

Working for the Government The Prohibition Against *Mesirah*

Part 1: What is *Mesirah*?

I received the following email from a former student: “Rabbi Wasserman, it has been a long time! I hope this email finds you well. I have a question that I was hoping you can answer, or direct me to a rabbi in New York. I was recently appointed Deputy Attorney General in charge of mortgage fraud prosecutions, and I am prosecuting cases against Jews, some who fled to Israel, unfortunately. They face jail time. I was wondering if there is a halachic problem for me to prosecute them.”

Shortly after his release from jail, “Rabbi B.” was sentenced to a second term in prison. He had served time for a tax evasion scheme operated by his community; he was subsequently subpoenaed by a grand jury to provide further information. He refused to testify, telling the federal judge, “Because the transgression of mesirah (informing against fellow Jews) is so dire, my mind won’t change until I die.”¹ (Los Angeles Times, March 16, 2012, “Orthodox Rabbi Ordered Jailed for Refusing to Testify”)

“Avraham” was horrified to discover that his mentally disabled teenage son had been sexually molested by a member of his own community at a local mikvah (ritual bathhouse). Avraham filed a complaint with the police, the molester was arrested, and the second shock wave soon followed: overnight, he became a pariah – no, not the molester, but the parent who informed the police and got the molester off the street! His friends ignored him, his family was evicted from their apartment, and he began to receive phone messages cursing him for daring to report the offender to the police. The mother of another handicapped child who had been sexually abused by this same individual told a relative of Avraham’s that she had kept quiet when it happened to her son – why couldn’t he have done the same? (New York Times, May 9, 2012, “Ultra-Orthodox Shun Their Own for Reporting Child Sexual Abuse”)

These incidents all relate to different aspects of the prohibition of mesirah: informing on a fellow Jew.²

A number of Orthodox Jews hold government positions working for tax authorities such as the Internal Revenue Service (IRS) in the United States or *Mass Hachnassah* in Israel, customs authorities, the office of the Attorney General, or other government prosecutors. What happens when their work responsibilities take on a new twist, and they are required to report irregularities on the part of fellow Jews, or even prosecute fellow Jews for wrongdoing? Are they permitted to pass on damaging information, or is it a violation of the laws of *moser*? Are they even permitted to take such jobs to begin with?

¹ Rabbi B.’s words to the judge were transmitted by a Yiddish interpreter.

² Because this vital topic is so often misunderstood, this chapter also deals with aspects of *mesirah* which are not directly related to the workplace.

“Rabbi B.” was willing to undergo another jail sentence to avoid informing on fellow Jews. In contrast, “Avraham,” the father of the abused teenager, apparently understood that the threat to his son – and other potential victims as well – overrode the prohibition of *mesirah*. He reported the molester to the police, arousing the ire of his community.

What is the difference between these three scenarios? How serious is the prohibition of *mesirah*? Is it forbidden to inform against a fellow Jew under any circumstances, or does *halachah* allow for exceptions?

Study of the laws of *moser* shows that while the prohibition is severe in the extreme, it is far from black-and-white. Unlike certain other major prohibitions, every case calls for careful consideration of the circumstances.

Defining the Prohibition of *Moser*

A *moser* is an informer – more specifically, one who informs on another Jew, turning over his assets or his person to secular authorities or aggressors. *Chazal* tell us that generally speaking, sinners are punished in *gehinom* (hell) for up to twelve months; after atoning for their sins, they go on to their eternal reward, as we learn from the words of the *Mishnah*: “All of Israel have a share in the World to Come” (*Sanhedrin* 10:1). There are, however, a few exceptional categories whose stint in hell never ends. Among them are the apostates and heretics who deny the basic tenets of Judaism and deny the Divine origin of the Torah. They go to *gehinom* and are judged there not for the twelve month cutoff, but for all time. Along with these people, surely the very worst dregs of society, “A *moser*... descends to hell and is judged there for all eternity” (*Rosh Hashanah* 17a).

Clearly, informing on fellow Jews (*mesirah*) is a serious prohibition which should not be taken lightly.

The *Shulchan Aruch* on *Moser*

The *halachos* of *moser* are included in *Shulchan Aruch Choshen Mishpat*, which deals largely with monetary matters and torts. The *Shulchan Aruch* rules that “one who turns over [a fellow Jew’s] assets to an *anass* (literally, an aggressor, oppressor, despot, or the like), whether the *anass* is a Jew or a non-Jew, is obligated to reimburse the person he informed on, for whatever the *anass* took” (*Choshen Mishpat* 388:2). The prohibition against *mesirah* includes both handing over information about a fellow Jew’s assets and informing against him personally. Even if this fellow Jew is wicked and an inveterate sinner, and even if he is a source of trouble and anguish, we are generally still forbidden to inform against him. The *Shulchan Aruch* concludes by saying that “Anyone who hands over a Jew to the non-Jews, whether his person or his assets, has no share in the World to Come” (ibid. 388:9).

An *anass* is an individual or authoritarian body who wields power by means of force. This includes, for example, unjust and oppressive governments, thugs and bandits. The *poskim* do not distinguish between an *anass* who is Jewish and one who is non-Jewish – the prohibition remains the same in either case.

As we will see, many *poskim* rule that it is forbidden to inform on a fellow Jew even to a just, enlightened and democratically elected government. It would only be permitted if one of the *heterim* permitting *mesirah* under certain defined circumstances applies to the case at hand.

Chazal: An Informer is Deadly

The *Gemara* relates two incidents of *Amoraim* who killed would-be informers. In one case, a Jew planned to inform on Rabbi Shila. Rabbi Shila ruled that the informer was a *rodef*,³ subject to the halachic principle that “One who comes to kill you, rise up first to kill him” – and acted on his ruling. Taking a preemptive measure against a threat to life is permitted in self-defense, and a *rodef* is a distinct danger (*Berachos* 58a).

In the second case, the *Amoraim* Rav and Rav Cahana were involved in a case of threatened *mesirah* of assets. “Reuven,” the *moser*, was warned by Rav not to go ahead with his plans to inform. Despite the warning, “Reuven” stood his ground. Rav Cahana, who was present at the time, witnessed the warning and the refusal to accede to it – and killed the potential informer. Rav cited the verse, “Your children have fainted, they lie fallen at the head of every street like a wild bull trapped in a net” (*Yeshayahu* 51:20). He said that when a wild bull falls into a pit, no one has mercy on it and pulls it out. The same is true of Jewish money – once it falls into non-Jewish hands, they have no mercy on it, and will even kill a Jew for his money (*Baba Kama* 117a).

Providing information about a Jew’s assets is considered by *halachah* to be *mesirah* on the same level as informing on his person, because of the circumstances prevalent in the time of the *Gemara*, the *Rishonim*, and well into the present era of the *Achronim* – in fact, throughout most of our people’s history. Tragically, gross bigotry and abuse, ranging from discriminatory legislation to outright violence, expulsions, and pogroms, made life for Jews frighteningly insecure, with little or no legal protection of assets and personal safety. If a Jew owned money or other assets, he had no recourse but to conceal them for safekeeping.

The *Rosh*⁴ writes that *Chazal* equate a *rodef* who informs an *anass* about another Jew’s assets to the classic *rodef* who pursues with intent to kill; the harassment over money will ultimately turn into a threat to the victim’s life. The *Rosh* describes the problem in the clearest of terms: “Today they take some of the money. The next day they take it all, and in the end, they will torture him and [eventually] kill him, in the hopes that he will admit that he has more money. Therefore, [one who informs against a Jew’s assets] is a *rodef*, and it is permitted to save oneself from him by killing him (Responso of the *Rosh*, *Klal* 17:1).

³ *Rodef*, literally “pursuer,” is a halachic term for one who is out to kill another person.

⁴ Rabbeinu Asher ben Yechiel (1250-1327), one of the great *Rishonim*, who lived first in Germany, then in Spain. A great halachic authority, he wrote a major commentary on the Talmud and over one thousand *teshuvos*. His *pesakim* are frequently cited by his son, Rabbeinu Yaakov ben Asher, in the *Tur*, and throughout the *Shulchan Aruch*. He wrote a commentary on *chumash*, and the *mussar* work *Orchot Chaim* is attributed to him as well.

Not in the Middle Ages but in 2012, Jacob Ostreicher, an Orthodox Jew from Brooklyn, was held in a Bolivian prison for eighteen months, accused of money laundering but never officially charged by Bolivian authorities.

When his family business in New York had fallen upon hard times, Mr. Ostreicher put his savings into a rice-growing venture in Bolivia, as a relatively small investor in a large enterprise. He began traveling to Bolivia on business – and was arrested there. He was cleared in court after providing extensive financial documentation, at a cost of nearly \$20,000. To his horror, only six days later the sentence was reversed, and he was back in jail... with no end in sight. After investigating Ostreicher's case, former FBI Agent Steve Moore reached a conclusion chillingly reminiscent of the Rosh's words centuries earlier: "The whole system is corrupt. There's no evidence to convict him of anything. But here's a guy they see coming in from New York, who's got probably a lot of liquid cash or represents a lot of liquid cash, and they saw an opportunity." In our era of democracy and fair trial, Jacob Ostreicher was the victim of a government shakedown.⁵

Exceptions to the Rule: When Are We Permitted to Inform?

