

תשובת מרן הגר"ש אלישיב שליט"א

בס"ד צום העשירי תשס"ד

לידידי וכו' הגרש"פ כהן וכו'

מכתבו קבלתי במועדו ולא עלתה בידי להשיבו עד שהגעתי ליומא דמפגרי ביה רבנן, תוכן השאלה אחד יודע שמישהו מתעלל בילד או בילדה בעניני מין, ובאופן שאין בידינו לעצור בעדו שלא ימשיך במעשיו הרעים, האם מותר להודיע על כך לפקיד הממשלה.

והנה ז"ל הרשב"א בתשו' ח"ג סי' שצ"ג "רואה אני שאם העדים נאמנים אצל הברורים רשאים הן לקנוס קנס ממון או עונש הגוף הכל לפי מה שיראה להם וזה מקיים העולם שאם אתם מעמידין הכל על הדינין הקצובים בתורה ושלא לענוש אלא כמו שענשה התורה — נמצא העולם חרב — ונמצאו פורצין גדרו של עולם נמצא העולם שמש, וכבר קנסו קנסות במכה את חברו וכו' בכל מקום ומקום דנין לגדור את הדור וכן עושין בכל דור ודור ובכל מקום ומקום שרואין שהשעה צריכה לכך — והנה אמרו דרב הונא שהיה מבבל קץ ידא — ולפיכך ברורים אלו שעשו זה אם ראו צורך השעה לתיקון המדינה — כדין עשו, — וכ"כ בדאיכא הורמנא דמלכא וכענין שעשו ר' אלעזר בר"ש בר"פ הפועלים"

מתוך דברי הרשב"א שמעינן דכדבר שיש בה משום תיקון העולם יש כח לחכמי ישראל שבכל דור ודור לגדור גדר ולעמוד בפרץ גם במקום שאין לנו צירוף של הורמנא דמלכא וממ"ש הריטב"א בחי' לב"מ [פ"ד ב'] משמע לכאורה דכחו של הורמנא דמלכא הוא זול"ש "אמר להו תפסוהו, והא דדאין בלא עדים והתראה, ושלא בזמן סנהדרין, שאני הכא דשליחא דמלכא הוא ומדיני המלכות להרוג בלא עדים והתראה לייסר העולם כמו"ש בדוד שהרג גר עמלקי ושלוחו של מלך כמותו -", אך כפי האמור בדבר שיש בו משום תיקון העולם א"צ בקבלת הורמנא דמלכא.

אכן כ"ז להתיר להודיע לממשלה הוא באופן שהדבר ברור שאכן ידו במעל, וכזה יש משום תיקון העולם אך באופן שאין אפי' רגלים לדבר, אלא איזה דמיון אם נתיר הדבר לא רק שאין בזה משום תיקון העולם אלא הרס העולם יש כאן ויתכן שבגלל איזה מרירות של תלמיד כלפי המורה מעליל על המורה או בגלל איזה דמיון שוא מכניסים אדם למצב שטוב מותו מחייו, — על לא עול בכפו, ואין אני רואה שום היתר בדבר.

והנני בזה ירידוש"ת

יוסף שלום אלישיב

Responsum of Maran HaGaon Rav Y. S. Elyashiv, Shlita

***BiSiyata D'Shmaya,
The Fast of Asara B'Teves, 5764***

To my dear friend...HaGaon Rav Shraga Feivel Cohen...

I received your letter in [good] time but I was unable to respond until I reached “a day on which the rabbinical students are weak.”¹

The essence of the question: A person knows someone who is abusing a boy or a girl sexually, and the case is such that we are incapable of restraining him from continuing his evil deeds, is it permitted to inform an official of the government about this?

Here is the language of the Rashba in his Teshuvos, Vol. III §393:

My view is that if the witnesses are found to be credible by the chosen judges, [those judges] are authorized to impose a monetary penalty or a physical punishment, however they see fit. This preserves the world, for if you will keep strictly to the laws fixed in the Torah and not punish except where the Torah has punished, we will confront a destroyed world. Thus will people breach the world's [most fundamental] safeguards² and thus will the world become devastated. And [we find precedents in that sages] have already instituted penalties for striking one's fellow...In each and every locale, [the rabbinical authorities] exercise their judicial powers to safeguard

¹ See Shabbos 129b with Tosafos. The reference is to a fast day on which the rabbis are too weak to study Torah with their customary rigor. Rav Elyashiv is saying that he had to wait until Asarah B'Teves, when the Beis Medrash schedule was lighter, in order to write this responsum.

