* do not necessarily list each obvious detail and pronounce “*assur*” lest we assume that it’s *muttar*. He does not present the possibility that the *Geder Olam*, in addressing the public about the spiritual dangers of mixed dancing, focuses on the more conspicuous forbidden behavior—*chibuk ve’nishbuk*—to show how far things can get out of hand, and not because only *chibuk ve’nishbuk* are forbidden.

Furthermore, the author is implying that, while mixed dancing is forbidden as it inflames the passions and comprises and causes ever greater sins, adding physical contact and holding hands does nothing to intensify a person’s pleasure and desires in a sexual direction! It is difficult to accept this.

The reader is left with the clear impression that handholding during dancing may actually not vio-

late halacha. However, the *Mishne Berura* informs us that this is not so. In an essay concerning the *aveirah* of mixed dancing he does explicitly mention this as a distinct component:

ואוחזין מעשה אבותיהם בידיהם של נשים וקורא אני עליהם "יד ליד לא ינקה" מדינה של גיהנם ... ורוב בתולות בזה"ו כבר הגיע זמנם לראות ולדעת הרמב"ם וכמה פוסקים ראשונים ואחרונים הנוגע בהן לשם חיבה וקירוב בשר עובר על לאו. (בה"ל סי' של"ט)

“They traditionally hold the hands of the women. I declare upon them the verse “hand to hand shall not be free” from the judgment of *Gehinnom*... and most girls today are already of menstrual age... One who touches them for affection or in order to have physical contact transgresses a Biblical prohibition.”

The *S'dei Chemed* cited by the author in note 20 has a similar treatment and *p'sak*.

Holding hands during dancing does, indeed, violate *lo sikrevu*.

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The author, having presented that touching is permitted and that clearly handshaking is not *derech chibas biah*, seeks to answer what is by now a very good question: What basis can there possibly be for “some rabbis,” as the author puts it, to “demur” from shaking a woman’s hand?

Here is the reason the author conveys: Avoiding handshaking is

based on a disputed *Teshuvos haRashba*, unaccepted by halachic decisors, that all *issur negiah* includes even totally non-*chiba* touching.

No wonder the author does not consider conduct based on this incredible explanation to be “basic halacha.” No *posek* does.

It is also difficult to see where this reason comes from. The author assures us that this is the reason that “is usually given,” but by whom? The sources mentioned in that footnote do not. They don’t discuss handshaking at all, except for the *S’dei Chemed* who (like the above *Igros Moshe*) says the opposite of the author’s statements: a) handshaking is forbidden *al pi din* not as a mere *chumra*, and b) precisely because it is *derech chiba ve’reinus*.

The source of his reason remains a mystery.

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After citing this *Teshuvos haRashba*, the author asks:

Yet, taking the pulse of one’s wife certainly does not indicate *chibat biab!* According to this understanding, Rambam prohibits... all physical contact with an *ervah*. How this accords with wording of the Rambam himself—specifically cited by *Shach* as his reason for disagreeing with the *Bet Yosef*—remains unexplained.

He then goes on to resolve the issue by tracing the ruling to Rabbeinu Yonah who is a *da’as yachid*—

a minority of one—and unacceptable as “basic halacha.”

In a halacha-oriented article, why this *pilpul*? True, the Rashba, which implies that non-*chiba* touching is prohibited with all women, is not accepted halachically. But the Shach’s problem with the Rashba is not just the Rambam’s wording, as the author implies. Rather, he objects to this ruling on the basis of the halacha, which is evident from the widespread, age-old accepted practice of women consulting male physicians. If so, there is no difference if Rashba is based on Rambam, on Rabbeinu Yonah, or even on his own determination.

His actual purpose in all this remains obscure.

It is also unnecessary. His point of departure is the inconsistency with Rambam’s words that “remains unexplained.” But he ignores his own sources: The *Toras haShlamim* whom he cites in note 22 does indeed explain the Rashba that, although with other *ervah* Rambam says that *de’oraisa* is limited to *derech chiba*, however with *ishto nidda*, where there are more stringent *harchakos*, it is true even without *chiba*. Thus, the imperative for the author’s solution is unwarranted.

Also unwarranted is his footnoted comment pointing out the fallacy of those *achronim* who “mistakenly say” that the Rashba mentions the Rambam by name. It is also gratuitous, halachically irrelevant. The only reason this is important to the author is because it emphasizes the novelty of his “*chiddush*.” It demonstrates how

strongly “everyone” assumed that the Rashba’s source is Rambam until he arrived to enlighten us that it’s really Rabbeinu Yonah.

In fact, the *achronim* quite simply do not write that Rambam is mentioned by name.

The Rashba deals with two components: (1) Which physical contact is prohibited with *ishto nidda*? (2) Is physical contact *de’oraisa* or *derabanan*? On the first question, the Rashba rules definitively that even non-*chiba* contact is *assur*. On the second question, he mentions the possibility of *de’oraisa*, and then proceeds to consider the opinion that it is *derabanan*.

The *achronim* follow the Bais Yosef’s assumption and describe the first opinion as being the Rambam’s. That’s all. They do not write that he is actually mentioned by name, nor do they cite a direct quotation from the *teshuva* to that effect. For clarity, the *Toras haShlamim* goes so far as to place this assumption into parentheses:

וכן משמע מתשובת הרמב"ן עצמו שם  
דלמאן דאמר כל קריבה אסור מדאורייתא  
(והוא כדעת הרמב"ם) ...

How can this be honestly interpreted as “the *Torat haShlamim* wrote that the *teshuva* mentions Rambam by name”?

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In tracing this *Teshuvot haRashba* to his teacher, the author writes:

R. Yonah is the one major *risbon* to have explicitly written that any touching at all of an *er-*

*vah* violates *lo tikrevu* and is *yeibareg ve'al ya'avur*. (*Igeret haTeshuva, Yom Bet*)

Rabbeinu Yonah does not write this. Having consulted several editions, here is Rabbeinu Yonah’s language in *Igeret haTeshuva*:

ואסור ליגע באשת איש... שנא'... לא תקרבו, וכן הלכה ברורה שהקריבה הזאת היא הנגיעה בידיה או בפניה או בכל דבר מאבריה כדי להנות מן הנגיעה וזאת מן העבירות החמורות שבתורה, ומתברר במס' סנהדרין (עד:) כי ראוי לאדם שיהרג ואל יעבור על זה.

“It is forbidden to touch a married woman ... as is says “Do not approach” (*lo sikrevu*) ... Such is the clear halacha, that this “approach” means touching on the hands or face or any limb in order to enjoy the touch. This is among the worst sins in the Torah, and in *Gemara Sanhedrin* it has been clarified that a person ought to choose death rather than transgress it.”

