Informing on Others to A Just Government

Rabbi Michael J. Broyde

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 or another aspect 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.

"Informing" is itself not a sufficiently precise translation of the Hebrew term *mesira*.[1] 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 well known, Jews have very often lived in situations where government was unjust towards Jews, or where criminal elements ("bandits") formed the basis for government, and telling the abusive government that a Jew had money or that a Jew had broken

1. The exact Hebrew term that is generally used is *mesira*, although sometimes the word *malshin* is used.

Associate Professor of Law, Emory Law School;
Member, Beth Din of America;
Rabbi of the Young Israel of Atlanta.

the law was a dangerous act. Indeed, this conduct often 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.[2] This article focuses on how these rabbinic decrees may or may not apply in a just government, which only acts to punish law breakers.

Furthermore, this article is **not** discussing the proper response to violent criminals or people whose conduct endangers others or the community as a whole.[3] Even in

---

2. See *Bava Kama* 115b-117b.

3. Endangering the community is not limited to cases of communal punishment, or immediate short term danger. Rabbi Yitzchak Adlerstein notes the following incident recounted to him by Rabbi Mordechai Kaminetsky, in the name of Rabbi Yaakov Kaminetsky.

> There was a period in the 1970's when a group of rogues were smuggling valuables in *tefillin* (phylacteries) and other religious articles that would usually evade inspection; thus the thieves assumed their scheme would be successful. Often they would send these religious articles with unsuspecting pious Jews and asked them to deliver them to certain locations near their final destinations. When United States customs officials got wind of this scheme they asked a few Orthodox Jewish agents to help crack the ring. In addition to preserving the sanctity of the religious items, the customs authority felt that Jewish religious agents would best be able to weed out knowing accomplices from unsuspecting participants who had been duped.
>
> The Jewish customs agent in charge of the operation decided to confer with Rabbi Yaakov Kaminetzky on this matter. Though his advice on how to break the ring remains confidential, the grandson reports that he explained how the severity of the crime was compounded by its use of religious items:
>
> "Smuggling diamonds in *tefillin*," he explained, "is

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. This article addresses the problems of informing as it relates to violators of non-dangerous law or non-violent or regulatory laws, from 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.[4]

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,[5] the Talmud recounts – in a number of places – that it is prohibited to inform on Jews to the secular

---

equivalent to raising a white flag, approaching the enemy lines as if to surrender, and then lobbing a grenade. That soldier has not only perpetrated a fraud on his battalion and the enemy; he has betrayed a symbol of civilization. With one devious act, he has destroyed a trusted symbol for eternity – forever endangering the lives of countless soldiers for years to come. These thieves, by taking a sacrosanct symbol and using it as a vehicle for a crime, have destroyed the eternal sanctity and symbolism of a sacred object. Their evil actions may cause irreparable damage to countless honest religious people. Those rogues must be stopped, by any means possible," he exclaimed.

4. This article is not really even discussing the question of whether one may inform on another whose conduct recklessly endangers people without malicious intent, such as a person with uncontrolled epilepsy who hides that fact from the government when seeking a driver's license; see e.g, R. Moshe Sternbuch, *Teshuvot ve-Hanhagot* 1:850 (the authorities may be apprised of one who drives recklessly or without a license).

5. See *Shulchan Aruch, Choshen Mishpat* 369:8.

government, even when their conduct is a violation of secular law or even of Jewish law. While there are a number of exceptions to this prohibition (explained further in this section), the essential halacha is that Jewish law prohibits 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.[6] Indeed, classical Jewish law treats a person who repeatedly informs on others as a pursuer (*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,[7] 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 incidents[8] clarifies that the act of informing causes one to be in the formal status of a pursuer , 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

---

6. Consider a secular government that makes it a violation of secular law for a person to cut down fruit trees for no purpose (which is also a violation of Jewish law); Jewish law would prohibit informing the secular government of such a violation.

7. See Mishnah, *Bava Kama* 116b, *Gittin* 7a and *Bava Kama* 117a-b.

8. *Bava Kama* 117a, where a talmudic Sage actually killed a person who was going to inform on another.

> given to a bandit (*anas*)[9] is analogized by the rabbis to one who is running after a person to kill him... Just as 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.[10]

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

---

9. Precisely translating the word *anas* is important – but hard. The word denotes an illicit oppressor. Thus, a rapist is an *anas*, as is an armed robber. A cat burglar would not be called an *anas*, since he sneaks into empty dwellings to steal.

10. *Teshuvot haRosh* 17:1.

– his status is worse than other tort-feasors.[11]

According to *Mordechai*, informing is different from any other act which causes damage 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,[12] but a

---

11. *Mordechai, Bava Kama, Hagozel* §117.

12. For a more complete review, see *Pitchai Choshen*, Volume 5, Chapter 4 and *Dinnai Momonot*, Volume 4, Chapter 5.
The question that is worthy of pondering is the relationship between the obligation to redeem captives (found in *Yoreh Deah* 253) and the prohibition to inform. In cases where there is no prohibition to inform (where informing is permitted, see *Darchai Teshuva* 157:53 and more generally Part III of this article) a logical case can be made that there is no mitzvah to redeem people jailed due to being reported (as they are in prison properly) when there is nothing wrong with informing. This exact observation is made in the name of Rabbi Shlomo Zalman Auerbach in a recent work, *Ve'aleyhu lo Yibol*, volume 2:113-114, which recounts in the name of Rabbi Yehuda Goldreich:

> I asked Rabbi Auerbach about a particular Jew who stole a large sum of money and he was caught by the police in America. He was sentenced to a number of years in prison in America. Was it proper to assist in the collection of money for him [we were speaking about a large sum of $200,000] in order to fulfill the mitzvah of redeeming captives to have him released from prison (possibly for bail)?
> When Rabbi Auerbach heard this he stated "Redeeming captives?! What is the mitzvah of redeeming captives here? The mitzvah of redeeming captives is only when the Gentiles are grabbing Jews, irrationally, for no proper reason, and placing them in prison. According to what I [Rabbi Auerbach] know, in America they do not irrationally

simple understanding of the nuanced rules is needed to understand why a just government might be different.

Eight rules can be given that outline the general approach halacha takes. Their actual application to real-life situation will be discussed hereinafter:

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.[13] One may not inform on a Jew, even if the Jew is a sinful and bad person.[14] (But see further below)

2. One who informs is liable to pay damages if his act of informing damages another.[15] As a general rule one is not liable for torts done to another by a third party; informing is an exception to this rule.[16]

3. Even without the order of a Jewish law court, (but only in certain cases!) one may kill a person who has certainly set out to inform on another, prior to the act of informing, as informing poses a danger to the one who is informed

---

grab Jews in order to squeeze money from them. The Torah says 'do not steal' and he stole money – on the contrary, it is good that he serve a prison sentence, so that he learns not to steal!"

13. *Shulchan Aruch, Choshen Mishpat* 388:9 (one who informs is denied a place in the world to come).