² See parallel usage in Rashi to Numbers 22:5.

the generation, and so has it been done in each and every generation and in each and every place where they saw that the hour called for this... [See, for example, Sanhedrin 58b in regard to Rav Huna]...Therefore, these chosen judges that did this, if they saw a need of the hour for the betterment of the province, then they acted legally. This is true all the more so if there is a governmental authorization [for their actions], similar to the case of R' Elazar Bar R' Shimon in Bava Metzlia 83b.³

From the Rashba's words, we learn that in a matter that entails *tikkun haolam* (the betterment of the world), the Sages of the Jewish people in every generation are empowered to institute a safeguard and stand in the breach, even where there is no authorization from the government. Now, from what the Ritva writes (to Bava Metzlia 84b) it appears that this [power] is [due solely to] the authorization of the government. This is his language there:

He said to them, "Arrest him!" Now, that which [R' Elazar bar R' Shimon] exercised judicial power [in this way] without witnesses or forewarning, and not in the era of the Sanhedrin [which is forbidden]; It is different here, because he was [acting as] an agent of the king, and it is part of the laws of kingship [as opposed to the laws of a Sanhedrin] to execute a person without witnesses and forewarning to correct the world punitively, as it is stated regarding [King] David who executed the Ger Amaleki [without witnesses, forewarning or the deliberation of a

³ The Gemara there records that R' Elazar bar R' Shimon came across a marshal employed by the government to investigate and arrest thieves. R' Elazar asked him how he distinguishes between the guilty and the innocent and the marshal had no good answer. R' Elazar then suggested how he could proceed, pointing out reasonable indications of guilt. His statement was repeated in the halls of government and they appointed him to carry out his suggestions personally. After he was authorized, he set about catching thieves. Another Tanna objected strenuously to his behavior, but he continued, saying, "I am ridding the vineyard of its thorns."

Sanhedrin], and the agent of a King is the same as him [i.e. similarly empowered].

But according to what was said [above], in a case that entails *tikkun haolam*, governmental authorization is not necessary.

However, all of this, to permit notifying the government, is only where it is clear that he participated in the crime. It is in this case that there is an issue of *tikkun haolam*. But where there is not even circumstantial evidence (*raglayim ladavar*), but only some impression [that he is guilty], then not only is there no issue of *tikkun haolam*, but [to the contrary] there is *heres haolam* (ruination of the world) here. And it is possible that because of a certain bitterness that a student feels toward the teacher and makes a false accusation against him or because of [someone's] delusion, a person [i.e. the accused] will be put into a situation in which his death will be preferable to his life. And it will be through no fault of his own, and [in that case],⁴ I see no permit in the matter.

And with this I remain your friend seeking the welfare of your distinguished person of Torah,

Yosef Shalom Elyashlv

⁴ I.e. the case where there is not *raglayim ladavar*.

The Jewish Law Obligation to Mandate Fingerprinting of School Employees

Rabbi Mark Dratch

September 15, 2008

Jewish law forbids its adherents to cause harm to the persons and property of others, as well as to their own persons and property.¹ Moreover, it obligates us to protect the welfare of persons and property by banning the engagement in dangerous activities. It also enjoins us to be proactive in preventing hazards from being created and in removing hazards that are present.²

There are numerous biblical and rabbinic sources that require us to foresee potential dangers and to take preventative action in order to avert harm. The Bible commands the construction of a fence around the roofs of houses to which people have access, in order to prevent falls (see Deut. 22:8). The Talmud, *Ketubot* 41a, expands this charge by obliging us to prevent or remove all dangerous situations: “[What is the biblical source] which bans a person from breeding a bad dog in his house or from keeping a rickety ladder in his house? [Scripture] states, ‘That thou bring not blood upon your house (Deut. 22:8).’” The dog and ladder are prototypes of potential hazards. Thus, one is liable not only for being a direct cause of damage, but for allowing and maintaining a potential hazardous situation as well. This principle is codified in The Code of Jewish Law, *Hoshen Mishpat* 427:8:

And so there is a positive to remove any obstruction that can cause danger and to guard against it and to be vigilant regarding it, as it is written, “Only be on your guard, and protect your soul (Deut. 4:9). And if one does not remove [the obstacles] and leaves those things that can cause harm [in place], he nullifies this positive commandment and violates the prohibition, “that you should not bring any blood upon your house (Deut. 22:8).”

In matters of danger and potential danger, Jewish tradition asserts a very realistic, practical approach, forbidding any reliance on Divine protection. Rabbi Moses Isserles, the great 16th century Halakhic authority, ruled:

A person should be careful regarding all matters that can cause danger, because danger is a more severe concern than ritually forbidden. One should be more vigilant regarding [protecting himself from] a doubtful danger than he is regarding a possible violation of ritual law... and it is forbidden to rely on a miracle...³

Although there is a tradition that one engaged in a religious mission will not suffer harm, the Talmud asserts that where danger is likely to occur one may not rely upon this promise.⁴

¹ *Hoshen Mishpat* 378:1.

² *Hoshen Mishpat* 427:8; 382:1.

³ *Yoreh De'ah* 115:5.

⁴ *Kiddushin* 39a.

The application is obvious. Sex offenders are dangerous. Recidivism is high. Their presence in schools is dangerous. Children need protection.