This is no different from any other *risbon*. Compare, for example, the language of Rambam (cited by the author in note 16) and the *Shulchan Aruch*

כל הבא על ערוה ... ונשק דרך תאוה ונהנה (= אן נהנה, בית שמואל) בקרוב בשר, הרי זה לוקה

“One who has relations with a woman forbidden to him... or kisses in a desirous manner or enjoys physical contact, receives *malkus*.”

Now, perhaps the author merely confused his source and he really meant *Shaarei Teshuva*, not *Igeret haTeshuva*. Indeed, in 3:80 Rabbeinu Yonah writes

כל קירוב בשר אסור כגון הנגיעה בידי אשת איש, ופירוש [לא תקרבו] לגלות ערוה, כי הקריבה מביאה לידי ערוה.

“All physical contact is forbidden, such as touching the hands of a married woman. The explanation of “Do not approach to have forbidden relations” is that such “approaching”—touching—leads to forbidden relations.”

Yet, this too is not what the author contends.

It is unacceptably simplistic to take these general words which specify no halachic details, interpret them as including non-*chiba*, and thus manufacture a brand-new *shittah* in opposition to all *Rishonim*, all because of the word “כל.” Furthermore:

- a) Rabbeinu Yonah immediately explains כי הקריבה מביאה לידי ערוה, which is the standard way of introducing *derech chiba*; see author’s notes 15 and 16.
- b) Rabbeinu Yonah’s own words in *Igeres haTeshuva*, quoted above, are sufficiently clear and serve admirably to clarify his position. Would the author rather assume a *s’tirah*, a self-contradiction, within Rabbeinu Yonah’s own works?

- c) No one has ever listed Rabbeinu Yonah as a dissenting opinion in these laws.

(If anything, Rabbeinu Yonah seems perhaps less stringent than Rambam. In *Shaarei Teshuva* 3:138, in the famous incident, he applies the ruling of ימות ואל תעמוד וכו' for *eishes ish*, while Rambam’s *Yesodei haTorah* 5:12 contains no such limitation.)

No wonder that throughout the ages no one has attributed the *Teshuvot haRashba* to Rabbeinu Yonah. He writes nothing unique or different from other *rishonim* and *poskim*.

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The author’s adding the words *yehareg ve'al ya'avur* does a disservice to the reader, to whom the sudden introduction of this concept here is confusing and seems irrelevant. Why, indeed, does he mention it?

The author failed to inform the reader that the entire prior discussion involving the Bais Yosef, Rashba, and the dissenting Shach refers only to taking the pulse in a case of *pikuach nefesh*, a potentially fatal illness, and the issue was: is there *yehareg ve'al ya'avur* for a man taking the pulse of his menstrual wife? In order to present Rabbeinu Yonah as Rashba’s source, the author supplied Rabbeinu Yonah’s ruling that *yehareg ve'al ya'avur*.

However, none of this is explained in the article. To the reader, being suddenly confronted with the unsettling words *yehareg ve'al ya'avur* serves only to isolate Rabbeinu Yonah’s opinion by indi-

cating how extreme it is. The reader is led astray, unaware that this is a straightforward halacha in *Shulchan Aruch* (YD 157:1, Rama):

כל איסור עבודה זרה גילוי עריות  
ושפיכת דמים אע"פ שאין בו מיתה רק  
לאו בעלמא צריך ליהרג ולא לעבור.

“Any prohibition of idolatry, forbidden relations or murder, even one that carries no death penalty liability but is only a Biblical prohibition, one must choose to die rather than transgress.”

The above Shach explicitly agrees with Rashba and the Bais Yosef that without *sakana*, spousal pulse-taking is prohibited. He also explicitly agrees that in all *chiba* touching, there is *yehareg ve'al ya'avov*.

In fact, *yehareg ve'al ya'avov* is exactly what the Chazon Ish ז"ל ruled (personal testimony), as did the Steipler Rav ז"ל, when asked about handshaking.

- 15 -

To the question posed in the author's title “Is Handshaking a Torah Violation?” the answer is simply: Yes.

Aaron Sonnenschein  
Brooklyn, NY

Yehuda Henkin responds:

It is specious to discount the title “Is Handshaking a Torah Violation.” The reason I dwell on the

question of a Torah violation is that, as the writer mentions, if handshaking violates *lo tikrevu* it is *yehareg ve'al ya'avov* but if not, not, following the Rema in *Yoreh Deah* 157:1.

The circumstances I mention are (p. 119): “Some rabbis will shake a woman's hand if extended to them, while others demur even at the cost of embarrassing the woman.” Embarrassing someone in public is a Torah prohibition (although apparently not *yehareg ve'al ya'avov* in itself, see *Bnei Banim* 1:41). That can be justified only if handshaking is also a Torah violation.

Equating an absence of a Torah prohibition with being *mutar*, or “essentially” *mutar*, leads to a caricature of my article: as if, in the writer's words, “all casual touching is permitted by halacha—a pat on the back, hands around the shoulder, a comforting hug and more, are not sufficiently *chiba* to be *assur* (except for unmarried couples who ought to adopt a policy of not touching).”

This is part hyperbole and part canard: a “comforting hug” certainly falls within the Rambam's category of *chibuk venishbuk*. It devalues rabbinic categories: as if *sechor sechor amrinan l'nezira* is wholly voluntary (“ought to” —?) or applies to unmarried people alone (it doesn't, see *Avodah Zarah* 17a and Meiri there). As if Ramban, who disagrees with Rambam on kissing and hugging and relies on *sechor sechor*, is lukewarm on limiting contact between the sexes.

In connection with *alonki*, the

writer is typically sweeping: “Meiri absolutely does not say ‘he sat directly on their arms.’ Based on the *sugya* of the *Gemara*, he *couldn't* have said it.”

There follows a purported proof from the *Gemara*, of unclear relevance. The writer then continues: “Meiri never says that he sat ‘directly’ or ‘without a chair.’ The closest he comes to saying this is not in his halachic *Bais haBechira*, but in his Commentary to *Beitzab*. After describing the placements of the men’s arms, he writes והיה הזקן יושב על אותן זרועות ויוצא, the sage would sit on those arms. But even these words don’t say ‘without a chair’; they used at least a ‘shoulder saddle,’ a leather seat, as the author quotes from Rabbeinu Chananel.”

Meiri’s commentary is **called** *Beit haBechirah*.

