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"RABBI & DOCTOR: SOME PARALLELS"

by

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The Rabbi and the physician, both traditionally honored personalities in Jewish society, represent two concepts always sought after and admired; spiritual health and physical well-being. It may be instructive, therefore, to sketch some of the parallel ways in which the two vocations are treated in Jewish law, both as functionaries in society and as human beings.

In ancient days, both Rabbi and doctor were united: The Kohen was also the one who examined the Israelite to determine the nature of his plague, such as tzaraat (usually translated as "leprosy"). The reason for this is not only because they were medically primitive and underdeveloped, but for basic philosophical reasons: Psychological and physical integrity of man. The dichotomy of *נפש* and *גוף* (2) is not an absolute bifurcation (gnostic). Hence the importance of *נשמת חיה* (and its emphasis on immortality).

Perhaps the differentiation starts with Ezekiel, who was both prophet and Kohen in exile: *והיה כהן ונביא*.

At any rate, as civilization becomes more complex, a differentiation functions. Today, ~~with~~ a more organismic, ~~and~~ holistic view of man, and a less atomistic view, leads to a greater harmony of ends. Of course, methodologies and means differ, but one must realize that man is one, a whole, and each profession can make its greatest contribution only when ~~each profession~~ appreciating the integrity of man.

It is not insignificant that both RABBI & DOCTOR mean the same thing: TEACHER! (Doctus - Latin: teach)

Also of importance is the use Maimonides makes of the physician as a metaphor for the spiritual mentor. So ( *אשר* *הוא* *הוא* ) he advises one of unbalanced character to seek help:

*אשר הוא רופא הרוח, ויכבדוהו כרופא*

Maimonides thereafter applies basic medical principles to character therapy. While the source for this analogy may be Greek -- in The Republic, Plato uses the physician as the model of a rational ruler (and YHL, in turn, uses the rational ruler as a model for the wholesome personality) -- The source for this is equally Jewish:

Hosea (14:5) *אני רופא*

In both the above proofs, there is a fundamental, subjective ambivalence: On the one hand, there is the fear of risks; on the other, excessive boldness in taking chances.

In medicine:

בחי"גא, ב"ק כ"ה ו"א: "ורכא ירכא" - גניא צבי רבי יסמאאל  
מכאן שנתנה רשות ערובא עכבאית

Rashi comments: The Torah suspends a quietistic assumption and

permits <sup>יד</sup> ~~רפואה~~: ולא אמרין בחמתא חדא עאידהו... (Even in later

generations, the problem bothered the Amoraim, especially רב אחא,

who lived in the middle of the 4th century: Ber: 60a)

The TUR adds a psychological element to the theological:

אלא יאמר מה לי לעצור הזה, שחא אטעה ונמלאי הו"ל נכסות דשעל - ויהא שיצהר  
מאיז מאוז כמו שראוי להבהר בדיון נכסות (טור י"ז ס' ע"ו)

Having established רשות, there automatically takes place

the next step: Mitzvah! So, the TUR (ibid.) adds:

ומצוה היא ובכלל בקולן היא והצריך ה"ל משיבא

~~What~~ (What Mitzvah? There are several opinions in the Rishonim:

וח"י אהם - בקולן; השבת אבדה; לא תעמז ע"ז צ"ח וע"ק

THE RAMBAN, (תורת האדם), himself an MD, adds reassurance to the

physician: since it is also a Mitzvah, therefore אין ע"י עח"ל כלום, שאם  
מתנהג בהם בשורה, ע"י דעתו, אין לו ברפואות אלא מצוה דוחמתא  
בקצו ערכו, ע"יבה אכסיה עמאעה

Hence, the double element of רשות - מצוה has a subjective coordinator:

it is not too fearful, not too bold; it's timid and rash.



Compare to RAB'T - in sense /"3 - Talmud A.Z. 19b:

מאי דכתיב "כי רבים חללים הביאה" - זה תלמיד שאל הקדוש להוראה  
ומורה; "ועלמין כל הרוגה" - זה תלמיד שחזק להוראה ואינו מורה.

A Rabbi must walk a thin line, otherwise he is guilty of murder!

And ר"ע says of a physician: ... אמר מונע עצמו - ה' ש"ס  
ומהו לא יתעסק ברבואה אלא הוא בקי... שאל"ב ה' ש"ס

So, each lives in a tension that is inherent in each vocation.

In bringing this element to a close, I will make one reference  
to classical sources of Western civilization (Thomas S. Szasz,  
"The Moral Physician" The Center Magazine, March/April 1975):

The main roots of modern medicine are Greek and Roman; the Greeks  
are concerned with how to treat the patient, the Romans with not  
hurting him. In a sense, both are combined in Judaism: ר"א

refers to the <sup>Roman</sup> concern of how to treat a patient (on the basis of  
financial obligations of a doctor if he abuses his patient); Mitzvah  
refers to the Greek concern of not hurting a patient (encouragement  
to practice as a religious responsibility).

>? For QUANT p.v. meager material: only one ר"א in ש"ס - ע"מ

only three ר"א . Laws Rabbinate? - None!

