



Beit Hillel

Attentive Spiritual Leadership

Beit Hillel-Attentive Spiritual Leadership

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Breaking Free from the “Tinok Shenishba” Mindset

Rav Ronen Lubitch - Rav of Moshav Nir Etzion, Board Member



How should Orthodox Jews relate to those who are not committed to keeping the Torah and its commandments? This question became a topic of the public discourse among European Jewry

in the 19th century, from the moment the phenomenon of secularism seeped into the nation of Israel. At first glance, it seems that the subject has been discussed and elucidated from all angles, and the appropriate behavioral patterns have been established a long time ago. The truth is, however, that this is a dynamic topic, and change is constantly occurring. In our own time, there is yet another new stage, one in which the organization of the rabbis of Beit Hillel have a unique and significant role to play and a statement to make.

In halacha and in the conceptual outlook of the periods of the Bible and of the Sages, the attitude toward a Jew who transgressed the commandments was extremely severe. If we take as a typical example the sin of desecrating Shabbat, the Torah declares that the punishment is death (when all the conditions for complete conviction are fulfilled), and the Sages consider the person who desecrates Shabbat to be a denier of the divinity of the Torah. In rabbinic literature, we find explicit statements that one should despise apostates, and these statements are based on the words of King David in Tehillim (139:22): “Those who hate you, Oh God, I despise; and with those who rebel against you, I shall quarrel. With consummate hate do I despise them; they are enemies to me.” The Sages determined that the verse “Love your neighbor as you do yourself” (Vayikra 19:18) refers only to “those who behave in the ways of your nation,” but “those who do not behave in the ways of your nation – you should not love” (Avot D’Rabbi Natan, ch. 16.) In accordance with these sources, the Rambam ruled (Laws of Mourning, 14:1) that all the commandments between a man and his fellow man, such as visiting the sick, comforting mourners, and all other acts of loving-kindness, only apply to “your brother in Torah and its commandments,” but not towards someone who has abandoned them.

The phenomenon of secularization among Jews began in 19th Century Germany, and the great rabbis of that period responded to it with the assistance of a different law of the Rambam, in which he addresses the appropriate attitude towards Karaites. He rules that they are to be considered in the same group as “all the heretics, those who deny that the Torah is from Heaven, informers, apostates, whereby all these are not members of the people of Israel ... and anyone who kills one of them has performed a major mitzvah” [Laws of Apostates (Mamrim), 3, 2]. However, in the very next law, the Rambam points out that a person who did not become a Karaite by his own initiative, but was born into the Karaite society, “he is like a baby who has been taken captive (Tinok Shenishba) amongst them ... for it is as if he was compelled (oness).” Regarding such people, the Rambam rules that “it is correct to encourage them to repent, and to draw them to Judaism with warmth, until they return fully to Torah.”

Rav Yaakov Ettlinger (Altona, Germany, 1798 – 1871), and Rav David Tzvi Hoffmann (Berlin, 1843 – 1921) referred to these words of the Rambam and applied them to Jews of their time who had begun desecrating Shabbat. But if one looks carefully into their responsa, one will see that this definition of “a baby who has been taken captive,” or tinok shenishba, did not bring them

to consider these people as good Jews for all purposes. They only relied on the concept of tinok shenishba to allow these people to complete a quorum of ten Jews for purposes of prayer (minyan); or to be lenient regarding wine that they touched, that it should not be forbidden under the category of “stam yeinam,” gentiles’ wine of unknown status, which may not be drunk. Similarly, it is clear from the halachic rulings of these rabbis that they are referring to people who, together with desecrating Shabbat, also attended synagogue, recited Kiddush and Havdala, and still retained a largely Orthodox way of life (see shut Binyan Zion HaChadashot 23, shut Melamed L’Hoil Orach Chaim 1:29).

As years went by, the usage of the concept tinok shenishba spread significantly. Today, if you were to ask any person who keeps Torah why he relates in a friendly manner to secular people, and why he does not hate them according to the citations from the Sages and the Rambam, would unhesitatingly answer: “What’s the problem? They are like a tinok shenishba!”

But there is a problem, and even several problems, with this definition:

1. There are major halachic authorities who disagreed with this definition of the Rambam.

2. The Rambam referred to Karaites who believed in the main articles of faith and observed the commandments, even if not according to the Sages. In contrast to this, among the secularists of today, there are many who have no belief at all and are far removed from observing the commandments.

3. Even the halachic authorities who applied the idea of tinok shenishba in our times, generally referred to Jews who on some level were faithful to Jewish tradition. Furthermore, they didn’t consider that the definition of tinok shenishba is reason enough to relate to people who do not observe commandments as if they are “your brother,” or worthy of being considered a “friend” in the context of “love your friend,” for anything other than a few isolated issues.

4. Many Jews who do not observe the commandments in our times grew up in observant or traditional families, and it is therefore problematic to consider them as tinok shenishba. Applying this definition to this group seems forced and insincere.

The primary problem regarding the concept of tinok shenishba has nothing to do with halachic thinking, but instead concerns ethics and interpersonal relations. The idea that lies behind the concept is that the secularist has a status of being compelled (oness), and the fact that he does not observe commandments is a result of the fact that he had no choice other than to live according to the irreligious education that he received. In halachic language the term “oness” is simply a technical definition, which can be utilized to exempt people from criminal transgressions that they were coerced to do.

By contrast, we are discussing an issue that needs to shape an attitude towards people who are absolutely independent and have free will, being confident that they are living their lives according to their own autonomous decisions. We come and say to them, “You think that you are independent in your way of life, but you are nothing but a ‘tinok shenishba!’” The concepts of “oness” and “tinok shenishba” incorporate a clear value judgment, which views such a person as inferior, as someone who lives his life in darkness, while only the religious person has “seen the light.” Relating to a secularist as an “oness” leads to a condescending and patronizing attitude, characterized by lack of respect. It strips him – “for his own good,” as it were – of his rational reasoning, and attributes to him an inability to make value judgments. This general assessment of a secularist as an “oness” as a result of his being considered a tinok shenishba has practical ramifications as well. Take for example the criticism and outrage that secularists often express after organized meetings with religiously observant people. Many claim that religious people spoke to them condescendingly and not eye-to-eye. They

complain that while they attended the meeting fully intending to participate in a discussion on equal terms, the religious people came in order to lecture them, and "show them the light."

The New Secularist

In my opinion, the attitude toward the secularist and towards secularism requires an updated general outlook that understands secularism as a new global phenomenon, and that it is incorrect to shape an attitude towards this issue by recycling halachic terms imported from a different era. The approach that I promote asserts that one must construct one's mindset regarding the secularist of our period upon an unequivocal assessment that he is not the "rasha" (wicked person) referred to by the Sages and the Rambam. Any honest person intuitively senses this distinction, and I would like to point out the primary aspects where it is demonstrated.

1. In previous periods of history, the apostate or the heretic was a secularist in a religious society. Today, the believer, who observes the commandments, is religious in a secular society. This simple historical fact is of major significance, for in the past, discontinuing the life of observing the commandments was scathing defiance against the Torah of Israel. Today the defiance element is no longer a factor. The secularist, even one who grew up in a cocoon of Torah and commandments, wishes to live his life like an ordinary person, the way the majority lives in society. His motivation is the desire for an existence of autonomy and not an urge to raise the flag of rebellion against the religion of Israel.

2. In the past, the religious element of a person's character was an integral and essential part of his Jewish identity, and consequently, leaving his religion implied leaving all connection to the nation of Israel. One who abandoned the burden of the commandments was defined in rabbinic literature as one who "departed from the path of the community," for the community at large observed the commandments, and he was the exception. As a result, one was obliged to hate and eradicate him (Rambam, the commentary to the Mishna of Sanhedrin, ch. 10.) Today, by contrast, there are many Jews who have left the Torah, yet have not abandoned their connection to the Jewish people at all. They are not religiously observant, but they are very Jewish indeed, in their commitment to the nation of Israel and to the State of Israel.

In the past, when law and order in society derived its force and stability from religious belief, there was logic in the position

committed to a world of law and moral values. Moreover, there are many areas in which the secular world developed detailed systems of law and morality far more comprehensive than those of the religious world. Subjects such as protecting the freedom of the individual and his rights, equality of all man, concern for social justice, organization of proper government, protection of the environment, and similar achievements are all to be found on one level or another in Jewish sources. But it is modern culture, bearing its liberal and democratic values, which developed these issues to their current developed level, and implemented them.

In light of all this, I believe that we must declare resolutely that the loaded halachic terms "rasha" (a wicked person), "mumar" (an apostate) and similar expressions, that in the past led to particularly severe operative instructions, are not suitable to the modern-day secularist. In halachic terminology, we may say that "פנים חדשות" – "כבאו לכאן" – "a totally different person has entered."

This new outlook dictates that one should consider any Jew who ties his fate with the nation of Israel, as a "friend" (as in the context of "Love your friend"), for all intents and purposes. This outlook is harmonious with our natural intuition, and generates genuine respect to the secular person, allowing us to treat him as our brother, even if he is not "your brother in Torah and its commandments"; it allows us to consider him a colleague and partner, and to conduct a dialogue as an equal. All this without needing to resort to condescending assumptions regarding his ability to make value judgments; or the temporary nature of the secular phenomenon, considering it as merely an instrument to implement short-term missions.

Obviously, this outlook does not relinquish the right to criticize certain aspects which characterize today's secularism, such as excessive permissiveness. The new approach is also supported by the fact that among the secular community in Israel, there are many who show great interest in Jewish sources, leaders, and values. There are those who express this by participating in various learning groups, while others selectively observe certain customs of Shabbat, festivals, etc.

This enlightened attitude to our brethren who do not observe Torah and its commandments is an extremely vital principle reflected in the activities of Beit Hillel. The condescending approach towards secularists often creates walls between the various sectors of society, while the approach of Beit Hillel builds bridges. Indeed, since the organization began its activities, we have set as our goal to bring others closer, not to push them away. We have succeeded in this mission in three ways:

The first way has been to publicize relevant responsa, such as detailed halachic instructions to those who observe kashrut, explaining how they may be guests at homes of friends who do not observe Kashrut; how one who observes Shabbat may invite one who desecrates Shabbat, despite the problem of travelling on Shabbat.