The *Rishonim* and *Achronim* recognize a number of exceptions to the prohibition against reporting a fellow Jew to the authorities. Nine out of ten of these *heterim* are based on the same principle: if the Jewish community is unable to deal with a danger or a threat, especially to the community as a whole, it is permitted to turn to the secular authorities who do have the power to prevent or eliminate the danger or the threat. A qualified halachic authority should always be consulted before acting on these *heterim*.

The first two exceptions relate to informing against someone who is himself an informer.

No. 1: Informing against a "certified" informer

If someone has informed against other Jews three times he is considered *muchzak* – a "certified" *moser*. As such, he is a public threat. If we can find a reason to report him to the secular authorities, it is permitted to do so, in order to get him out of commission and prevent him from informing yet again.

The Rambam writes that "If one is a certified *moser*, it is permitted to take steps to stop him, lest he inform again on others. It is common in the Western communities to... hand over informers to the non-Jews, to be sentenced to execution, physical punishment, or imprisonment, in keeping with their crimes" (*Hilchos Chovel U'Mazik* 8:11).

The ruling of the *Shulchan Aruch* is similar: the community finds a way to eliminate the threat posed by a repeat offender who has informed on Jews or their assets to *anassim* (aggressors) three times (*Choshen Mishpat* 388:15).

⁵ Mr. Ostreicher was released from prison to house arrest on \$14,000 bail in December 2012, and fled to the United States a year later. Various Bolivian officials were later arrested as partners in an extortion ring.

This *pesak* highlights a critical point in any exception to the prohibition against *mesirah*. Reporting the individual who is *muchzak* as an informer to the secular authorities for any illegal actions he may have committed is not intended to punish him for informing. Rather, because he has established a pattern of informing against his Jewish brethren, in all likelihood he will continue to do so, making him a danger to the welfare of the community. In order to protect the public, it is permitted to see to it that he is apprehended and punished by the secular authorities for whatever they consider to be criminal acts.

No. 2: Informing against one who is likely to continue informing

Certain circumstances permit informing against the *moser* himself in order to restrain him, even if he is not a *muchzak*. If the *moser* is currently involved in an ongoing act of *mesirah*, it is permitted to report him for some other infraction as a means of restraining him. The same is true of informing against a *moser* who does not – or does not yet – have a three-time record of *mesirah*, but there are substantial grounds to believe that if he is not stopped, he will inform against a fellow Jew a second time (*Rema, Choshen Mishpat* 388:9; *Shach* *ibid* 52; *Shulchan Aruch HaRav, Choshen Mishpat, Hilchos Nizkei Mamon* 6).

Here too, the concern is that even if the *moser* has not established himself as an entrenched informer, he nonetheless poses a threat and should be stopped.

No. 3: Informing against a troublemaker who harasses the community

The *Gemara* discusses informing in a case of verbal, rather than physical or financial abuse.

The *Amora* Mar Ukva told Rabbi Elazar that certain people were reviling and cursing him. He asked if he was permitted to inform against them to the government, freeing himself of the anguish they were causing him. Rabbi Elazar responded by citing a verse from *Tehillim*: “I will guard my ways from sinning with my tongue, I will guard my mouth with a muzzle while a wicked person confronts me” (*Tehillim* 39:2). Even though there is “a wicked person against me,” Rabbi Elazar told him, “I [still] will guard my mouth with a muzzle.”

Some time passed and Mar Ukva told Rabbi Elazar, “They are tormenting me relentlessly, and I cannot take it anymore.” Rabbi Elazar responded with another verse: “Wait silently for Hashem’s salvation, and wait for Him with longing” (*Tehillim* 37:7). In other words, Rabbi Elazar said, wait and hope for Hashem’s salvation, and He will topple them for you. Rabbi Elazar then advised Mar Ukva not to inform against them to the government, assuring him that if he dedicated himself to Torah, the problem would resolve itself without his intervention – and so it was (*Gittin* 7a).

This *Gemara* is essential to our understanding of when it is forbidden and when it is permitted to inform on a fellow Jew. The *Rif*⁶ writes that we learn from here that even

⁶ Rav Yitzchak Alfasi (1013-1103), who marks the end of the *geonic* period and the beginning of the period of the *Rishonim*. The *Rif* was an outstanding *posek* and *rosh yeshivah* in North Africa and later, in Spain, and the author of *Sefer HaHalachos* or *Hilchos HaRif*.

if a troublemaker is causing others anguish, it is still forbidden to inform on him to the secular authorities as a means of ending the abuse (commentary on *Baba Kama* 43b).

However, both the Rambam and the *Shulchan Aruch* make an important distinction between anguish caused to the community, and the anguish of an individual. Mar Ukva's was a case of harassment of an individual, and he was instructed by Rabbi Elazar not to take action. According to the Rambam and the *Shulchan Aruch*, a public menace has a different status, and it is permitted to report him to the secular authorities. They rule that in order to eliminate a troublemaker who is plaguing the community, one may inform on him to the secular authorities, with the understanding that they will punish him. However, one may not inform on him to prevent him from harassing an individual (Rambam, *Hilchos Chovel U'Mazik* 8:11 and *Shulchan Aruch Choshen Mishpat* 388:12). It is not clear from the sources how far this extends – does the *heter* to protect the community include only extreme verbal abuse, or emotional and psychological harassment, spreading rumors, excessive noisemaking, and the like.

No. 4: Reporting physical abuse of an individual

The previous *heter* permits informing on one who harasses the community – but not one who harasses an individual. The *Sema*⁷ writes that the *heter* refers specifically to harassment of the community which is troublesome and a source of anguish. In such a case, we may inform only to prevent trouble to the community, although not to an individual.

However, the *Sema* writes, if a troublemaker is *physically* abusive, even if only of an individual, it is permitted to report him to the secular authorities in order to prevent the abuse. Physical abuse includes striking another person and various other forms of physical harm (*Sema*, *Choshen Mishpat* 388:30; see *Rema* *ibid.* 9). According to Rav Eliezer Yehudah Waldenberg, author of *Responsa Tzitz Eliezer*, sexual molestation is even worse than physical abuse (*Tzitz Eliezer*, volume 19, 52).

Rav Yaakov Bloy⁸ writes that if there is no other way to protect oneself, it is permitted to call the police without first turning to a *beis din* under any of the following circumstances: if one is being attacked; if he has reasonable grounds to suspect that he is going to be attacked; and certainly, if he has received threats against his life or safety. This is true, says Rav Bloy, even if the assailant will be fined or imprisoned as a result (*Pis'chei Choshen*, *Hilchos Nezikin*, Chapter 4, footnote 18).

No. 5: Reporting actions which are potentially dangerous to the community

Rav Menachem Mirzburk,⁹ a fourteenth century *Rishon*, discusses the case of a Jew whose illegal activities are potentially dangerous to the community. For example, he

⁷ Rabbi Yehoshua HaKohen Falk (1555-1614), one of the great Polish *Achronim*, author of *Sefer Me'iras Einayim*, a major commentary on *Shulchan Aruch Choshen Mishpat* known as “the *Sema*.”

⁸ Rav Yaakov Blau (1929-2013) was a Jerusalem *rav* and *posek*, renowned for his expertise in the field of halachic issues related to finance.

⁹ Rav Menachem ben Pinchas of Mirzburk, also known as Rav Menachem Me'il Tzedek or Rav Menachem HaMe'ili after the name of his work *Me'il Tzedek*, lived in Germany sometime in the 1300's.

writes, if one Jew counterfeits money or clips coins,¹⁰ other Jews or even the entire community could be held liable for his crimes. If the community warned the perpetrator to stop his illegal activities and he ignored them, they are permitted to report him to the secular authorities, in order to forestall trouble.

However, he continues, if he has committed these crimes only one time, and then stopped, or he will stop once he has been warned, it is forbidden to inform on him to the non-Jewish authorities (*Nimukei Maharam Mirzburk*). The *Rema's pesak* in *Choshen Mishpat* (388:12) is consistent with that of the Maharam Mirzburk: it is permitted to inform the authorities that the perpetrator is the only one involved in the crime, in order to protect the community. Citing Maharam Mirzburk, he writes that one who endangers the community by engaging in illegal activity viewed by the government as a serious offense is a *rodef* (*Choshen Mishpat* 425:1).

The Vilna Gaon's comments on this ruling are a key source for understanding this *heter*. He writes that one whose criminal activities endanger the community as a whole is a *rodef*. This is so even if it is not his intention to incriminate others, and even if the concern is only for the future – nothing has actually happened yet. The Gaon rules that it is permitted to take steps to save the community from a *potential* threat (*Choshen Mishpat* 388:74).