Life, by its nature, is hazardous and not all potential harm can be avoided. Citing the verse, “the Lord watches out for the simple (Ps. 116:6),” the Talmud permits engaging in low-level risky activities that are widespread and socially accepted.⁵ Nevertheless, this license is not absolute. In an unusual responsum, Rabbi Moshe Feinstein, one of the leading rabbinic decisors of twentieth century America, discussed whether it was permitted for an observant Jew to be a professional ball player, concerned with the element of danger inherent in the sport. Rabbi Feinstein rules permissively because the incidence of harm to himself or others is statistically negligible. Nevertheless, he qualifies his statement with the following caveat: “[One is permitted to engage in an activity that might remotely cause harm to another] only when that other person engages in the activity willingly, for one certainly does not have permission to expose others even to remote danger if they were other unaware of the situation or did not consent to expose themselves to danger, regardless of how remote it is.”⁶

Objections have been raised in certain Jewish circles that partnering with the government in the matter of mandated fingerprinting is contrary to Jewish law. They cite the Halakhic restriction on reporting fellow Jews to non-Jewish authorities, a significant matter referred to as *mesirah*. Suffice it to say that according to the overwhelming majority of the most prominent decisors of our generation, this is not an issue, especially in matters of child abuse. Some of these authorities argue that in the case of a *meitzar ha-tzibbur* (public menace), informing is permissible; since the rate of recidivism in child abuse cases is high, a child molester is considered a “public menace.”⁷ Others aver that a child abuser is worse than a *meitzar* and is in the category of *rodef* (pursuer) concerning whom one is permitted to do anything to stop the attack.⁸ In addition, when a person is a repeat abuser (“*ragil le-hakot*—strikes on a continuing basis”), one is permitted to report him to the non-Jewish authorities in order to prevent him from abusing again.⁹

In a ruling of great significance for victims of abuse, Rema writes, “A person who attacks others should be punished. If the Jewish authorities do not have the power to punish him, he must be punished by the civil authorities.”¹⁰ According to this ruling, the victim has

⁵ *Shabbat* 129b; *Yevamot* 12b, 72b, 100b; *Ketubot* 39a; *Sanhedrin* 110b.

⁶ *She'eilot u-Teshuvot Iggerot Moshe, Hoshen Mishpat*, I, no. 104.

⁷ See Rabbi Eliezer Waldenberg, quoted in *Nishmat Avraham*, IV, p. 209; R. Asher Zelig Weiss, “*Mesirah la-shiltonot be-hashud be-hit'olelut be-yeladim*” in *Yeshurun*, 5765, p. 659; R. Yehudah Silman, “*Teshuvah le-shei'lah be-inyan divu-ah al pegiyot be-yeladim*” in *Yeshurun*, 5765, p. 661.

⁸ R. Moshe Halberstam, *Mesirah le-shiltonot be-mi she-mit'olel be-yeladav* in *Yeshurun* 5765, p. 646.

⁹ *Shakh, Hoshen Mishpat* 388, no. 45 and 60.

¹⁰ *Hoshen Mishpat* 388:7 and *Shakh*, no. 45; See also gloss of Rema to *Hoshen Mishpat* 388:9; *Ba'i Hayei* and *Maharam miRiszburg* cited in *Pahad Yitzhak, Ma'arekhet Hovel be-Haveiro*.

the right to go to the civil authorities not just to prevent an attack, but to seek punishment and justice for an attack that has already taken place.¹¹

The leading contemporary Halakhic decisor, Rabbi Shalom Yosef Elyahiv, ruled that one may report a child abuser to the civil authorities in America if he is certain about the abuse.¹² Others maintain the prohibitions of *mesirah* and *arka'ot* do not apply to these situations altogether. R. Yitzchak Weiss avers that the state has an interest in the safety and welfare of its citizens and one may therefore report those who are endangering that safety.¹³

Regarding the specific question of requiring fingerprinting of all employees and volunteers in parochial schools, it is obvious in light of our discussion that Jewish law not only allows for it, but, as an act of prevention of harm to innocent school children, requires it. Fingerprints themselves have been recognized as a valid form of identification in Jewish law and there is sufficient precedent to rely on government experts and protocol in these matters.¹⁴ Even those rabbinic authorities that object to the use of fingerprints in order to find a person guilty of a crime may agree to their use in this case. Here, the fingerprints are not used to convict anyone of a crime. They are used to screen and identify those who have already been convicted and are listed as sex offenders.

Furthermore, the community has every right and obligation to proceed in such a cautious manner. Despite the religious call to judge people favorably, there is room for suspicion, precaution, and protection of self and others: "A person should always consider others as thieves, while honoring them like Rabban Gamliel."¹⁵ We may not let our favorable judgment cause us to ignore possible violations of Jewish law or potential harm to others. The Torah obligates us to rebuke those who have sinned¹⁶ as well as to protect the safety and welfare of the community.¹⁷ Automatically assuming another's innocence prevents

¹¹ See *Darkei Moshe, Hoshen Mishpat* 388 and *Teshuvot Maharam MiRizbork* cited by *Shakh*.

