



Jewish Life

THE PRIVATE LIVES OF PUBLIC FIGURES

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The Private Lives of Public Figures

A Jewish View on the Kennedy-Manchester Controversy

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THE assassination of President Kennedy was a traumatic event in the collective consciousness of the American people and, perhaps, of the entire world. The profound psychological consequences of this senseless tragedy have yet to be experienced in their entirety. But in recent weeks all the emotions, private and public, that have adhered to the assassination and the personality of the martyred President have been aroused in the controversy that has developed about the publication, in book form and in magazine serialization, of William Manchester's "The Death of a President." Mrs. Kennedy and her family have attempted to stop publication of this book, or at least to delete certain passages they regarded as offensive or in bad taste; the author and publishers have pleaded freedom of the press and the right of the world to know history in all its significant and intimate details.

To a great extent, the controversy turns on the determination of certain facts, such as whether or not an authorized representative of the Ken-

nedy family tacitly approved the text before publication. In recent days and weeks, it appears that the American publishers have come to an agreement with Mrs. Kennedy, but that German, and possibly Formosan and other, publishers will print the uncensored text of Mr. Manchester's book.

Such questions of fact and of contractual obligations shall not concern us in this essay. More important for the sake of the light it may shed on related issues in the present and in the future is the larger question of—as a national news-weekly put it—the rights of privacy versus the claims of history. Which of these two should take precedence: the right of a person to his own privacy and to guarding any information about himself from the prying eyes and ears of his neighbors, or the right of all mankind to know the details of the great events that shape the history of our times and possibly of generations to come?

What we shall here attempt is a Jewish view on what might be called the ethics of information, especially as it concerns the two competing

claims of personal privacy and world history. It is understood that this is but a preliminary effort to derive a judgment from authentic Jewish sources. Naturally, I cannot make any claim to comprehensiveness; I present this essay primarily as the basis for further discussion.

Before proceeding to the essential question, let us dispose of the problem of the one versus the many, i.e., whether the rights of the individual are subordinate to the rights of the public when the two come into conflict with each other.

THE ONE AND THE MANY

IT IS the glory of Judaism that, unlike certain other religions, it stresses the obligations of the individual to the community, and gives these duties much more prominence than the individual's striving for personal salvation. Man is part of the community, the Jew identifies himself as part of a living organism called Israel, and the responsibilities of the one to the many are given their legal formulation in the Halachah, or Jewish Law, which constitutes the bulk of both Biblical and Talmudical literature.

Nevertheless, when the life and the integrity of the individual come into conflict with the demands of the group—whether community or nation—Judaism does not sanction the involuntary sacrifice of the individual in favor of the collectivity. Thus the Tosefta teaches (Terumoth 7:20):

If heathens said to a group of men, 'Surrender one of you to us and we shall kill him, otherwise we will kill all of you,' let them all suffer death and not surrender one soul from Israel.

Similarly, one who murdered by accident is, according to Biblical law, condemned to be exiled to one of the cities of refuge, there to be protected from the blood-avenger. If he leaves the city of refuge, he exposes himself

to death. Now, the Halachah does not require him to leave his refuge, and risk his life, even if *all Israel* needs him. The life of the individual, once again, is not subordinated to the claims of the entire people.*

Of course, this does not mean that it is a virtue to ignore the safety or well-being of the community, that it is forbidden for a man to lay down his life for his people or faith. Abraham risked his life for Lot, Moses for his brethren, and all of Jewish history is replete with luminous illustrations of martyrdom. It does mean that the community cannot *coerce* an individual to yield his life for its sake. The Halachah considers voluntary self-sacrifice on behalf of others as admirable piety (*midduth chasiduth*), but it does not *obligate* the individual to surrender himself for the sake of others. (See the comprehensive and fascinating treatment of this problem in Rav Kook's *Mishpat Kohen*, No. 143.)

This principle, denying to society the right to sacrifice the individual in order to preserve itself or enhance its welfare, applies not only to the *life*

* So Maimonides, *Mishneh Torah*, *Hilchoth Rotzeiach*, 7:8—*kol Yisrael*; our regular edition of the *Mishnah*, *Makkoth* 2:7 reads only *Yisrael*, but the Munich edition reads *kol Yisrael*—"all Israel."

of the individual, but to his dignity and honor as well. Thus the Mishnah teaches (Terumoth 7:20):

[So too] women who were told by the heathens, 'Surrender one of you to us and we will defile her, otherwise we will dishonor all of you,' let them all suffer defilement and not surrender one soul from Israel.