The second way has been to shape positive thinking patterns regarding modern culture and values.

The third way, built on the previous two layers, has been to instigate activities which necessarily require cooperation between religious and secular people. A classic Beit Hillel initiative, which also gained significant publicity in the Israeli media, was the "Israeli Shabbat" project of October 26, 2013, in which more than 2000 secular and religious families were guests in each other's homes. Following this, Beit Hillel created another initiative, "נר מחבר" ("unifying candle"), in which families of the secular sector hosted religious friends on Hanukkah for candle-lighting. Another example of constructive cooperation is Beit Hillel's substantial participation in a project named "שמיטה ישראלית" ("Israeli Sabbatical year"), which intends to instill values and ideology into the otherwise technical and dry experience that the Israeli public has become accustomed to in the Sabbatical year. This initiative sees the Shmitta year as an opportunity for discussion and implementation of principles such as social justice, education of values, protecting the environment, community renewal, and more.

Instead of relating to "babies who have been taken captive," we at Beit Hillel aspire to create a diverse, mutually respecting coalition of Jews that will be able to unite around the inclusive traditions of our people.

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that leaving the walls of religious society was paramount to renouncing basic human values. The atmosphere that was common in the past dictated that if you do not believe, you cannot be believed, and one cannot trust a man who has no God. As a source to this idea, the Mussar elders enjoyed quoting the verse that Avraham said when he reached the dangerous area of Gerar: "There is no fear of God in this place – and they will kill me" (Breishit 20:11.) Avraham claimed that religious faith and fear of God are the exclusive guarantors of moral behavior, and the establishment of values of honesty and justice in society; and when these are missing, people are even capable of killing. Today, it is clear to all that people of no religious faith are also

Beit Hillel's professional conference on solutions to the problem of Agunot and Get Refusal

Beit Hillel's conference on Agunot and Get Refusal took place in the beginning on November . Scores of the organization's rabbis and rabbanivot participated in the conference in order to study the issues and to weigh various solutions to this problem that were presented at the conference.

Amongst the speakers were Rabbi Yuval Cherlow, Rosh Yeshiva of the Orat Shaul Yeshiva, Rabbi Shlomo Riskin, chief rabbi of Efrat, Rabbanit Adv. Yardena Cope-Yosef, senior lecturer in Talmud and Jewish Law at Matan, Rabbi Shabtai Rappaport, head of the Higher Institute for Torah at Bar Ilan, Rabbi Barukh Gigi, Rosh Yeshiva of Yeshivat HarEtzion, Rabbanit Dr. Rachel Levmore, Professor Brachyahu Lifshitz of the Hebrew University, Rabbi Yoel Bin Nun, Rabbi Zeev Weiman of Tenuva, Rabbi Adv. Tzuril Boubilil head of the center for Agunot and Rabbi Amit Kula, rabbi of Kibbutz Alumim.

During the course of the conference, the rabbis and rabbanivot took an strong stance on the urgent need to adopt a fitting solution to the problem of Agunot and those refused a Get in light of the fact that the problem is escalating. A number of experts in the field presented the latest in research on the extent of the problem. They emphasized that in addition to the pain and suffering of those refused a Get, in the current cultural climate this situation is generating numerous illicit affairs, leading to the births of increasing numbers of mamzerim and is playing a major factor in the rising numbers of those choosing a civil marriage over a Jewish ceremony.

The bulk of the conference was devoted to presenting and weighing the pluses and minuses of the proposed solutions, including: Hafka'at Kidushin, A community enactment by the Israeli Knesset to Retroactively Confiscate the Ring (An application of the Hafka'a concept conceived of by Prof. Brachyahu Lifshutz), Kiddushin (and Nissuin) with a Conditional Clause, Conditional Get (at or shortly after the wedding), amendments to or additions to Israeli Legislation, and combinations of various solutions such as introducing a "Tnai" clause and Get clause into a tri-partite prenuptial.

A previous conference of Beit Hillel dealt exclusively with the preventative monetary prenuptial ("Heskem K'dam Nisuin") which the organization has adopted as policy [insert link].

The director general of the Rabbinical Council of America, the RCA, Rabbi Mark Dratch, gave an overview of the current situation in North America. He noted that in light of a recent survey of its members the RCA is working within the rabbinic ranks to insure the universal use of the preventative prenuptial solution. The president of Yeshivat Chovevei Torah, YCT, Rabbi Asher Lopatin, presented a number of new suggestions currently under review at YCT including, amongst others, the idea that the at the giving of the ring effecting the Kiddushin the husband take an oath that he will not chain his wife by refusing to give a Get.

Beit Hillel sees this conference as an extremely positive and productive contribution to the world-wide search for solutions. Its leadership "calls on all rabbinic leaders around the world and across the board to make the issue of Get refusal a priority, to study it in yeshivot and communities in order to find a joint solution that will be acceptable to the majority of the rabbinic world. A solution that will speedily relieve the suffering of Agunot and those refused a Get and strengthen the institution of Jewish Marriage."

Beit Hillel's leadership added that "we will be focusing and acting determinedly on this issue. Beit Hillel will continue to promote the universal use of prenuptial agreements and, simultaneously, search for additional systematic solutions to this painful issue."

Five Conditions for Solving Get Refusal Rabbanit Yardena Cope-Yosef, Board Member



Several years ago, on the way to an event promoting halachic prenuptials, I gave a ride to Shira Abramson z"l, at whose first marriage the luminary, Rabbi Pinchos Hirschsprung of Montreal had officiated – and required—a prenuptial agreement. Rabbi Hirschsprung z"l sent her and her former husband to a lawyer to draw up a prenup. The agreement specified that in the event of divorce, the husband was required to give his wife a get. If, after a certain time period specified by the Beit Din had elapsed without the husband granting the get, the husband would be subjected to a fine.

His foresight led to what could only be described as an aguna prevention "success story." By that I mean that the long forgotten prenup was introduced into the Beit Din's proceedings by her rabbinic advocate and she saw it as the magic key that produced a timely get – curtailing what she described as an unbearable time of waiting, fighting, and uncertainty. Her first marriage was broken but she was young enough to start again, remarry, have four more children, and live a full life as a doctor, bodeket tahara, and Chabad emissary.

I tell this story in order to demonstrate the success of the prenuptial—and laud the efforts of individuals and women's organizations that have been promoting this solution for decades. I applaud Beit Hillel's prenuptial campaign, and its rabbinic counterparts abroad, such as the Rabbinical Council of America and others, who have been working for over twenty years to universalize this preventative solution. According to prenup expert Dr. Rachel Levmore, this solution, if universalized, could prevent 50-70% of get refusals. Unfortunately, it has not yet been universally promoted or implemented. Indeed, the prenup is just one part of a larger picture that I see embodied in this story.

It is this larger picture of creating a comprehensive solution to the problem of get refusal and agunot that I would like to develop. A comprehensive solution will involve more than one mechanism and cover different scenarios. It will involve universalizing the signing of halachic prenuptials. It will need to cover those who have not or will not sign prenups. It will need to cover the 30% for whom the prenuptial will not work. These include true agunot – those chained women whose husbands have disappeared, either by deliberately hiding or due to war or other disasters, or are mentally incompetent. These women can never receive a Get from their husband, and can never remarry or have children without another solution. Another example of a scenario in which a prenup will not work is in hard-core recalcitrant spouse cases, some hidden to the public eye and some well-known. For those we need to step up the innovative solutions – from within halacha as well as secular legal measures.

A near 100% solution to agunot and get refusal can only be achieved if we adopt a solution that meets five conditions:

1. Acknowledgment of the gravity of the problem.

The question I am most often asked is: How bad is it? How many women in need of a get (mesuravot get) are there in Israel? That question has been asked and answered at almost all conferences dedicated

to finding solutions. The answers range from the official rabbinic court answer of 200-400 a year to the cumulative number of 100,000 of those refused or potentially extorted in attaining a get, as cited by a study of the Rackman Center.

For argument's sake, I'd like to adopt the minimalistic number – yet note that this reflects only the number of cases in which a man, after receiving a rabbinic court decision requiring or forcing him to give a get, has refused to give a get for over a year. To that we must add those extorted to give up all claims to a joint apartment or forced to pay hundreds of thousands of shekels for a get, and those who never had a formal rabbinic court "obligation" to give a get. They are not all reflected in the statistic.

Let's assume, then, that we are speaking about hundreds each year. Hundreds who are trapped in what could be seen as a jail or hostage-like situation, which is the way Rabbi Yehuda Amital z"l, based on Maimonides' Hilchot Ishut (14,8) described the situation, likening mesuravot get to captives in need of redemption.

A number of leading twentieth century rabbis have stated that the situation in our generation has degenerated and needs to be remedied by more extreme measures than in previous generations.

Rabbi Yechiel Yaakov Weinberg, in his introduction to Rabbi Eliezer Berkovits' treatise, "Tnai B'Nisuin U'V'Get," writes: "The evils of the current degenerate situation...not to be taken lightly, the increasing incidence of couples who cannot divorce for the known reasons (of mental illness or get-refusal...) yet form partnerships after a civil divorce...what is new is the prevalence of this blight."

Former Sephardic Chief Rabbi of Israel, Rav Eliyahu Bakshi-Doron, writes in a responsum: "To our chagrin, the number of couples separating without a get is growing. These women remain 'living widows' who cannot remarry...in our generation when the norms have been crushed and permissiveness has taken its toll, husbands are no longer in need of a get...this situation of couples living without a get is causing anguish, creating pitfalls and generating mamzerim (a class of people of unmarriageable status under Jewish law)."

On this basis, I agree heartily with a sentiment expressed at Beit Hillel's November 2013 rabbinic conference on solutions to get refusal, namely, that Rabbis must sincerely acknowledge that this is a serious problem. Only then will they strive for a solution. Many still feel it is acceptable to "pay for a get" or wait for a long period of time under the pretense of attempting "shalom bayit"—even when the marriage is a dead-end one. This policy is unacceptable.