¹² "*She-eilah be-inyan hoda'ah la-memshalah al hit'olelut be-yeled 'o be-yaldah*" in *Yeshurun*, p. 641.

¹³ *She'eilot u-Teshuvot Minhag Yitzhak* VIII:148.

¹⁴ *She'eilot u-Teshuvot Ein Yitzhak, Even ha-Ezer* no. 31; *She'eilot u-Teshuvot Yabi'a Omer*, VI, *Even ha-Ezer*, no. 3; *Otzar ha-Poskim*, 117:199; R. Zalman Nehemiah Goldberg, *Tehumin*, 23, p. 116; S. Fisher, *Noam*, II, p. 211; G. Navon, *Dinei Yisrael*, VII, p. 129.

¹⁵ *Masekhet Derekh Eretz, Pirkei Ben Azzai* 3:3.

¹⁶ Lev. 19:17; *'Arakhin* 16b; *Hil. De'ot* 6:7-9.

¹⁷ "Do not stand by the blood of your neighbor" (Lev. 19:16).

these obligations from being fulfilled.¹⁸ And this obligation of rebuke applies even when the one accused of doing wrong is one's parent or teacher.¹⁹

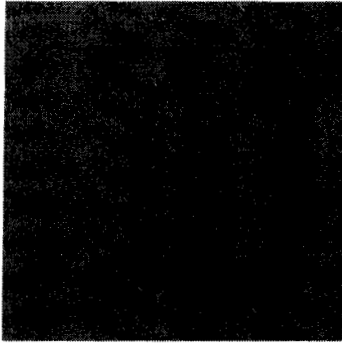
Finally, the leading sage of our generation Rabbi Shlom Zalman Auerbach, allowed for the investigation of an entire group of people in order to uncover a theft by one of them. He felt that the inconvenience and shame of being suspect imposed on innocents was not significant when it came to the larger good of the pursuit of justice.²⁰

Fingerprinting all prospective employees and volunteers in Jewish schools is a small price to pay for the potential benefits of saving countless children from lifetimes of pain and suffering. While it is an obligation under Jewish law, it should not remain a discretionary act by schools. Only through state mandate can we ensure that all schools will comply and that all of our children will be safer. We owe them no less.

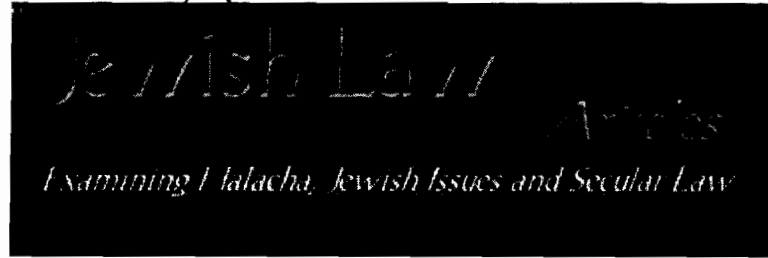
¹⁸ *Hafetz Hayyim, kelal 4, Be'er Mayim Hayyim* no. 18; *She'eilot u-Teshuvot Minhath Yitzhak VI*, no. 139:11.

¹⁹ *Baba Mezi'a* 31b. In fact, R. Yehudah was greatly rewarded for calling his teacher, Shmuel, to task, see *Tosafot, Baba Batra* 10b, s.v. *elyonim le-mata ve-tahtonim le-ma'alah*.

²⁰ *She'eilot u-Teshuvot Minhath Shlomo, Tanina*, no. 133.



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**Informing on Others for
Violating American Law:
A Jewish Law View**
Rabbi Michael J. Broyde

Informing on Others for Violating American Law: A Jewish Law View

by Rabbi Michael J. Broyde¹

Table of Contents

I. Introduction

II. Classical Jewish Law and Informing: An Overview

**III. Informing on People When Government is Committed to
Procedural Justice: Five Opinions of Contemporary Decisors**

**A. The View of the Rabbi Eliezer Yehuda Waldenberg:
No Prohibition to Inform when Government is Just**

**B. The View of Rabbi Ezra Batzri: There Are No Just
Legal Systems and No Just Prisons**

**C. The View of Rabbi Yitzchak Shmelkes: Informing as
a Tort in a Just Government**

**D. The View of Rabbi Shmuel Wozner: Informing is
Permitted when Jewish Law Recognizes Secular Law as
Valid**

**E. The View of Rabbis Feinstein and Breisch: The
Prohibition is Unchanged by a Just Government**

IV. Hypotheticals and Conclusion

I. Introduction

This article addresses the question of whether and when Jewish law permits, prohibits or mandates that a person inform governmental authorities of the fact that a Jew is violating one aspect or another of secular law. In particular, this article will focus on the application of the classical rules of informing (*mesira*) to modern day America, with its (procedurally) just system of government.²

Besides this introduction, this article is divided into three sections. The first briefly explains the central principles related to informing and summarizes the halacha as found in the Shulchan Aruch and decisors (*poskim*). The second section explores the various positions taken by modern decisors in regard to the prohibition to inform when society and government are just. The conclusion presents six hypotheticals that concern informing in a just society and notes the various views taken by modern decisors on them.