THE Halachah is based upon the fundamental Jewish conception of man as created in the "image of G-d," i.e., possessing certain resemblances to his Creator. The Creator, being not only One but also Unique, that is, incomparable and incommensurate, endows each of his human creatures with uniqueness. That which is unique, by definition, cannot be compared with anything else. The value of one human being cannot, therefore, be assessed as greater or lesser than that of any one or any number of other human beings. Quantity is irrelevant when judging human life. "Whosoever destroys one soul, Scripture considers it as if he had destroyed the whole world and whosoever saves one soul, Scripture considers it as if he had saved the whole world" (Mishnah, Sanhedrin 4:5). The human soul, possessing infinite worth and G-d-like uniqueness, cannot be subordinated to the needs of any other being or group of beings.

Hence, the problem which concerns us, that of the privacy of the individual as it comes into conflict with the desire or the right of the many to know history, cannot be reduced to a mere question of numbers. Although the claims of privacy are certainly less consequential than the claims of survival, the same principle is relevant:

the integrity of the individual personality may not be overwhelmed by the demands of the many.

We may add, *en passant*, that on the basis of this principle Jews ought to protest vigorously any attempt to perform medical experiments on patients whose consent has not been obtained in advance. Recent charges, in New York, that physicians have been performing such experiments on the poor and the mentally retarded, are alarming. Such deeds are outrageous, they scandalize the most elementary sense of morality, and no possible benefits that may accrue to society from such experiments are sufficient to permit us to risk the life or limb of a single individual.

Equally intolerable is the situation which prevails in many states in this country, and in a number of other civilized countries, whereby unclaimed bodies are considered *res nullius* and are released for anatomical dissection. The poor, the forsaken, and the lonely are thus submitted to post-mortem mutilation, while the rich and the comfortable may not be dissected without prior permission from the family or the person concerned before his demise. Judaism takes exactly the opposite view: the body of a person unclaimed by any relatives or friends must be buried immediately, and this obligation devolves upon the entire community, including the High Priest of Israel who otherwise may not defile himself even to his next of kin. Even in death, according to Jewish Law, the individual's rights are protected against all other claims; certainly no impersonal bureaucrat can ever be empowered to dispose of unclaimed bodies at his own discretion.

THE CLAIMS OF HISTORY

A KNOWLEDGE of history is indispensable to the full and proper use of the special advantages which a democratic society confers upon its citizens. The essence of a democracy is the freedom of men and women to choose between as many alternatives as are available to them in deciding the course and the conduct of their government. But "choice" is meaningless if it is unlearned. The more the voter knows about the alternatives, the more intelligent a choice can he make. In a sense, then, his freedom is directly proportional to his knowledge of the issues and the personalities amongst which he must decide. Now "history" may be more than just a record of "the facts," but certainly whatever interpreting and ordering the historian does must be done with events that occurred and people who lived and acted in a certain manner. Perhaps Ambrose Bierce was right when he defined history as "an account mostly false, of events mostly unimportant . . ." but surely the more accurately events are known, the more we can keep the account straight. To know what occurred at a time of great national crisis, how the principals reacted and thus revealed their underlying character, what the relations were between various factions of government, what subtleties proved significant and what did not—this is the stuff of which good history is written, and which intelligent citizens of a democracy consider when they choose their leaders.

Undoubtedly, a good part of the desire of the public to ferret out information about every aspect of the Kennedy assassination, including the most intimate and unspoken feelings

of the slain President's widow, is nothing more than rumor-producing curiosity about a family that came nearest to American royalty, compounded by a prying political voyeurism. But it is more than that; it is also a desire to know how great men measured up to the test in moments of rare crisis, where they failed and where they succeeded, what underlying motivations came to the fore in this emergency, and hence whether some of these same people can be trusted to guide the nation and its destiny in a future that no doubt will continue to subject them to great stress and trials of all sorts. In a democracy, the people have a right to such information, a claim to the history of their own nation.

From the Jewish point of view, a similar claim can be made for the right to a knowledge of the past, though not in such strictly political terms. *Maasey avoth siman l'vanim*—the biographies of the patriarchs are the paradigm for the history of their descendants. Far from being a collection of folk-tales, mythical epics, or Scriptural gossip, the Biblical narratives are the stuff of which Jewish ethics and morality are constructed. History, for the Jew, is *Heilsgeschichte*, sacred history, the record of the Divine Will intersecting the temporal order, the account of significant events leading to where the "finger of G-d" points. Israel has always been short on geography and long on history. As the account of the Divine quest for man, the response of the authentic saint and the elected people to that Divine challenge, and the chron-

icle of G-d's involvement with man, history occupies central importance in Judaism. In the Amidah prayer, the one benediction which requires full *kavvanah*, such that if one fails to concentrate properly the blessing is void and the entire prayer must be repeated, is the first, *Avoth*—the one blessing which recapitulates Jewish history and speaks of the Divine engagement with Abraham and his descendants.