14. Ibid.

15. Ibid, 388:2, *Sema* 388(5) and *Shach* 388(13).

16. This is derived from the talmudic incident recounted in *Bava Kama* 116b and the comments of Rashi ad locum s.v. *deachve achvi* who notes that the informing is without any direct act of the informer, but yet the informer is still liable. Even in cases where the informer is not generally liable (such as when the informer is coerced) if the informer actually takes the goods with his own hands from the Jew, the informer is generally liable; *Shulchan Aruch, Choshen Mishpat* 388:2.

upon.[17] Once the 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).[18] One who regularly informs may be killed without warning.[19]

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 [as noted earlier, including not only a person whose actions are violent or dangerous but also one whose activities may endanger the Jewish community by casting them into disrepute] may be informed upon.[20] One who hits others or is violent may be informed upon.[21]

5. When a Jew owes money to a Gentile, and the Jew is seeking to improperly avoid payment of the money, and another Jew informs the Gentile, who then collects the money rightfully owed to him, that is not called informing, as the Jew only has to pay that which he ought to pay, anyway.[22] Payment of taxes to the government is exactly such a debt.[23] Some say such informing is frowned on when

---

17. Ibid. 388:10.

18. Ibid. 388:11, 13.

19. Ibid. 388:14. There is a dispute between various decisors about whether such a person may be killed directly or indirectly. Compare *Shulchan Aruch* with Ramo *id.*

20. *Shulchan Aruch, Choshen Mishpat* 388:12. Even a person who drives recklessly may be informed upon as such conduct endangers members of the community. See note 4.

21. Ramo commenting on *Shulchan Aruch, Choshen Mishpat* 388:7, and *Shach* 388:45.

22. Ramo, ibid, 388:12.

23. *Shach, Choshen Mishpat* 388:20 and *Pitchai Choshen,* Volume 5, Chapter 4:15, note 44.

it gratuitously benefits a pagan, and others say such conduct is proper.[24] All agree that when such conduct leads to a desecration of G-d's name, it is prohibited to decline to report such a person.[25]

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 caused.[26] There is a dispute as to whether such conduct is proper or simply immune from liability.[27]

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.[28]

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.[29]

---

24. Compare *Be'er Hagolah, Choshen Mishpat* 388:(*70*) (proper to report) with Ramo, commenting on *Shulchan Aruch Choshen Mishpat* 388:12 (improper to report). This is because – even when there is no sin in helping a Gentile, halacha nonetheless directs that one should not involve oneself in a matter, where one need not be involved, when a Jew loses and a bad Gentile (pagan) or an apostatized Jew benefits.

25. *Bava Kama* 113b.

26. *Shulchan Aruch, Ibid.* 388:2-3.

27. Compare *Sema* 388:(13) (such conduct is prohibited, but generates no liability) with *Taz* 388:3 (s.v. *harai ze patur*) (such conduct is completely proper and without sin).

28. Compare Ramo *Choshen Mishpat* 388:3 (liable) with *Shach* 388:22 (exempt).

29. See Ramo's comments, ibid, 388:5; *Responsa of Ramo* 88 endorses the view that informing, when done to save one's own property, is not considered informing. See also *Responsa of Maharshal* 19.

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 the community, or the informer is merely allowing the victim to reclaim what is his anyway or, according to some decisors, the informer does so to protect his own property.[30] In cases of desecration of G-d'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 unquestionably be required.

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 obey the laws, and who punish people in accordance with its laws? We make certain assumptions about American law that need to be stated, inasmuch as our conclusions herein are predicated on these assumptions:

---

30. For specific sources, see *Shulchan Aruch Choshen Mishpat* 388:2-3, 388:12, and *Shach* 388(45) and Ramo, ibid 388:5.

> The governments of the United States of America and the various states are just and proper governments that do not, in general, punish people beyond the dictates of the secular law.[31] They are not corrupt governments, nor are they generally motivated by anti-Semitism.[32]
>
> As a matter of American law, people cannot be compelled to go to a Jewish law court (a *beit din*) to resolve claims against them if they do not wish to submit to the *beit din*. In America, *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, disagreeing with any one of these assumptions 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.[33] In modern American law, unlike Jewish

---

31. However, it is important to add that while secular law punishes people without any anti-Semitic overtones, still the punishments meted out are not – typically – the punishments directed by Jewish law

32. Of course, one should not misunderstand these assumptions and posit that the secular government never makes mistakes or acts corruptly or has no employees whose conduct is anti-Semitic.

33. See Restatement (Second) of Torts § 314 (1965): "The fact that the actor realizes or should realize that action on his part is necessary for another's aid or protection does **not** of itself impose upon him a duty to take such action." As one well-known

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.[34] 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.

Halachic authorities have presented a broad variety of responses to the issue of whether the *issur* (prohibition) of informing applies today, in a just society. Their attitudes range from virtual abrogation of the *issur*, to reduction of its strictures, to maintaining that it remains in force today as always, albeit possibly for somewhat different reasons. We will examine their responses and the rationales offered for their various positions.

A. The View of the Tzitz Eliezer, 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 Yechiel Michel Epstein (19th-20th centuries) in his *Aruch Hashulchan*. He states:

Note: As is widely known, in times of old in places

---

police officer stated "there is no law requiring citizens to report a crime ... or to stop a crime," quoted in Jennifer Bagby, "Justifications For State Bystander Intervention Statutes: Why Crime Witnesses Should Be Required to Call For Help," *Indiana Law Review* 33:571 at 572 (2000).

34. See Jessica R. Givelber, "Imposing Duties on Witnesses to Child Sexual Abuse: a Futile Response to Bystander Indifference," *Fordham Law Review* 67:3169-3205 (1999).

> far away, no person had any assurance in the safety of his life or money because of 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.... **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.**[35] (emphasis added)

The question of whether the writer of *Aruch Hashulchan* really meant what he wrote about the Czar's heading a just government or whether he wrote it for the sake of the Russian government censor, is still a matter in dispute, although that does not alter the gist of his argument.[36]

---

35. *Aruch HaShulchan, Choshen Mishpat* 388:7.

36. This matter is discussed extensively by Justice Menachem Elon in "Extradition in Jewish Law" *Techumin* 8:263-286, 304-309 (1988) and Rabbi J. David Bleich, "Extradition," *Techumin* 8:297-303 (1988), and Rabbi Shaul Yisraeli, "Extradition," *Techumin* 8:287-296 (1988). While one can dismiss the words of the *Aruch Hashulchan* as put in for the censor, there are at least three logical reasons why one might conclude that the words in the text actually reflect the normative Jewish law view of the *Aruch Hashulchan*.

Rabbi Eliezer Waldenberg explicitly adopts the view of the *Aruch Hashulchan*. In the course of discussing whether one my 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 faraway 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.**[37] (emphasis added)

They are:

(1) All apologetic remarks for the benefit of the censor in *Choshen Mishpat* in the *Aruch Hashulchan* are found in star footnotes in italics at the bottom of the page. This passage is found in the text and not in italics.

(2) His mention of the British government is unexplainable if directed to the censor. Britain and the Czar were not allies at this time, and he is clearly referring to the British democratic tradition.