No. 6: Clearing the community or an individual of suspicion

In essence, this *heter* is a continuation of the previous one.

As discussed in the previous *heter*, Maharam Mirzburk rules that if a Jew has committed a crime which the community may ultimately suffer for – such as counterfeiting or coin-clipping – it is permitted to report him to the authorities under the following conditions: there is an ongoing violation of the law, and not only a one-time prior offense; and the perpetrator refuses to give up the crime even after due warning.

He mentions an additional important related *heter*: if another Jew is falsely accused of the crime, the accused is permitted to clear himself of that specific crime by revealing the identity of the real perpetrator.

Rav Chaim Ohr Zarua (Maharach Ohr Zarua), a thirteenth century *Rishon*, also discusses the question of clearing oneself by informing, taking the *heter* even further. He writes that one may inform on the perpetrator even if he committed the illegal act with the intent to fulfill a *mitzvah*. He cites an incident which took place in the time of his father, Rav Yitzchak Ohr Zarua of Vienna (1180-1250), one of the great *Rishonim*:

A mohel undertook to circumcise converts to Judaism. At that time, conversion to Judaism was not only illegal, but likely punishable by death. Obviously, circumcising illegal converts was also forbidden by law, but this intrepid mohel went ahead with it, presumably on his own initiative. His actions, well-meant as they were, put the entire

¹⁰ In earlier times, when the coins circulating in the marketplace were made of gold and silver, “clipping” or shaving metal off the coins in order to sell the cuttings was an extremely serious offense; in Germany of the 1500's, it was punishable by strangulation.

community in danger. Under the circumstances, the Ohr Zarua ruled that it was permitted to point him out as the mohel (Responsa Maharach Ohr Zarua, Teshuvos Chadashos 4).

Here too, we see that the safety of the community, and even of an individual, is the overriding consideration.

No. 7: Informing against a violent person

In their discussion of informing against a violent individual who strikes others, Maharam Mirzburk and Maharach Ohr Zarua differentiate between different levels of violence (*Nimukei Maharam Mirzburk; Responsa Maharach Ohr Zarua, Teshuvos Chadashos 4*).

Level one relates to a one-time offender who has repented for his deed, and it is clear that he will not lose control again. Under these circumstances, the assault is viewed as a past incident, and the assailant is not considered to be a current or future threat. As such, it is forbidden to inform against him to the secular authorities.

Level two concerns someone who is a current threat to another's wellbeing, and must be stopped.

For example, Reuven struck Shimon, and Shimon is absolutely furious. Shimon, or a relative of his who is equally incensed, fully intends to take the law into his own hands – he is going to pay Reuven back with interest, so to speak. In order to prevent further violence, it is a *mitzvah*, incumbent upon each and every Jew, to report the problem to the authorities before it spirals out of control. Even if as a result Reuven is heavily fined and loses all of his assets, the informer is not obligated to pay the damages as an ordinary informer would be. Otherwise, the Maharach Ohr Zarua writes, no one would come to the aid of one who is being attacked – who would want to risk being fined for their altruism?

Level three is a *muchzak*: he has a history of striking others on three occasions. It is clear that he has no intention of changing his ways; anyone who crosses him is likely to be the next victim. In this case, the *poskim* rule, “It is a *mitzvah* for every Jew to report him to the authorities, and ask that they restrain him. If as result, they will trump up a charge against him and confiscate all his assets, the informer is not liable for the losses incurred” (*Rema, Choshen Mishpat 388:7; Shulchan Aruch HaRav, Choshen Mishpat, Hilchos Nizkei Mamon 6*).

Here too, we have the element of a current or future threat. If the Jewish community does not have the means to curb a violent individual, it is permitted to turn to the secular authorities. This is also true in our times, when it is likely that the offender will receive a jail sentence (see *Pis'chei Choshen, Hilchos Nezikin, Chapter 4, note 20*).

No. 8: Informing against a habitual thief

A problem which does unfortunately arise and is discussed by many *poskim* is that of the inveterate thief. The Responsa literature deals with a variety of questions about

reporting Jewish thieves, including those who steal silver or Torah scrolls from the synagogue, or who pilfer the charity box – on Shabbos, no less. This is a complicated question, and there is no single conclusive answer in the writings of the *poskim* (see Responsa *Chavos Yair* 139; Responsa *Tashbetz* 3:168; Responsa *Panim Meiros* 2:155; Responsa *Minchas Yitzchak* 9:9:2).

Responsa *Yashiv Yitzchak* cites a responsa from Rav Yosef Shalom Elyashiv¹¹ concerning recurring thefts of cash from public funds. All of the evidence indicated that one specific person was guilty, but there was no way to compel him to confess. Reporting him to the police might result in a confession, but the outcome of trial in the secular courts would be harsh in the extreme.

Rav Elyashiv cited the responsum of the *Panim Meiros* concerning a theft where the identity of the perpetrator seemed clear. A large sum of money was stolen from a strongbox which had been forcibly opened, and the owner had good reason to suspect one of his servants. The *Panim Meiros* ruled that it was not permitted to take the case to the secular courts, because in the 1700's, when the responsum was written, the thief might well be executed if he admitted to the crime.

Rav Elyashiv wrote that since this is no longer a concern in our times, it would be permitted to report the theft to the police (Responsa *Yashiv Yitzchak, Choshen Mishpat* 37, p. 291, citing *Kovetz Teshuvos* 198, p. 376).

Rav Bloy provides guidelines on the question of reporting a thief. He writes that it is reasonable to assume that it is permitted to call the police when one sees the thief entering the premises, or has grounds to believe that he is about to be robbed. This is so even if the punishment administered by the secular authorities will be more severe than mandated by the Torah.

He writes that once the theft has already been carried out, the thief is no longer a *rodef* – at this point, the danger is over, and it is no longer permitted to inform against him. However, if there is reason to suspect that if the thief is not apprehended he will continue robbing others, it would be permitted to call the police.

The question here is whether one who is *muchzak* as a thief has the same halachic status as one who is *muchzak* as a *moser*. Apparently there are grounds to report a “certified” thief to the secular authorities in order to prevent him from preying on others in the future, if this will not put him in potential danger (*Pis'chei Choshen, Hilchos Nezikin*, Chapter 2, note 49 and Chapter 4, note 11).

A valuable Torah scroll owned by a Jerusalem family was stolen from a synagogue in the first part of the 20th century. They found evidence pointing to the thief, and some family members wanted to have him arrested by the Turkish police. The father insisted that before going to the police, they first speak to Rav Yosef Chaim Sonnenfeld. As the family explained it to the Rav, if the thief was left on the loose, he would surely rob other synagogues – shouldn't he be stopped?

¹¹ Rav Yosef Shalom Elyashiv of Jerusalem (1910-2012) was revered and renowned as the “*posek hador*,” the leading halachic authority of our generation.

Rav Sonenfeld told them not to go to the police. The two most likely outcomes would be a chillul Hashem, plus serious injury to the thief. Instead, he advised letting the thief know that he had been found out... and as it turned out, that was enough. The Torah scroll was soon returned to the synagogue (“Guardian of Jerusalem - The Life and Times of Rabbi Yosef Chaim Sonenfeld”).

On a practical level, there is no one answer to the question of reporting a thief to the secular authorities. The facts and circumstances of every individual case should be considered before reaching a decision in either direction.

No. 9: Informing under duress

The *Shulchan Aruch* discusses the problem of informing under extreme pressure. Ordinarily, *halachah* requires that an informer pay any damages incurred by the one he has informed against. However, if an *anass* – whether Jewish or non-Jewish – forces one Jew to inform against another, the Jew who was coerced is not liable for the damages (*Choshen Mishpat* 388:2).

The *Rema* comments that “coercion” means physical abuse or suffering, but not financial loss. The *Shach*, citing the opinions of a number of *Rishonim*, disagrees, and rules that financial loss is also considered “coercion” (ibid. 22). The *Shulchan Aruch* continues, “If the king coerced the *moser* until he informed on the assets of someone fleeing the king, and he revealed the location of the money because of the duress, the informer is exempt from paying damages, for had he not pointed out the assets, the king would have beaten or killed him” (388:3).

The *Achronim* disagree on the question of whether or not this is permitted up front (*lechatchilah*), or whether one is only exempt from paying damages after the fact (*b’di’eved*). The *Sema* (ibid. 12), based on the precise wording of the Rambam and the *Shulchan Aruch*, rules that this *heter* is not an ideal choice: they write that one who is coerced by the government to inform is *patur* (exempt) – not that it is *mutar* (permitted) to inform. The term *patur* means only that while it is forbidden, one who does so is exempt from paying the damages. The *Taz* (ibid. 3) disagrees. In his opinion, in a case of duress, one may inform [against assets] even *lechatchilah*.

This *heter* as well allows for *mesirah* in order to remove a current threat – in this case, the threat of personal harm from an aggressor or the secular authorities for refusing to cooperate.