Two initial points need to be made to provide a certain amount of background to the relevant Jewish law. Firstly, "informing" is itself not a sufficiently precise translation of the Hebrew term³ that is the concern of this article. Jewish law discusses three different problems: informing a bandit that a person has money or some other item of value; informing an abusive government of the same, and informing the government that someone has violated its laws. As is obvious to anyone with even a vague familiarity with the flow of Jewish history, Jews have generally lived in situations where government was unjust (or unjust towards Jews) or bandits formed the basis for government, and telling the abusive government that a Jew had money or that a Jew had broken the law was a dangerous act. Indeed, this conduct clearly, readily and directly caused people to have their money taken, themselves beaten or tortured and sometimes simply murdered. The Talmudic Sages had no choice but to enact rabbinic decrees prohibiting such informing.⁴ This article focuses on how these rabbinic decrees affect people's conduct in a just government, where government only acts to punish law-breakers.

Secondly -- as will become clear throughout this work⁵ -- this article is not discussing the proper response to violent criminals or people whose conduct endangers other people or the community as a whole.⁶ Even in unjust societies, it was clear that one must bring such people to the attention of the secular authorities, if that was the only way to get them to cease their violent ways.⁷ This article is discussing the problems of informing as it relates to violators of non-dangerous law or non-violent or regulatory laws, from cat-burglers and tax cheaters to zoning violators and prescription drug abusers. This article is not discussing serial killers, armed robbers, sexual predators or muggers. They must all be informed upon if that is needed to protect society

from them.⁸

II. Classical Jewish Law and Informing: An Overview

Even though Jewish law expects people to observe the law of the land, and even imposes that obligation as a religious duty,⁹ the Talmud recounts -- in a number of places -- that it is prohibited to inform on Jews to the secular government, even when their conduct is a violation of secular law and even when their conduct is a violation of Jewish law. While there are a number of exceptions to this prohibition (which are explained further in this section), the essential halacha was that Jewish law prohibits such informing absent specific circumstances. Even if secular government were to incorporate substantive Jewish law into secular law and punish violations of what is, in effect, Jewish law, Jews would still be prohibited from cooperating with such a system.¹⁰ Indeed, classical Jewish law treats a person who repeatedly informs on others as a pursuer (a *rodef*) who may be killed to prevent him from informing, even without a formal court ruling.

The prohibition of informing derives from three different talmudic incidents,¹¹ whose central theme is that informing on a Jew so that others take the property of the one informed upon is both prohibited and tortious. One of the talmudic incidents¹² clarifies that the act of informing causes one to be in the formal status of a pursuer (*rodef*), whose life may be taken to prevent the act of informing from occurring.

The reason for the rabbinic decree positing that an informer (*moser*) is a life-threatening pursuer (*rodef*) is simply stated by Rabbenu Asher.

One who runs to inform so that Jewish money is given to a bandit (*anas*)¹³ is analogized by the rabbis to one who is running after a person to kill him. This is seen from the verse (Isaiah 51:20) 'your children lie in a swoon at the corner of every street, like an antelope caught in a net.' Just like when an antelope is caught in a net, the hunter has no mercy towards it, so too the money of a Jew, once it falls into the hands of bandits, the bandits have no mercy on the Jew. **They take some money today, and tomorrow all of it, and in the end, they capture and kill him, since perhaps he has more money. Thus, an informer is like a pursuer to kill someone, and the victim may be saved at the cost of the life of the pursued.**¹⁴

According to Rabbenu Asher, what makes informing worse than any other act which improperly damages another Jew is that informing puts a person in danger of life and limb -- even when the initial act of informing is over a small money matter. Once one is enmeshed with these types of people, one never can tell what will happen and even death can result. Thus one who informs is like a pursuer who might kill.

Mordechai states the matter differently. He writes:

Even though as a general matter we do not push into a pit [to kill] any tort-feasor, even a thief or an armed robber, **the reason an informer is different is that the pagans gain and the Jews lose through this conduct; this is disgusting and one who regularly trains himself to engage in such informing to pagans -- his status is worse than other tort-feasors.**¹⁵

According to Mordechai, informing is different from any other act which damages another because the Rabbis decreed that a person who regularly involves himself in ensuring that Jews lose and gentiles improperly gain is engaging in an evil activity and forfeits his normal rights as a Jew.

A complete review of the rules related to informing is both complex and beyond the scope of this paper,¹⁶ but a simple understanding of the nuanced rules is needed to understand why a just government might be different.

Eight different sets of rules can be given that outline the general approach halacha takes.