It is not true that according to Meiri they used a shoulder saddle, something Meiri never mentions. Nor in this *sugya* does he mention Rabbeinu Chananel. Meiri defines *alonki* as the crisscross of arms itself, as opposed to Rabbeinu Chananel’s definition of it as a shoulder saddle. (Also, it should be clear that there is a difference between a sitting on a hard chair and a shoulder saddle, as regards avoiding contact.)

So much for generalizations about what “the Meiri absolutely does not say...couldn’t have said...never said.” The writer also overlooks or ignores the citation (p. 116) from the *Aruch* that a woman, sitting in *alonki*, supported herself by placing her hands on the heads of those carrying her. The

*Aruch*’s statement by itself disproves the writer’s claim that “the author’s example of rabbinically permitted extended touching *does not exist*.”

That it *does* exist is further grounds for reading the Rambam in a way that is the simple meaning of his words:

1) חיבוק ונישוק. If any and all affective touching is *mideorayta*, kissing and hugging are poor examples.

2) מפעולות הזנות. Are we to define a handshake as a “promiscuous activity” (simply because the writer declares it to be the case)?

3) קירוב שיביא לגילוי ערוה. The writer mocks the explicitness of this. But the language is made even clearer by *Megillat Esther* to *Sefer haMitzvot*: דהיינו הקירוב שרגילים לעשות, כאשר ירצו לגלות ערוה שהוא בקירוב בשר, “the *keiruv* that [people] normally do when they want to have sexual relations, skin to skin.”

Similarly, the meaning of the *Shach* is what the *Shach*’s words דרך ביאה היבט themselves indicate, as quoted in footnote 10 and as in the Rambam and *Semag* cited by him etc. As the *Semag* wrote in his introduction, שלא לקרב לעריות בדברים, המביאים לידי גילוי ערוה כגון חיבוק ונישוק, “not to come close to *arayot* in things [acts] that lead to sexual relations, for example hugging and kissing.”

The Rambam himself makes his approach clear in *Hilchot Issurei Biab* 11:19 in discussing contact with one’s *niddah* wife: ולא יגע בבשרה מפני הרגל עבירה. A *niddah* wife is an *ervah*,

and there exist three categories of contact, *pace* the writer's strenuous claims in that there are only two. The three are a) Hugging and kissing, which violate a *lo taaseh*. This is not what is being referred to here, as the *issur* is only because of *bergel aveirah*. b) Detached, impersonal, medical/"clinical" touching—to use the writer's terminology. There is not the slightest hint that this is being referred to, nor does the context (לא תאכל עמו בקערה אחת) admit to it. c) Other *negiah*, proscribed because of *bergel aveirah*.

This is the meaning of Resp. *Lev Chayim's* נגיעה בעלמא לא שמענו, in spite of the writer's confusing the issue of what is *deorayta*.

The *Terumat haDesben* defines חיבוק ונישוק as more than simple touching, and that is the point being discussed. Hugging and kissing is a halachic terminology whose meaning remains constant. And see Resp. Rivash 425 in the answer: דרשו בספרא שאפילו קריבה לבד רצונו לומר קריבה של הנאה כגון חיבוק ונישוק אסורה מן התורה.

Lest the reader be impressed by the writer's copious style, I would advise caution in accepting anything at face value without carefully checking, even categorical claims. For example, in section 12, we find the statement: "The *Achronim*...describe the first opinion as being the Rambam's. That's all. They do not write that he is actually mentioned by name, nor do they cite a direct quotation from the *teshuva* to that effect...."

But I already cited, in footnote 20 and 22, the *Bet Shmuel* who wrote, concerning the *teshuva* of the

Rashba attributed to the Ramban: וכתב בתשובה, אפילו אינו עושה דרך חיבה סבירה ליה לרמב"ם מדאורייתא אסור. So, too, the *Sdei Chemed* (and many *Achronim*) quote the *Bet Shmuel* as writing הרמב"ן מבואר שמבין דרך בתשובת הרמב"ם דאפילו אם אינו עושה דרך חיבה אסור מן התורה. So much for the writer's description of what the *Achronim* "do not write."

Concerning Rabbeinu Yonah and *Igeret haTeshuvah* and *Shaarei Teshuvah*, see *Bnei Banim* 1:37 (7). Note carefully that according to *Igeret haTeshuvah*, brought also by the *Orchot Chayim*, the prohibition is touching "in order to enjoy the touch," i.e. touching for the purpose of enjoyment. Returning a proffered handshake in order not to embarrass or even out of social convention would not be a Torah violation [although it would be according to *Shaarei Teshuvah*]. The difference between Rambam and *Semag* etc. and this version of Rabbeinu Yonah is that according to the former the Torah prohibition is limited by the nature of the forbidden activity—hugging and kissing—while for the latter it is defined by pleasurable intent regardless of the type of contact.\*

Accordingly, circle dancing violates *lo tikrevu* according to Rabbeinu Yonah (both versions) but not according to the Rambam; although it is certainly forbidden

\* But note *Hilchot Issurei Biyah* 21:6 that the Rambam requires intent in addition to mere mechanical action; see *Bach, Kunteres Acharon to Even haEzer* 21.

under *Hilchot Issurei Biah* 21:2. See, at length, in *Bnei Banim* 1:37 (4-10) and 38-39. It is certainly obnoxious to be accused by the writer of giving the “clear impression” that mixed dancing “may actually not violate halacha,” in keeping with his tendentious equation of the absence of a Torah violation with being “*mutar*.”

As for the argument that handholding in dancing isn’t mentioned by *Geder Olam* because *Poskim* do not necessarily list each “obvious” detail, the first obligation of a *posek* is not to introduce a stumbling-block, particularly in a pamphlet translated into Yiddish for wide consumption: if handholding alone violates *lo tikrevu*, not saying so creates the impression that one can avoid the *lav* by avoiding hugging and kissing. And see *Geder Olam* chapter 8, where *lo tikrevu* is illustrated by “*chibuk venishbuk min haTorah*” without any context of dancing.

Finally, the writer selectively quotes the *Mishneh Berurah*—*Beur Halachah*, omitting what seems contradictory to his thesis: ואפילו קורבא בעלמא אסור, והמתבקה והמנשקה לשם תאוה היה לוקה כמו שכתב הרמב"ם בהלכות איסורי ביאה פרק כ"א וספר המצוות מצוה שנ"ג.

