

"THE ETHICS OF SAFETY"

The national and international tragedy reported this summer concerning thalidomide - a hypnotic drug responsible for the deformities of a large number of babies born here and abroad - is a subject which should be discussed in every quarter and level of society, from government to the press, from medical groups to the parlors of ordinary citizens.

And certainly the pulpit should not refrain from offering ^{what it} ~~which~~ is considered to be the judgment of religion. I refer not only to the significant question of whether it is permissible to destroy a deformed fetus, which should be treated with the utmost gravity and never decided impetuously, but even more to the profound ethical issues involved in the circumstances which made possible the use of this drug in the first place.

The Torah tells us, in the portion we read this morning, Ki tivneh bayit chadash, if you build or acquire a new home, then v'asita maakeh le'gagekha ve'lo tasim damim be'vetekha, "thou shalt make a parapet for thy roof, that thou bring ~~not~~ blood upon thy house, if any man fall from ^{thence} them."

It is accepted in our rabbinic tradition that this is a broad biblical category which includes every manner of public protection and safety precaution. For instance, included in the mitzvah of maakeh is the law that a man may not keep a sulam rifo'a, a weak ladder in his possession, or that he may not maintain an uncovered ditch in his yard, lest someone by accident use the ladder or fall in the ditch and sustain serious injuries. These, too, are included in the law of maakeh or the parapet about the roof. This may come as a surprise to some to learn that regulations which in the modern world ordinarily are preserved to ^{for} the municipality are included in the realm of religion. But this indeed is the nature of Halakhah, that it covers all aspects of life, and therefore it contains as well an ethics of safety.

And indeed it must be so, for it is the logical continuation of the whole biblical philosophy of man. If, as Judaism teaches, man is created in the image of God; if Torah was given so that man shall "live by it, and not die because of it"; if, as the Talmud teaches, "he who destroys one's soul is considered as if he had destroyed a whole world, and he who saves one's life is regarded as having saved a whole world"; if human life is unutterably precious and unique; then it is equally true that v'asita maakeh le'gagekha, that mundane and prosaic safety requirements are part of the divine revolution. Then this is true that a roof must be ~~regarded~~ guarded with a parapet; that a ~~sess~~pool must be covered, lest such tragedies that we heard of this past summer recur; that elevators in Manhattan must be made secure; even that observant Jews must install safety seat belts in their automobiles. For if life is sacred, then safety is a sacrament. This is Torah and this is Halakhah - and the law of maakeh is cut from the same cloth as kashruth, shabbat, and any of the hosts of other mitzvot. And it is this same life-affirming mitzvah which requires drug manufacturers to maintain maximum safety precautions for the protection of the public.

During 1961, thousands of deformed infants were born to mothers who took thalidomide at a particular time. Because of the permissiveness of our laws, we have no way of knowing how many more such tragedies may yet occur from this drug which has been experimentally used in the United States since 1956. If not for the heroism of Dr. Frances Kelsey, who has rightly been honored by our government, the disaster would have been far more wide-spread. Even as is, as long as five to six years ago a whole crop of deformed babies was born in one block of New York City, and there is reason to suspect that thalidomide was responsible. Worse yet, statisticians, according to a recent issue of the Saturday Review, are afraid that by next spring another 30 to ^{such} 40 children will be born to mothers who unsuspectingly and unwittingly took this drug.

The ethical issues as such that they represent one of the most damning cases against our form of society and our way of doing business. It is a blot on the

record of free enterprise and a restraint on those who sincerely and genuinely believe that government should be limited in the extent of its intrusion in the affairs of the day to day life of our citizens.

For we have here a scandal of shocking proportion: the thoughtless, heartless, and consciousnessless pursuit of profit by a concern, deaf, dumb, and blind to the agonizing prospect of armless, legless, and earless infants born to innocent parents. And the question of how such things can come to pass - and there are at least three other current cases of a similar nature being investigated - and what it tells us about our national ethics and the extraordinary value our society places upon business - these problems in the long run may prove even more crucial than the question of horeg et ha-ubar, the destruction of a deformed foetus.

For the drug company, we are told according to the Congressional Record, relentlessly pressed Dr. Kelsey to rush approval of thalidomide. Over 50 representations were made to Dr. Kelsey, and they included a warning that they would go over her head to her superior, ^{in and} ~~and~~ a veiled hint of liable action against her. She was so harassed and badgered, that it required of her great stamina, courage, and bravery to which stand the onslaught, ^{note -} ~~note -~~ courage which marked her as a true modern heroin. But besides the callous indifference of the company, where was our government? England and Germany ~~very quickly~~ withdrew the drug as soon as they learned of its potential danger. Why did the responsible agency of our government wait for about six months before withdrawing the drug from the market?