2. A Firm Grounding in Halacha—Any acceptable solution must be halachically valid

In stating this requirement, I mean to imply three things:

A. In procuring a solution, the halacha must be seen as a vehicle for achieving innovative solutions—not as an insurmountable hurdle. In a moving letter to Rabbi Yehiel Yaakov Weinberg, Rabbi Eliezer Berkovits writes: "If there is a solution to the problems I labored to address in my article, then the Torah giants must find the solution and remove this terrible obstacle...I believe with a perfect faith that there is a solution because I believe. Because I believe in the G-d of Israel and His Torah, I also believe in the steady and eternal power of the halacha to solve the

problems undermining the life of the nation of Israel."

B. The solution(s) must be acknowledged as halachically valid by a number of broadly accepted poskim. In speaking of an innovative solution such as hafka'a and/or ta'u one needs fairly widespread rabbinic acceptance of the innovation. The rulings of a Beit Din operating on its own progressive principles will not be acknowledged and its gittin will not be recognized, leaving the woman unmarried on a practical level. If not accepted by rabbis across the board, a solution to a personal status problem that is accepted by only a few divides the community and creates situations in which Jews cannot marry Jews.

C. Given the degenerate situation today, it is incumbent upon us when assessing the halacha to adopt the approach cited by Rabbi Shalom Mashash (d. 2003, former chief rabbi of Morocco and Jerusalem). In Rabbi Mashash's opinion, although we ought to be stringent in the weighty matter of *erva* (forbidden relations) whenever possible, the current situation is one of "sha'at ha'dchak" (time of urgency) in which it is our obligation to act within the basic requirements of the law to save women from assimilation and *igun*.

3. A solution must be accepted and widespread amongst rabbis and communities alike.

To be an effective solution, one needs rabbis on board—just as in the story involving Rabbi Hirschsprung. Recently, the Rabbinical Council of America, whose policy it is to encourage its members to perform marriage ceremonies using a prenup, sent out a questionnaire that found that up to half of the rabbis responding admitted to be performing marriages without the prenup.

The RCA set out to find out why this was so, in order to rectify the situation. Rabbis complain that couples and families do not want to hear about prenuptials in the month before their wedding. While I personally have not found this to be the case, I have seen that families often do not consider this to be a priority and simply don't "get around to it." Halachic authorities who believe in a particular solution must be proactive in spreading their solution(s) and engaging a wide coalition of partners to promote them. Moreover, the solution must enjoy the support of rabbis and communities who must fully adopt the solutions and work to popularize their implementation.

4. Proportionality – A solution must be proportional to the problem at hand.

This requirement is drawn from a similar standard employed in weighing whether one is justified in going to war—and what type of warfare one may deploy—even when the cause for war is entirely just. The solution to get refusal must be driven by balancing concerns that Jewish law recognizes as weighty, both concern for the sanctity of marriage and for the oppression of chained spouses. It must be able to contend with offenders and abusers without weakening the institution of marriage—which is already under attack on all fronts – and without undermining the authority of Jewish law. I recently read of an aguna activist calling for the abolishment of Jewish marriage ceremonies and another (male) activist calling for all husbands to stand up and divorce their wives out of protest. In my opinion, such extreme actions only serve to replace one problem with a far more serious threat to the Jewish future as a whole.

At the same time, that balance has to acknowledge greater modern abuse of the halachic system cited above, creating more *get-refusal* and more acute problems on a larger scale than have ever existed.

At Beit Hillel's November 2013 conference, several solutions were proposed for consideration, including, the idea of T'nai *ensis* the dilemma raised by Rabbi Yehiel Yaakov Weinberg in his introduction to Rabbi Eliezer Berkovits' treatise, "T'nai B'Nisuin UV'Get." While acknowledging the severity of the problem in

our generation he asks, "to what to give priority and enact: do we preserve the holiness and eternity of married life as in, "you shall be betrothed to me forever"...not to cause a jolt and temperance of the holiness of living together under chuppa and kiddushin... or do we take into account the evils of the current degenerate situation...not to be taken lightly, the increasing incidence of couples who cannot divorce for the known reasons (of mental illness or *get-refusal*...) yet form partnerships after a civil divorce... what is new is the prevalence of this blight...there are reasons and arguments for both sides..." In addition to other halachic arguments, this consideration might derail the T'nai solution—or it might serve as a guideline for adopting the T'nai solution in a limited way.

5. Practicality and accessibility – a solution has to be easily implementable and not too costly, complex, or elitist.

Any preventative solution, such as a prenup, that must be implemented by those officiating at weddings and adopted by all couples, has to be readily available, short, and easily understood. The rabbi should be well versed in the explanation of the halachic prenuptial or he should be able to refer the couple to a professional service, preferably online, that clearly and succinctly explains the prenuptial. In Israel it is required by law that either a notary or marriage registrar notarizes the signatures of the couple, after verifying that they are signing of their own free will and understand the contents of the agreement. The notarization fee is a few hundred shekels and registrar's fee is (to date) NIS 210, certainly affordable. Yet, although the prenup has been in use for decades in Israel, it is still found to be used mostly in highly-educated modern Orthodox circles—not among the masses of ultra Orthodox, traditional, or secular couples. We need to

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examine what it would take to reach all officiating rabbis of all sectors of society and achieve the popularity of a decorated car, whereby families and couples would be asking their rabbi, "How can they get married without a prenup?" Ideally, all marriage registrars would be required by law to mention the possibility of signing a preventative prenup and possibly, as in France, a prenuptial could be required by law.

Interestingly enough, in Shira Abramson's story above, the prenup, being uncommon at the time, was almost overlooked because the rabbinic advocate did not assume the couple had signed such a document, and only mid-way through the proceedings was it "remembered."

Any additional solutions such as a condition in marriage or conditional divorce, would need to meet the same standard of practicality and accessibility, whereas at the present time both of those solutions are theoretical and difficult to implement correctly on a broad scale.

Ultimately the solution(s) must be effective and cover the majority of cases. This is the litmus test and is true of both preventative and *ex-post facto* solutions. All legal structures can leave loopholes and create problems for a few, but we must strive for a combination of solutions that work to cover the greatest number of cases, including cases that involve "light" and "heavy-weight" *get refusal* and *agunot*. We must strive for "zero-tolerance."

To the extent that we as leaders succeed in resolving this issue, and are seen to be taking responsibility for what is a negative by-product of an overall good system—Jewish law as a whole will be seen in a more positive light. It will not only be perceived as such, but will live up to its mission as a way of life whose "ways are ways of pleasantness and all its paths are peace." Jewish marriage will not be stigmatized as something to be avoided but embraced as a valuable asset to society that respects the dignity of men and women.



"Shmitta Yisraelit": Ideas for a uniquely Israeli Sabbatical Year

Rabbi Zeev Weitman- Rosh Beit Midrash for Halacha in Beit Hillel and Rav of Tenuva



The Sabbatical year (Shmitta) commandment, by definition, is Israeli, as the Sabbatical year is only practiced in the Land of Israel, and not in the lands of the Diaspora. Not only is this commandment practiced exclusively in the Land of Israel, but this is the commandment that grants us permission to inhabit the Land of Israel, for the Torah testifies that transgressing the

commandment of the Shmitta year will directly lead to exile and losing the land. This Israeli commandment is one of the most demanding in the Torah, if not the most difficult of all: to withdraw from working the land for an entire year, in an environment in which the produce of the land is critical in order to survive. Furthermore, even produce that grows by itself during this year, without interference of man, is not the possession of the landowner, but is considered abandoned for all to take – the impoverished, the wealthy, and even wild animals.

Consequently, we face a difficult challenge. Our logic informs us, on the one hand, that observing the Sabbatical year according to the letter of the law will bring economic demise, and perhaps even scarcity and famine. On the other hand, the Torah tells us precisely the opposite: disobeying the laws of Shmitta will bring about the loss of the land and its destruction.

The solution of heter mechira, selling the land to a non-Jew for the duration of the Sabbatical year, and continuing to work in a fashion similar to regular years, is not an Israeli solution. By doing this, we relieve ourselves of the obligations of the commandments of the Shmitta year. In fact, we are converting the Land of Israel to a foreign land for the duration of Shmitta year, returning to the situation we were in when we lived in foreign lands, instead of facing the challenge of fulfilling the commandment of the Sabbatical year.

Furthermore, the solution of preferring the produce of non-Jewish farmers during the Shmitta year as a substitute to "blue and white" produce of Jewish farmers, is not an Israeli solution, for the Israeli vision is that we should have a state in which we grow the agricultural crops that we need for our subsistence, ourselves; and this should be done by Jews who work the land and keep the commandments of the Land of Israel. We thus effect the redemption of the land, together with the redemption of the Torah, which includes many commandments that became irrelevant in the years of exile, when Jews were unable to grow agricultural produce in the Land of Israel.

If so, the huge challenge is to find a solution by which on the one hand, we fulfill the commandment of the Shmitta year without abandoning the holiness of the land and the obligations of the commandments that are dependent on the land; and on the other hand, we find a method by which the land should not become desolate and the Jewish farmers should be able to continue to maintain their livelihood, even during the Sabbatical year. If we can, in fact, find such a method, we shall indeed be able to name it an "Israeli Sabbatical Year."

The foundations of such a solution were laid and designed by Rabbi Avraham Yeshaya Karelitz, better known as the Chazon Ish, who guided Jewish farmers observing Torah and mitzvot, during the two Sabbatical years prior to the state's establishment, and the first Sabbatical year afterwards. The Chazon Ish thereby illuminated how it is possible to observe the Sabbatical year while continuing to grow agricultural produce from which one can earn a livelihood during that same year. He taught them how one can tend to and use agricultural produce that was sown before the Shmitta year, how it is possible to care for farms and orchards during the Sabbatical year, and how one may market one's produce in a manner permissible in the Shmitta year, through the implementation of the concept of "Otzar Beit Din," a storehouse operated by a Beit Din. The challenge before us today is to adopt the instructions and guidelines of the Chazon Ish that were intended for individual farmers, who were a small minority in the State of Israel in his day, and apply them to suit the modern-day agriculture industry of the entire State of Israel.

There is no doubt that fulfilling this vision is dependent upon cooperation among the farmers, the rabbis, and the consumers. In this way, the commandment of the Shmitta year will become a national mission, in which all Jewish residents are partners –

including those who are not involved with agriculture and do not own land.