Editor’s Note:

Rabbi Sonnenschein faults the *Hakirah* editors for printing “Is Handshaking a Torah Violation,” which is “so *halacha le-ma’aseh*” and involves *issurei de’oraisa* without at least a cautionary note, and won-

ders about editorial “awareness.” In fact, *Hakirah* enthusiastically accepted this article for publication precisely because the editor most familiar with the issues involved in this halacha is in full agreement with Rav Henkin’s conclusion that Rambam did not forbid handshaking with women and hence one should “not claim that such is basic halacha.” Moreover the editor is fully “aware” (“personal testimony”) of the harm caused to the livelihoods of many *bnei torah* by what he considers an unwarranted *chumra*.

The last part of our statement of purpose reads, “Create a forum for the discussion of issues of *baskafa* and *halakha* relevant to the community from a perspective of careful analysis of the primary Torah sources.” We were very careful to choose the words “primary Torah sources.” With regard to our issue the primary Torah source is the Rambam which, as Rabbi Sonnenschein points out, is the source of the halacha quoted in *Shulchan Aruch*. An example of a non-primary source is the oral testimony of the words of Chazon Ish and Steipler Rav that Rabbi Sonnenschein brings. Even the written words of recent *poskim* can hardly be considered primary sources unless accompanied by compelling arguments.

The Rambam’s intent is the issue, and his words are crystal clear:

כל הבא על ערווה מן העריות דרך אברים, או שחיבק ונישק דרך תאוה ונהנה בקירוב בשר—הרי זה לוקה מן התורה: שנאמר "לבלתי עשות מחוקות



התועבות"; ונאמר "לא תקרבו לגלות ערווה", כלומר לא תקרבו לדברים המביאין לידי גילוי ערווה. [ב] והעושה דבר מחוקות אלו, הרי הוא חשוד על העריות.

All that is included in the prohibition is sexual contact. Rabbi Henkin makes this clear and notes the language of the *Sefer haMitzvos* and in *Hilchot Sanbedrin*, which makes it even clearer that this prohibition involves only acts of זנות.<sup>1</sup>

<sup>1</sup> Rambam lists no rabbinic prohibition related to touching and handshaking, therefore the act is permitted unless done with sexual intent as in the second halacha ואסור לאדם לקרוץ בידיו וברגליו או לרמוז בעיניו, לאחת מן העריות; וכן לשחק עימה, או להקל ראש. ואפילו להריח בשמים שעליה, או להביט ביופייה—אסור; ומכין המתכוון לדבר זה, מכת מרדות. והמסתכל אפילו באצבע קטנה של אישה, ונתכוון ליהנות—כמי שנסתכל במקום התורף; ואפילו לשמוע קול הערווה, או לראות שיערה—אסור. Here even looking is prohibited. If Rabbi Sonnenschein feels that handshaking must be viewed as sexual, not respectful, or that anything that can lead to sexual desire is prohibited, then he should also conclude that looking at a woman (especially an attractive one) and nodding as a sign of respect is also prohibited. Indeed such an evaluation demands that we adopt the veil for women. Moreover, although these acts only incur מכות מרדות, it is almost certain that these secondary prohibitions are also of a דאורייתא nature. This is clear from Rambam's *Sefer Mitzvos Koton, lav 353* שלא לקרב לעריות בדברים המביאים לידי גילוי ערוה כגון חבוק ונשוק ורמיזה וקפיצה שני חסיד (סוטה כא:) and really not viable.

The Shach cited by Rabbi Henkin makes clear that he reads Rambam this way by saying<sup>2</sup> דרך תאוה וחבת באה.<sup>3</sup>

Moreover, Shach explains that

*Hamishnayos* to *Sanbedrin* 7:3 where Rambam's definition of the דאורייתא is even wider, but apparently he backed away from some of that position.) Using the premises of those calling for יהרג ואל יעבור, the ramifications of this would be enormous.

<sup>2</sup> In דרך חבת באה - קנוי: or קצה:כ. R. Sonnenschein confuses the issue when he tells us in section 14 of his letter that the "Shach explicitly agrees with Rashba and the Bais Yosef that without *sakana* spousal pulse-taking is prohibited." Of course he does; that is a case where the הרחקות of *niddah* apply, but that is not relevant to our issue. In addition Rav Henkin brings the explanatory words from the Megillas Esther.

<sup>3</sup> The only source that could possibly be considered primary that contradicts the simple reading and that of the Shach is the Bais Yosef's implication that Rambam would forbid even taking a pulse of any *ervab*. *Bais Shmuel* (*siman* 20) seems to accept this, but Rav Moshe and the *Toras Shlomo* he quotes find this an impossibility, just as we feel, and therefore interpret this *Bais Yosef* differently. (Rav Moshe even interprets the *Bais Shmuel* differently.) Should we follow what seems to be the intent of the *Bais Yosef's* words, he would consider it possible that one would not be able to grab a woman to save one's own life or her's. Of course such a view is considered that of a חסיד (סוטה כא:) and really not viable.

even “hugging and kissing” is not included in Rambam’s Torah prohibition when it is not done with sexual intent.<sup>4</sup> This is clear<sup>5</sup> from the latter halacha המחבק אחת מן העריות שאין ליבו של אדם נוקפו עליהן, או שנישק אחת מהן—כגון אחותו הגדולה, ואחות אימו, וכיוצא בהן—אף על פי שאין שם תאוה ולא הנאה<sup>6</sup> כלל, הרי זה מגונה ביותר. ודבר זה אסור הוא, ומעשה טיפשים הוא—שאינן קרובין לערוה כלל, בין גדולה<sup>7</sup> בין קטנה: חוץ מהאם לבנה, והאב לבתו<sup>8</sup> Were these acts, with no sexual intent, part of the אסור דאורייתא, they would not be permitted between parent and child, and we would not find *Chachamim* having engaged in the practice themselves.<sup>8</sup> The הוות יאיר is also explicit that kissing and hugging without הרה is nothing but עבירה דעלמא ועוד קיל מיניה. Thus in order to avoid a large fine, the הוות יאיר permitted one to kiss one’s wife while she is a נדה in order to prove to a tax collector that this was indeed his wife, but he instructs them to be נושק בלב עצב וכמי שכפאו שד ואין בכך כלום<sup>9</sup> Obviously he

would permit handshaking, especially when refraining could cause harm to one’s livelihood, and there is no source to indicate that Rambam prohibited it in any case.<sup>10</sup>

In addition, it is important to note that Rambam makes clear that even these prohibited acts of נוח are not a form of עריות—only that they can lead to it, and thus according to his opinion there is no reason to believe that there is יהרג ואל יעבור even on these acts.<sup>11</sup> Only by combining the opinion of those *Rishonim* who believe that אבזרייהו<sup>12</sup> (related prohibitions) are

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that if one can manage to kiss with absolutely no desire, there is not even a rabbinic prohibition.