The question of compensation to physicians has a long history in both Greek and Jewish tradition. In the Republic, Plato has Socrates ask: "Is it (the physician's) business to earn money or to treat his patients?" The answer was clear - if naive: "treat patients."

The same question is formulated quite differently in our tradition. We see it as a Mitzvah, and ~~have invoked the sacred~~ here a sacred principle is invoked: *מי איך בחינם אדם בחינם* (Ned. 37a)

This formulated \_\_\_\_\_: (*גמ' פ' ט"ז*)

*המורה הנקדה מחברו ... מנחם יצחק*

Yet, the Mishnah already recognized physician's fees:

*גמ' פ' ט"ז - מי איך בחינם אדם בחינם* (BK 8:1),

i.e. medical bills. The Gemara adds: *אדם בחינם - כל מה שיש לו*

A doctor who takes no fee is worth every penny of it! (story - Rabbi sent *שם* ...) So there seems to be a contradiction.

How can it be resolved? There are two answers: The least known is as follows:

*Hebrew*

Most popular is the principle of שכר בלעדי -- one accepts compensation for other profitable activities taken away from.

The nearest analogy to the case of doctor and Rabbi is - ר"ב. Here too is the problem of מה אנו מקבלים על אחריותנו. Mishnah (בסו"ט פ"ג) הניחא שכל ר"ב רשאי. But Baraita (Ket. 105a) considers ר"ב as מוכר, but ר"ב רשאי. The Talmud reconciles: for one side only - ר"ב רשאי; שכר בלעדי which is מוכר ר"ב (i.e. can't prove amount) (and both sides) - ר"ב רשאי but he's מוכר; שכר בלעדי - OK.

In Babylon, in the days of the Geonim, began institutionalized Dayanim, and שכר בלעדי was assumed by the congregation. Other countries soon followed. (Proof: רמב"ם - date from 12th Century)

However, in the Middle Ages, the problem became quite sharp. Rambam (מהר"ם - רמב"ם) rejects the idea of paying judges and criticizes it harshly as מוכר דין. He permits payment only to Rabbis \_\_\_\_\_, superannuated, etc. But the Rambam was attacked by גאון (1361-1444) (מהר"ם, רמב"ם, רמב"ם) - who said that the Rambam could afford to be independent since he was קדוש חכמה and also because he made money -- as a physician!

Same *שם* adds (in his *ענינים של אכילה*) that he was accepting a Rabbinical salary reluctantly since he had prepared himself for a career in medicine -- and that is insufficient in Algeria and Morocco!

A Rabbi needs *סמיכה חכמים*. Later on *הוראת היראה* or *הוראת היראה* was given by *הרמב"ם* and *הרמב"ם*. Then, by other Rabbis; Yeshivot.

In the same way, a doctor needs *ר"ב*. However, the *ר"ב* is not considered a necessity in the technical sense. Actually, the Beit Din is an authoritative body. So, *ר"ב* decides governmental permission or license is adequate.

So, it is similar. But ~~one~~ there is one historical difference. For a long time, Semichah was given only to married men! (So, R. Jonathn Eibeshitz, in a letter to Moses Mendelsohn ~~at the age of 32~~ who was 32, and a *בן חורין*, writes that he can't grant him *מורה* title because he is a bachelor! See *פירוש*, *הנדרש, פ"ד*)

JURISDICTION: Rambam (Sanh. 4:14) - Dayan authorized by Beit Din which is in Israel has no authority in *ארץ ישראל*. Hence, a doctor recognized in one country (or State) - is unauthorized



elsewhere. ( 3 יחידא אלא - "חובא בהלכה", עמ' דס"ה )

MALPRACTICE: The basic principles formulated in Shulhan Arukh (336:1)

are: ואם חובא אלא ברשות ב"ק ח"יב בתשלומין אפילו אם  
הוא בקי ואם חובא ברשות ב"ד ואם והציק טאח מצונו  
אדם וח"יב בד'נו שמים ואם האית ונידע לו פסק, גילתה  
על ידו.

The moral judgement (צ"ן מסור לשמים) is explained by מג"א as:

God knows whether (NL: so, if one can prove his  
malicious intent, he would be ח"יב.) Basically, this is a very  
liberal policy in favor of physicians.

One of the sources of this view is: Tosefta (Git. 3:13):

חובא אלא שריבא ברשות ב"ד והציק - בשוגג אלא, במצ"צ, ח"יב -  
מכאן ויקון הכולם

The last phrase is explained by מנחת כבוד (ad loc.) as:

חובא אלא שריבא ברשות ב"ד - i.e. a more punitive mal-

practice law which is counter-productive and injurious to public  
health.

The same point was reiterated by RAMBAN, who relates the

doctor to the ~~Dayan~~ Dayan. ופא יופא שטא יאמר חובא מה  
אי בלעזר הנה שטא אפיה ונמצא היום נכסות באיך  
אפיך נתיי לו ראות לרפואה

However, Ramban continues by quoting contradictory Tosefta



(Mak. 2:5) that *ה' (יהציק) יאסר*. Hence,  
there is punishment for *שיגה*, i.e. exile.