Consumers during the Sabbatical year must prefer the produce of Jewish farmers who observe the Shmitta laws even if, due to certain types of labor that are forbidden during the Sabbatical year, their produce is of a slightly lower quality than the produce of a regular year. They are also required to prefer this produce, even if it introduces certain limitations to the fruits and their derivatives, stemming from the obligation to observe "kedushat Shvi'it" (the holiness of the seventh year produce). Consumers need to learn to consider the eating of fruits of the seventh year as a privilege, not a burden or nuisance.

We also need the cooperation of the rabbis to understand the great advantage of observing the commandment of the Sabbatical year. They must be prepared to follow in the footsteps of the trailblazing Chazon Ish, and embrace the "power of leniency" towards the farmers, to the consumers, and to the methods of marketing the produce. In this way, it will be possible to fully and meticulously observe the commandment of the Sabbatical year while avoiding non-Israeli solutions of abandoning the holiness of the land or buying from non-Jews.

Through observing the commandment of the Shmitta year, we internalize the central message of this commandment, namely, that the Land of Israel belongs not to the nation of Israel, but rather to God, "for you reside in my land as strangers and foreigners." If, as a result of refraining from working the fields and the orchards, and abandoning the produce of our lands, we understand this critical message, then the manner in which we conduct ourselves will be different. A person who is a guest in someone's home behaves modestly and in accordance with the rules of the owner. He understands that anything that is given to him is done so as a matter of kindness. So, too, with us: if we understand and internalize the idea that we are fortunate to live in the Estate of God, we will be more prepared to humble ourselves to His guidelines in the realms of justice, kindness to others, mutual love, and helping the needy. We shall understand that all that

"[Shmittah] is a special need for this nation, that from time to time its internal divine light should reveal itself in its full splendor, so that it should not be extinguished by the routine grind of toil and anxiety of civilized life, with the rage and competition that characterizes it, so that the nation's unsullied soul will be able to appear internally in its full purity."

Rav Avraham Yitzhak HaKohen Kook, z"l

we possess is a gift from God, and this will automatically make it easier to share our fortunes with the poor.

If we refrain from working the land, how should we utilize the spare time that we will have as a result? Once in seven years, we can dedicate ourselves to developing our spirituality. We can spend more time learning Torah, and acquiring vital nourishment for the soul. The festival of harvest of the Sabbatical year is the Festival of Sukkot at the end of the Shmitta year, in which we have the privilege of displaying the "yield" of that year through the commandment of "hakhel" (gathering), where we publicly read, in Jerusalem, the Torah with which we have occupied ourselves during the Sabbatical year.

The commandment of the cancellation of debts (Shmittat Ksafim) in the Sabbatical year is the very foundation of charity to the poor and the needy. Every year we are commanded to lend our money without interest to those in need, while on the Shmitta year these loans, which we give to the poor and the needy, become a grant and total charity, should the recipients not be able to return their debt. In this way, loans becomes charity.

There are those who wish to initiate expanding the atmosphere of the Sabbatical year, spreading its concepts to non-agricultural

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News from Beit Hillel

Beit Hillel Shabbaton in Netanya

More than 100 rabbanim, rabbaniyot, lay leaders and their spouses joined together at Netanya's Blue Bay Hotel on December 27-28 (Parashat Va'era) for Beit Hillel's annual Shabbaton. Lively debate and discussion took place on hot button issues such as "Civil Marriage in the State of Israel," "Enlistment of Women in the IDF," "The Prevalence of Older Dati Singles," "Ethical Perspectives on the Laws of Kashrut," and the upcoming "Shmittah Yisraelit" program.

In addition to our esteemed rabbanim and rabbaniyot, we are honored to have been joined by Rav Yaakov Medan, head of Yeshivat Har Etzion, and Rav Avichai Rontzki, former IDF Chief Rabbi and head of Yeshivat Hesder Itamar, both of whom made significant contributions to the deliberations. Rav Rontzki wrote a remarkable post on his Facebook page regarding his transformative experience, noting, "I was surprised by the sharp contrast between the image of this group and the reality on the ground: these people are Torah scholars, and my dialogue with them was fascinating... It was a quintessential example of Torah scholars' 'togetherness': 'When the righteous convene, it is good for them, and good for the world.' " (Sanhedrin 71b)

Over 6,000 Households Participate in Beit Hillel's Shabbat Yisraelit

On Shabbat Parshat Chayei Sara (October 25, 2013) we witnessed an historical moment in Israel. Over 6,000 households participated in Beit Hillel's country-wide initiative – Shabbat Yisraelit – that brought together religious and non-religious families for Friday night dinner. Government Ministers, members of Knesset, mayors, IDF commanders, musicians, as well as thousands of Israelis from over 50 different cities, participated in the initiative. Beit Hillel Executive Director Rav Ronen Neuwirth had the tremendous privilege to host Zev Bielsky, the mayor of Ra'anana and former chairman of the Jewish agency.

Shabbat Yisraelit represents the application of the two halachic rulings that Beit Hillel published over the past year; specifically about Shabbat invitations and the possibility of eating at the home of someone who does not observe Kashrut.

Shabbat Yisraelit received mass media coverage – interviews on TV and radio, print and online news articles, oped pieces, and social media outlets. For example, see the Jerusalem Post's review 'Religious-Secular' Shabbat Attracts 6,000 Households.

We also produced an educational booklet specifically for Shabbat Yisraelit, which contains articles about Shabbat written by both observant and non-observant people. The printed edition was distributed in 110,000 copies across Israel.

Shabbat Yisraelit created a big buzz, and was very well received by both the religious and non-religious communities. In response to the numerous requests of the non-observant guests to host the religious families, Beit Hillel continued this initiative on Chanukah wherein the families got together for a joint candle lighting ceremony.

If you haven't already seen it, check out the special humorous video clip (a spoof of National Geographic) that we produced to promote the initiative – a clip that has already received more than 180,000 views:

<https://www.youtube.com/watch?v=18M64F8IFMM>

Maariv Newspaper: Beit Hillel is one of the 10 Most Influential Organizations in Israel

The major Israeli newspaper Maariv listed Beit Hillel in its annual list of the 100 most inspiring individuals and organizations in Israel. Beit Hillel was named one of the 10 organizations with the most impact in the realm of Judaism.

Other leading figures and organizations selected to the exclusive Maariv list of 100 come from fields such as Education; Culture and the Arts; Science and Technology; Judaism; Zionism; military and security; Economics; Sports; Society; and Environment.

Since our founding in 2012, we have aspired to engage in meaningful, two-directional relationship-building with the Jewish People, to sanctify G-d's Name, to strengthen Jewish values and identity in Israel, and to restore a moderate, tolerant voice of Judaism to the center of the public discourse and the media. See our official platform.

We express our heartfelt thanks to Maariv for this prestigious honor.

We also want to thank you, our friends who support and actively follow our activities, who help us constantly improve, and who give us the encouragement to continue doing good on behalf of our remarkable country.

Together, we will bring Judaism back to ALL of US!

What is "Shmittah Yisraelit", anyway?

Since the establishment of the State of Israel, Israeli society's exposure to the Shmittah year has generally been that of strife between rabbis and different religious philosophies.

In contrast, the Shmittah Yisraelit initiative is an attempt to restore Shmittah to its intended place in society as an uplifting experience for all of the Jewish People.

The initiative is headed by Teva Ivri organization, in partnership with Beit Hillel.

Earlier this month, we gathered with hundreds of people – secular and religious – all of whom are seeking the same thing: that the Shmittah year have influence on not just fruits and vegetables at the store, but also on the educational system and the public discourse in Israel.

Sounds nice, but how will this be done?

1. We will endeavor to make the laws and philosophical underpinnings of Shmittah accessible to the public.
2. We will emphasize the mitzvot relevant to nature, such as allowing the land to rest, and appropriate gardening in urban areas.
3. We will study the mitzvot related to economics, such as encouraging interest-free loans; postponement of loan repayments after the Shmittah year; and the establishment of a loan fund for repayments.
4. Most importantly, we will encourage a nationwide dialogue about the concept of Shmittah as it relates to financial and social conduct.

So, in summary, what is Shmittah Yisraelit?

It is an ideal year for learning and change, communal involvement, reduction of social gaps, and environmental responsibility.



Halachic Perspectives on Non-Jews Living in the State of Israel

Beit Midrash for Halacha

Among the halachic authorities of our generation, one finds varying schools of thought regarding the issue of non-Jews living in the State of Israel:

- Our situation today requires total implementation of the laws separating and distinguishing between the Jewish people and other nations dwelling among us. According to this view, one should be especially stringent and meticulous with these distinctions, and with extra emphasis regarding non-Jews who are antagonistic towards the Jewish people and the State of Israel.

- The majority of the non-Jewish residents of the State of Israel fit into the halachic category known as Ger Toshav ("foreign resident"). Such residents live in Israel without converting, but accept upon themselves to abide by the Seven Noahide Laws. Accordingly, those maintaining this position claim that it is possible, and perhaps even halachically obligatory, to award full social and economic rights to non-Jewish citizens of the State of Israel.

- In light of the partial dependency of the State of Israel upon the other countries of the world, our situation is defined as a time in which "the hand of Israel is not dominant." Accordingly, we are unable to implement those laws which distinguish Jews from non-Jews, for such a policy could potentially damage the security and strength of the State of Israel, possibly causing a "life threatening" situation (pikuach nefesh), especially for Jews and Jewish communities in the Diaspora.

- The required distinctions between Jews and non-Jews apply exclusively to non-Jews who are not "restrained within the practices of religions." However, non-Jews who are in fact "restrained within the practices of religions" and adhere to moral values and justice, are not subject to the halachic distinctions between Jews and non-Jews, or at least not to a large portion of these distinctions.

According to all schools of thought, there is a need to distinguish between non-Jews who are faithful to the State of Israel and abide by the law, and the enemies of the State of Israel who seek its demise and encourage terror against the citizens of the State.

Since this topic is comprised of many considerations, which can change according to place and time, we have chosen to present various possible rulings that can provide us with the necessary tools to reach a correct halachic decision applicable in any context.

1. Burial

Can a non-Jewish soldier be buried in an army cemetery alongside his Jewish comrades?