Concerning communal leadership, the Talmud suggests that only such people be appointed leaders who have

"a basket of reptiles hanging on their backs," i.e., unsavory pasts, for only thus will they retain a measure of humility; should they turn arrogant, one can tell them, "look back!" (Yoma 22b). Obviously, then, even unfavorable facts about leaders and potential leaders must be known in order to make appointments of communal responsibility. The Torah itself is unsparing in reporting the flaws of its most cherished heroes and exposing them to criticism. In Judaism too, then, a good case can be made for reporting history honestly and fully.

THE RIGHT TO PRIVACY

JUDAISM has always recognized the right to privacy, as we shall later show from both Halachah and Aggadah. But as society becomes more complex, as people become more intertwined with each other, and with increasing urbanization, privacy becomes more precarious and the need to protect it all the more urgent. A thousand years ago, the Rabbis already sensed a need for additional safeguards to secure the right to privacy, and Rabbenu Gershom, "The Light of the Exile," enacted a ban on the reading of another's mail.*

In the great cities of modern times, privacy is even harder to come by. Yet without it, a decent social, psychological, and domestic life would be impossible, so many are our daily contacts. Perceptive observers have seen in the characteristic impersonality and

anonymity of apartment-house dwellers in our great urban centers, a vital defense-mechanism against the encroachment on their privacy. (See, for instance, Harvey Cox, "The Secular City," pp. 29-46; one may approve of his social analysis while taking strong exception to his theology.) Technologically, man now has the ability to destroy privacy completely and forever. Electronic snooping and eavesdropping have now been developed to a high art and constitute a grave menace. A news columnist has recently reported that, despite assurances by the F.B.I. and the C.I.A., President Johnson believes his own office and telephone to be "bugged," and the Congress is presently considering strong legislation in an attempt to outlaw such activities except in matters of national security. Clearly, if the right to privacy was always recognized, it is now absolutely vital to the safety and sanity of modern man.

* This *takkanah* is nowhere quoted in full, and it might well be older than Rabbenu Gershom; see L. Finkelstein, "Jewish Self-Government in the Middle Ages," pp. 171 ff., 178, 189.

THE HALACHAH

THE source for the right to privacy in the Halachah is the principle of *hezek re'iyah sh'meh hezek* ("viewing—or prying—is considered a substantial damage"), as developed in the first folios of Bava Bathra. Basically, this means that if two partners jointly acquired or inherited a tract of land, and decide to divide it and thus dissolve their partnership, each has the right to demand that the other share the expense of erecting a fence at least four cubits high, i.e., high enough to prevent each from spying on the other and thus violating his privacy.

Interestingly, the Halachah does not simply permit one of the erstwhile partners to build a fence for his own protection, and then require his neighbor to share the expense because he too is a beneficiary, but demands the construction of the wall so that each one prevents *himself* from spying on his neighbor. Thus, R. Nachman said in the name of Samuel that if a man's roof adjoins his neighbor's courtyard—i.e., the two properties are on an incline, so that the roof of one is approximately on level with the yard of the other—the owner of the roof must construct a parapet four cubits high (Bava Bathra 6b). In those days, most activity took place in the courtyard, whereas the roof was seldom used. Hence, without the obstruction between them, the owner of the roof could see all that occurs in his neighbor's courtyard and thus deprive him of his privacy. This viewing is regarded as substantial a *hezek* or damage as if he had physically invaded his premises. Therefore, it is incumbent upon the owner of the

roof to construct the wall and bear all the expenses, and so avoid damaging his neighbor by denying him his privacy.

Thus, the Halachah insists upon the right of privacy, and holds the violator of another's privacy guilty of inflicting a substantial damage. It is the responsibility of each individual not to pry into his neighbor's personal domain.

It should be added that while the discussion in the Talmud concerns visual access to a neighbor's domain, the principle may be expanded to cover eavesdropping as well. Thus, Meiri (p. 6 of the Sofer edition) decides that while we must guard against *hezek re'iyah* visual damage, we need not worry about *hezek sh'miyah*, aural damage. Hence, the wall the partners can demand of each other must be solid enough to prevent overlooking each other's affairs, but need not be so strong that it prevents overhearing each other's conversations. But the reason Meiri gives is not that eavesdropping is any less heinous than spying as an invasion of privacy, but that people normally speak softly when they think they will be overheard. Where this reason does not apply, such as in electronic "bugging," then obviously *hezek she-miyah* is as serious a violation and a damage as *hezek re'iyah*.

