

Corresponding Respect: Privacy in Personal Mail

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Reading the

Correspondence of Others

Parshas Shelach contains the

tragic narrative of the spies sent to survey the Land of Canaan. While their task was to observe and to report their observations, a major component of modern espionage is signals intelligence, and communications intelligence in

particular, with Henry L. Stimson's celebrated distaste for the practice ("Gentlemen do not read each other's mail.") seen as laughably quaint. I am not

aware of any significant discussion of the ethics of such intelligence gathering in the service of the national interest; this article explores some of the *Halachah* pertaining to such conduct in the context of the intercourse of private citizens.

The

Cherem of Rabbeinu

Gershom

There

is a medieval tradition, generally attributed to *Rabbeinu*

Gershom Me'or Ha'Golah, of a *cherem* [ban /

anathema] against reading (or opening) a letter addressed to another.

The *acharonim*

have

additionally noted various *halachic* problems with

reading others' mail, either as rationales for the ban or as independent considerations:

- The utilization of another's property without permission is forbidden.
- "Thou shalt love thy neighbor as thyself" - "that which is hateful to you, do not do unto your friend".
- "Thou shalt not go up and down as a talebearer among thy people".
- *Geneivas da'as* is prohibited. [The phrase generally refers to deception, i.e., the *planting* of a *false* idea in the mind of another, whereas our situation appears to be the exact opposite: the *extraction* of a *true* idea from the mind of another;
- It is

prohibited to cause harm to another, even indirectly (*grama be'nezikin asur*), and reading others' correspondence usually causes harm, whether financial or otherwise.

Among the Sephardim, it was common to inscribe a reference to the *cherem* on (the outside of) letters, although the *cherem* applies regardless.

Is the *Cherem*

Still

In Effect?

There

is a tradition that Rabbeinu Gershom's ban on polygamy was only in force until

the end of the fifth millennium, and some extend this to our *cherem*, too.

The

basic tradition with regard to polygamy itself, however, is not universally accepted, and our *cherem* in particular

may have no expiration date, as unlike polygamy, which is perfectly permissible

according to Biblical law, the reading of others' mail may be prohibited to begin with, for the various reasons given above, and so Rabbeinu Gershom would

not have included a sunset clause in his *cherem*.

Discarded

Letters

Some

of the medieval formulations of the *cherem* contain the dispensation that "if he has discarded it, it is permitted", and this has been understood to mean that even if the discarding has not been directly observed,

the mere fact of the letter being apparently abandoned allows us to conclude

either that it has been deliberately discarded or that care was not taken to secure it, due to its not containing any confidential information. There is, however, an opinion that limits this to where the letter has been discarded in

a publicly accessible place, where it is likely to be read, as this clearly indicates that the discarder is unconcerned with its being read, but where it has been placed into a private or even a public garbage can, the contents of which are generally unlikely to be exposed, as dumpster-diving is uncommon in

contemporary times, there is no basis to impute such unconcern to the

discarder.

Additionally,

there is an opinion that forbids reading a letter found in the street, as even insofar as the recipient does not care if the letter is read, the sender may still care.

Unsealed

Letters and Postcards

The *poskim*

debate

whether the *cherem* applies to

unsealed letters and postcards; on the one hand, since the sender did not bother to seal his missive, he evinces unconcern with its being read, but on the other, perhaps he simply relies on general compliance with the *cherem*.

Additionally,

irrespective of the sender's lack of concern, the addressee of the missive may

object to third party perusal.

Permission of

the Recipient

There

is an opinion that permission from the recipient of a letter suffices to allow third party perusal; others maintain that permission from the sender is also necessary.

Extenuating

Circumstances

There

is an opinion that the *cherem* applies even in

the face of a *mitzvah*. On the other

hand, some maintain that just as Rabbeinu Gershom's ban on polygamy may not

apply in situations of *mitzvah* and *aveirah*, so, too, does

our *cherem* include such an exception, and it is therefore permitted for an educator to read the correspondence of a female student with a young man where

there is a suspicion that the contents are illicit, although it is preferable to simply ban the correspondence, and in any event, no one but her teacher may

read it, and it must be perfectly clear that any information he gleans from his

perusal must remain absolutely confidential. Similarly, where parents or teachers have a reasonable suspicion in particular circumstances that their children or students are corresponding with those who may incite them to sin,

or where there is a reasonable suspicion of scandalous intercourse on the part of a woman, the parents, teachers, husbands, *batei din* or their agents may read the correspondence in order to prevent the illegitimate conduct or take other appropriate action.

It is unclear whether it is permitted to read another's correspondence in order to avoid harm.

Eavesdropping

Some maintain that the *cherem* applies to eavesdropping on telephone conversations and the like.

Beyond the *Cherem*

Some maintain that even where the *cherem* is technically inapplicable, excessive curiosity and nosiness are inappropriate.