A Jewish youth killed an Arab from a prominent Jerusalem family. The killing was an accident, but the terrified young man realized that this would not matter; the local Arabs, headed by the victim’s family, would track him down and literally tear him apart. He fled to the home of Rav Yosef Chaim Sonenfeld, who personally found him a safe hideout. The mayor of Jerusalem, a non-Jew, confronted Rav Sonenfeld with evidence that the fugitive had been seen near his home, and threatened him with imprisonment if he did not cooperate with the authorities. Rav Sonenfeld said the police could try to find him on their own; he was not an informer, and was prepared to go to jail. The mayor arranged for influential members of the Jewish community to threaten the rav and pressure him to reveal the fugitive’s hiding place, but Rav Sonenfeld convinced them to desist.

Jerusalem under the Turks was anything but an “enlightened government,” and their prison system was notoriously brutal, certainly an exceedingly dangerous place for a Jewish rabbi. Why was Rav Yosef Chaim willing to endanger himself by shielding the young man? Because, as he explained, in this case, the culprit would not receive a fair trial and due punishment – the mob would murder him with their own hands before he ever saw the inside of a courtroom. Otherwise, he said, he would have been obligated to obey the authorities.

No. 10: Informing against one who owes money to non-Jews

The *Rema* discusses a question especially relevant for Jewish employees of government agencies such as the tax authorities (for example, the Internal Revenue Service (IRS) in the United States, or *Mass Hachnassah* in Israel), customs authorities, and the like. A Jew may owe money to a non-Jew, and a fellow Jew knows that the Jewish debtor plans to flee in order to evade payment. The *Rema* rules that the informer does not have the halachic status of a *moser*, because he has not caused the Jewish debtor any additional loss – he is only causing him to pay what he owes (*Choshen Mishpat* 388:12).

However, the *Rema* continues, “even so, he has done something bad, because it is as if he is ‘returning a lost item’ to a non-Jew. If his actions have caused the debtor a loss beyond the actual debt (see *Shach* 61), the informer is obligated to reimburse him.”

The Torah commands us to return a lost item to a fellow Jew (*Devarim* 22:3), a commandment which is specific to our relationship with fellow Jews (*Baba Kama* 113b). If, for example, a Jew owes money to a non-Jew, he may let the debt ride until the non-Jewish creditor actively seeks repayment. In terms of a Jewish government employee reporting an irregularity to the customs or tax authorities, in effect, he is returning a non-Jew’s “lost item,” which should not ordinarily be done. Nonetheless, one should return a non-Jew’s lost item to create a *kiddush Hashem*, and must do so in order to prevent a *chillul Hashem* (*Shulchan Aruch*, *Choshen Mishpat* 266:1; *Rema*, *Choshen Mishpat* 388:12; *Biur HaGra* 388:77).

Part 2: Does the Prohibition against *Mesirah* Still Apply?

Practically speaking, how do the *poskim* understand *moser* in our times? Does the prohibition still apply in countries where the governments have been democratically elected, and crimes are fairly judged?

Approach No. 1

***Aruch HaShulchan: Mesirah* under enlightened governments**

Rabbi Yechiel Michel Epstein (1829-1908), author of the *Aruch HaShulchan*, begins his discussion of the *halachos* of *moser* with an interesting comment that has become the subject of some controversy:

“It is well-known that in ancient times, in far-off lands, no individual had any security for his person or his assets from thieves and aggressors, even if they considered

themselves a legitimate government. We are familiar today as well with the thievery and corruption perpetrated by government officials in some of the African countries. Worthy of praise are the European kings, and especially our master, the Russian Czar, and his ancestors the previous Czars, and the kings of Britain, who have expanded their rule to distant lands, so that the assets and person of every individual are secure, and the wealthy need not hide for fear of being robbed and killed.

“All the laws of *moser* (informing) and *malshin* (talebearing) in the Talmud and the works of the halachic authorities revolve around this point, as we will explain, with Hashem’s help. One who informs and bears tales against his fellowman to thieves of this nature is a *rodef* who threatens another’s life and assets. As such it is permitted to take preventive measures against this type of informer” (*Aruch HaShulchan, Choshen Mishpat* 388:7).

It is worth noting, however, that Russia in the time of the *Aruch HaShulchan* was an oppressive regime. The Russian czars were notorious autocrats and vicious anti-Semites. According to some halachic authorities, the writing of this qualification was prompted by fear of the overbearing Russian government, and is not indicative of the *Aruch HaShulchan*’s actual halachic opinion.

Other writings of the *Aruch HaShulchan* bear this out. For example, he prefaced his commentary on *Choshen Mishpat* with an introduction entitled *Kavod Melech* (“The King’s Honor”). This introduction focuses primarily on the importance of a stable government, along with praises for the Russian czar. It also stresses the great loyalty of Russia’s Jews to the czar, as evidenced by the special prayer recited in the synagogues on Shabbos and Yom Tov for the welfare of the czar and the imperial family. This introduction clearly indicates Rav Epstein’s concern that the Russian government might read sections of his work, as well as the oppressive atmosphere endured by Russian Jews during those years.

There are similar statements elsewhere in the *Aruch HaShulchan*. For example, in the second chapter of *Choshen Mishpat* Rav Epstein writes, “Heaven forbid that any Jew should have even a private thought of rebellion against the Russian czar and his officers (*Aruch HaShulchan, Choshen Mishpat* 2:1).

Nonetheless, it is possible that while the *Aruch HaShulchan*’s description may not have been accurate for the Russia of his times, in his opinion the halachic standard still stands: he did rule that in principle, the prohibition of *moser* does not apply to cooperating with an enlightened government, even if the Czarist Russia of his times was not that government. In addition, Rav Eliezer Yehudah Waldenberg (1915-2006), author of Responsa *Tzitz Eliezer*, notes that the *Aruch HaShulchan* praised the British kings along with the Russian czars, lending credence to the argument that the *Aruch HaShulchan*’s comment was not inserted merely due to concern over the reaction of the Russian government.

In fact, according to the *Tzitz Eliezer*, the *Aruch HaShulchan*’s ruling is fully applicable in current halachic practice, as we find in his analysis of three questions concerning the prohibition of *moser*.

- When a child who has obviously been physically abused by one or both parents is admitted to the hospital, a complaint is routinely filed with the police. The social services intervene, and the child is transferred by court order to a foster home or institution. Removing the child from his parents is a preventive measure, since experience has shown that future instances of maltreatment could be fatal. If the doctor involved knows that there is a strong likelihood that the child will be transferred to irreligious or non-Jewish foster care, should he nonetheless report the case to the police? (It is worth pointing out that in certain countries the doctor's license can be revoked for failure to report a case of child abuse.)
- Is it permitted to report a father who sexually abuses his young daughter, even though the abuse is not actually life-threatening?
- Is it permitted to report a teacher who molests young students?

In response to the first question, Rav Waldenberg wrote that if it seems almost certain that the parents will continue to abuse the child at home, possibly even endangering his life, the doctor is obligated to report the case to the authorities, in order to protect the child. The doctor is not the one who will be making the placement into foster care; he is only addressing the immediate problem of the child's safety. Strictly speaking, there is no prohibition here of *lifnei iver*,¹² because it is not certain that the child will in fact be placed in a non-Jewish or irreligious environment.

In response to the second question, concerning the sexually abusive father, Rav Waldenberg ruled that it is obligatory to save the girl from physical and emotional harm. He wrote that the underlying principle of his response to the first question also applies here: the child must be protected from danger. A father who molests his daughter is a *rodef achar ha'ervah* (one who pursues another for forbidden sexual purposes), and he has the same status as a *rodef* who pursues with intent to kill. A man who has relations with his own daughter commits a transgression punishable by *karess* (excision), and should certainly be stopped. In light of these factors, Rav Waldenberg ruled in this case as well that the abusive parent should be reported.

He cites the *Rema's pesak* (*Choshen Mishpat* 388:7) concerning the victim of physical violence. He is permitted to complain to the secular authorities, even if this causes considerable damage to the assailant. The *Shach* (*ibid.* 45) rules that one may go to the secular authorities in order to prevent recurring harm. Rav Waldenberg writes that since sexual abuse is even worse than physical beating, it is permitted to report the abuser to prevent continued harm. He concludes by saying, "*u'beis din avihem shel ketanim*" – the rabbinical courts are the "guardians (literally 'father') of minors." When the parents do not care properly for their children, it becomes the obligation of the *beis din* to intervene on the children's behalf.

Rav Waldenberg's *pesak* conforms with the *heter* to inform on a fellow Jew if necessary to prevent ongoing or future harm, even if it is directed against an

¹² *Lifnei iver lo siten michshol* literally means "do not place a stumbling block before one who is blind" (*Vayikra* 19:14). One aspect of this prohibition is enabling or causing another to sin. In this instance, reporting the parents' abuse could lead to the child being placed in a non-observant or non-Jewish foster home, where he will be raised to be non-observant.

individual, rather than the community as a whole. Considering the greater harm caused by sexual abuse, the same *heter* applies.