It is the custom of Israel since time immemorial,

that one does not bury Jews alongside non-Jews. The source of this law is the rule: "One does not bury a righteous person (tzaddik) alongside a wicked person (rasha)." Clearly, one would not define a non-Jewish soldier, who fought and forfeited his life for the sake of the Jewish people, as a wicked person! The separation of soldiers according to their religion, after their death, is likely to harm the vigor of the fighters and their comradeship. Therefore, one can permit burying non-Jewish soldiers who forfeited their lives for the sake of the Jewish people alongside their Jewish comrades in an army cemetery.

2. Employment

It is permissible to employ a non-Jew or to purchase something from a non-Jew, assuming that it is done according to the laws of the state, and does not harm its security. There is a preference in halacha to assist a Jew who is having financial difficulty, as well as to make business transactions with Jews, thus helping their livelihood, rather than do so with non-Jews. Nevertheless, it is the state's duty to make sure its non-Jewish citizens can earn a living and live in dignity.

3. Renting and selling houses

One may permit the rental of houses to a non-Jew since it is a temporary arrangement, and the house remains under the ownership of the Jew, on condition that he does not bring idol worship into the rented house.

Concerning selling houses, the halachic authorities disagree whether one may sell apartments and houses to non-Jews. Among contemporary authorities, there are those who are lenient when there is a genuine need, especially when the purchaser is not an idol worshipper, but believes in One God, as will be explained below.

In general, there is a halachic preference to sell or rent houses to Jews. However, it is incumbent upon the state to make sure its non-Jewish citizens may attain living arrangements in dignity.

Practically speaking, it is necessary to judge each case by its merits. There are situations in which preferring a Jew will cause hatred and incitement, and may even endanger Jews around the world; and there are situations that being lenient may lead to a security risk of losing the state's sovereignty over certain areas. Therefore, in order to know how to conduct oneself in practice, one needs to consult both security and halachic authorities. It is the governmental leadership's responsibility to make sure that Non-Jewish citizens are accorded rights, while simultaneously safe-guarding the national and security interests of the state, considerations which are bound to vary according to the place and time.

Sources and Explanations

A. Introduction

The Rambam (Laws of Idol Worshipping, ch. 10, law 2) writes: "It is forbidden to heal an idol worshipper, but if he fears him, or is apprehensive over possible hostility, then he may heal for a fee, but it is forbidden to do so without pay; but a ger toshav (foreign resident), since you are commanded to sustain him, you may heal him without pay. One does not sell them houses or fields in the Land of Israel, but one may rent houses to them in the Land of Israel, on condition that they do not create a neighborhood, and one may not rent fields to them."

He further states: "Even when it is permitted to rent to them, the intention is not a house to live in, for he might bring in idols; and one does not sell them fruit or produce which is connected to the ground, as it says 'Lo Techanem' – do not give them a place to settle ('chanaya') upon the land, for if they will not have land, their dwelling will be a temporary dwelling."

Elsewhere, the Rambam writes: "One sustains the poor of idol worshippers together with the poor of Israel for the sake of maintaining peaceful relations (Gifts to the Poor, 7, 7), and, "One asks how they are keeping for the sake of maintaining peaceful relations (Idol Worship 10, 5). After all of the above, The Rambam writes (ibid, law 6): "All this is relevant only when Israel is exiled among idol worshippers, or they have the upper hand over Israel, but when Israel has the upper hand, it is forbidden for us to maintain idol worshippers among us, and even if he dwells temporarily; until he commits himself to the seven commandments that the sons of Noah were commanded; and if he commits himself to these seven commandments, then he becomes a ger toshav; but we do not accept a ger toshav, except in periods in which the Jubilee year is observed." According to the Rambam, since it is not possible to accept gerim toshavim (foreign residents) in our period, there are those who claim that it is not permissible to allow non-Jews to settle in the State of Israel.

The Shulchan Aruch adds this rule (Yoreh De'ah, 151): "One may not sell houses and fields to idol worshippers in the Land of Israel. It is permissible to rent them houses, but not fields." This rule became the source of a major dispute in the context of the topic of selling the Land of Israel during the Sabbatical (Shmitta) year ("heter mechira"), starting at the end of the 19th century.

Having said this, it should be emphasized that not all of the Rishonim (Medieval commentators) adopted the Rambam's ruling (the Ra'avad, for example), and there are commentators of the Rambam (such as the Kesef Mishneh) who explained his opinion differently from the way that we have presented it. These contrary opinions and commentators are the basis of the possibility to compromise and create a bridge between halacha and the foundations and principles of democracy.

B. The approaches of the halachic authorities of our generation

There is an approach that does not consider there to have been any significant change regarding the rights of minorities in the modern State of Israel. Such an approach can be found in an article written by Rav Yehuda Gershoni

“Not necessity or concern about the reactions of the world obligate us to act with integrity and accord equality towards the minorities in our day, but our internal and free values - 'moral humane obligation'”

(“המיעוטים וזכויותיהם במדינת ישראל לאור ההלכה”, Tachumin 2).

Rav Gershoni analyzes the various schools of thought, and his conclusion is that it is possible to apply the category of Ger Toshav to the Muslim minority among us, and to give them civil and economic rights. Regarding Christians and other minorities, however, it is not at all clear that it is permissible to offer them equal rights.

A second approach is that of Rav Yitzhak Isaac Halevi Herzog, in his book, “תחוקה לישראל על פי התורה” (pp. 12-21). Rav Herzog

maintains that it is possible to consider the majority of the non-Jewish residents of the country to be in the category of ger toshav, and to accordingly afford them equal rights. Rav Herzog bases his position on three suppositions:

1. Neither Muslims nor Christians are to be classified as idol worshippers. This is true of Muslims because all of their worship is directed to one God, as the Rambam already ruled in a number of places. As for the Christians, even if they believe in the Trinity and link other entities together with God, nevertheless the Sons of Noah were not prohibited from including other entities in their belief, and it is therefore not considered to be idol worship. Even Catholics, who use the crucifixion as part of their ritual, do not actually worship the figure, and therefore this also is not actual idol worship.

2. In the Laws of Idol Worship (10, 6), the Rambam rules that when “the hand of Israel is not dominant,” it is forbidden to allow a non-Jew who is not a Ger Toshav to dwell in the Land of Israel. But the Ra'avad in his comments on this law, disagrees and states that if the person does not worship idols, he is allowed to settle in the Land of Israel, while the Kesef Mishneh at this point writes that even the Rambam agrees to this. According to these lenient positions, there is no problem in allowing people of other nations to settle in the Land of Israel, as long as they do not worship idols.

3. Additionally, one must take into account the words of Rav Avraham Yitzhak Hacohen Kook, in his responsa “משפט כתר” (ch. 58, sec. 61): “An entire nation that behaves according to such manners shall be considered for this matter as Ger Toshav.” Namely, the people of a nation that, as part of their beliefs, conduct themselves according to the Noahide laws, do not need to specifically commit themselves before a Beit Din, authorized for this purpose. (The author of “כלי חמדה” wrote similarly, חמדת ישראל, p. 202.) For this reason, the fact that the Jubilee is not commemorated today does not create a problem. Indeed, accepting a Ger Toshav in front of a Beit Din is dependent upon the Jubilee being commemorated. However, according to this understanding, an entire nation that behaves suitably according to their beliefs, does not need to be accepted by a Beit Din, and the people of such a nation are considered ger toshav even when the Jubilee is not commemorated.

It is true that there are those who opposed the approach of Rav Herzog, especially his second and third suppositions, and they claimed that it is not possible to apply the law of ger toshav today, whether it be because the Jubilee is not commemorated, or because it is necessary to accept the seven Noahide laws specifically before an authorized Beit Din.

For instance, Rav Shaul Yisraeli, in his book “עמוד הימיני” (ch. 12) rules that one may not rely only on the Ra'avad's opinion in order to bolster the status of non-Jews in the State of Israel.

Accordingly, Rav Yisraeli suggests a third approach. After he clarifies that the Ra'avad's position is that these prohibitions only apply to the original seven nations that inhabited the Land of Israel, he points out that even according to the Rambam, the prohibition against allowing idol worshippers to dwell among us is applied only when “the hand of Israel is dominant.” In today's geopolitics, it is feasible to say that Israel's hand is not dominant, and “even though in certain contexts the State does have control, it is not necessary to rule accordingly, for we are not considered to be in a position that ‘the hand of Israel is not dominant’; whether due to fear of becoming embroiled in a war ... or whether ... because the majority of Jews are not in the country, and the entire country isn't even under our rule, and the nation of Israel is not able to perform the commandment of totally expelling them from the land. Consequently, there is no obligation even in those places where our hand is dominant.”

Rav Herzog's position is similar position to that of Rav Yisraeli, but with a variation. According to Rav Herzog, the assessment that the destiny of Israel is dependent upon the agreement of the nations of the world and their protection necessitates considering the Israeli government's policies regarding minorities in the state. Harming Christians and negating their rights breaches the covenant and the benevolence that the Christian nations extend to Israel, and this endangers the very existence of the Jewish State.

Rav Herzog also writes: “These commandments, which are public commandments, not incumbent upon each individual, but rather upon...the Jewish government – in whichever form it may be – that has the power to perform them, were only given in the first place to the Nation of Israel who were conquering the land, and were

receiving sovereignty by itself, without any concern for other nations.

"Clearly that is the background in the Torah for these commandments, and the simple understanding of the passages is self-explanatory. Therefore, indeed, without this context, and in such a situation that the state is given only upon this specific condition, these commandments do not apply, just as these commandments do not apply in the Diaspora, or even in the Land of Israel when our hand is not dominant ... in such a manner, we were not commanded, and there is neither a commandment nor a transgression in this context."

Rav Herzog uses Rav Yisraeli's reasoning, but adds that since the state is essential to the needs of the entire Nation of Israel, we must allow even actual idol worshippers to settle among us, and even give them rights, as is customary in democratic countries.

In addition to this claim, it should be emphasized that in a world in which social media networks play such a central role in forming public discourse, an isolated incident of a single individual who discriminates against a non-Jew is likely to turn "viral", and to arouse waves of hatred in the whole world, thus endangering the Jews of the Diaspora. These concerns were accentuated by the South African Chief Rabbi Warren Goldstein, who participated in the deliberations of Beit Hillel's Beit Midrash, and reported that the letter of the rabbis that was publicized in 5771/2011 against renting apartments to Arabs created a real danger for the Jews of South Africa.