(3) The *Aruch Hashulchan* gives a logical and halachic explanation for his view, which he never does when speaking to the censor.

Indeed, this writer notes that one could almost state that if there is a hand of the censor, it is not in terms of the *principle* that informing does not apply to just governments, but to the remark that the Czar is just!

37. *Tzitz Eliezer* 19:52. The genuineness of the view of the *Aruch HaShulchan* is also noted by Rabbi Gedalia Dov Schwartz in

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 "bandits" about people's activities. The many different rules limiting when one can inform on a Jew are limited to cases where the people to whom one is informing are unethical and unjust individuals or one informs to an unethical and unjust government.

The language of the *Tur* supports this:

> 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....[38]

A close examination of the words of Rabbenu Asher quoted above[39] 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 also 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,

---

"The Abused Child–Halakhic Insights," *Ten Da'at*, Spring 1988, p. 12. One could claim that the view of the *Bach*, as cited in the *Darchai Teshuva* 157:53, is identical to that of the *Aruch Hashulchan*.

38. *Tur, Choshen Mishpat* 388:2.

39. *Teshuvot haRosh* 17:1.

will bring the suspect to secular court. The matter could be serious, as we suspect that the person is the father of a large family, and this person is connected to Torah activities; it is possible that there will be a desecration of G-d'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 in 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 at the end he concludes "nonetheless I [the author of *Panim Me'erot*] say that is it improper to report him to secular authorities, as our talmudic 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 times [Rabbi Elyashiv's]. **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 G-d's name, and it is not in my ability to evaluate this, since I do not know the facts.[40]

---

40. Rabbi Sinai Adler, *Devar Sinai* 45-46 (Jerusalem, 5760). See also the view of Rabbi Shlomo Zalman Auerbach, quoted in note

This view posits that when fear of death or torture is functionally gone, the rabbinic decree prohibiting informing does not apply. According to these authorities this is true 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 the rabbinic decree prohibiting informing was limited to situations of banditry.[41] Thus, in situations where there is

---

12, which concludes,"According to what I [Rabbi Auerbach] know, in America they do not irrationally grab Jews in order to squeeze money from them. The Torah says 'do not steal,' and he stole money – on the contrary, it is good that he serve a prison sentence, so that he learns not to steal!"

41. Rabbi J. David Bleich writes:

> Jewish law also posits severe strictures against delivering either the person or property of a Jew to a Gentile. Thus, *Shulchan Arukh* [sic] declares that the person and property of even a "wicked person" and a "transgressor" remain inviolate even if that individual is a source of "trouble" or "pain" to others. There is, however, an inherent ambiguity in this proscription. There may be reason to assume that the prohibition is limited to turning over a person or his property to the custody of an "oppressor" who inflicts bodily or financial harm in a manner that 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 treatise on Jewish commercial law, *Dinai Mamonot*, 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... This should be thought true only by the very naive, as even in democracies... 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**

---

malevolent or entirely extralegal. Indeed, the terminology employed by the *Tur Shulchan Arukh* ("*Tur*") in codifying this provision of Jewish law lends credence to such a restrictive interpretation since *Tur* incorporates the term *"anas"* or "oppressor" in recording the prohibition. Rabbi J. David Bleich, "Jewish Law and the State's Authority to Punish Crime," *Cardozo L. Rev.* 12:829, 830 (1991).

> **destroy people and in many places they do, in fact, destroy people.**[42] (emphasis added)

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

> [N]onetheless, 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.**[43]

Rabbi Blau proposes the possibility that even if a justice system works only to incarcerate people who are deserving of incarceration, nevertheless 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.[44] Evaluating this type of claim is very difficult, but Rabbi Blau's observation has a certain amount of merit. 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

---

42. Rabbi Ezra Batzri, *Dinai Mamonot* 4:2:5n.1 at page 86.

43. *Pitchai Choshen* 7:4 in note 1, in the course of a lengthy discussion of this issue.

44. In this view, prison has the status of an indeterminate sentence (*mas she'ayn lo kitzvah,* see *Rashba* 1:1105, and *Pitchai Choshen* volume 5, Chapter 12, paragraph 5 in the notes) which is definitionally void according to Jewish law, in that in prison one is subject to random extra-judicial punishment by both the guards and fellow prisoners.

– and 20% of those under the age of 25 – have been assaulted while in prison.[45]

---

45. See John R. Williams, "Representing Plaintiffs in Civil Rights Litigation Under Section 1983", 596 PLI/Lit 117, 160 (1998). See also Sharone Levy, "Balancing Physical Abuse by the System against Abuse of the System: Defining 'Imminent Danger' Within the Prison Litigation Reform Act of 1995," 86 *Iowa L. Rev.* 361 (2000), which notes that:

> Studies demonstrate that life in prison is becoming more dangerous, and prison violence is increasing. In 1996, the U.S. Department of Justice found that fourteen percent of all inmates were assaulted while serving prison sentences. Further, not all of these incidents occur between inmates. Guards often subject both male and female prisoners to rape and physical abuse.

Assuming that the numbers are correct, a very strong case can be made that abuse in prison is a statistically noticeable event and must be considered an event of some real possibility (a *mi'ut hamatzuy*) with all of the ramifications associated with that. Consider how one would respond if a judge explicitly sentenced a non-violent felon to "three years in prison where he might be raped by fellow prisoners as part of his sentence." We would all recognize that such a sentence is wrong and improper and ought to be defied, even if that meant no punishment for such a person, as this was the only sentence government can actually provide. Rabbi Blau is arguing that such is exactly the reality of a prison sentence for a non-violent prisoner sent to a prison with violent inmates (as is the norm outside of the Federal prison system). See for example "Rape in Prison," *The New York Times*, April 22, 2001, Section 4; Page 16; Column 1 which states:

> Because convicted criminals enjoy little public sympathy, **prison guards and wardens routinely turn a blind eye as prisoners in their custody commit vicious sexual assaults on their fellow inmates.** Out of sight and out of mind for most Americans, rampant sexual abuse behind prison walls scars its victims for life, transmits H.I.V., and mocks the constitutional prohibition against cruel and unusual punishment.
>
> A disturbing new report by Human Rights Watch

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.

In the approach of either Rabbi Batzri or Rabbi Blau, one divides cases of informing into three types of categories. One situation occurs when the person being informed upon 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 they might be harmed by the brutal prison system. The second situation is that of non-violent criminals (white collar crimes such as intentionally bouncing checks, or recreational personal drug use). Because the prison system might be brutal to them, 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 are usually not a possibility, would not be prohibited by this rationale.