Rav Waldenberg's response to the third question is based on the same reasoning. It is clearly permitted to report a teacher who sexually abuses students, all the more so because this will usually affect not only one child, but many. A "teacher" like this is a public menace (see *Choshen Mishpat* 388:12).

Unfortunately, a school principal may cover for a staff member who has molested students, because he assumes – incorrectly – that the prohibition against mesirah applies in this context. Even if such a teacher is fired by the school in question, he will usually be able to obtain a position in a different school, different community, different city or even different country, moving on when things become uncomfortable in his present location. The losers are obviously the new students exposed to the threat he poses everywhere he goes.

The *Tzitz Eliezer* concludes that apparently, there is a difference in turning to the secular courts under an oppressive regime, and the courts in a country with an enlightened government. He quotes the *Aruch HaShulchan* cited above (*Choshen Mishpat* 388:7), who makes this differentiation. In conclusion, Rav Waldenberg comments that this principle is applicable to the topic of *moser* overall, and not only to cases of physical or sexual abuse (*Responsa Tzitz Eliezer*, vol. 19, 52).

On the whole, Rav Waldenberg permits and even requires informing the secular authorities in each of these three scenarios, on two fundamental grounds. First, he applies the relevant *heterim* discussed by the *poskim* (see Part 1). In addition, he rules in keeping with the *Aruch HaShulchan*'s opinion that the prohibition against *mesirah* does not apply to dealings with enlightened governments.

It should be noted that while many *poskim* would not agree with Rav Waldenberg's reasoning based on this particular *pesak* of the *Aruch HaShulchan*, they would agree that it is permitted – and even required – to inform in cases of sexual abuse, based on the first grounds brought by Rav Waldenberg.

Approach No. 2

Shevet HaLevi: Dina d'Malchusa dina* supersedes the prohibition against *mesirah

The halachic principle of *dina d'malchusa dina* (literally, "the law of the government is law") is a Jew's halachic obligation to comply with certain laws in his country of residence (*Baba Kama* 113b; *Shulchan Aruch Choshen Mishpat* 104:2). According to Rav Shmuel HaLevi Vosner¹³ and some other *poskim*, in a situation where this principle applies, it is permitted to report a violation of the law to the secular authorities.

Rav Vosner (was asked about the possible conflict faced by an employee of the tax authorities when he discovers that a fellow Jew is cheating the government. Is

¹³ Rav Shmuel HaLevi Vosner (1913-2015) was one of the great *poskim* of recent times. Born in Vienna, he was a student at Rav Meir Shapiro's Yeshivas Chachmei Lublin. He settled in *Eretz Yisrael* in 1938. He was the *rav* of Zichron Meir, founder and *rosh yeshivah* of Chachmei Lublin in Bnei Brak, and the author of the eleven volume *Responsa Shevet HaLevi* and other works.

reporting the offender forbidden *mesirah*, or does the principle of *dina d'malchusa dina* apply, permitting the employee to report the offender?

He rules that tax regulations fall under the principle of *dina d'malchusa dina*. He cites the case of Rabbi Elazar ben Rabbi Shimon as proof that it is permitted to report tax evaders (*Baba Metzia* 83b). Rabbi Elazar ben Rabbi Shimon turned thieves over to the non-Jewish authorities, and his actions were permitted because he was acting upon orders of the government (*hormana d'malka*).

Rav Vosner cites the ruling of the *Be'er HaGolah* (*Choshen Mishpat* 388): “It has become accepted practice that the leaders of the Jewish communities take care that no deceit or injustice is done to the non-Jews. They publicize information concerning those who bought from non-Jews on credit and did not pay their debts.” The *Rema* (*ibid.* 11) writes that if one Jew informs against another Jew who wishes to abscond without paying his debts to a non-Jew, he is not considered a *moser*. This *pesak* is in keeping with our tenth *heter*: it is not a violation of the prohibition of *moser* to inform the secular authorities that a Jew plans to flee without honoring his debts.

In 1530 Rabbi Joselman of Rosheim, governor and protector of the Jews of the Holy Roman Empire, instituted ten takanos (enactments) related primarily to business practices with non-Jews. These takanos were largely aimed at preventing the entire community from being blamed for the wrongdoing of an individual. The seventh article threatened a Jew attempting to flee non-Jewish creditors with cherem (excommunication). The ninth article required Jews to reveal any dishonesty on the part of fellow Jews against Christians to the officers of the community.

Nonetheless, the *Rema* concludes that informing against a Jewish debtor is not a proper course of action, because the informer is effectively returning a lost object to a non-Jew.

However, Rav Vosner writes that the issue of returning a lost item – in this case money owed – to a non-Jew relates specifically to an individual non-Jew. When the money is owed to the government, and the Jew is employed by the government to report this information, it is no longer an improper course of action. Rav Vosner’s *pesak* is applicable not only to working for the tax and customs authorities, but to various other related government agencies as well. Despite this, Rav Vosner concludes that ideally, one should not take a job which requires him to inform against fellow Jews, even if it is technically permitted, because this is not *mishnas chassidim* (pious practice) (*Responsa Shevet HaLevi*, Part 2, 58).

It should be noted that it is not clear that according to Rav Vosner, in every case where *dina d'malchusa dina* has been violated, the prohibition of *mesirah* does not apply. In addition, we are left with the critical question of when *dina d'malchusa dina* does in fact apply, a question which is beyond the scope of this discussion.¹⁴ (See also *Responsa Maharam Alshich*, 66, who cites the principle of *dina d'malchusa dina* in a related context, and *Shach*, *Choshen Mishpat* 388:20, who implies that where *dina d'malchusa dina* applies, there is no violation of *mesirah*.)

¹⁴ See Chapter 23, “Law Abiding Citizens: *Dina D'Malchusa Dina*,” for a detailed discussion of *dina d'malchusa dina*.

Approach No. 3

The prohibition of *moser* applies even to an enlightened government

***Igros Moshe*: Reporting a thief who robbed a synagogue**

Rav Moshe Feinstein was asked about reporting a thief who robbed a synagogue to the police and the secular courts. The question of reporting thefts is a very difficult issue, the subject of many responsa. Unfortunately, it is a common problem: thieves, Jewish or non-Jewish, can easily make their way into a synagogue and walk off with the charity box, silver religious articles, and if they are really ambitious, Torah scrolls, which command a good price if the buyer is unaware that they are stolen property.

Torah law prescribes defined financial penalties for theft. The secular courts, on the other hand, impose physical punishment in the form of years of imprisonment. Rav Moshe writes that it clearly is not permitted to hand a thief over to a legal system whose criminal code is not in keeping with that of the Torah. Even if there were no prohibition against going to the non-Jewish courts, it would still be forbidden, because the Torah does not mandate the physical punishment for theft dictated by the secular courts (*Igros Moshe, Orach Chaim* vol. 5, 9:11).

Rav Moshe himself lived in the United States. Apparently, he held nonetheless that the prohibition of *moser* remains unchanged, regardless of the nature of the government involved: just or unjust, enlightened or despotic. In the absence of a specific *heter*, it is still forbidden to hand a fellow Jew over to the secular authorities.

A group of young Jewish visitors to London's Orthodox community recently made themselves embarrassingly unwelcome. Surveillance cameras installed by Shomrim, the community's volunteer civilian patrol, revealed that they were pilfering considerable sums from synagogue charity boxes. After consultation with the organization's rabbanim, the youths were presented with an ultimatum: they could call their parents, obtain money to repay the stolen funds, and purchase tickets back home, never to return to London. Otherwise, Shomrim would call in the police. They agreed immediately. The case was handled entirely within the community, without involving the secular authorities.

There are *poskim* who disagree with the *Igros Moshe* on this *pesak*. For one, Rav Moshe does not distinguish between a one-time offender, and one who has a history of robbing synagogues (*muchzak*). Another issue is the *Rema's* ruling that it is permitted to inform against a fellow Jew in order to prevent current or potential harm to the community (see *heter* no. 5). Even so, Rav Moshe explains that the *Rema* refers specifically to reporting an offender whose criminal acts will be blamed on the community as a whole, as in the case of the counterfeiter or the coin-clipper of old. The *Rema* was not speaking of financial damage to the community, as in the case of theft.

Some other *poskim* are of the opinion that it is permitted to report a thief to the police if that is the only way to prevent him from carrying out further thefts. As we saw in *heter* no. 8, Rav Bloy writes that if there is reason to suspect that a thief will go on to rob other victims if he is not reported, it is permitted to go to the police.