Even more relevant to the particular controversy under discussion is the specific question of the propriety of revealing a confidence. This certainly constitutes an invasion of privacy. I do not merely put my ear to the wall and overhear the idle chatter of a neighbor; I am entrusted with specific

information, and I then violate my trust and betray the secret. Here, the acquisition of the information was proper, but my publishing of this information is in question. How does Jewish law consider this?

Our ethical instinct tells us that this act is immoral. The Halachah codifies it as an illegal act by specifically including it in the prohibition of *lashon hara*, gossip. "If one tells a friend something, he may not tell it to another unless he has received permission" (*Chafetz Chayyim*, 10:6); and "if the speaker warned the listener not to reveal the information, then even if the speaker himself mentioned it publicly, the listener violates the law of *lashon hara* if he thereafter reveals it even casually" (*ibid.*, 2:7).

Thus, whether one encroaches on the privacy of another by acquiring information without permission, or by revealing it without permission, he is culpable according to the Halachah.

WE HAVE established, then, that the right to privacy is a legally actionable right, and that the victim can sue for damages. But when we move out of the realm of the Halachah's civil law, we find that the Halachah considers privacy not only a *legal right*, but also a *moral duty*. We are bidden to protect our own pri-

vacancy from the eyes and ears of our neighbors. The Talmud (Yoma 86b) quotes Rav as pointing out a contradiction between two verses. David says, "Happy is he whose transgression is concealed, whose sin is covered" (this is the Rabbinic interpretation of Psalms 32:1), whereas Solomon states, "He that covereth his transgressions shall not prosper" (Proverbs 28:13). The Talmud offers two solutions, the first of which is that David discourages the revealing of sins not publicly known, whereas Solomon encourages confession of sins that are already widely known. What is not known to others I may not reveal about myself. A man has the moral duty to protect his own privacy, to safeguard his own intimacies from the inquisitiveness of his neighbors. The Talmud (*ibid.*) records an opinion that once a man has confessed his sins to G-d on Yom Kippur, he should not confess them again on the following Yom Kippur—and applies to one who does so the verse, "as a dog that returneth to his vomit" (Proverbs 26:11). These are strong words, and reveal to us the contempt of the Rabbis for the indignity inherent in the loss of privacy—even one's own privacy, and even before his Maker only. What is at stake here is nothing less than *tzeniuth*, modesty in its broadest and most sublime aspects.

THE THEOLOGY OF PRIVACY

Tzeniuth means more than modesty in the moral or sexual sense. By extension, the term comprehends respect for the inviolability of the personal

privacy of an individual, whether oneself or another, which is another way of saying respect for the integrity of the self. Man is fundamentally in-

scrutable, in that, according to Judaism, he is more than just *natura* but also *persona*: he is possessed of a mysterious, vital center of personality which transcends the sum of his natural physiological and psychological properties. But not only *is* he mysterious, he also *should* be, and the extension of this free and undetermined center of personality constitutes the boundaries of his selfhood and hence his privacy. It is this privacy which we are called upon to acknowledge as an act of *tzeniuth*.

Wherefrom the obligatory nature of *tzeniuth*? In the Jewish tradition ethics is founded on *imitatio dei*, the imitation of G-d: "as He is compassionate, so must I be compassionate; as He is gracious, so must I be gracious" (Mehilta, to Beshalach, 3). Thus, such ethical norms as the visitation of the sick and the burial of the dead are regarded as an imitation of the actions of G-d.

Now, we may speak of the privacy of G-d in many ways. In both the philosophic and Kabbalistic traditions, the knowability of G-d by man, or His relatedness to His creatures, is but one aspect of Divinity. In His essence He transcends man; in His absoluteness He is infinitely remote from and beyond the concerns of mortals.* This unknowable Essence or Absoluteness is the inner boundary of His privacy. In his resistance to and limitation of man's metaphysical and theological curiosity ("in what is hidden from the Thou shalt not inquire"), G-d is asserting His exclusive Divine privacy. Even Moses may not gaze

upon the source of the voice which addresses him (Shemoth 3:6).

Moreover, even prayer is considered an encroachment on Divine privacy, and hence would not be permitted were it not for the specific dispensation to pray implied in the attributes of praise uttered by Moses and confirmed by the Men of the Great Assembly. Rabbi Haninah thus scolded a man who, in leading the services, was overly prolific in his praise of the Almighty (Berachoth 33a).