<sup>10</sup> The only Rabbinic prohibition then is kissing and hugging without sexual intent.

<sup>11</sup> Rambam does not include אבזרייהו, and even most *rishonim* who do, require that the act be one subject to a punishment of death. Why Rambam does not learn from תעמוד לפני ערומה that all אבזרייהו should be included is easily explained. See for example the brought in YD 157:5 of מהר"ם ן' הביב of the *Birkei Yosef* or קפ"ב חות יאיר קפ"ב. The *Kesef Mishneh* does not suggest that Rambam means all אבזרייהו, although he makes detailed comments on Rambam’s *shitta* in יהרג ואל יעבור.

<sup>12</sup> Even those not punishable by death. See *Yoreh Deah* 157:1, Rama. But as their source is עומד בפני ערומה, they too are referring only to some type of overt sexual relationship. We should remember also that many *rishonim* feel that contact between a non-Jewish man and a Jewish woman is not even

<sup>4</sup> Both in קצ"ה and קנ"ז.

<sup>5</sup> Although Shach does not explicitly bring this Rambam as his source.

<sup>6</sup> No pleasure? Obviously only sexual pleasure is considered pleasure.

<sup>7</sup> Halacha 6. By the way, this prohibition applies only to עריות and hence not to kissing a young niece who has not yet become a נדה.

<sup>8</sup> Rambam in *Perush Hamsibuyos Sanhedrin* 7:3 quoting *Shabbos* 13a where Ula would kiss his sister and Rambam claims he regretted it afterward because of סחור סחור לכרמא.

<sup>9</sup> See חוות יאיר פתחי תשובה קנ"ז:יא. In this case his language implies

יהרג ואל יעבור with Rambam's position<sup>13</sup> that לא תקרבו לא constitutes an אסור דאורייתא,<sup>14</sup> and then adding that even handshaking qualifies as part of this אסור דאורייתא, do we come up with יהרג ואל יעבור. Some *Risbonim*, in agreement with Rambam, would reject the idea of יהרג ואל יעבור even for what Rambam does include in לא תקרבו.<sup>15</sup> Others apply it to cases of לא תקרבו and include in this category sexual interaction that does not include touching, but there is no reason to believe that handshaking is included. Since the model of אבזרייהו לעריות is עומד לפניו, we should assume there must be something of a sexual nature involved to qualify. Only Rabbenu Yonah could be interpreted<sup>16</sup>

as contending יהרג ואל יעבור for shaking hands. Is it normative halacha to be extremely *machmir* in יהרג ואל יעבור?<sup>17</sup> Rabbi Sonnenschein should have perhaps attached a warning to his letter, when he concludes it, by not only claiming that handshaking is a Torah violation but that one must give up his life to avoid it. Does he really believe that Rambam tells us, and the halacha should be, that if in the unlikely case a crazed feminist would demand to have her hand shaken by all the men in the office, that the *ben torah* who happens to be present should choose death? Wouldn't this also mean that a *ben torah* should let the drowning woman die,<sup>18</sup> rather than hold her in his arms to save her—this grasp of her body is certainly more than a handshake.<sup>19</sup> It is pre-

עריית, and this must also be factored in if a woman is faced with handshaking.

<sup>13</sup> Which is shared by others.

<sup>14</sup> These first two criteria make up the opinion of the *Ran* and *Nimukei Yosef*, which is quoted by the *Rama* as halacha, but apparently not the halacha according to the *mechaber*. The *Gra* does entertain the possibility that even a Rabbinic prohibition constitutes אבזרייהו, but as we note later, the criterion of אבזרייהו is that there be sexual content.

<sup>15</sup> The *Baal Hamaor* (*Sanhedrin* 74) does not demand יהרג ואל יעבור even for the עריות themselves, if it be for one's own pleasure. The *Tur* does not bring אבזרייהו in *siman* 157, nor does the *Bais Yosef* even discuss the opinion there, where the halacha is formulated. And he does not bring the *shitta* in the *Shulchan Aruch*.

<sup>16</sup> And Rabbi Henkin does not con-

cede this either.

<sup>17</sup> One should read Rambam's *Iggeres HaShmad* to see what he thinks of those who are.

<sup>18</sup> Including נדה אשתו.

<sup>19</sup> The *Gemara* in *Sotah* (21b) calls this conduct that of חסיד שוטה but because he will say it is inappropriate to look at her, perhaps even the חסיד שוטה knew that this grasp of salvation could not be a prohibition. Rabbi Sonnenschein puts "preventing injury, aiding the injured" in the category of permitted touching to avoid this conclusion, but what is the logic? The initial pulling out of the water must be followed by a grasp that is more likely to lead to a loving relationship than a handshake, and the fact that it will save a life is irrelevant in a case of יהרג ואל יעבור.

cisely this type of erroneous perception of halacha that *Hakirah* hopes to address.

ABB

## Hatam Sofer

In his article, “Was the Chasam Sofer Inconsistent,” Rabbi Nosson Dovid Rabinowich takes issue with three points I made in a previous essay on R. Moses Sofer. Rather than get bogged down in a complicated back-and-forth, which readers who do not have the original articles in front of them will find hard to follow, let me make the following points.

1. Rabinowich understands me to be saying that the Hatam Sofer was “attempting to misrepresent R. Bahya.” While I state that Hatam Sofer “actually seems to misrepresent” R. Bahya’s opinion, I never assumed that this was intentional. If I am correct—and after reading Rabinowich’s critique I am not certain that I am—the Hatam Sofer could have been using a rhetorical flourish in his criticism of R. Bahya, with the unintended result that he has R. Bahya saying something that doesn’t appear in the *Hovot ha-Levavot*. I certainly do not believe that the Hatam Sofer would purposely distort R. Bahya.

Incidentally, in his critique Rabinowich misunderstands my comment that the Hatam Sofer “was sensitive to the stance of

moderate anti-Talmudism” found in R. Bahya. Contrary to Rabinowich’s understanding, the word “sensitive” in this sentence does not mean a “‘show of sensitivity’ to the (opposing) position.”

2. Regarding *Ta’amei ha-Mitzvot*, I argued that the Hatam Sofer contradicted himself as to whether it was proper to seek out the meanings of the commandments. In opposition to my reading, Rabinowich writes: “The Chasam Sofer discouraged finding reasons and rationale **only** for the *Chukim*.”

My point was that sometimes the Hatam Sofer also encourages finding reasons for the *Hukkim*, and in this there is an element of inconsistency. In addition to the source I quoted in my article, here are two others that speak to this issue.