Igros Moshe: Reporting the fraudulent sale of non-kosher meat as kosher

Rav Moshe discusses the question of *mesirah* in another responsum, concerning the fraudulent sale of non-kosher meat as kosher. Unfortunately, this is a problem which has surfaced in different communities on more than one occasion. This particular question was addressed to Rav Moshe in 1961 by the *Vaad HaRabbanim* of Baltimore.¹⁵

A Jewish butcher had been selling non-kosher meat, passing it off as kosher. When he was found out, he said that he was willing to have the case heard in *beis din*. Under these circumstances, would it be permitted to take him to the secular courts, which would impose fines and imprisonment?

Rav Moshe's answer is essentially consistent with his *pesak* concerning the thief who robbed a synagogue, but with an important additional point. The butcher's transgression was serious in the extreme, and he did not show any indications of remorse. However, as long as it was not yet certain that the *beis din* would be unable to restrain him from continuing to sell non-kosher meat, it was forbidden to turn to the secular courts, for two reasons.

First, even if the secular courts were to judge the butcher in keeping with Torah law, it is nonetheless forbidden to go to the secular courts (see *Shulchan Aruch Choshen Mishpat* 26:1). Second, there is no question that they will sentence him to prison and impose fines which are *not* in keeping with Torah law, raising the concern of the prohibition of *moser*. Rav Moshe writes that "it is forbidden to hand over a Jew to the non-Jews, whether his person or his assets, even if he is wicked and a sinner, as it says in *Shulchan Aruch (Choshen Mishpat* 388:9)."

Rav Moshe sets two requirements before going to the secular authorities. It would only be permitted to take the butcher to court after it became apparent that the rabbinical court cannot prevent him from selling non-kosher meat, and only after he is warned that they will go to court if necessary, in keeping with the ruling in *Choshen Mishpat* (388:2). Therefore, Rav Moshe concludes, in his opinion, the case should first be heard by the *Vaad HaRabbanim*. The *Vaad* should take whatever steps possible to restrain the butcher. If he does not obey, they may then take him to the secular courts (*Igros Moshe Choshen Mishpat*, vol. I, 8).

In this *pesak*, unlike his ruling concerning a thief who had robbed a synagogue, Rav Moshe does permit going to the secular courts if these two requirements are met. This is in keeping with our third *heter*: it is permitted to inform on another Jew to prevent ongoing harm to the community.

As we see from these responsa, Rav Moshe holds that unless there is a specific *heter* which permits informing against a fellow Jew, the prohibition of *moser* applies, even under a just and enlightened government like the United States.

Chelkas Yaakov: Mesirah still applies under an enlightened government

¹⁵ The Association of Orthodox Rabbis of the Greater Baltimore Area.

Rav Yaakov Breisch's *pesak* in Responsa *Chelkas Yaakov* is similar to that of Rav Moshe. He writes that even in our times, when Jews are no longer officially persecuted by the secular authorities, the prohibition against *mesirah* still applies. The *Shulchan Aruch* and *poskim* do not differentiate between enlightened and non-enlightened governments as far as *mesirah*. Rav Breisch cites the case of Rav Cahana (*Baba Kama* 117a) and the comparison to a wild bull: once Jewish assets fall into non-Jewish hands, the Jew is pursued without mercy. The prohibition against *mesirah* is explicit in the *Shulchan Aruch* and the *poskim*, and circumstances have not altered the *halachah*. He concludes, without going into details, "the facts we have seen with our own eyes, even in our times, prove this" (Responsa *Chelkas Yaakov*, *Choshen Mishpat* 5).

In other words, Rav Breisch warns that the times and the courts are not as enlightened as we may think. Another point to consider is that even if the sentencing was fair and untainted with anti-Semitism, there is still the matter of the jail itself, and the dangers faced by the inmates. Even with an entirely legal sentence handed down in a legitimate court the prohibition against *mesirah* can still apply, depending on the conditions in a given jail. It has been suggested that in the United States, the conditions in federal jails may be better than those in state jails, but there are no clear guidelines.

Does it really still happen? Unfortunately, it does.

In 2008 Sholom Rubashkin, CEO of a major kosher meat processing plant, was accused of bank fraud and illegal labor practices. He was cleared of the labor law charges, but faced a life sentence for financial offenses. Protests from the legal community throughout the United States resulted in a reduced sentence of twenty-five years, upped by the district judge to twenty-seven. This sentence equals or exceeds sentencing for second-degree murder, kidnapping, child rape, or providing weapons to terrorist organizations.

Part 3: Practical Applications

We have discussed three basic approaches to the question of *moser* by contemporary *poskim*:

According to the *Aruch HaShulchan* and the *Tzitz Eliezer*, the prohibition of *mesirah* does not apply under enlightened governments. It is unclear how broadly they would extend their approach. For example:

- Is there no problem of *mesirah* in reporting *any* violation of secular law by a Jew, or only specific, serious violations?
- What if the offender's actions were illegal under secular law, but permitted by Torah law?
- What if the punishment is jail, and the offender would be placed in a dangerous situation?

Regardless, this view has not been accepted by most *poskim*.

The *Shevet HaLevi* ruled that reporting a violation of *dina d'malchusa dina* is not considered *mesirah*. However, it is not clear whether he extends this principle to *all* cases where one violates *dina d'malchusa dina*, or only to specific cases. In addition, there is no universal consensus among the *poskim* as to when *dina d'malchusa* actually does apply. Some limit it to a narrow range of cases, while others extend it to a broader range. The *Shevet HaLevi*'s lenient ruling would, at most, only apply in instances where *dina d'malchusa dina* applies, and not every law issued by a secular government qualifies.

Other *poskim*, among them the *Igros Moshe* and *Chelkas Yaakov*, rule in keeping with the “classic” understanding of *moser*, and forbid reporting a fellow Jew even to a just, enlightened government, unless there is a specific *heter* to do so.

What follows are a number of scenarios relevant to our times. According to the *Aruch HaShulchan* and *Tzitz Eliezer*, under an enlightened government, the prohibition against *meisrah* would probably not apply in any of these cases. According to the *Shevet HaLevi*, the prohibition of *mesirah* may or may not apply, depending on the specific circumstances, and how broadly the principle of *dina d'malchusa dina* is applied. Let us consider how the rulings of the majority of *poskim*, including the *Igros Moshe* and *Chelkas Yaakov*, would likely relate to these cases.

1. *Dan has a terrible temper, and too many people in the community – the men in shul, local storekeepers, staff members at his children's schools, and others – have been subjected to his angry, even frightening tirades. One day Dan crosses a red line, and accompanies his shouts with a punch to his shocked neighbor's jaw! The first time becomes many times, and it is soon all too apparent that anyone who offends Dan, even with the most minor slight, risks a beating. Is it permitted to report Dan to the police, or would this be a violation of the prohibition against mesirah?*

Until he takes active steps to control his temper, Dan has established himself as a consistently abusive individual, who poses a threat to the public. Based on *heter* no. 7 it is permitted to report Dan to the secular authorities, to prevent any further abuse and protect the community as a whole.

Based on Rav Moshe's responsum, Dan can be reported only if the *beis din* is unable to restrain him, and he has been duly warned. However, if issuing the warning poses a danger, it is unnecessary and inadvisable.

2. *Yeshivas Kavei HaBinyan finally purchased a building of their own, in the heart of a nice residential area with many Jewish neighbors. There was only one problem: local zoning laws did not allow school buildings in that part of town. Practically speaking, the yeshivah was taking great care not to offend the neighbors with noise, litter, or even a sloppily-kept lawn. And yet... their presence there did violate a law. Many or most complaints about zoning violations are motivated not by concern for the community, but personal pique. Even so, once they are filed, the zoning laws will be enforced. Would it be permitted to report the yeshivah's zoning violation, which almost certainly would lead to their eviction, or at best, a protracted legal battle?*

According to the classic view of *moser*, it would be forbidden to report the violation because it presents no particular danger or harm to the community, or even to an individual.

3. *Larry definitely came across as a rather strange type, and the neighbors soon discovered why. Someone recognized the distinctive shape of the leaves flourishing in his backyard, and the sticky-sweet smell wafting out of his windows... Larry was a recreational marijuana user. He kept mostly to himself, though, and never so much as suggested that the neighborhood kids visit his little garden.*

While Larry certainly needs help in overcoming his addiction, he is essentially harmless. As long as he is not selling or distributing marijuana to others, there apparently would be no *heter* to report his activities to the police according to the classic view of *moser*.

4. *Yaakov sighed, then groaned. The kids upstairs were at it again, and it was after 1:00 a.m.! Yaakov's windows were vibrating in their wooden frames from the music blasting a flight above him. He turned to his wife and said, "One of these days I'm going to call the police." She said, "Are you sure you're allowed to? They're not really hurting anyone, are they?"*

Based on Rav Moshe's understanding of the prohibition of *mesirah*, it is likely that he would not allow Yaakov to call the police, certainly not initially. Yaakov should first attempt to speak to the neighbors. If they ignore him, he should next turn to a *beis din* for assistance. If their intervention also does not help, it is possible that Rav Moshe would permit involving the police in this circumstance – assuming that they will bother to respond to the complaint. Rav Moshe mentioned two problems in approaching the secular authorities: punishment which is not in keeping with Torah law, and the prohibition against going to secular courts. If it is probable that the police will only issue a warning, rather than fining or imprisoning the noisy kids, neither of these concerns would be an issue.