In our days, the danger of desecrating God's name is even greater, as a result of discrimination against minorities. The obligation of decent behavior and avoiding discrimination towards the minorities among us, is a sanctification of God's name, and serves as an avoidance of its desecration (Rav S. Goren, *משנת המדינה*, p. 46, Rav A. Sugarman, 18-19, *ניב המדרשה*).

A fourth approach comes from Rav Haim David Halevi (*תחומין דרכי שלום*, ס'). In his opinion, all of the laws that were stated in this matter relate specifically to worshippers of foreign gods, sculptures, and graven images. This viewpoint is based on the opinion of Hameiri (as is explained, for instance, in the tractate Gittin 62a, and in the tractate Avoda Zara in several places). Regarding this opinion, the author of the responsa *ציץ אליעזר*; הלכות מדינה (vol. 3, p. 257) writes: "It is not feasible to say that this entire opinion was written by Hameiri only to appease the government censors, and for the sake of living harmoniously with non-Jews. Therefore, these views of Hameiri can serve us as a prototype when we come to deal with these problems concerning the nations in our times."

Thus, Rav Halevi rules: "Since the non-Jewish nations of today are not considered idol worshippers, therefore, even if Israel's hand was dominant, in the halachic and practical sense of those days, in no circumstance would we be obligated to treat the non-Jews of today according to the laws of idol worshippers. Therefore, in the entire network of relations between Israel and non-Jews, whether in Israel or in the Diaspora; whether regarding the attitude as a society or as a state towards its non-Jewish citizens, or the attitude as an individual towards his non-Jewish neighbor or friend, there is absolutely no need to preserve these relations only "because of harmonious relations" ("מפני דרכי שלום"), but because they no longer fit the halachic definition of idol worshippers. Therefore, their livelihood, visiting their sick, burying their dead, comforting their mourners and other concerns, all may be done in the framework of a humane, moral obligation."

It is neither necessity nor concern about the reactions of the world that obligates us to act with integrity and to accord equality towards the minorities in our day. It is, rather, our internal and free values – "moral humane obligation."

Together with the possibility and the requirement of allowing minorities to live in dignity, giving them rights with no discrimination, Halacha is also sensitive to the possibility that these rights may be abused. Accordingly, there are a number of limitations to minorities' residing under Israeli rule. Therefore, for example, according to the Midrash Halacha (זו ספר דברים רנ"ז), one may not settle them on the borders due to security concerns (Rav N.T. Friedman *שנה בשנה* (תש"ג), Rav S. Goren *משנת המלחמה*, vol. 1, pp. 249-257, Rav Y. Rozen, *תחומין*, pp. 259-266.)

We have thus summarized the theoretical approaches of the halachic authorities. We shall now briefly discuss the three issues raised earlier, based on these approaches.

C. Burial of a non-Jew next to a Jew

In the tractate Sanhedrin (47a), the Gemara rules that one does not bury a wicked person (rasha) next to a righteous person (tzaddik), nor a severely wicked person next to a mildly wicked

person. The halachic rulers learned from this that one does not bury a Jew next to a non-Jew. This is also apparent from what is said in the tractate Gittin (61a), that one buries the non-Jewish dead next to the Jewish dead, due to harmonious relations, and it seems from there that, at least in principle, one should not do so. One should add that even for the sake of harmonious relations, medieval commentators (Rishonim) maintained that one should not literally bury the non-Jewish dead next to the Jewish dead. The intention of the Gemara here is that we should participate in the burial of non-Jews, and not actually bury them in the same place, side by side.

Should this be the law, even in the case in which a non-Jew who served in the Israeli army is killed, and there is an appeal to bury him in an Israel army cemetery, alongside his comrades, the Jewish soldiers? In such a case, it is possible to be lenient and bury him beside Jewish soldiers, for several reasons:

1. The Rambam does not mention the law that one does not bury a wicked person beside a righteous one. And even though this law appears in the Shulchan Aruch (Yoreh De'ah 362, 5), nevertheless, when necessary, one may rely on the Rambam (see Rav Arusi, 14 תחומין p. 313).

2. One may deduct from a careful reading of the Rambam in the Laws of Kings (10, 12) that one may bury a ger toshav next to a Jew, and so is the opinion of the Bach (Yoreh De'ah 151), that for the sake of harmonious relations, one may bury a Jew and a non-Jew side by side.

3. Similarly, the leniency is necessary for the sake of the morale of the fighters and their ability to fight, a concern related to the concept of "pikuach nefesh" (on this principle, see Rav M. Halperin, תחומין פיו חללים בשבת, 22, p. 106), since they know that should they die, they will be afforded dignity in their death, and be buried in an Israeli Army cemetery, in a section alongside their comrades, and will not be buried in a separate plot, on the side.

Moreover, since the source of the custom is that one may not bury a wicked person next to a righteous person, it seems obvious that one would not define a non-Jew who forfeited his life for the sake of the Jewish people as a wicked person! [See tractate Bava Batra (10b) regarding the martyrs of Lod, who, according to some opinions, were not Jewish, which states that no one is able to stand in their presence due to their distinction of having forfeited their lives for the sake of the people of Israel.]

It should be noted that the actual halachic ruling on this issue is determined by the Army Rabbinate, and it is possible that there may be exceptional circumstances which justify an alternative ruling, in accordance with their comprehensive view of all relevant considerations and of Halacha.

D. Employing non-Jews

In תחומין (Tchumin), vol. 32 and 33, two articles were published, one by Rav Shlomo Aviner, and the other by Rav Ohad Fixler, who deal with the question of employing non-Jews. Since these articles are accessible to all, we shall not repeat the content, but only mention the main sources and the halachic conclusions that emerge from these articles.

The Sifra, Parashat Behar (3, 3) states that if a person wishes to purchase something, he should do so from a fellow Jew, and not from a non-Jew. From this passage, Rav Benzion Meir Hai Uziel reaches the conclusion in his responsa Mishpetei Uziel (Choshen Mishpat, 44) – "... In my humble opinion, there is another commandment involved with Hebrew labor (Avodah Ivrit), which is not based on the principle of tzedakah, but rather on a sense of a national and brotherly obligation ... this commandment of the Sages is a prototype for any work involving cooperation, between a seller and a buyer, or a worker and an employer. Whether it be practical in the form of commercial negotiations, or temporary hiring, it should be done with a Jew. And this commandment also obligates the worker, that he should give preference to performing his work for and giving his time to his brother, the Jew... for the commandment to prefer Hebrew labor is not only a commandment of admirable charity, but also a full obligation, that is given to the jurisdiction of the Beit Din, which obligates the seller, the manufacturer, the employer, and the worker to give preference to their brothers."

On the other hand, we have seen that there is an obligation to afford the same benefits to the ger toshav that we do to our fellow Jew, in that we must allow him sustenance and to have a livelihood (Vayikra, 25:35; Masechet Avoda Zara 65a). We have also mentioned the passage in tractate Gittin, which states that we must allow sustenance for non-Jews and treat them well for the sake of harmonious relations.

In light of this, it is reasonable to suggest that even though the

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Dilemmas Involving African Refugees and Migrant Workers in Israel

Beit Midrash for Jewish Thought

Abstract.

The Torah, in teaching us about the holiness of each and every human being, described him and her as having been created in the "image of God," on the one hand; and of the Nation of Israel as "the Chosen People," on the other hand. The question of the appropriate balance between these two values has accompanied the Jewish People throughout the generations, and is a particular challenge today in the State of Israel.

In this context, the multitude of African refugees and migrant workers to the State of Israel in recent years presents us with a pressing and practical challenge. Until now, the issue has not been dealt with appropriately. The reality is that there is anarchy, causing great misery on a day-to-day basis, both to the legal citizens of Israel and to the African refugees and migrant workers. The responsibility for this issue, which demands urgent action, rests on the shoulders of the Government of Israel and all of entire Israeli society. It must not be allowed to fall on particular cities or neighborhoods.

When addressing this topic, we must set forth guidelines that will strengthen the Jewish identity of each individual Jew, safeguarding the Jewish identity of the state and its society, while simultaneously helping those in great distress and striving to care for each and every human being. Thus, we call upon the Government of Israel to urgently deal with the issue of the African refugees and migrant workers in a comprehensive manner, based upon the balance that the Torah teaches us between the distinction of the Jewish people as the chosen nation and the dignity worthy of every human being. It is this balance that we shall endeavor to define in this position paper.

Introduction

Throughout our history, Jews were compelled to contend with the complexity of safeguarding personal and national Jewish identity while living amidst in a predominantly non-Jewish society. In most generations, Jews dealt with this in small communities under the rule of non-Jews, and various themes within the Oral Law deal with these issues.

With God's kindness, however, the Nation of Israel has ingathered in the past few generations to Eretz Yisrael, and we have the privilege to live in a thriving Jewish State, to which non-Jews arrive, some as refugees or migrant workers, desiring to share the blessing with which we have been endowed. How fortunate we are to live in such a generation in which we must contend with the question of how a sovereign Jewish state should treat non-Jewish minorities who wish to live among us! But this blessing comes with responsibility, which the Torah also addresses.

How should we relate to these refugees and migrant workers? Do we have a responsibility to ensure their well-being? Or perhaps our primary responsibility is to the Jewish identity of Jewish individuals and Israeli society, and we should consequently put the refugees and migrant workers aside?

We shall open our discussion with the basic ideological foundations of the relations between Israel and the nations. Subsequently, we shall focus on the urgent, practical issue of the desirable attitude toward refugees and migrant workers.

A. Jews and non-Jews

1. From Creation and throughout the generations

The Torah is intended for the Nation of Israel, and focuses upon it, relating its history and conveying the commandments which are given only to Israel. It is therefore intriguing that the Torah opens with chapters and stories of universal interest, from the story of Creation until the choosing of Abraham as the Patriarch from whom the Nation of Israel will continue and flourish.

It is impossible to deal with the selection of Israel without first unfolding the universal background, for the selection of Israel is for no other reason than "to repair the world under the Kingdom of God" (the Aleinu prayer), and to "crown the Lord over the entire world" (High Holy Days liturgy). This is the blessing that Abraham Avinu received at the beginning of his mission: "Through you and your offspring all the families of the earth shall be blessed" (Breishit 12:3). He, "Avram the Hebrew" (Breishit 14:13), literally "Avram of one side," about whom it is said: "the entire world is on one side, and he is on the other side" (Breishit Rabba 42), is the same Abraham whose name was changed to emphasize that he is the father of a multitude of nations (av hamon goyim) (Breishit 17: 5).