*Torat Moshe*, vol. 5, p. 65a:

מצוה על כל איש למצוא שום טעם על כל מצוה ולהסביר לו הענין כמו שעשה הוא ז"ל בס' מורה נבוכי'.

*Derushim be-Aggadot ha-Hatam Sofer*, p. 45:

ועי"ז למען תשכיל תוכל להשכיל טעמי מצות כולם ולא יסתיר ה' ממך מצותיו.

Rabinowich’s major point, indeed his overarching theme, is that “supposed ‘contradictions and inconsistencies’ are either nonexistent or can be properly explained.” Rabinowich sees it as a slight to the

Ḥatam Sofer to assume that there are such inconsistencies. I must disagree with this approach, even if one grants that Rabinowich is correct in all of his specific criticisms.

The fact is that one can find inconsistencies in our greatest sages, including Maimonides and R. Joseph Karo. Therefore, it would not be surprising if one should find them in the Ḥatam Sofer as well. A true *talmid hakham* is constantly studying and coming up with new insights, and sometimes these new ideas contradict what he had earlier thought. Ralph Waldo Emerson famously said: “With consistency a great soul has simply nothing to do” (*Essays*, First Series, “Self Reliance”). This is because a great soul is not bound by what he said previously, but by the search for truth.

R. Jehiel Jacob Weinberg put the matter well: ולא לכבוד יחשב להוגה דעות כשיאמר עליו כי נשמתו "שלמה" היא, בלי שום סתירות וספקות פנימיים. (*Kitvei ha-Gaon Rabbi Yehiel Yaakov Weinberg*, vol. 2, p. 267.)

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## Chronology Problem

The following is a short response to some tangential points in the article entitled “A Y2K Solution to the Chronology Problem.”

1. Page 68, note 3: it is not clear that the problem with (all/any) of these dating systems in the Mishnah is “potential negative political fallout”; quite plausibly, the prob-

lem is that these are dating systems not in general use, and therefore most people will not be able to determine the exact year to which the *get* refers.

2. Page 68, last line: Rabbi Schwab clearly had a change of heart; it is less clear from the text of his retraction if his change of heart is about his solution or about his presentation.

3. Page 76, note 15: Heifetz is embarrassingly unaware of the basis of the accepted chronology of the Persian period since Scaliger in the 16<sup>th</sup> century, specifically the Ptolemaic Canon, and also unaware of the unequivocal reinforcement it receives from the Akkadian tablet generally referred to as the Saros Canon.

4. Page 77, 3<sup>rd</sup> row of chart: this should not be referred to as סדר עולם רבה; it is Ratner’s Introduction to it.

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## Yarmulke

**THANK YOU** for your straightforward survey of halacha regarding the *yarmulke*.

A sociologist (and satirist) would have a field day with the multitude of *kippah* types here in Israel. Head coverings provide a fairly accurate indication of the religious, ideological, and political identity of the wearer.

Size (from miniscule to covering the ears), color, design, shape,

material, weave and manner worn will identify a Chasid (Chabad, Breslav, Gur, etc.), Litvishe (and from which Yeshiva), Shasnick, Religious Zionist (subdivided into moderate RZ, Chardali ultra-Orthodox, Kooknick, minimally religious kibbutz youngster, activist hilltop youth), Mashiachist, modern Chareidi, American studying for a year in a Yeshiva, not overly observant Sephardi, etc.

A black—somewhat pointy and ill-fitting—cloth yarmulke indicates a nonobservant politician, who carries one in his pocket for “you never know when . . .”

Although supposedly a sign of *Yir'at Shamayim*, a *kippah* only too often constitutes a *chilul Hashem*. Just about every Jewish criminal (especially those accused of the most violent crimes) appears in court crowned with a *kippah*.

I had occasion to ask a judge why so many shady types wear a *kippah* in court. “Is it out of respect to the judge (which halacha recognizes as a real *chiyuv*), or are they trying to create the impression of being religious?”

The judge answered: “The latter.”

“Are the judges fooled by this?”

“Of course not!”

(Might the above be a modern echo of the Talmudic punishment for miscreants who cannot be punished by strict Sanhedrin procedures, i.e. “*machnisim oto l'kippah?*”)

Considering the above and also the scandals involving “professionally” religious personages, it’s hard to criticize some truly observant *Yir'ei Shamayim* who choose to

avoid possible guilt by association and go bareheaded in public.

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## Omnipotence

SEVERAL MONTHS ago, the editors of *Hakirah* pointed me toward Rabbi Avraham Bergstein’s<sup>20</sup> detailed and rather vehement critique<sup>21</sup> of my article *On Divine Omnipotence*.<sup>22</sup> My reaction was, and remains, one of delight; his critique was then, and is still to this day, almost<sup>23</sup> the only indication I have that anyone outside of my immediate circle has even noticed, let alone carefully read, the article. As to his sharp dissent, well, כך היא דרכה, של תורה, זה בונה וזה סותר.

My article demonstrated that many *Rishonim* rejected the notion that God can do absolutely anything, and instead qualified His omnipotence by maintaining that He can do only those things that

<sup>20</sup> Apparently affiliated with כולל מנהם שע"י מזכירות כ"ק אדמו"ר.

<sup>21</sup> Published on the web at <<http://www.haoros.com/archive/index.asp?kovetz=919&cat=7&haoro>>, retrieved on August 8, 2007.

<sup>22</sup> *Hakirah*, Volume 2 Fall 2005.

<sup>23</sup> Rabbi Buchman pointed out to me that a commenter on the *Emet* blog has also read my paper (and is also disappointed with me for not citing any dissenting opinions); see <[http://www.emet.blog-city.com/faith4\\_1.htm](http://www.emet.blog-city.com/faith4_1.htm)>.

are **inherently possible**. The main thrust of Rabbi Bergstein's critique is an argument that the Rashba—whom I had declared, on the evidence of an explicit responsum of his,<sup>24</sup> to be an adherent of the qualified view of omnipotence—is, on the contrary, actually a staunch opponent of a view he considers pernicious. Rabbi Bergstein's argument has two prongs: he attempts to prove, based on various other statements of the Rashba, that the latter firmly rejects the doctrine that some things are impossible even for God, and having established that to his satisfaction, he then reinterprets the Rashba's apparently contrary responsum in that light. I shall first analyze his arguments that the Rashba does indeed reject the doctrine, and subsequently consider his rereading of the responsum that I cited.