1. It is prohibited to inform on a fellow Jew to a gentile, whether the act of informing is about monetary matters or physical security.¹⁷ One may not inform on a Jew, even if the Jew is a sinful and bad person.¹⁸
2. One who informs is liable to pay damages if his act of informing damages another.¹⁹ As a general rule one is not liable for torts done to another by a third party, informing is an exception to this rule.²⁰
3. Even without the order of a Jewish law court, one may kill a person who has certainly set out to inform on another, prior to their act of informing, as informing poses a danger to the one who is informed upon.²¹ Once a person informs, one may

not kill the informer as punishment for the sin, and one may not steal from an informer (unless taking his property will stop him from informing).²² One who regularly informs may be killed without warning.²³

4. One who troubles the community through misconduct may be informed upon; so too one who engages in conduct that endangers members of the community may be informed upon.²⁴ One who hits other people, or otherwise engages in acts of violence against people, may be informed upon.²⁵
5. When a Jew owes money to a gentile, and the Jew is seeking to improperly avoid payment of the money to the gentile, and another Jew informs the gentile of this fact who then collects the money rightfully owed to him, that is not called informing, as the Jew who is informed upon only has to pay that which he ought to pay, anyway.²⁶ Payment of taxes to the government is exactly such a debt.²⁷ Some say such informing is frowned on when it gratuitously benefits a pagan, and others say such conduct is proper.²⁸ All agree that when such conduct leads to a desecration of God's name, it is prohibited to decline to report such a person.²⁹
6. A Jew who is threatened with physical harm unless he informs on another is not called an informer if he delivers information, and he is not liable for the damage causes.³⁰ There is a dispute as to whether such conduct is proper or simply immune from liability.³¹
7. There is a dispute about whether a Jew who is threatened with economic harm unless he illicitly informs on another is called an informer or not and whether such conduct is permitted or not.³²
8. Many authorities rule that no liability is present if one informs on another to save one's own property without any gratuitous intent to hurt the other person.³³

Taken at face value, these rules would prohibit a person from calling the governmental authorities when he is aware of illicit activity by a Jew unless the informer is himself under duress to inform, or the

criminal is violent or threatening of the community, or according to some decisors, the informer does so to protect his own property.³⁴ (In cases of desecration of God's name, informing is also sometimes permitted.) These rules, by their simple direct application, would prevent a person from informing on his neighbor who is cheating on his taxes (since the government imprisons such people, and does not merely retake the money owed), violating non-safety related zoning law, stealing cable television from the cable company, and a host of other violations of American law. Informing on a serial killer, mugger, assaulter, child abuser, or any other violent criminal would be permitted.³⁵

The next section considers whether just governments have different rules according to Jewish law.

III. Informing on People When Government is Committed to Procedural Justice: Five Opinions of Contemporary Decisors

How do the halachic rules of informing apply to a just government of laws -- with non-discriminatory laws properly enforced by police who obeys the laws, and who punish people in accordance with its laws -- is the question this section will address. This section makes certain assumptions about the nature and operation of American law that need to be stated, as this section is predicated on these assumptions. At least four specific assumptions are posited in this section about the nature of American society and its government.

1. The government of the United States of America and of the various states and other governmental units are just and proper governments that do not, as a general matter, punish people beyond the dictates of the secular law.³⁶ They are not corrupt governments.³⁷
2. Governmental actions are not generally motivated by anti-Semitism, and the conduct of governmental officials is not anti-Semitic.³⁸
3. As a matter of American law, people cannot be compelled to go to a Jewish law court (a *bet din*) to resolve claims against them if they do not wish to submit to the *bet din*.
4. As a matter of American law, *batai din* are unable to adjudicate matters that require physical punishment, incarceration or restraint of people,

and cannot respond in emergency situations when force is needed.

As will be shown throughout this section, disagreeing with any one of these four factual points will frequently lead to significant changes in the applicable Jewish law of informing.

One additional point needs to be made about American law, as it impacts on the relevant Jewish law. As a general proposition, members of our secular society are not obligated, according to American criminal or tort law to report violators of American law.³⁹ In modern American law, unlike Jewish law, if one did not cause the violation or have some other special relationship either to the victim or the criminal, one bears absolutely no legal obligation to intervene to stop a crime or even call the police.⁴⁰ In American law one need not report one's neighbor for tax fraud, or call the police when one witnesses a crime, or rescue a drowning person from a river. Thus, even in circumstances where Jewish law mandates that one not inform on a person, the person who has knowledge of criminal activity by another, and does not report it, is not violating American law at all. However, once one is summoned to testify, or even questioned by a government official, it is a crime to lie to a governmental official about a relevant matter.⁴¹

No less than five different halachic answers have been presented with regard to whether the prohibition against informing applies in a just society. These five views can be summarized as follows:

1. The rules of informing have not changed at all, as they are independent of the status of the government as just or unjust. Informing is thus only permitted in cases of harm to others, or any one of the exceptions permitting informing mentioned above.
2. An informer is not a pursuer anymore, but informing is still a tort, and one who informs on another without cause is liable for the damages caused.⁴² Informing is a tort no different than damaging a person's property with a baseball bat.
3. Even a just government behaves improperly sometimes, or runs jails that are improper places, and the presence of even occasional improper behavior by government or its agents or in its prisons justifies the prohibition of informing. Thus, the rules of informing have not changed.
4. There is no prohibition of informing to the secular

government when the secular government is enforcing a law that Jewish law deems valid under "the law of the land is the law" or according to the obligation of gentiles to create a proper system of law (*dinnim*).