Other halachic opinions, among them the *Machon L'Horaah* in the United States, apply the principle of *dina d'malchusa dina* to disturbing the peace, particularly as these laws were instituted for the public good. For example, see *Kissei Mishpat's* responsum permitting reporting prank calls from an unknown source to the police (*Choshen Mishpat* 46).

5. *Yosef liked to call himself an amateur driver – he had no formal training and followed no set rules, but he loved driving and did it all the time. In short, he was a menace on the road, driving without a license and speeding without compunction. Is Yosef's recklessness behind the wheel his own business, or is it permitted to report him to the authorities and get him off the road?*

Rav Moshe Sternbuch¹⁶ ruled that a reckless or unlicensed driver has the status of a *rodef*; traffic laws are made to preserve life and must be obeyed. The reckless driver

¹⁶ Rav Moshe Sternbuch, a contemporary *posek* and *rosh yeshivah* in *Eretz Yisrael*, is the *rosh av beis din* of the *Eidah HaChareidis* in Jerusalem and the author of a wide range of works on *halachah* and other topics, including the five volume *Responsa Teshuvos V'Hanhagos*.

should first be warned by the city's *rav* or local *beis din* that if he does not give up his dangerous driving, they will inform the authorities. If he refuses to comply, it is a *mitzvah* to report him, in order to protect the lives of others (*Teshuvos V'Hanhagos*, vol. I, 850).

6. *Max was Jewish, but he had chosen a most repugnant way to make a living: he owned and operated a brothel. Supposedly only non-Jews patronized the establishment, but no one stood at the door checking ID's... Was it permitted to report him to the police?*

Rav Sternbuch ruled that if filing the complaint would serve to close down the brothel, it was not only permitted, but a *mitzvah*. As a *rodef achar ha'ervah* (a pursuer of forbidden sexual activities) the owner had to be restrained, and in addition, he was causing others to sin. Ideally, a warning should be issued to the owner before approaching the police, but if he is too dangerous to deal with, it would be permitted and in fact required to report him even without the warning, to curb immoral behavior and prevent a *chillul Hashem* (*Teshuvos V'Hanhagos*, vol. II, 727).

7. *David was determined to beat the system – he was outsmarting the IRS and evading taxes. Abe heard him talk about it often enough. Was he permitted – or perhaps obligated – to report David to the IRS for tax evasion?*

According to *heter* no. 10 it is technically not a violation of the prohibition of *mesirah* to report tax evasion, but it is certainly not recommended. It is problematic in terms of returning a lost object to a non-Jew. However, it would be required in an instance where it would prevent a *chillul Hashem*, and advisable where it would create a *kiddush Hashem*.

8. *Joe has made himself a serious nuisance to the community. While he has never actually touched anyone, he is responsible for costly, annoying property damage suffered by many angry residents. Does reporting him qualify as forbidden mesirah?*

It is possible that even those *poskim* who hold the classic view of *moser* would permit reporting “Joe” to the secular authorities, categorizing him as a persistent troublemaker plaguing the community (see *heter* no. 3). According to the Rambam and the *Shulchan Aruch*, it is permitted to report a *public* nuisance to the secular authorities, with the understanding that they will punish him – although we may not inform on him to prevent him from harassing an individual (Rambam, *Hilchos Chovel U'Mazik* 8:11 and *Choshen Mishpat* 388:12). However, as we said, it is not clear how far this *heter* extends. Even if a *beis din* cannot put an end to Joe's ongoing damage to the community, it is uncertain whether or not these *poskim* would allow reporting him to the authorities.

Based on Rav Moshe's responsa on the topic of *moser*, it is possible that he would have ruled that it is forbidden to report non-violent acts of vandalism. Concerning the thief who robbed the synagogue, also a form of financial damage to the community, Rav Moshe did not distinguish between a one-time offender and a habitual troublemaker – he prohibited informing overall, since the secular courts are likely to impose punishments which are not mandated by the Torah.

We do not have a clear picture of how the classic view of *moser* would treat Joe, but the specific circumstances may be an important factor. For example, how many people have suffered from Joe's vandalism? Was he warned, and did he ignore the warning? What sort of punishment are the secular courts likely to give Joe? Are there any available avenues other than the police and ultimately, the courts?

9. “*Avraham’s*” son was sexually molested by a member of the community. As it later turned out, his son was not the first victim. Was he permitted – or perhaps obligated – to report the abuser to the police, to protect his own child and others as well?

While it would be problematic to report non-physical harassment directed to an individual as opposed to the community (see *heter* no. 3), the *Sema* rules that it is permitted to report a fellow Jew who is physically abusive, even if only to an individual (*Sema*, *Choshen Mishpat* 388: 30; see *Rema* *ibid.* 9). The *Tzitz Eliezer* rules that sexual abuse is even worse than physical abuse. Accordingly, one is required to report the molester, who not only harmed an individual, but is a potential threat to other members of the community (*heter* no. 4).

10. “*Rabbi B.*” had served jail time related to tax evasion on the part of an institution. When called upon by a grand jury to testify against others involved, he refused, even when threatened with a second jail sentence. Was he right to refuse, or was he permitted to disclose the information requested by the authorities?

There is no one answer to this question. The *Rema* rules that it is technically permitted to inform a non-Jewish creditor that his Jewish debtor plans to flee, in order to evade the debt – the Jewish debtor will only be paying what he in any case owes (*heter* no. 10). Nonetheless, the *Rema* rules that this is not a positive course to take, and that the informer is responsible for any additional damages incurred beyond the actual debt (*Choshen Mishpat* 388:12, *Shach* 61). Another factor to be considered is the potential *chillul Hashem* or *kiddush Hashem* involved in refusing to cooperate with the government.¹⁷

According to the Rambam and *Shulchan Aruch*, in a country where the halachic principle of *dina d’malchusa dina* applies, it is legitimate for the government to fine a tax violator by taking double, triple, or even a hundred times as much as he originally owed, even to the point of confiscating all of his property (Rambam, *Hilchos Melachim* 4:1 and *Hilchos Gezeilah* 5:12; *Shulchan Aruch*, *Choshen Mishpat* 369:7). However, as we see from the *Rema*, the fact that the government can impose the taxes and penalties does not mean that it is permitted to report a fellow Jew for tax evasion.

Rav Sternbuch rules that if informing the authorities will mean that the violator will have to pay fines beyond what he actually owes, or will be imprisoned, it is prohibited (*Responsa Teshuvos V’Hanagos*, vol. III, 476).

¹⁷ Similarly, the *Shulchan Aruch* prohibits testifying on behalf of a non-Jew against a Jew as the sole witness in a case which would obligate the Jew to pay remuneration to the non-Jew; however, to avoid a *chillul Hashem*, in certain circumstances it is permitted (*Choshen Mishpat* 28:3).

Part 4: Working for the Government

Many Jews work for government agencies responsible for taxes, customs, and other financial or legal matters. My student,¹⁸ employed as a deputy attorney general, quickly found himself faced with an unpleasant dilemma: could he prosecute fellow Jews if his job demanded it? Others grapple with similar conflicts – their jobs require them to report violations, but by doing so, they would be handing other Jews over to the secular authorities. Is this *mesirah*?

***Hormana D'malka* - acting under the king's orders**

The *Gemara* relates two instances of *Tannaim* who found themselves reporting Jewish transgressors to the non-Jewish government.

Rabbi Elazar, the son of Rabbi Shimon, observed a government official arresting thieves. These thieves would be sentenced to death. Rabbi Elazar questioned him about his system for making arrests: how did this officer know that he was in fact taking in the right people? Might he actually be arresting innocent men? The officer replied that he had no choice – this was his job, and he was acting under the king's orders (*hormana d'malka*).

Rabbi Elazar gave him an interesting tip for making sure he only apprehended guilty men. He advised him to make the rounds of the taverns four hours into the day, during the late morning. If he noticed a patron falling asleep over his drink, he should conduct inquiries. If the sleepy patron was a Torah scholar, he could assume that he had been up early learning Torah, accounting for his exhaustion. If the customer was a day laborer, he had probably been up early for work, another legitimate reason for fatigue at that time of day. If he was a night laborer, he also had good reason to be tired. If he did not fit into any of these categories, however, the officer could assume that he was a thief, and take him into custody.

The advice was good, and word got out that Rabbi Elazar had a knack for weeding out thieves. The government promptly pressed *him* into service as a policeman arresting suspected offenders. Rabbi Yehoshua ben Korchah sent Rabbi Elazar a message expressing his disapproval: “You are vinegar, the son of wine [the unworthy son of a worthy father]. How long will you continue handing over G-d's people to be executed?”