---

documents how rape in America's prisons has become commonplace, ... An academic study of inmates in men's prisons in four Midwestern states found that as many as one in five prisoners reported at least one instance of forced sexual contact since being incarcerated....
America's two million prison inmates have been lawfully deprived of their liberty, but they have not been sentenced to physical and psychological abuse. Yet Human Rights Watch found that prison authorities rarely investigate complaints of rape, and prison rapists rarely face criminal charges. **Most prisons make little effort to prevent sexual assaults and provide minimal attention for victims.** (empasis added)

This observation – that prisons are 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:

> Such a person does not have the status of a pursuer, as there is no fear nowadays that such informing will lead to danger to life, and certainly such a person is not ineligible to serve as a witness according to Torah law ....[46]

According to Rabbi Shmelkes, one must make a factual determination as to whether informing can lead to life-threatening conditions. If it can, then the informer would be a pursuer; otherwise, such conduct is a generic tort and while damages have to be paid, one is not considered a pursuer (*rodef*). One might not even be deemed a "sinner" but merely a tort-feasor.

A similar view is seemingly endorsed by Rabbi Yaakov Yeshaya Blau, in *Pitchai Choshen*:

> Many decisors found some merit (*lamdu zechut*) on the kings and governments of their time [so] that the rules of informing did not apply. But it is widely known that in these kinds of works the hand of the

---

46. *Beit Yitzchak Yoreh Deah* 49(12).

censor is present. In circumstances they wrote [or left out] matters out of fear of the censor or the government, or at the least because of hatred of the Jews (*aiva*), and it is thus hard to learn from these sources. **Nonetheless, in my humble opinion, there is an acceptable aspect of this view [that informing does not apply in a just society] since the essence of the prohibition to inform even on monetary matters is "lest they come to kill you." It is clear that in a country where the government is just, even though informing is clearly prohibited, nonetheless there is no fear that they will kill you. Thus an informer is no different from any other damager of the property of another, and none of the strictures concerning informing which can result in physical duress apply....**[47] (emphasis added)

To understand this view, one must accept that there are at least two distinct components to the rules of informing: the tort component of damaging another, and the sin of endangering the life of another through informing. In a society where, in fact, there is no danger of life and limb through informing to the governmental authorities, the informer loses his status as a pursuer, according to the view of Rabbi Shmelkes.

Indeed – although Rabbi Shmelkes does not state so explicitly – when only the tort prohibition is present, the only reason informing is prohibited is because one is improperly damaging the property of another. Absent the danger – both economic and physical – informing becomes merely a tort. It is an unusual tort according to Jewish law in that the causation is indirect, but that would be the

---

47. *Pitchai Choshen*, Volume 5 Chapter Four, note 1.

essence of the remaining rabbinic decree – that informing on another person improperly creates liability according to Jewish law.[48] In fact, the halacha does become much more complex in that once informing is treated like any other form of damage, it becomes permissible to engage in informing any time damaging another is permissible.[49] Thus, for example, consider the case of one who was improperly disposing of waste oil into another's backyard. If this person's misconduct did halachically recognizable harm to another, and that person needed to abate the harm being done him, he could call the relevant governmental organizations, which would issue the suitable regulatory remedy. However, according to the rationale of Rabbi Shmelkes, if one simply called the relevant authorities in a case in which there was no harm to oneself, such action would be prohibited according to Jewish law, as it would be causing damage without any right to do so according to Jewish law.[50] One would then be liable for the full damages one did, including lawyer's fees and the like.

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

Another view relates the prohibition of informing to

---

48. As opposed to most forms of gossip, which do not ever lead to liability. See *Pitchai Choshen*, ibid, paragraphs 21-29.

49. Or where the tort causes no damage, such as when one informs on a person for a debt that he is liable to pay according to Jewish law; see text accompanying note 43 for a further explanation of this.

50. The statement in *Shulchan Aruch Choshen Mishpat* 388:10 that "it is permitted to kill an informer in any place, even nowadays..." would, according to Rabbi Shmelkes, not be applicable when informing will never lead to harm.

the legality (from the perspective of Jewish law) of the secular government's actions. In this view, informing is prohibited only when the government seeks to enforce secular law that Jewish law does not consider obligatory upon Jews, according to Jewish law.

Consider, for example, Rabbi Shmuel Wosner's discussion of whether one may work as a tax auditor for the government:

> In the matter of one who works in the tax offices, and when he sees one who defrauds the government he has to report him to the courts. That person wants to know if he is in the status of an informer or whether "the law of the land is the law [applies, and is thus proper]."
>
> It is clear that according to the halacha, taxes – without dispute or controversy – are covered by the obligation to obey the law of the land....
>
> On the question of informing to the government, it is clear from the incident discussed in *Bava Metzia* 83b with Rabbi Eleizer who informed upon a person to the government, that this conduct was permitted because of loyalty to the government, even though they said to him "how long will you hand over G-d's nation to be killed?" That is because this matter relates to the danger to the life of a Jew. So, too, that which Elijah recounts to Rabbi Yishmael [that he should cease informing] is applicable, but the technical halacha appears that this matter has a benefit to the government....[51]

---

51. Rabbi Wosner adds: "In the *Biur Hagola Choshen Mishpat* 388 it states 'it is already well established by decree and custom that the leaders of the community are careful not to lie or cheat

> See also Ramo *[Choshen Mishpat]* 388:11 who notes that if one wishes to flee to avoid paying a Gentile what he actually owes him, and another reveals this information, the latter person lacks the status of an informer....That which is relevant to the government and its designee, there is no sin. Nonetheless, *ab initio* it is better not to accept an appointment to engage in such activity, since it entails informing on one even in a permissible way, which is not the conduct of the righteous, as is noted in the Jerusalem Talmud *Teruma* 8:4.... Furthermore this case is not analogous to other cases as those cases involve danger to life when the Gentiles are informed; this case is different because punishment imposed on the violator nowadays never involves mortal danger.[52]

In this view, informing is a violation of halacha only when Jewish law does not recognize the inherent right of the secular government to enforce its actions. Whether the conduct one is reporting violates autonomous Jewish law (absent secular law) is completely irrelevant to this mode of analysis. Whether the person is punished in a manner consistent with Jewish law also does not matter, because Jewish law only prohibits informing when secular law is invalid in the eyes of Jewish law.[53]

Gentiles, and they inform on and give permission to reveal [about those] who take improperly...'."

52. *Shevet Halevi, Yoreh Deah* 58. Rabbi Wosner also refers to *Maharam Alsheich* 66 who notes that one cannot be considered an informer (*moser*) when the activity one is informing on violates "the law of the land." That view is also hinted at in *Darchai Teshuva, Yoreh Deah* 157(53).

53. See *Niddah* 61a which states:

It was rumored about certain Galileans that they killed a person. They came to Rabbi Tarfon and said to him, "hide us."

In this writer's opinion, this approach is broadly predicated on the conceptual analysis of Rashi, commenting on the Talmud, who seems to accept the premise that Jewish law recognizes that the secular government may properly enforce any law validly promulgated under the rule "the law of the land is the law" (*dina de-malchuta dina*), even against Jews.[54] Maintaining law and order is unquestionably a permissible function of government, as is collecting taxes. Indeed, since Judaism accepts that Gentiles are empowered by Noachide law (through the commandment of *dinim*) to make and enforce laws, it is not a far leap of logic to observe that such criminal laws, once made, are binding upon Jews to the extent that Jewish law does not mandate a

---

Rabbi Tarfon replied, "What shall I do? If I do not hide you, you will be seen. Should I hide you? The Sages have said that rumors, even though they may not be accepted, nevertheless, should not be dismissed. Go and hide yourselves."