5. There is no prohibition of informing when government conduct is governed by law and order generally. The talmudic Sages prohibited informing to bandits and unjust governments only.

As has been made clear throughout this work -- these five views are not discussing serial killers, armed robbers, sexual predators, muggers or other similar violent criminal. They must all be informed upon if that is needed to protect society from them.

A. The View of the Rabbi Eliezer Yehuda Waldenberg: No Prohibition to Inform when Government is Just

The view that the prohibition of informing does not apply to a government that protects property rights and is generally governed by law and order is first articulated in the writings of Rabbi Yecheil Michel Epstein in his restatement of Jewish law, the Aruch Hashulchan. He states:

Note: As is widely known, in times of old in places far away, no person had any assurance in the safety of his life or money because of the pirates and bandits, even if they took upon themselves the form of government. It is known that this is true nowadays in some places in Africa where the government itself is grounded in theft and robbery. One should remind people of the kingdoms in Europe and particularly our ruler the Czar and his predecessors, and the kings of England, who spread their influence over many lands in order that people should have confidence in the security of their body and money. The wealthy do not have to hide themselves so that others will not loot or kill them. **On all of this [the presence of looting and killing] hinges the rules of informing [*moser*] and slandering [*malshin*] in the talmud and later authorities, as I will explain infra: These rules apply only to one who informs on another to bandits and so endangers that person's money and life, as these bandits chase after the person's body and money, and thus one may use deadly force to save oneself.⁴³**

The question of whether the writer of the Aruch Hashulchan really meant what he wrote or he wrote it for the sake of the censor is still a

matter in dispute.⁴⁴ However, Rabbi Eliezer Waldenberg adopts the view of the Aruch Hashulchan explicitly. In the course of discussing whether one may inform on a teacher who is molesting children, Rabbi Waldenberg states:

Even in the understanding of the secular court system it appears that there is a difference between primitive and enlightened governments as is noted by the Aruch Hashulchan in Choshen Mishpat 388:7 where it states that "every issue related to informing found in the Talmud and poskim deals with those far away places where no one was secure in his money or body because of the bandits and pirates, even those who had authority, as we know nowadays in places like Africa" such is not the case in Europe, as the Aruch Hashulchan notes. ... **I write this as a notation of general importance in the matter of the laws of informing.**⁴⁵

The halachic predicate for this view is that the repeated use of the term bandit (*anas*) throughout the many halachic texts dealing with informing is to be limited to its simple meaning -- it is only prohibited to inform on people to bandits. The many different rules limiting when one can inform on a Jew are limited to cases where the people to whom you are informing are unethical and unjust individuals or an unethical and unjust government.

The language of the Tur supports this. Tur states:

One who delivers another's money into the hands of a bandit, whether the bandit is Jew or Gentile, must pay damages that he caused, since he caused a loss of money....⁴⁶

A close examination of the words of Rabbenu Asher quoted above⁴⁷ does indeed indicate that it is the fear of improper murder or torture of the victim that caused this rabbinic decree.

Rabbi Yosef Shalom Elyashiv explicitly adopts this logic. A questioner asked:

The office of Religious Affairs in our location has been robbed of collected money on more than one occasion. All of the indications point to one of the workers, but all of our efforts have not led this person to confess. We are asking if it is proper to call the police, who after investigation, if successful, will bring the suspect to secular court. The matter could be serious, as we suspect that the person is the husband of a large family, and this person is connected to Torah activities; it is possible that

there will be a desecration of God's name, Heaven forbid. On the other hand, public money is missing, and who knows what else is gone.

Rabbi Elyashiv replied:

See Responsa Panim Me'erot 2:155 dealing with our matter of one who found an open chest, and much was stolen from it. There is reasonable grounds to believe that one of his workers did this act of theft. Is it permissible to inform on this worker to the secular authorities? He proves from Bava Batra 117 and Bava Metzia 25 that there is a religious duty on the judge of this matter to hit and punish based on the knowledge that he has, when his knowledge is correct. He then quotes from the incident with Rabbi Heshel and the view of the Shach but he ends he concludes "nonetheless I [the author of the *Panim Me'erot*] say that is it improper to report him to secular authorities, as our Talmud sages recount 'they treat him like a caught animal' and one must be afraid that they will kill him." From this it is clear that such is not applicable in our [Rabbi Elyashiv's] times. **By the halacha it would be proper to report him to the police.** But, you ponder the possibility that this will lead to a desecration of God's name, and it is not in my ability to evaluate this, since I do not know the facts.⁴⁸

This view posits that when fear of death or torture is functionally gone, the rabbinic decree prohibiting informing does not apply.⁴⁹ This is true according to these authorities even when the government has no right (according to Jewish law) to enforce this particular law on its Jewish citizens or is punishing them in a manner far beyond that permitted by Jewish law, and even applies when the government is arresting an apparently innocent person, as the system as a whole is just and fair. Even non-violent criminals or people who violate regulatory directives (such as zoning laws) may be informed upon, in this view.