There is a cry that goes up in our lands, and it adds up the words of the bible: ve'lo tasim, damim be'vetekha, bring not blood upon thy house. Do not subvert life ~~and~~ in favor of finances. Do not drain the life ^{is} blood from the hearts of innocent parents into whose homes comes not a bundle of joy but a caricature of a human being.

Some of these things will be taken care of by the legislation recently passed under the prompting of Senator Kefauver and by the national outcry as a result of the tragedy. But there are a number of ethical issues involved besides the sanctity of life, and they include the rights of the individual. Perhaps many of us may not realize that according to our present laws, drug concerns and physicians and researchers may test drugs upon patients without their knowledge and consent. We must demand that an end be put to this system where we can become guinea pigs in the hands of unknown outsiders who ^{play} plague ^{god} with the population, choosing at will and at random who will be the subjects of their test.

Certainly medical experiments must be carried on. Certainly there will always be risks involved. But the patient must have the option of choosing to take those risks by being informed of as much possible information as he can understand in advance. It must not be left to the ^{diminutive} dominative consciences of concerns whose primary interest is the advancement of their business. Ve'lo tasim damim be'vetekha.

There is yet another pernicious consequence of the entire affair. The Talmud hinted at it when it included in the concept of maakeh the prohibition to raise a kelev ra, a rapid or dangerous dog, in one's possession. For the Talmud maintained that not only a kelev ra which ~~may~~ bite a bystander ^{is} forbidden, but any unleached animal may not be kept in the home. The reason the Talmud gives is, she'lo yivahalu mi-kol nevi'ehato, that bystanders may be frightened by the dog's bark. Any the Talmudic concept is that not only is a bite injurious, but even the fright occasioned by a bark must be avoided; it too is considered an injury.

And indeed fright and suspicion are part of the side effects of the thalidomide scandal. For, unfortunately, a mood and atmosphere of suspicion and fear has been created. Who knows how many lives will yet be lost because some patients, with the searing memory of thalidomide behind him, will refuse to take a drug which is helpful to him and harmless in every way?

We live in an age when the dangers are far more prevalent in the past. Our machines, our drugs, and our structures are more complicated than ever, and the dangers to human survival continuously mount. And perhaps here the choice by the Torah of the example of a roof ^{as} an instance of the Jewish ethics of safety is ^pro^thetic. For if society can be envisioned as a bayit, a house, then, as a result of the technological progress in modern times, society today is no longer a hut but a bayit chadash, ^a new house in the form of a skyscraper. ~~Our~~ ^{gag}, or roof, has been raised to unprecedented heights. The structure and complexity of society is ^{continually} ~~continually~~ growing higher. And the higher the roof, the greater the descent, and the more hazardous the potential fall. The whole enterprise of merely living and surviving nowadays is more risky and more difficult than ever. Hence the need for more circumspect attention to safety is more urgent than ever.

Once upon a time, a man who was trigger happy could ^{kill} ~~one~~, two, or a dozen people. Today the same mentality might be responsible for setting off a hydrogen bomb and destroying millions. Once, a sadist might torture three, four, or five victims; today a number of them have been responsible for destroying six-million Jews. In days past, an irresponsible baal agalah, or Wagonner, could cause three ^{or} four people to ~~hurtle~~ ^t to their death because of the mad way in which he drove the wagon. Today the same mentality placed in the cockpit of a Jet airliner can cause ^{the} ~~a~~ death of over one-hundred people at one time. Once, in days past, a depraved mind with a penchant for illi^cite literature, could corrupt the minds of a few youngsters; today, with ~~television~~, printing, and other media of mass communication, smut has become a national phenomenon and disgrace. Therefore the concern of Torah, because it is the concern of the Creator of all life, is that while enjoying the benefits of progress, we not fall prey to its hazards, whether from nuclear fallouts or food additives, from poorly built buildings or industrial smog, from pilots asleep at the controls, or elevators poorly inspected. The higher the roof, the harder the fall, and the greater the need for the "parapet about the roof."

In his Code of Law, Maimonides declares that upon making the maakeh on the roof, one is required to recite a berakhah, a blessing in the form: asher kidshanu Ge'mitzvotav ve'tzivanu la-asot maakeh. This is somewhat surprising, not only because through a non-Jewish mind such activity seems outside the realm of pure religion, but also because Maimonides himself maintained that a purely protective or hygienic measure to prevent sakanah, danger, does not require a blessing. Nevertheless, the construction of a maakeh does require a berakhah - for the parapet is a visible symbol and a concrete expression of the total concern of Torah for human life and limb; it is an eternal symbol of God's love and compassion for humanity. For little, in the view of Torah, is more sacred than human life. All Torah is for us a source of berakhah or blessing. For, etz chayim hi la-machazikim bah, "it is a tree of life to them who grasp it, and all who uphold it shall be rendered happy."