The reason Rabbi Tarfon declined to aid is in dispute, and this dispute is undoubtedly related to this issue. Rashi states that the reason Rabbi Tarfon would not help these people was because if they were guilty, helping them would be prohibited. This would imply that Jewish law prohibits aiding defendants who might be guilty. Tosafot and Rosh disagree and argue that the reason he would not help was because he was afraid that the government would punish him for helping criminals escape, but that helping them is halachically permitted; Tosafot, *Niddah* 61a (s.v."*atmarinkhu*") and *Tosafot ha-Rosh* on *Niddah* 61a, both quoting R. Aha mi-Shabha, *She'iltot*, Numbers 129.

54. See e.g., Rashi, commenting on *Gittin* 9b ("*Chutz megitai Nashim*") who explicitly relates secular law to the mitzvah of *dinim*, and Rashi, *Niddah* 61a ("*michush leah mebay*") who, as understood by *Tosafot ha-Rosh*, adopts the view that if one kills and flees from the government, Jewish law prohibits one from assisting him to avoid the punishment of secular law, since secular law is proper in punishing in that case. For more on this, see Michael Broyde, *The Pursuit of Justice: A Jewish Perspective on Practicing Law* (Yeshiva University Press, 1996) at pages 83-87.

different result. If that is so, the Jewish community may assist in the enforcement of Noachide law without stepping afoul of the rabbinic prohibition of informing (*mesira*).[55]

As noted by Rabbi Wosner, this approach can be found explicitly in a number of talmudic incidents, and the commentaries of various *Rishonim* on it. The Talmud states:

> Rabbi Eleazar son of Rabbi Simeon was brought to the court [and appointed to be a police officer], and he proceeded to apprehend thieves. Rabbi Joshua son of Karchah sent word to him, "Vinegar, son of wine! [i.e., inferior son of a superior father]: How long will you deliver the people of our God for slaughter?" Rabbi Eleazar sent the reply, "I eradicate thorns from the vineyard." Rabbi Joshua responded, "Let the owner of the vineyard come and eradicate his thorns". . . . A similar incident befell Rabbi Yishmael the son of Rabbi Yosi. The prophet Elijah appeared to him and rebuked him. . . . "What can I do – it is the royal decree," responded Rabbi Yishmael. Elijah retorted "Your father fled to Assia, you flee to Laodica [i.e., you should flee and not obey]."[56]

Thus, the Talmud records that two sages were rebuked for assisting the government in the prosecution of criminals,

---

55. For a more complete analysis of this issue see Nahum Rakover, "Jewish Law and the Noahide Obligation to Preserve Social Order," *Cardozo L.R.* 12:1073, 1098-1118, and App. I & II (1991).

56. *Bava Metzia* 83b-84a. For an excellent analysis of the issues raised by secular enforcement of criminal law, see Rabbi J. David Bleich, "Jewish Law and the State's Authority to Punish Crime," *Cardozo L.R.* 12:829 (1991); see also idem., "*Hasgarat Poshea Yehudi she-Barah le-Eretz Yisrael*," *Or ha-Mizrach* 35:247-269 (1987).

indicating that this conduct is not proper, or at least the subject of a dispute between Rabbi Eleazar and Rabbi Joshua. A number of commentaries advance an explanation which changes the focus of this reprimand. Rabbi Yom Tov Ishbili (Ritva)[57] states that even Rabbi Joshua – who rebuked Rabbi Eleazar for working as a police officer – admits that it is only scholars and rabbis of the caliber of Rabbi Eleazar and Rabbi Yishmael who should not assist the government as prosecutors or police officers. Even for these individuals such conduct was not prohibited, but only frowned upon.[58] Many authorities agree with this explanation.[59] According to this analysis, it is undignified for scholars to act as government agents in these circumstances – but all others may. There is no technical prohibition to inform in such cases.

According to Rabbi Wosner's conceptual observation, the scope of the prohibition to inform is inversely related to the scope of the obligation to obey the law of the land, about which there are three principal perspectives:[60]

---

57. Ritva, commenting on *Bava Metzia* 83b, as quoted in R. Betzalel Ashkenazi, *Shittah Mekubetzet*, ibid.

58. This understanding might be based on an inference from the Jerusalem Talmud, *Terumot* 8:4 which indicates that this conduct is only prohibited to the pious.

59. See *Ran*, commenting on *Sanhedrin* 46a; R. Solomon ben Aderet, *Teshuvot Rashba* 3:29; R. Yosef Karo, *Beit Yosef, Choshen Mishpat* 388; *Taz, Yoreh Deah* 157:7-8; R. Tzvi Hirsch Shapira, *Darkei Teshuvah*, commenting on *Yoreh Deah* 157:1; R. Meir Simhah of Dvinsk, *Or Sameah, Melachim* 3:10; and R. Moshe Schick, *Teshuvot Maharam Schick, Yoreh Deah* No. 50.

60. For a thorough exposition, see Rabbi Hershel Schachter, "Dina De'Malchusa Dina": Secular Law as a Religious Obligation, *Journal of Halacha and Contemporary Society*, Vol. 1, No. 1 (Spring 1981).

The *Shulchan Aruch* considers that secular law is binding upon Jews under Jewish law only as it directly affects the government's financial interests, such as taxes or tolls.[61] The Ramo[62] agrees but also includes secular laws enacted for the benefit of the community as a whole. On this point, *Schach*[63] disagrees with Ramo, if these enactments are contrary to Jewish law obligations.

While there is substantial debate about which approach to follow, nevertheless, it seems that most modern authorities agree that, at least outside the State of Israel, Ramo's view should be applied. These include Rabbi Moshe Feinstein,[64] Rabbi Eliyahu Yosef Henkin,[65] Rabbi Yosef Soloveitchik,[66] and Rabbi Yoel Teitelbaum.[67]

Based on this approach one could argue that informing is permitted if the person on whom one is informing has actually violated secular law that Jewish law deems valid, and the informer gains from governmental enforcement, or from abatement of the tort.[68] So, too, in a situation where

---

61. *Shulchan Aruch, Choshen Mishpat* 369:6,11.

62. Ibid, 369:11.

63. *Shach* on *Shulchan Aruch, Choshen Mishpat* 73:39.

64. *Iggerot Moshe, Choshen Mishpat* 2:62.

65. *Teshuvot Ibra* 2:176.

66. This is implied in *Nephesh Harav* at pages 267-269 and has been confirmed by other sources.

67. *Divrai Yoel* 1:147.

68. Rabbi Hershel Schachter posits:
One critical point should however be added: there is no problem of "*mesira*" [informing] in informing the government of a Jewish criminal, even if they penalize the criminal with a punishment more severely than the Torah requires, because even a non-Jewish government is authorized to punish and penalize above and beyond the [Jewish] law . . . for the purpose of maintaining law and

silence would lead to a desecration of G-d's name and informing would lead to a sanctification, informing would be permitted. However, some of these same authorities are not prepared to make this conclusion.