Rabbi Bergstein begins by citing the following remarks of the Rashba (emphasis added):

ובאמת כי לא יכזיב שום דבר שהוא מקובל ביד עמנו רק מי שהתחייב אצלו בטול כל מה שהוא כנגד הטבע והנמנע במציאות, כאמרם שיש לכל הנמנעות טבע קיים.<sup>25</sup>

וכן יארע לנו בספורי הפלוסופים שיש בהם לנמנע טבע קיים ועושין זה סוג לכל המציאות, ומזה ודאי יצא להם בטול האותות כקריעת ים סוף ועמידת השמש והירה ויציאת המים מן הסלע ועליית הבאר עם ישראל בכל מסעיהם ובכלל חדוש העולם והמן וכלל דברים אלו אסור לשמען כל שכן לאמרן.<sup>26</sup>

These comments seem to actually imply the exact opposite of what Rabbi Bergstein infers: the Rashba is objecting specifically to those who believe that **all** impossibilities are absolutely so, even those that are mere violations of the natural order, and who are therefore compelled to completely reject any possibility of the supernatural. There is no indication that the Rashba insists that **all** things are possible for God; on the contrary, the Rashba's sole concern appears to be with the rejection of the beliefs of traditional Judaism and the miraculous accounts of the Bible, and not with the theoretical, doctrinal issue of God's omnipotence.

Rabbi Bergstein then quotes several other passages in which the Rashba sharply condemns the philosophers and their doctrines that reject the possibility of the supernatural, based upon their insistence that impossibilities, including even mere violations of nature, cannot be accomplished even by God. These passages, too, seemingly imply nothing about the Rashba's stance on the abstract philosophical question of omnipotence, and testify merely to his fierce opposition to those who rejected traditional, miraculous Judaism.

The issue, however, is not quite that simple, and there is more to Rabbi Bergstein's arguments than I initially realized. The question of the Rashba's stance becomes most acute when we consider his po-

<sup>24</sup> שו"ת הרשב"א חלק ד' סימן רל"ד.

<sup>25</sup> שם חלק א' סימן ט.

<sup>26</sup> שם סימן תי"ג.

lemical remarks<sup>27</sup> at the height of the great early fourteenth century Provençal controversy over the study of philosophy, Rav Yedayah Ha'bedarsi's celebrated<sup>28</sup> reply in his "Letter of Apology,"<sup>29</sup> and the conspicuous absence of a response to it from the Rashba, all of which Rabbi Bergstein cites.

The Rashba writes:

על כן יבושו, כי יספרו וידרושו, יאמרו  
בפיהם ויורו באצבע, שאי אפשר לשנות  
את הטבע, ובוזה יודיעו לכל שאינם  
מאמינים בחדוש העולם, ולא במופתים  
שבאו בתורה כולם.

I admit that I would have understood this as above, that his comments target only the radicals who categorically deny the supernatural, and not the (relatively) mainstream Maimonideans who merely place certain specific impossibilities beyond even God's reach. Rav Yedayah himself, however, is apparently not so sure:

רומז אדננו בזה הלשון כפי הנראה  
מדבריו בכאן וכפי המבואר מקצת  
הכתבים הקודמים מי שהוא מכוין לתפוש  
חכמי הארץ הזאת על האמתם שיש  
לקצת הנמנעות טבע קיים שלא יתואר  
האל ביכלת לשנותו כמו שכתב הרב  
הגדול ז"ל, וכמה יראה זה הענין בתחלת  
המחשבה קשה בחק התורה כשישולל  
מהאל שום יכלת, וכמה הוא מחוייב  
והכרחי אחר קצת התבוננות הבחינה  
באמתות ענינו. וגם בזה אנו צריכים  
לגלות און אדננו שיחיה במה שנאמינהו  
בוזה היסוד באופני הכרחיותו בתורתנו

<sup>27</sup> שם סימן תט"ז.

<sup>28</sup> עיין שו"ת רמ"א ריש סימן ז.

<sup>29</sup> שו"ת הרשב"א חלק א' סימן תי"ח.

האמתית ונאמר.

He then continues with a lengthy and detailed explication of the Maimonidean distinction between impossibilities that I discussed in my paper, and concludes with an appeal to the Rashba for his opinion on the theological legitimacy of the doctrine:

יעיין כבוד אדוננו אם יש פקור וכפירה  
בזאת האמונה או אם יש בה יסוד וחזוק  
וזה הוא שלמדנו רבינו ז"ל בקיום טבע  
קצת הנמנעות.

As I mentioned earlier, I know of no direct response by the Rashba to this letter. It seems, though, that Rav Yedayah was not quite certain of the Rashba's stance on the matter.

Rabbi Bergstein goes even further and argues that the absence of any moderation or qualification of the Rashba's vehement opposition to philosophical study subsequent to his receipt of the Letter of Apology indicates that the Rashba insists that absolutely all things are possible for God. This seems to me to be a totally unwarranted conclusion. Rashba clearly felt, and continued to feel, that the study of philosophy was dangerous and corrosive, but we can hardly conclude that he necessarily denied *everything* that the philosophers and their spokesman Rav Yedayah maintained.

Having concluded, though, that Rashba does indeed deny the Maimonidean distinction between impossibilities, Rabbi Bergstein is therefore compelled to reinterpret what is apparently an explicit en-



dorsement by Rashba himself of this very position. The context is a response by Rashba to the religious Maimonideans' philosophical difficulties with the mass revelation at Sinai,<sup>30</sup> which they seem to have felt to have been absolutely impossible from the perspective of the Maimonidean framework for understanding prophecy. The Rashba vigorously and at length refutes their contention that there is something fundamentally impossible about the mass prophecy, and then concludes (emphasis added):

וכל זה לא יקשה למאמיני החדוש ואצלי שני חלקים בנמנע האחד ההכרחי וישר מצד עצמו להיות צלע המרובע גדול מאלכסונו או מה שהיה שלא היה והרבה כיוצא בזה וזה נמנע גמור מצד עצמו לא ישוער בו האפשרות והשני לא מצד עצמו אלא מצדנו וממניעת החכמה מצד הנמנע בטבע שלא מצדנו סלע מוציא מים והים יקרע לשעה וישוב לשעה ושיעמדו השמש והירח לא יסבבו ולא יזוו ממקומם או ישוב השמש לאחורנית והרבה כיוצא באלו ותחיית המתים בכללם ואמנם אין כל זה נמנע אצלנו אלא מצד מיעוט חכמת הנבראים כולם ולאות כוחם לשנות המוטבע בחותם הטבע אבל בחוק הבורא יתברך אינו נמנע אלא מחוייב בחכמתו יתברך שאין להתייחס לו כלום חסרון ולאות בכח חכמתו שהוא וחכמתו אחד ולא ידענו חכמתו עד שנדע מהותו ובוזה יתקיימו כל הנסים שנעשו ושעתידים להיות ולא נשאר בזה שום פקפוק בכל מה שאמרוהו הכתובים במה שאנו צריכים להנחתו הראשונה כפי הפשט לקיום האמונה ומה שנמשך אחריה אבל במקום שאין אנו צריכים לכך אם תרצה ליקח אותם לפי

החכמה (אפילו לא הוצרכת) [הפילו-סופית] אם תצטרך לכך או מן הרצון הפשוט לבד זהו שנראה לי בכלל דברים אלו.<sup>31</sup>

Based on his conviction that Rashba unequivocally rejects the Maimonidean distinction between impossibilities, Rabbi Bergstein argues that Rashba was merely providing the religious Maimonideans with a defense of the Sinaitic revelation on their own terms, but that he himself maintained that God can do absolutely anything, a stance that clearly obviates the entire discussion.