From the very outset, Abraham Avinu calls out in the Name of God in a world in which all the people are idol-worshippers. He acts kindly with Lot his nephew and other strangers who appeared

"We call upon the Government of Israel to urgently deal with the issue of the refugees and migrant workers in a comprehensive manner, upon the basis of the balance the Torah teaches us between the distinction of the Jewish people as the chosen nation, and the dignity and worth of every human being..."

to be bowing down to the dust of their feet (Rashi on Breishit 18:4, according to Breishit Rabba). The way of our first patriarch, which he passes down to posterity is "the way of God to do righteousness and justice" (Breishit 18:4), namely, belief in God, as a foundation to spread values of righteousness and justice to the entire world.

These are two sides to the coin of Israel as the chosen people: the choosing of Israel, and the objective of their having been chosen – repairing the world (tikkun olam). If one side of the coin is missing, the coin does not exist at all. There is no Torah without the selection of Israel, and the selection of Israel is not for its own sake, but entirely intended to bring blessing to the whole world, as a "kingdom of priests and a holy nation" (Shemot 19:6). "A holy nation" indicates the holiness of Israel, while "kingdom of priests" represents the task of Israel to bring that blessing of holiness to the world.

The commandment to sanctify God's Name (Kiddush Hashem) also expresses this two-sided coin: the Torah obligates us as a nation to live lives of holiness, but the Torah does not limit its vision inward, within our nation. It extends it outward, as well, in the direction of the nations of the world. The Torah obligates us with a special responsibility to carry upon our shoulders the Name of God before the eyes of the nations.

When the Nation of Israel is about to settle in its land, Moshe Rabbeinu emphasizes the importance of sanctifying God's Name before the eyes of the nations: "Observe [the mitzvot] carefully, for this will show your wisdom and insight to the nations, who will hear about all these laws and say, What a wise and insightful people is this

great nation! For what other nation is so great as to have their gods near them the way the Lord our God is near us whenever we call upon him?! (Devarim 4:6-7).

Similarly, in the words of Yeshayahu Hanavi: "...the people whom I created for myself so that they may proclaim my glory (43:21). The nation is a unique creation, whose establishment was intended to sanctify God's Name in the world.

Rabbi Akiva also alludes to these two sides of the coin, in a mishna in Avot (ch. 3) – "Beloved is humanity, for it was created in the image [of G-d] ... as it says, 'For in the image of God, He made humanity.' Beloved are Israel, for they are called 'children of God' as it says: 'You are children of the Lord your God.'"

The well-known words of Rabbi Yehuda Halevi in his Kuzari uniquely express the two-sidedness of the selection of Israel: "Israel amongst the nations are comparable to the heart amongst the organs" (2nd section, ch. 36). On the one hand, Israel is not a regular organ of the body; it has a special existence, a singular vitality, similar to the heart in the body. The Nation of Israel has a perpetual duty upon which all of humanity is dependent, and if we do not carefully guard the heart, we damage the entire body. On the other hand, the heart does not stand alone, disconnected from the rest of the body. The importance of the special duty of the Nation of Israel is to provide life and meaning to all humankind.

In essence, then, there is no separation between the selection of Israel and the Nation of Israel's universal mission. The Bible and the Oral Law are replete with references to both sides of this coin. Throughout the generations, many Torah sages have sought an accurate understanding of the uniqueness of Israel and the relationship of this quality to the nation of Israel's universal mission, and have put forth various approaches to understanding the complexity and its practical implementation. In the following sections, we shall present several highlights from this broad topic.

2. Rav Kook: Nationalism, Universalism, and Uniqueness

Rav Avraham Yitzhak Hakohen Kook, who saw great significance in the uniqueness of Israel, was careful to emphasize that this uniqueness is not intended to cause a separation from other nations, or indifference towards them. On the contrary, the uniqueness is the root of the internal love of Israel for each other, and this internal mutual love of Israel is required to prompt love towards all nations. "The internal mutual love of Israel obligates love towards all nations" (5, 4, [אורות ישראל]).

In a number of places, Rav Kook points out that there are apparent contradictions between halachic principles and love towards all of humanity. However, he does not accept that this is an absolute contradiction, and calls upon us to exert ourselves to find the correct synthesis of these two aspects, for they both stem from the one God (see, for example, 3, אורות הקודש, p. 318; and מידות הראיה, Love, 7).

One of the foundations to understanding this synthesis is that the selection of Israel does not entail isolation from the rest of humanity, but rather the concentration of energy in an inner circle, whose purpose is nothing else but to bring blessing to all. "Israel, as a special nation, blessed in the depth of its holiness, influences the entirety of the whole world, to refine the national soul within each nation, and to arouse every single nation to a more lofty status" (1, 5, [אורות ישראל]).

It is impossible to detach nationalism from universalism; what is under discussion is a "nation who has total universalism ingrained in the depths of its soul." On the one hand, love and the desire to help others are universal. On the other hand, it is necessary to safeguard the Nation of Israel, which God has selected to play a leading role in repairing the world. The result of this complexity is that the Nation of Israel must undergo "practical contraction together with spiritual expansion." It is "a nation that dwells alone and a light unto the nations, simultaneously" (ibid, sec. 3).

The desire to benefit the entire world is "the inner kernel of the essence of the soul of the Assembly of Israel." However, this positive sentiment must be wisely channeled "in order to identify how to put it into practice" (ibid, 1, 4). The laws whose purpose it is to perpetuate the distinction between Israel and the nations are part of this wisdom of bringing good to the world by means of the Nation of Israel in the most effective manner, safeguarding love towards all other nations, and channeling that love via the halachic channels that guide it.

Rav Kook is rather adamant about the importance of desire to benefit all nations: "Love of humankind requires a major effort ... against the superficiality one sees upon an initial review by one who is not initiated in instruction... It is as if there is opposition to,

or, at the very least, disinterest in, this love, which should fill every last chamber of one's soul at all times. The supreme level of love of humankind should take the love of man and make it spread over the entire person, disregarding any differences of outlook, religion, and belief, and despite any distinctions of race or climate."

He continues: "It is appropriate to reach a full understanding of the different nations and groups, learning their nature and qualities as much as possible, in order to know how to establish human love upon grounds that will lead to practical deeds. For only in a soul enriched with the love of humankind can the love of the nation rise up to its glorious nobility and spiritual and practical greatness. But narrow-mindedness that causes one to consider anything outside the special nation's boundary, even if it is outside Israel's physical boundary, as only ugliness and impurity, is a most appalling, deep darkness, causing wide-ranging destruction to any worthy spiritual building..." (מידות הראיה, Love, 10).

Similarly, one should never ignore natural human morality, for it is only on the basis of that morality that one can correctly build holiness, which is a level above natural morality: "It is necessary for a man to first train himself in natural, simple morality, to the extents of its width and depth; and the fear of God, and the pure essence of simple faith, with all its attributes, in breadth and depth; and only upon these two qualities should he build all his upper spiritual heights. The fear of God must not push aside man's natural morality, for then the fear of God is no longer pure. A sign of pure fear of Heaven is when natural morality, which is implanted in man's basic nature, ascends in synchronization with his fear of Heaven, to higher levels than that to which fear of Heaven would have risen alone." (11, ראש דבר, 3, אורות הקודש).

Having said this, one needs to be extremely careful not to minimize the uniqueness of Israel: "...it can happen that the basis of this expansion of affection (to all of humanity) comes at the cost of dulling the emotion and dimming the light of holiness of the recognition of the supreme specialness of Israel, and then it is poisonous, and the content of its activity is terrible destruction..." (5, 8, [אורות ישראל]). If a positive attitude to the nations means neglecting to fulfill our special duty to bring blessing to the world, then we have lost our way, and we have withheld this blessing from the world, Heaven forbid. Our duty remains to bring to the world the special blessing that God has presented us.

3. Humanistic Torah

On the basis of the perspective we have presented so far, we shall consider a few issues that require emphasis regarding a humanistic attitude toward non-Jews, based on the philosophy of Rav Aharon Lichtenstein, as it appears in 134 דף קשר of Yeshivat Har Etzion.

The point of departure for our attitude to the sons of Noah, according to Rav Lichtenstein, must be the recognition of the character of the non-Jew as a "metaphysical, moral, human being."

"Humanistic consciousness – and let us not be embarrassed by this term – a humanistic view that sees the greatness of humanity in the super-natural, cosmic, moral sense, is the point of departure for and foundation to any question of bond, not only to ourselves, but also to the sons of Noah."

Every person, Jew and non-Jew is created to worship God. He offers sacrifices, prays, and learns Torah – concerning the laws he is obligated to implement, as Rabbi Meir said (Sanhedrin 59a): "From where do we learn that even a non-Jew who occupies himself with Torah is comparable to the High Priest? As it says (Vayikra 18) 'which a person shall perform, and live by them'; 'Kohanim, Levi'im, and Yisraelim' – it does not say, rather 'a person'; from this you may learn that even a non-Jew who occupies himself with Torah is comparable to the High Priest."

Rav Lichtenstein emphasizes that our involvement with and attitude to humanity cannot be passive, but it is incumbent upon us to also remain proactive, namely, performing kind deeds towards a non-Jew, in accordance with the commandments: "After the Lord your God you must walk"; "Walk in his ways"; and "The Lord is good to all; He has compassion on all He has made."

All of this does not contradict the selection and holiness of Israel. On the contrary, the demands of each man towards his fellow human being are simply required from the Nation of Israel on a higher level.

4. Discourses of distinction and equality

One needs to distinguish between two modes of discourse which can be found in the Torah. One is the discourse of distinction. Halacha distinguishes between Jew and non-Jew, between man and woman, and others. The effect of these distinctions is so great that there are

those who see in another discourse, that of the equality of all man, a mistaken value, foreign to the Torah of Israel.

However, as Rav Yuval Cherlow writes: "From within the world of the Torah and the Halacha, it is possible to absorb a totally different viewpoint, also in line with the simple meaning of the texts, about the intrinsic equality that exists between people, and it is incumbent upon us to give this expression, as well."