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

The view of Rabbi Breisch (explicitly) and Rabbi Moshe Feinstein (implicitly) is that the rules relating to informing are unrelated to the status of the government as just or unjust, proper or improper. In three distinctly different responsa, Rabbi Feinstein appears to posit that the prohibition of informing remains identical in a just society.[69] In 1961 Rabbi Feinstein answered a question concerning whether the communal rabbinate may report to the police a person who had been selling not kosher food as kosher, if instead, he is willing to consent to a *din Torah* by the rabbis themselves. Rabbi Feinstein writes:

I received your letter with regard to an evil doer...In

---

order. However, this only applies in the situation where the Jewish offender or criminal has at least violated some Torah law.

R. Hershel Schachter, "Dina De Malchusa Dina: Secular Law as a Religious Obligation," *Journal of Halacha & Contemporary Society* 1:103, 118 (1981). In contrast with this, see the statements of Rabbi Feinstein, in the text above.

69. There is no doubt, from many different responsa that Rabbi Feinstein wrote that he considered the government of the United States to be a proper government, to which full fidelity to the law of the land is expected. Consider the following statement: **"Because of the fact that the government is a pious one**, whose whole purpose is to benefit all of the inhabitants of the land, the government has created a number of programs to benefit students...." *Iggerot Moshe, Choshen Mishpat* 2:29 (emphasis added).

> my opinion, even though his sin is great, and he shows no repentance, nonetheless so long as we cannot say that the Jewish judges cannot judge him, one may not turn the matter over to the secular authorities.... **In addition, since it is certain that the secular authorities will adjudicate the matter through incarceration or a fine inconsistent with Jewish law, one must be fearful of the prohibition of informing, as it is prohibited to inform on a Jew to the secular authorities, whether through danger to his body or his money, even if he be a sinner.**[70] (emphasis added).

No mention is made of the fact that the secular authorities (in this case, the state of Maryland) will adjudicate the matter fairly (i.e., consistent with its laws) or that prison was the proper penalty according to secular law. Rather, Rabbi Feinstein adopts the view that unless one of the exceptions permitting informing is present, it is prohibited to inform on a person according to Jewish law, inasmuch as the punishments imposed by secular law violate Jewish law, and thus may not be imposed on a person lest one violate the prohibition of informing.[71]

This view is repeated again in Rabbi Feinstein's discussion of whether one can be a tax auditor for the government. He states:

> In the matter of one who wants to be an auditor for

---

70. Ibid, 1:8.

71. Of course, Rabbi Feinstein accepts that if the person will not consent to attend a *beit din* or will not listen to the directive of that *beit din* after the fact, such a person may be informed upon; this conduct falls under the category of "troubling the community"; *Shulchan Aruch, Choshen Mishpat* 388:12.

> the government such that on occasion one will encounter the tax returns of one who has cheated, and he will detect the fraud, [and will thus report it to his superiors] and will be like one who informs the government, and they will punish this person more than he is liable according to Jewish law. It seems logical to me that since anyone who examines tax returns will encounter the fraud, and even if this person declines the job, others will take the job and discover the fraud, one sees from this that the one who commits the fraud suffers no loss whether this person takes the job or not, and thus the one who cheats loses nothing whether or not this person takes the job; and without a loss there is no prohibition.[72]

Again, Rabbi Feinstein posits that there is no justification to inform on a person even given the just American government. Rather he provides a narrow "technical" explanation for why this particular activity of informing while working for the IRS is not prohibited to this particular person. It seems that in a case where if any particular person did not inform, the cheater would **not** be caught, then it would be prohibited to inform, according to Rav Feinstein.

Indeed, in a responsum entitled "May One Inform on a Thief to the Courts of the Land," Rabbi Feinstein states:

> It is prohibited for us to inform on a person for a matter where the punishment is unfounded in Jewish law. In Jewish law, theft is resolved through restitution as measured by an expert, and secular law punishes through imprisonment, unfounded in Jewish law.[73]

---

72. *Iggerot Moshe, Choshen Mishpat* 1:92.

73. Ibid, 5:9(11).

Although Rabbi Feinstein provides no explicit discussion of whether a just government is of any relevance, he repeatedly focuses on the fact that the punishment imposed by the secular government is contrary to Jewish law in its magnitude or scope.

A different rationale is explicitly stated by Rabbi Ya'akov Breisch, who notes that the rules which prohibit informing cover even cases where there is no threat of bodily harm. Rabbi Breisch was asked:

> Is the prohibition of informing specifically when they are chasing after Jews, and thus if one informs on one's friend they punish him because he is a Jew, but if a Gentile did this they would not punish him, then one is called an informer (*moser*), or it is even nowadays, when they are not pursuing Jews through law, and if a Gentile had violated the law they would punish him as what he did is a crime, is that too called informing as defined in *Shulchan Aruch, Choshen Mishpat* 388?

Rabbi Breisch answers:

> One who looks in *Shulchan Aruch* and other decisors will see explicitly that there is no difference, and even when one uses secular courts to reclaim his own, the matter is in dispute in *Choshen Mishpat* 388:5, and the *Shach* views such a person as an informer. A similar view is taken in *Brachot* 58a concerning . . . [a person who slandered the government] and such a person became a pursuer [to destroy the government] and he was killed. Even though it is certain that if a Gentile had done the same thing... they would have punished him, still Rav Shelai considered him an informer (*moser*) and killed him; while it is true that this case is different in that Rav Shelai was

> certain that they would be punished for mocking the government.... Even the money of a Jew, once it falls into the hands of a Gentile, they show no mercy on it, as is quoted in *Shulchan Aruch* and other decisors, and as a matter of normative halacha this matter does not change... That which we have seen in recent times [the Holocaust] provides proof to this.[74]

Rabbi Breisch is stating that even when there is no illicit harm to the Jew's body, money is taken contrary to Jewish law, and that alone validates the rabbinic prohibition against informing.

Both of these approaches find considerable halachic justification in the alternative approach developed by the *Rishonim* to explain the conduct of Rabbi Eleazer and Rabbi Joshua in *Bava Metzia* 83b-84a.[75] This approach rejects the opinion of Rabbi Eleazar that one may serve as a police officer and informant, and accepts that Rabbi Joshua, who rebuked Rabbi Eleazar, represents the normative opinion which prohibits this conduct.[76] If Rabbi Joshua's opinion is normative, then the only time it would be permitted to assist the secular government in criminal prosecutions is when the person poses a threat to others or to the community through his conduct[77] Both of these situations are based

---

74. *Chelkat Yaakov, Choshen Mishpat* 5 (new edition), 3:96 (old edition).

75. Discussed above in text.

76. Such an approach can be implied from Rambam, *Rotzeah* 2:4; Tosafot, *Sanhedrin* 20b; R. Moshe Schreiber, *Chatam Sofer, Likkutim* 14; and R. Bleich, "State's Authority to Punish Crime," at 840-844.