Answer: *סבוכא כצ"ן, שמינה לדין, ואם טעה בלא הודע  
אין ענין בניה בלא, כצא מרן שמי יאמר הצ"ן מה' לי בלעזי דנה... אין  
לצ"ן אלא מה שבינו הוא.  
וכ' אל כאן מלינו אדם כסור מתעוררין, אלא שאין כסור מצ"ן שמים  
ם 3 משום הנצק ויגלה על המיתה*

Ramban's point in this passage (see complete text in *מורה נבוכים, חלק א', פרק כ"ג*)

is that in all cases MD, like Dayan, is exempt from court  
action. But, as far as moral culpability is concerned, all turns  
on his later awareness that he had indeed erred. If there is no  
such awareness, his conscience is clear - If there is, he ought  
to pay damages and accept exile if he caused death. This is the  
decision which is codified in Sh.A. mentioned above. The problem  
that confronts us here is that according to Ramban, on the basis  
of the Tosefta, the law on physicians is more severe than the  
equivalent law of, say, the agent of the court who, in the process  
of flogging one guilty of such penalty, killed him. In the latter  
case, no ~~ex~~ exile is mandated. One authority (*מנחם נדבכי*,  
cited in *אורח חיים* to Sh.A., ad loc.) would have it that the  
court's agent is fulfilling a mitzvah, whereas the death of the  
patient nullifies the mitzvah ~~and~~ quality of the physician's

ministrations. However, this would reduce the medical services of the physician to a success-criterion, and vitiate the whole concept of mitzvah ~~quality of~~ as encouraging the physician to overcome his hesitations and practice his profession.

More compelling is the interpretation of Arukh ha-Shulhan (Y.D. 366:2) who uses the criterion of negligence. Only if the physician was negligent or prepared himself inadequately for the case is he morally culpable (if licensed -- for otherwise he is liable to damages in a court of law) and must he go in exile to the city of refuge if the patient died. If, however, there was sufficient study and no negligence, no exile is required and the physician is to be treated no worse than the agent of the court.

Conclude this point by quoting ~~from~~ a contemporary scholar,

R. Eliezer Waldenberg:

חוב קדוש בל הנוכח שהיו צה"ר  
מאזר של איזה ספק שהא בדרכי האפוס - שהג'ם ע"מ  
אדום ממנו יאא שהג'ים בפני האשע'ים - וכ"ן  
ה' 13 אל ה' 13 ...

So, both Rabbi and Doctor must consult in case of doubt.

I am now speaking of the Rabbi not in juridical function or even primarily in his capacity of scholar - but as a communal

leader, pastoral rule. (Too often downgraded by overemphasizing Halakhic function; yet these are very important - even for אדם 'על 'על).

Rabbi and Doctor often serve as the CRUTCH for others.

Patients and congregants often come with feelings of helplessness and rely on us -- too much. This implies a tremendous responsibility - to help - but also to tell the truth, and not exaggerate our own powers as unannointed saviors. We must beware of two extremes - of cruelty and of paternalism, of distance and closeness, i.e., *מרחק / קרבה*. Also, there ~~are~~ is the occupational risk of coming to believe myths some people entertain about <sup>the</sup>omniscience <sup>AND</sup> omnipotence of a Rabbi or Doctor,  $\Rightarrow$  megalomania...

Ultimately, each - Rabbi and Doctor - must recognize that this organic being we call man, this psycho-physical organism to whom we each minister in different ways is, as said at the very beginning - a whole being, not a fractionated one; and above all - a *אדם אחד*. This awareness heightens <sup>+</sup> sharpens the ~~timidity~~ tension of timidity and boldness...

If one succeeds, both Rabbi and Doctor are most honored callings. Once, ~~the~~ Jewish mother wanted her son to be a Rabbi; today, a Doctor. Both are "Jewish" professions. (In Jewish Center -

*היהודי, רב, רופא, אדם אחד.*)



But if one should fail, the risks are great indeed. ~~xxx~~ A

Rabbi who fails causes a *חטא חמור*, which *אצל* compared to the

spilling of blood: *כי רבים חטאים הכילה ועצומים כל הרגיה*

A doctor who fails is guilty of *אכילת דמים*.

Each must attain genuine humility - the golden mean between  
timidity and boldness. A Rabbi who fails is *פוגע בגאון השכינה*,

he desecrates God. A Doctor who fails, desecrates the Image of

God. What the Talmud said of a Doctor can be said of a Rabbi

as well: *אם שבריו באים לך הניחם* - If you consider yourself *טוב*,

better than you are, and do your work without sensitivity, without

humility, without responsibility, and without reverence for those

to whom you minister -- Hell is too good for you.

But if you pursue your labors with sensitivity and humility  
and responsibility and reverence - then what is said of a Rabbi -

*וה"ו עולם נאם במדני* - may be said of the physician as well: *אומר ומה*

You have achieved Paradise, *א-עולם* - in this world, in here-and-

now; *במדני* - in your very selves.

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