This approach posits that informing -- even when the government does (as a matter of after-the-fact truth) use the information provided by the informer to produce an improper result -- is not a classical tort at all in the eyes of Jewish law, but was a special rabbinic decree prohibiting conduct that was not intrinsically tortious, and that rabbinic decree prohibiting informing was limited to situations of banditry.⁵⁰ Thus in situations where there is no prohibition to inform, there is no violation of Jewish law to inform. Any damage that is caused is not attributable to the informer but to the one who does the damage.

B. The View of Rabbi Ezra Batzri: There Are No Just Legal Systems and No Just Prisons

Rabbi Ezra Batzri, in his modern multi-volume treatises on Jewish commercial law, *Dinnai Mamonut*, responds to the view discussed in the Aruch Hashulchan above. After stating the view that informing is prohibited, he notes the following:

Do not be surprised by the rules in this chapter, and think that they are inapplicable nowadays since governments are enlightened and democratic, a beacon for people to travel. This should be thought true of only by the very naive, as even in democracies, in truth when there is a matter that involves the government, the matter is treated as out of the normal protocol as happens when matters relate to security of the state. **All rules of informing are applicable even currently.** Anyone who knows and understands and sees not only what is externally visible, and what previously was, will see that only the external appearance has changed -- the outside has changed -- but the central characteristic [of government] has not changed. **Even if they bring all matters to court, it is clear that, through interrogation and the police, government can destroy people and in many places they do, in fact, destroy people.**⁵¹

Rabbi Batzri posits that even when the external justice system seems to work, nonetheless the executive and judicial systems is so deeply fraught with exceptions, and extra-judicial misconduct, and coerced confessions, that one must assume injustice will occur and thus informing on a fellow Jew remains generally prohibited, as always.⁵²

Rabbi Yaakov Yeshaya Blau, author of the multi-volume *Pitchai Chosen* raises a related point as a possibility. Even if the justice system works up until the point of incarceration:

nonetheless the punishment of imprisonment is analogous to endangering a person's life by informing on them in a way that endangers their life, **since imprisonment poses a possibility of life threatening conditions.**⁵³

Rabbi Blau proposes the possibility that even if a justice system works only to incarcerate people who are deserving of incarceration, jail is a most unpleasant place to be, with physical duress exactly of the type the Talmud imagined, and thus informing on a person in a way that might produce a prison sentence is prohibited.⁵⁴ Evaluating this type of claim is very difficult, but Rabbi Blau's observation has a

certain amount of merit in this matter. One well known commentator on prisons in America observed:

Prisons, never safe places, are growing increasingly dangerous to inmates. The most recent Department of Justice research shows that 14% of all prison inmates -- and 20% of those under the age of 25 have been assaulted while in prison.⁵⁵

According to Rabbi Blau, it is in prison where halacha now fears that the observations of the Rosh are correct -- people are abused and tortured without any basis in law.

If the approach of either Rabbis Batzri or Blau is correct, one divides cases of informing into three types of categories. One situation occurs when a person is being informed upon is an individual who is violent, or threatens violence, or induces harm to others or endangers the welfare of the community. Such a person may be informed upon, as Jewish law recognizes the need to remove these people from the community, even if these people might be harmed by the brutal prison system.⁵⁶ The second situation is that of the non-violent criminal (white collar crimes such as intentionally bouncing checks, or recreational personal drug use). Because the prison system might be brutal to them,⁵⁷ Jewish law rules that one may not inform on them to the police because the punishment imposed on them is unacceptable according to Jewish law. Other areas of informing, such as parking violations, building code violations, unintentional environmental damage, and the like, where arrest and detention is not a possibility, would not be prohibited by this rationale.

In this writer's opinion, this observation -- that prisons are (sadly enough and to the shame of our society) treacherous places with tortious conditions incapable of punishing people justly -- has a powerful practical logic to it and seems factually persuasive. If American society cannot run a criminal justice system that punishes non-violent criminals properly, Jewish law should not be an accomplice to a criminal justice system that in fact brutally punishes people for non-violent offenses.

C. The View of Rabbi Yitzchak Shmelkes: Informing as a Tort in a Just Government

Rabbi Yitzchak Shmelkes advances a novel answer to the question of informing in a just society. He states:

As you wrote on the central matter of one who informs about monetary matters nowadays, **such a person does not have the status of a pursuer, as there is no fear,**