While I cannot completely rule out this interpretation, I find it somewhat forced, especially in light of Rashba's bookending of his explanation with the words ואצלי and זהו שנראה לי.

The vehemence<sup>32</sup> of Rabbi Bergstein's critique comes at its conclusion (emphasis in the original; words in brackets added):

[לאחרונה]... יצא א' בלשון מדברת גדולות ודורס ברגל גאווה את ה"אמונה הנאיבית" [naive belief] ב"נמנע הנמנעות" [נראה מדבריו שם שזהו ביטוי חסידיי ליסוד שאין שום דבר נמנע בחק הבורא יתברך] בהביאו דעת הרמב"ם

<sup>31</sup> שו"ת הרשב"א חלק ד' סימן רל"ד.

<sup>32</sup> Incidentally, a friend of mine, a תלמיד who is a scion of a distinguished Syrian family, was disturbed by the sharpness of Rabbi Bergstein's tone, not on my account but on that of the Rambam. "How can someone," he protested, "be so dismissive of a well-known view of the Rambam?"

<sup>30</sup> ראה מורה נבוכים חלק ב' פרקים ל"א ול"ב.

במו"נ ור' ידעיה הפניני ודעת הרשב"א ומסכם: "הרי לנו דעות גדולי הראשונים שהבינו הבעיות בהאמונה הבלתי מוגבלת והנאיבית שהוא יתברך "כל יכול" ולכך נקטו בגישה יותר חולשת אבל יותר מתוחכם".

מה נאמר ומה נדבר, מלבד שטח עינו מראות שעמדת הרשב"א אינו כן כלל, הרי יסוד זה שהקב"ה הוא כל יכול נתקבלה ורווחת היא בכל תפוצות ישראל, וכן הוא דעת גדולי המקובלים והחסידות ואף גדולי מנגדי החסידות... וא"כ, על בעל המאמר הנ"ל ליישב זה ב"הגינות" מספיקה, ועד אז להתייחס בדרך ארץ הראוי לגדולי הקבלה והחסידות ומתנגדיה שלא נקטו כגישתו ה"מלומדת".

יתר על כן: האמת היא, כדברי כ"ק אדמו"ר זי"ע, שאחר שיסוד זה נתקבל על דעת כל גדולי המקובלים והחסידות ונתפשט בכל תפוצות ישראל, נפסקה ההלכה כמותם ואין לערער אחריהם אם יבא מישהו לערער על כך, הרי זה כאילו מערער על פסק הרמב"ם שנתקבל אצל כל גדולי ישראל שלאחריו שאין הקב"ה בעל גוף.

לסיכום: קודם שיכנה האמונה בה' כ"כל יכול" - "נאיביות" וכו', עליו להחליט לאיזה מהקבוצות (הנוכרות לעיל) ברצונו להשתייך, והקב"ה "לא ימנע" טוב להולכים בתמים."

I have little to say on the question of my tone, other than to note that I had been then unaware of any actual opposition to the doctrine in question, and that I might otherwise have written more circumspectly. I also decline to enter here into a discussion of the important but fraught topic of the applicability of the concept of פסק הלכה to questions of theology and doctrine;<sup>33</sup> I will merely observe

<sup>33</sup> See, e.g., Rabbi Gil Student's online

that Rabbi Bergstein is apparently unable to produce *even a single* <sup>34</sup> ראשון who unequivocally rejects what I had termed the less naive and more sophisticated understanding of omnipotence.

As far as I know, the only *Rishon* who directly criticizes Rambam for having an unacceptably constrained view of God's power and latitude to do exactly as He wills is the *Tosaphist* Rabbi Moshe ben Hisdai.<sup>35</sup> He is widely cited as being

essay *Crossroads: When Theology Meets Halakhab*, at <<http://www.aishdas.org/articles/crossroads.htm>>. He apparently discusses this issue further in a review of Marc Shapiro's *The Limits of Orthodox Theology: Maimonides' Thirteen Principles Reappraised*, published in *Modern Judaism*, which I have not seen.

<sup>34</sup> Rabbi Bergstein claims that ויתכן שכן הוא [כלומר, שהבורא יתברך הוא הכל יכול פשוטו כמשמעו] דעת עוד כמה מהראשונים but his only citation in support of this extravagant suggestion is a passage from הר"ן that implies nothing of the sort; the Ran merely reiterates therein several times that הנמנעות בחק הטבע אינם נמנעות בחק השם יתברך, a proposition explicitly accepted by all those I cited as proponents of the Maimonidean distinction between impossibilities.

There may well be *Abaronim* who reject the Maimonidean position, as Rabbi Bergstein and others have maintained; my original essay as well as this note are, without implying any disrespect to the *Abaronim*, concerned solely with *Rishonim*.

<sup>35</sup> Also known as Rabbi Moshe Taku; see בעלי התוספות (Auerbach) p. 348 (I am indebted to my father for this ref-

one of the few prominent dissenters to Rambam's vehement and uncompromising insistence on Divine incorporeality, on the grounds that it is quite presumptuous for man to dictate to God what His immutable nature must be. It remains unclear to me,<sup>36</sup> however, whether Rabbi Moshe goes as far as denying our ability to impose *any* constraint on God whatsoever, even some of the more basic theological or logical ones. Does Rabbi Moshe really believe that God can choose to divide Himself into a multiplicity, or to incorporate logical inconsistencies into His creation? Perhaps he does; I do not know.

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erence). His philosophical views are expressed in a polemical fragment of his work *כתב תמים* published by Kircheim in *אוצר נהמד* (volume III pp. 54–87). I thank Rabbi Buchman for bringing Rabbi Moshe's comments to my attention.

<sup>36</sup> A more careful reading of the *כתב תמים* than I have yet been able to undertake is in order.