77. See R. Shimon Duran, *Tashbetz* 3:168, and Ramo, *Choshen Mishpat* 388:12, both of whom address communal dangers. See e.g., R. Shmuel di-Medina, *Maharashdam, Choshen Mishpat* 55:6; R. Moshe Sternbuch, *Teshuvot ve-Hanhagot* 1:850 (the authorities may

upon the rules of a pursuer (*rodef*). Indeed, in Jewish law, one who poses a threat to the life of others must be prevented from accomplishing the intended harm; force, even deadly force, may be used in such a case without the need for a court hearing. This threat need not be limited to the possibility that the criminal will actually harm another, but includes such factors as the possibility that in response to a Jew's being apprehended for committing a crime, other Jews will be injured or anti-Semitism will be promoted.[78]

Following the approach of either Rabbi Feinstein or Rabbi Breisch, one divides cases of informing into two types of categories, no different in a procedurally just society than in an unjust society. One situation occurs when the person being informed upon is an individual who is violent, or threatens violence, or endangers the welfare of the community. Such a person may be informed upon. In all other cases, informing is prohibited and is subject to the rules of informing, as explained previously.[79] Perhaps in cases where the outcome is identical in secular law and Jewish law, we may assume that Rabbi Feinstein would aver that there is no problem of informing, as there is no damage (as quoted above in Section III, from *Iggerot Moshe, Choshen Mishpat I:92*).

---

be apprised of one who drives recklessly or without a license).

78. See Ramo commenting on *Shulchan Aruch, Choshen Mishpat* 388:12 (discussing one who counterfeits coins), 425:1. For a complete analysis of the various permutations of this rule, see R. Yaakov Blau, *Pitchei Choshen* Volume 5, chapter 4.

79. Indeed, one authority has argued that on a functional level there is no difference between the various approaches because disobedience of the law generally will surely lead to anarchy and crime, and thus all significant violations of the law can be punished under the pursuer rationale. R. Zvi Hirsch Chajes (*Maharatz Chayes*), *Torat Nevi'im* Ch. 7.

IV. Hypotheticals and Conclusion

This article has sought to explain the Jewish law prohibition of informing, with a particular focus on how the prohibition applies to a just system of government. One group of decisors posits that just governments are exempt from the prohibition of informing, either because the entire prohibition did not apply when government was just, or because governments that operate within the confines of the Jewish law principle that the "law of the land is the law" are exempt. Another group posits that the prohibition applies even to just governments, since the rabbis did not want Jews assisting in the punishing of Jews in a manner inconsistent with Jewish law – even if the government itself can engage in this conduct, Jews should not help it. A third group of decisors posits that the system – even as it appears just – is not, and thus informing is prohibited.

For the sake of relevance, let us consider six simple cases to elaborate on the various views. (Assume in each of these cases that such a person will not obey the directives of a *beit din* to stop, and the community and its *beit din* are powerless to stop such a person.)

1. A Jew regularly assaults people. May one inform on him to the police?

This case is straightforward. All agree that such a person must be informed upon. Thus, one must report allegations of child abuse (sexual or physical) when one is aware of it, (according to some, even if this means that the child might be placed in a Gentile foster home).[80]

---

80. Abraham Sofer Abraham, *Nishmat Avraham* Volume 4, pages 307-11, quotes responsa from Rabbis Auerbach, Elyashiv and Waldenberg in agreement on this point, that one must report cases of child abuse. No alternative view is quoted in this enclyopedic

2. A Jew is a regular non-violent vandalizer of property. May one inform on him to the police?

If the person rises to the level of one who makes the community suffer by regularly doing such vandalism, then

---

work. Rabbi Abraham writes:

> A child or infant who is brought to a hospital with symptoms of being a battered child... it is prohibited, after an investigation to return him to his home as they will continue to beat him until he might die. Because of the real danger, it is obligatory for the doctor to inform the courts, and with an order from the court, place the child with a foster parent or agency. There is no problem of informing since we are dealing with danger to life and the parents are the pursuers. This is permitted even if they will place the child, due to no choice, with a family or agency that is secular. It is incumbent upon the Jewish court to do everything in its power to insure that the child is placed with an observant family or agency. Particularly in the diaspora it is important that the Jewish court work to insure that the child not be placed with a Gentile family or agency. Rabbi Shlomo Zalman Auerbach agreed with all of the above.
>
> Rabbi Yosef Shalom Elyashi recounted to me that it is permitted for the doctor to inform the authorities even if it is possible that the child will be placed with a family or agency that is not Jewish ....
>
> Rabbi Waldenberg wrote "if there is a real risk that the parents will continue to hit the child .... it is obligatory for the doctor to report the matter to the police..."
>
> Sexual abuse is no different than physical abuse. [Rabbis Waldenberg, Elyashiv and Auerbach agree that reporting is mandatory also.] Rabbi Elyashiv writes "there is no difference between boys and girl since one is dealing with a seriously life-wounding event (*pegiah nafshit*) and a danger to the public ... this is much more serious than theft and one certainly must report this matter to the school administration and if nothing is done, even to the police, even in the diaspora."

all agree that such a person may be informed upon to the police.[81] However, if one does not rise to such a level, then whether one may report such a person depends on which view of informing one accepts.[82] According to the view of Rabbi Waldenberg, who permits informing generally, or those authorities who permit informing when secular law is valid in the eyes of Jewish law,[83] or Rabbi Shmelkes, who think that informing is merely a tort, one may inform in this case if one is the victim of such conduct (since government will treat this person justly, and one is permitted to do a tort to one who damages his property, if that will cause him to stop).[84] However, in the view of Rabbi Feinstein, who rules that no aspect of informing has changed, or Rabbi Batzri, who rules that any form of incarceration creates improper informing, such informing is wrong.

3. A Yeshiva has built a building with a non-dangerous[85] zoning violation in place.[86] May one inform

---

81. One who causes trouble to the community as a whole is treated as a violent person; *Shulchan Aruch, Choshen Mishpat* 388:12.

82. Without a doubt, of course, one may seek a *heter arkaot* and sue this person for the damage done. However, normally such tort-feasors are judgment proof, and thus such a strategy is ineffective.

83. I.e, the approach of Rabbi Wosner to informing combined with the approach of Rabbi Henkin to secular law.

84. According to Rabbi Wosner, such informing is not even violation of the conduct of the pious, since one is informing to protect his own possessions. In a case of *chilul hashem,* one also may inform according to this view. According to Rabbi Shmelkes, one tort justifies another.

85. Once a zoning violation becomes hazardous, informing is clearly permitted if the institution will not otherwise fix the problem.

on them to the zoning authorities?[87]

According to the view of Rabbi Waldenberg, because informing is no longer sinful in a just government, such conduct is permitted. According to those authorities who permit informing when secular law is valid in the eyes of Jewish law,[88] although such conduct is not called "informing", it is nevertheless prohibited for other reasons in Jewish law–unless being silent leads to desecration of G-d's name or informing leads to a sanctification of G-d's name, in which case informing is mandatory.[89] But it would only be permitted when the informer stands to benefit concretely from the enforcement of the zoning violation[90] or when it is the informer's job to find such violators. According to the view of Rabbi Shmelkes, such conduct is not prohibited as informing, but is a tort, and would only be permitted in cases where tortious conduct is permitted. According to Rabbi Feinstein, such conduct is prohibited.[91]

4. A Jew is a recreational marijuana user (but not seller), who grows his own marijuana in his backyard. May one inform on him to the police?