"It hath been told thee, O man," says the prophet Micah (6:8), "what is good and what the Lord doth require of thee: only to do justly, and to love mercy, and to walk *humbly* with thy G-d." The Hebrew for "walk humbly" is *hatz'neia lecheth*, the first word deriving from the same root as *tzeniuth*. Man must tread the path of reverent privacy "with thy G-d"—for it is from Him that we learn this form of conduct and Whom we imitate in practicing it.

G-d, according to Prophetic imagery, even weeps in privacy: "My soul shall weep in secret" (Jer. 13:17). By the principle of *imitatio dei*, we must accord the same right to human beings. We may not violate the right of a woman, even if she be the widow of a major figure of world history, to her private anguish, her secret sighs, her intimate resentments and bitterness and tears and fears, the privilege of keeping her broken heart and her wounded life to herself. The expression of these feelings by Mrs. Kennedy to the author of "The Death of a President" was privileged information, and until and unless it was released by her, it must remain inviolately private.

* For a fuller explanation, see my article "G-d is Alive" in the March-April 1966 issue of JEWISH LIFE.

PRIVACY AND HISTORY

IT should be evident from the foregoing that the protection of privacy is a greater good in Judaism than the knowledge of history. The paucity of source material on the latter, and the abundance of both halachic and aggadic teachings on the former, lead us to conclude that the rights of privacy take precedence over the claims of history. But while this is already evident generally, we may yet point to one more passage, an Aggadah, where the two are juxtaposed more explicitly.

Our text deals with Zelophehad, who died in the desert and left only daughters who inquired of Moses as to the disposition of their father's estate. We know little of this man other than what his daughters told Moses: "Our father died in the wilderness, and he was not in the company of them that gathered themselves together in the company of Korah, but he died in his own sin" (Bemidbar 27:3). All we know, then, of this man whose daughters' inquiry brought him Scriptural immortality, was that he was not part of the rebellion but "died of his own sin." R. Akiva, however, identifies him as the anonymous transgressor who "gathered sticks" on the Sabbath, thus violating it publicly and incurring death by stoning (Bemidbar 15:32).

This identification of Zelophehad as the infamous violator of the Sabbath earned for R. Akiva the following rebuke from his colleague, R. Judah b. Bathyra: "Akiva, in either case you will have to give an account (before the Heavenly Court) for your statement. If you are right, then the Torah shielded him (by not disclosing his

disgraceful identity) while you exposed him; and if not, you cast a stigma upon a righteous man!" (Shabbath 96b).

Zelophehad is a mysterious figure in Biblical history. We wonder why he attained fame in the first place. His daughters' description of him intrigues us, and raises more questions than it answers. Likewise, the gatherer of the sticks arouses our curiosity: who was this man who, so soon after Sinai, publicly scandalized all of Israel? R. Akiva's answer is revealing; it may be the source of much ethical information. Zelophehad had been dead for centuries. He had no sons, and there were probably no contemporaries of R. Akiva who knew who were his descendants. What harm could come from such identification of the two historical figures?

Yet no didactic value, no moral advantage, can excuse this violation of the privacy of a historical personality long dead. The great R. Akiva is adjudged guilty by his colleagues—for what the Torah concealed, we may not reveal. The *claims of history*, though they serve the loftiest and noblest ends, *remain subordinate to the right to privacy* of one long gone. Better that there be blank pages in history, than that they be besmirched by the shattered reputations of those whose privacy has been trespassed.

The right to privacy is a sacred one. Unless G-d has decided to suspend it, by recording it in the Torah, we have no right to encroach upon it in the name of history or morality. Of course, the right of privacy is not absolute—in the case of litigation, where I have relevant information

about one of the litigants, I am commanded to testify about it. But no more than that. Privacy must yield to the demands of justice (otherwise it might be used as a tool to injure others), but it supersedes the claims of history.

* * *

THE current Kennedy-Manchester controversy will soon pass away from the center of the attention of the public. But the larger issues it has raised are ethical in nature, and, given the nature of the times in which we live, will return again and again in many forms.

In our treatment of this problem from Jewish sources, we have seen that the individual and his rights may not be sacrificed on the altar of the public interest, and that the claims of the nation, of even all mankind, to more detailed historical information about the tragedy in Dallas cannot outweigh the sacred right of the President's widow to her personal privacy.

To decide otherwise, it seems to me, would be to diminish the innate dignity of man, which he possesses by virtue of the Divine Image in which he was created, and which teaching is one of Judaism's major contributions to all mankind.