Rabbi Elazar's response was, “I am weeding out the thorns from the vineyard,” a reference to Jews who had violated the law by stealing. Rabbi Yehoshua ben Korchah replied, “The owner of the vineyard will weed out his own thorns” – the Al-mighty will take care of the lawbreakers Himself, without Rabbi Elazar's assistance (*Baba Metzia* 83b).

In the second instance, Rabbi Yishmael ben Rabbi Yosse held a similar government position. Eliyhau HaNavi rebuked him, saying, “How long are you going to give over Hashem's people to be executed?” Rabbi Yishmael replied, “What can I do? I am responsible to the government, and acting under orders (*hormana d'malka*).” Eliyahu

¹⁸ See above, “Part 1: What is *Mesirah*?”

HaNavi told him, “Your father fled to Asia; you should run away to Ludkia.” In other words, the prophet told him, skip town to get away from the job (ibid. 84a).

The *Beis Yosef* recounts these two incidents, and points out that we cannot conclude that Rabbi Elazar and Rabbi Yishmael, two saintly *Tannaim*, acted with no basis in *halachah*. However, he writes, specifically because they were righteous *tzaddikim*, they of all people should have had no hand in the execution of Jews for offenses not punishable by death under Torah law. This is why they were compared unfavorably with their fathers – their behavior was not compatible with their fathers’ level of piety. Had they been totally wrong the *Gemara* would not have minced words. We cannot say that these great people were violating *halachah*, G-d forbid, writes the *Beis Yosef*, but their actions were a violation of *middas chassidus* (pious practice).

Another proof that Rabbi Elazar and Rabbi Yishmael were not violating *halachah* is Rabbi Yishmael’s response to Eliyahu HaNavi: “What should I do? I am acting on government orders,” to which the prophet replied, “Get out of town.” If Rabbi Yishmael’s actions had been outright forbidden, it would have been pointless for him to argue in his own defense – he should have allowed himself to be killed rather than sin by informing on fellow Jews.

The *Beis Yosef* concludes that based on a responsum from the *Rashba*, one who is appointed by the king or secular government and conducts himself in keeping with secular law is acting on government authority to enforce necessary laws (*Choshen Mishpat* 388).

In light of this background, three recent *Achronim* discuss whether it is permitted to take government jobs which could require a government employee to inform against fellow Jews.

No. 1

***Shevet HaLevi*: Permitted but not ideal**

We cited the *Shevet HaLevi*’s responsum (Approach No. 2 above) concerning employment with the tax authorities: is it considered talebearing to hand over a fellow Jew who violates the law, or is it permitted as a matter of *dina d’malchusa dina*, adhering to the laws of the land?

He rules that tax regulations fall under the principle of *dina d’malchusa dina*. Concerning reporting tax evaders, he cites the case of Rabbi Elazar ben Rabbi Shimon as proof (*Baba Metzia* 83b). Rabbi Elazar ben Rabbi Shimon turned thieves over to the non-Jewish authorities, and his actions were permitted because he was acting under the auspices of the government.

And yet, although it was technically permitted, Rabbi Yehoshua ben Korchah chastised him, saying “How long are you going to give over G-d’s nation to be executed?” The problem here, and in the case of Rabbi Yishmael ben Rabbi Yosse, was that the people they apprehended were in danger of being executed by the secular authorities.

Generally speaking, it is a basic halachic principle that *dina d'malchusa dina* – the law of the government is law, and one may act on the king's behalf. However, he continues, it is certainly not an ideal first choice to accept a position which requires informing on fellow Jews, even if it is technically permitted to do so. Rav Wosner concludes that accepting such a job is not *mishnas chassidim* (Responsa *Shevet HaLevi*, vol. II, 58).

No. 2

Igros Moshe: Permitted, but only barely

Rav Moshe Feinstein was asked about accepting employment as an accountant or auditor for the government. On the job, the accountant is likely to review the tax returns of fellow Jews who misreported. The information would go to the authorities, with him acting as the informer, and the penalty imposed on the offender would be more severe than mandated by the Torah for a similar offense. Is it permitted to take such a job?

Rav Moshe writes that any accountant employed in this capacity will pick up on the fraudulent information. If the questioner does not take the job, someone else will – it is going to happen in any case. The person who submitted the questionable tax returns will be penalized no more severely if the questioner takes the job than if someone else does the audit, so he has not caused him any harm. Therefore, this type of work is not forbidden.

However, Rav Moshe points out a critical consideration which may prohibit taking such a position. An employee at the IRS or similar agencies applies for the job on his own – no one is forcing him into a situation where he must inform against another Jew. Therefore, taking such a job of one's own initiative may be forbidden.

Nonetheless, Rav Moshe lists grounds for leniency:

The accountant's job does not consist exclusively of picking up on fraudulent returns. When he begins his review of any particular return, he does not know that it will be problematic. His job is to go over the returns in general; in the process, he will also discover fraudulent returns.

Because the job is not designed specifically to catch frauds – although it does happen – and that is not the job's main focus, Rav Moshe writes that it is not forbidden to accept such employment. As far as reporting questionable findings, he rules that at that point, the accountant is an *anuss*, compelled by circumstances – in this case, the terms of his employment – and he has no choice but to report his findings.

As we see, Rav Moshe does not advise anyone to go into this particular line of work; he does, however, try to find possible technical grounds for permitting it when necessary.

No. 3

Mishneh Halachos: Forbidden

In a responsum on a similar question, Rav Menashe Klein directly disagrees with some of Rav Moshe's reasoning. He writes that one who works for the government tax department, discovering who has not paid his taxes, or has not paid enough in taxes, and must then report him to the authorities, "is literally a *moser*, G-d forbid."

For example, he writes, an auditor may be given ten files to review. Five of these files may belong to Jews, and of these, one or two may have irregularities. He reports them to the authorities, thereby causing a fellow Jew financial loss. At times this can mean the loss of *all* his assets, and may even be life threatening. Rav Klein, writing in 1971, described a notorious case that had taken place a number of years earlier. A wealthy person was apprehended for tax evasion. He was tried in court and lost all of his money. He was then confined to a mental asylum and died there. This was one well known incident – certainly, he writes, there are others like it. Even if the case will not result in loss of life but does cause financial loss, the accountant is a *moser*.

The *Mishneh Halachos* goes on to say that it is incorrect to argue that it is permitted to take the job because the files will be audited and the fraudulent return will be caught and reported in any case, regardless of who the auditor is – whether it is the questioner, a non-Jewish employee, or an apostate Jew. As we saw, this was one of the rationales suggested by Rav Moshe to permit taking the job. The *Mishnah Halachos* disagreed, for two reasons:

First, he writes, who is to say that another accountant will be as quick to pick up the problems in the return? His review might not be as meticulous, and he might not notice it.

In addition, files for auditing are selected at random. Who is to say that another accountant will select precisely that file? He might never even see it. And even if it were to happen that he did indeed review the specific problematic file, the fact that another auditor will review the file and report the individual in any case does not permit the questioner to be the one to do it – he is a *moser* nonetheless.

He cites the *Gemara's* account of Rabbi Elazar ben Rabbi Shimon and Rabbi Yishmael ben Rabbi Yosse. Even though they were working for the government, their actions were criticized. When Rabbi Yishmael justified himself by saying that he had been forced into it by the government, Eliyahu HaNavi instructed him to flee in order to evade the job, even though he had been forced into it unwillingly.

In Rav Klein's opinion, a Torah Jew should not work for the government in this capacity, unless he can avoid auditing the files of fellow Jews. Even then, he concludes, it is preferable not to get involved in this line of government employment at all (*Mishneh Halachos*, vol. VI, 313).

(See also Responsa *Teshuvos V'Hanhagos* 3:476, for a fourth approach to our question of taking a job with the tax authorities, and Rav Sternbuch's distinction between Israel and governments outside of Israel.)

The Bottom Line

Mesirah is clearly a serious prohibition: “A *moser*... descends to hell and is judged there for all eternity” (*Rosh Hashanah* 17a). It is also clear that the prohibition does not apply in all situations, across the board.

When is it permitted to inform against a fellow Jew to the secular authorities? Any analysis of the question depends heavily on the differing opinions of the *poskim* as to when the prohibition applies, and on the specific facts and circumstances of the case at hand.

As we discussed, the *poskim* recognize a number of exceptions to the prohibition against *mesirah*. For the most part, the *heterim* are based on the same principle: if the Jewish community and the *beis din* are unable to deal with a danger or a threat, especially to the community as a whole, it is permitted to turn to the secular authorities, who do have the power to prevent or eliminate the danger or the threat.

The *poskim* often weigh the severity of the prohibition of *mesirah* against the harm being inflicted by the perpetrator. Harm to the community more easily permits informing against the perpetrator, as does serious harm to an individual, including physical and/or sexual abuse.

Any *heter* to inform assumes that *beis din* is unable to restrain the offender, making recourse to the secular authorities the only practical solution. A competent halachic authority should be consulted in every instance.