---

86. Such as a building without an elevator for those in wheelchairs or with exterior lights that violate local zoning regulations.

87. The zoning authorities will not arrest anyone, but will mandate the fixing of the violation and could even condemn the building.

88. I.e, the approach of Rabbi Wosner to informing combined with the approach of Rabbi Henkin to secular law.

89. See *Shulchan Aruch Choshen Mishpat* 266:1.

90. Such as when the zoning violation decreases the value of one's own residence.

91. Rabbi Batzri's view is hard to discern.

According the view of Rabbi Waldenberg, such conduct is permitted since informing is not wrong in a just government. According to Rabbi Batzri, such informing is prohibited and makes the informer a pursuer, as it will land the drug user in jail, and that is prohibited. According to those authorities who permit informing when secular law is valid in the eyes of Jewish law,[92] although such conduct is not informing, it is prohibited for other reasons. It would only be permitted when the informer stands concretely to benefit from the arrest, or it was one's job to arrest such people. According to Rabbi Feinstein, such informing is prohibited and makes the informer a pursuer (unless this conduct is one's job, and if he did not do it, someone else would or the person violating the law would be detected anyway).[93]

5. A Jew is knowingly and intentionally cheating on his United States taxes. May one inform on him to the Internal Revenue Service?

According to the view of Rabbi Waldenberg, such conduct is permitted because informing is not wrong to a just government. According to Rabbi Batzri, such informing is

---

92. I.e, the approach of Rabbi Wosner to informing combined with the approach of Rabbi Henkin to secular law.

93. Rabbi Shmelkes' view is hard to determine as he takes no view on whether jail is by definition dangerous.

Consider as well the case of a securities dealer, who is aware of insider training by another dealer. The question of what to do when one is in a profession where everyone bears an American law obligation to report violations of American law, (such as a securities dealer with regard to insider trading), is complex. This forces the question of whether fear that one will himself be seriously punished if one does not inform on another gives rise to any halachic leniency and is thus permitted. See Rabbi Alfred Cohen, "On Maintaining a Professional Confidence", *Journal of Halacha and Contemporary Society*, No. V11 (Spring 1984).

prohibited and makes the informer a pursuer, as it will land the tax cheater in jail, and that is prohibited. According to Rabbi Wosner, although such conduct is not informing, it is prohibited under the rubric of doing gratuitous harm to another, and would only be permitted when the informer stands to benefit concretely from the arrest,[94] or when it was one's job to detect such people or when being silent leads to desecration of G-d's name or informing leads to a sanctification of G-d's name, in which case informing is mandatory.[95] According to Rabbi Feinstein, such informing is prohibited and makes the informer a pursuer (unless this conduct is one's job, and if he did not do it, someone else would and the person would be detected anyway).[96]

---

94. Such as when the government knows about the cheating and actually suspects the informant of being the cheater.

95. See *Shulchan Aruch Choshen Mishpat* 266:1.

96. Rabbi Shmelkes' view is hard to determine.

Cheating Medicaid or Medicare would seem to be no different than cheating on taxes. Consider a simple case of a doctor who is in a medical practice with another doctor who is forging the first doctor's signature on Medicare reimbursement forms; may the first doctor inform on the second? This case is relatively simple as informing is the only certain way the first doctor can preserve his own Medicare rights. He is informing for direct personal benefit, and thus such conduct would be permitted, even more so since Medicare fraud only very rarely results in jail sentences.

A much harder hypothetical involves a Jew who is involved in non-violent criminal activity with a group of Jews and who – alone – is caught by the police. The other members of the criminal ring are not caught and their identities are still unknown. The District Attorney offers this defendant a deal, in which if he reveals the identity of his fellow criminals he will serve no jail time. Otherwise, a full penalty will be imposed. While a full analysis of this matter is quite complex, it is clear that one who informs out of fear of being punished himself is not generally deemed an informer; *Choshen Mishpat* 388:2. However, many

6. A rabbi in New York repeatedly performs Jewish weddings aware of the fact that the couple have not been issued a civil marriage license, and do not wish to have one issued, in violation of New York law.[97]

This law is of debatable constitutionality, perhaps only applies in situations where the couple wants to be married according to civil law, and is on the outer limits of the proper application of "the law of the land is the law."[98]

---

authorities deem such conduct a sin; see *Pitchai Choshen* volume 5 Chapter 4, notes 31 and 32 and Chapter 12, paragraph 5 and 27. According to the view of Rabbi Waldenberg, such conduct is permitted as informing is not wrong in a just government. According to Rabbi Batzri, this conduct saves one's life, while endangering the life of others, and is wrong. According to Rabbi Wosner's approach, if this is an area where the authority of the secular law is valid in the eyes of Jewish law, such conduct is permitted. According to Rabbi Feinstein, such informing is prohibited and perhaps even makes the informer a pursuer.

97. New York Domestic Relations Law Article 3, Section 17 states:

If any clergyman or other person authorized by the laws of this state to perform marriage ceremonies shall solemnize or presume to solemnize any marriage between any parties without a license being presented to him or them as herein provided . . . he shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine not less than fifty dollars nor more than five hundred dollars or by imprisonment for a term not exceeding one year.

98. Attempts by government to restrict purely ecclesiastical activity (such as a Jewish wedding ceremony) are subject to strict scrutiny, and one would have to show an otherwise unattainable governmental interest to be valid as an American law. While one could imagine such a government interest in preventing out-of-wedlock fornication generally, such is no longer the case in our secular society.

Only Rabbi Waldenberg's view would permit informing in such a case, although performing such a wedding is a deeply unwise idea for many different reasons.[99]

The application of talmudic rules to modern life is complex and difficult, and frequently requires that one ask questions that until modern times were not asked, for social conditions made the question irrelevant. This article has sought to indicate the wide range of rabbinic opinion on a most important issue. We note that major differences in halachic rulings may arise from a seemingly minor divergence on a preliminary point. As always, only one well versed in Jewish law is qualified to render guidance for proper procedure to follow in any given situation.

---

99. This case is readily distinguished from the case of a man who is religiously divorced from his wife but still civilly married to her, who now wishes to religiously (but not civilly) marry another woman. In that case, there are many more serious grounds for prohibiting, such a religious ceremony. Two are readily apparent: First and most significantly, such conduct is a *chillul* hashem in that the man and woman who are religiously married to each other are conducting an adulterous relationship in the eyes of secular society. Second, the secular law that is being violated in that case is the bigamy statute, whose validity is without contest in halacha through *dina demalchuta* (except, perhaps, in cases of *yibum* for Sefardim; see *Yabia Omer Even haEzer* 8:26).