For example, the source of all humanity is the joint creation of Man and Woman; the one commandment that they receive together in the first chapter of Breishit. Likewise, there are legal emphases of equality in the simple meaning of the Torah, such as, "You are to have the same law for the foreigner and the native-born," and many other examples. (See Rav Cherlow: "העמדת השוויון - בצלם א-לוקים ברא את האדם - כבצלקומו הראוי והשפעתה".)

Since both modes of discourse are rooted in the Torah, "any position which deals with the topic must bring both languages of discourse, which absorb from the very same Torah, and must seek methods to reach the correct balance between the two directions."

5. Separation, selection, and complexity

People often organize themselves into ideological groups, which seemingly need to choose between the idea of Israel as the chosen people, and natural, universal morality. On the one hand, one group believes in the Torah and the selection of Israel, reasoning that this belief contradicts natural morality and the universal spirit. Any viewpoint which supports natural, universal morality is discarded by this group as opposing the Torah and being foreign to it.

On the other hand, the opposite group waves the flag of universalism and rejects the idea of Israel as the chosen people, and the unique destiny of the nation of Israel, and rebuffs the idea of the special love for the nation of Israel.

In light of what we have seen, we must rise above the need to make this false choice. One must not forego either of these critical values, both of which are rooted in the Torah. One must make the effort to find the balance by which one may live with both values. We believe that according to the Torah, this is the appropriate way for our generation, a method that will fortify the Nation of Israel internally, and will amplify the sanctification of God's Name in the eyes of all humankind.

6. Contradicting sources

There are other approaches that can be found in the words of our tradition that express a negative attitude towards non-Jews. Some of these sources were written within a certain historical context, during various difficult periods of our history, and one may not ignore them. But as with any issue in which there is halachic or philosophical disagreement, it is necessary to reach conclusions suitable to one's time period.

Nevertheless, there are those who exploit those sources reflecting a negative attitude toward non-Jews, and applying them to our own days, deriving from them far-reaching conclusions, while ignoring the explicit message of Biblical verses, and many other commentaries. We must fervently oppose such tendencies, especially when they are used to incite hatred and violence.

Note that some of the sources, while on the surface appearing to express a negative attitude towards the non-Jew, can often be explained in other ways, when the full context is understood. [Please see the Hebrew version of this article for an illustration of this.]

B. Ger Toshav

In attempting to form an appropriate attitude towards a non-Jewish person living in a Jewish state in the Land of Israel, we need to clarify the non-Jew's halachic status.

When the state was established, several Torah scholars such as Chief Rabbis Rav Yitzhak Halevi Herzog and Rav Bentzion Meir Hai Uziel, as well as Rav Shaul Yisraeli, Rav Eliezer Waldenberg, Rav Haim David Halevi, and others, invested significant time to create a halachic infrastructure for the State of Israel. Amongst other things, they dealt with the question of the status of non-Jewish minority groups in the State.

Halacha recognizes the status of ger toshav (foreign resident). A ger toshav may live in the Land of Israel, and we are commanded to

enable him to live among Israelites with rights and allow him access to satisfy all humanitarian needs. The question is: who is a ger toshav?

Rambam (Laws of Idol Worshippers, end of ch. 10) rules that a ger toshav is a non-Jew who has committed himself to the Seven Noahide laws during a period that the Jubilee is being practiced. According to this, it would seem that the status of Ger toshav is not possible in our days, and indeed Rav Yehuda Gershoni (תחומין 2, "המיעוטם וזכויותיהם במדינת ישראל לאור ההלכה") wrote that the Muslim minority among us (being monotheistic) may receive the status of ger toshav, and we may allocate them civil and economic rights. However, it is not clear that we may allot equal rights to Christians and other minorities.

In contrast to this, several of the halachic authorities of our generation wrote that one should indeed allocate civil rights to non-Jews that live in Israel, for various reasons. Rav Herzog ("תחוקה לישראל על פי התורה", 12-21) is of the opinion that we may consider the majority of the non-Jewish residents of Israel as gerei toshav, and consequently allocate them civil rights.

Rav Yisraeli (עמוד הימיני, ch. 12) opposes Rav Herzog's position, however, ruling that we must not negate them basic rights, because in our times "we are not in the situation called 'Israel has the upper hand,'" and even Rav Herzog agrees to this point of Rav Yisraeli. [More on this in the responsa of the Beit Midrash of Halacha, in this publication]

Rabbi Menahem Hame'iri (13th-14th Century) has a very important position on this topic. He writes in many places in his commentary on the Talmud that there is a fundamental difference between the non-Jews of the past and the non-Jews of his days. Non-Jews in the past were "filthy in their deeds, and ugly in their character, as is implied in the verse, 'You must not do as they do in Egypt, where you used to live, and you must not do as they do in the land of Canaan, etc.'"

The non-Jews living in Hame'iri's days, however, "are restrained in the ways of religions, and are purified of the ugliness of those characteristics. On the contrary: they even punish such deeds." Consequently, all the monetary laws and moral standpoints between Jews and non-Jews, which reflected a negative attitude toward the non-Jew, referred only to the non-Jew of the past. But regarding non-Jews in his time, "these things are not at all relevant" (beginning of ch. 2 of tractate Avoda Zara).

Elsewhere, Hame'iri writes: "All who are from the nations that are restrained in the ways of religions, and worship God in some manner, even though their faith is vastly different from our faith, are not included in this directive, but they are like a total Israelite for these issues, even concerning returning his lost item or refraining from misleading him, and so with other topics, without any distinction whatsoever" (Bava Kama 113b).

There are those who believe that Hame'iri's words were uttered under the pressure of the censor, and do not reflect his true opinion. However, Rav Eliezer Waldenberg has already written, "It is not reasonable to say that this entire methodology was written by Hame'iri only to appease the censor and in deference to keeping peace. Therefore Hame'iri's comment may indeed serve as a prototype when we come to assess the problems surrounding other nations in our own times" (הלכות מדינה, end of sec. 3).

Even though Hame'iri is a lone opinion among the medieval commentators (Rishonim), we see that Rav Waldenberg considers that we should rely on his approach in practice, in our days.

Similarly, Rav Kook wrote, "Hame'iri is the opinion we should follow, namely, that all nations that are restrained in decent manners amongst themselves, are immediately considered gerim toshavim concerning all obligations towards them." (אגרת, p. 99)

Rav Haim David Halevi ("דרכי שלום", פ' תחומין) also ruled accordingly: "In all relations between Jews and non-Jews, both in Israel and in the diaspora, whether with regard to the attitude of society as a state to its non-Jewish citizens, or with regard to the attitude of the individual to his non-Jewish neighbor or friend, the need to maintain good relations is based on halacha, and not merely due to 'peaceful ways'. Therefore, their livelihood, visiting their sick, burying their dead, comforting their mourners, and other concerns, should all be done in the framework of a humane, moral obligation."

Likewise, Rav Uziel wrote that minorities should receive equal

rights in the state, and emphasized that the reason is due not to international constraints, but rather "due to our integrity and conscience ... and due to the Torah's commandments, which obligate us to give love and honor, equal rights and freedom of religion and nationality to every nation and to every person who dwells in our land in peace and loyalty" (התורה והמדינה, סיני כב, שנת תש"ח, p. 219).

Although there are halachic authorities with alternative opinions, we shall adopt Hame'iri's path and go according to those rabbis of our generation who maintain that one must give non-Jewish minorities in the State of Israel equal civil and economic rights.

We believe that it is incumbent upon the State of Israel and Israeli society to relate to the non-Jews who live in the State of Israel in a moral and humane manner, as an integral part of the requirements of holiness that are unique to the Nation of Israel. That is clearly the most suitable halachic approach to the milieu and morality of our times, and as we have shown, it is widely anchored in the world of Jewish thought and halacha.

C. African refugees and migrant workers in the State of Israel

Upon the basis of the infrastructure we have established, we now turn to the important practical question of the attitude toward the African refugees and migrant workers currently living in Israel. As we have noted above, the two central pillars of our attitude to humanity are the holiness of Israel on one hand, and the moral and respectful approach towards all human beings, on the other. We seek the correct balance between these two important values.

1. The bases of our approach towards non-Jews in the State of Israel are:

- a. We must safeguard the holiness of Israel and strengthen Jewish identity in the society and in the State, preventing cultural and practical assimilation.
- b. Our foremost concern must be for the security and economic welfare of the citizens of Israel.
- c. We must relate and behave in a moral fashion to all persons as one who was created in the image of God, to have concern for his wellbeing, and care for his security, the fulfillment of his needs, and his standard of living, spiritually, culturally, and materially.
- d. We must be concerned and careful not to desecrate God's Name, Heaven forbid, and instead aspire to sanctify God's Name amongst the nations.
- e. Many commandments in the Torah remind us that we are to perform interpersonal commandments in order to recall that "you were strangers in the land of Egypt." In this spirit, we must pay attention to the rights that we demanded for Jewish minorities living in different countries throughout our history, and those who still live there. We must ensure that in the state in which we are the majority, and the responsibility for all people in the state is incumbent upon us, that the minorities receive similar rights. On this matter, Rav Uziel wrote: "This was our claim in all the lands we lived in, to demand equal and full rights, and justifiably so; and even though in general we were not heeded, we are not excused to behave as we demanded from others to behave towards us."

2. The current situation

One gets the impression that in recent years this topic has been neglected, and this abandonment has caused the greatest damage, both to the citizens of Israel and the refugees and migrant workers themselves, who suffer terribly on a daily basis.

The handling of the African refugees and migrant workers in the State of Israel must be the responsibility of the state and its civil society establishment, making a broad and wide assessment, as part of public responsibility and policy; and not be dealt with in a local and piecemeal fashion. This is a national task, and the responsibility for this task must be divided amongst all parts of society, and not be placed on the doorstep of single neighborhoods or cities. We call on the government to place the situation of the African migrants and migrant workers on high priority, and to deal with it urgently.

3. Refugees

One must distinguish between refugees and migrant workers. The term "refugees" in our discussion refers to people who are fleeing persecution that has been inflicted upon them in another place. Sending them back to their place of origin may unjustly endanger their lives or liberty. We call upon the government to ensure that thorough checks are undertaken regarding the status of the people who arrive. When it is apparent that the person in question is a bone fide refugee fleeing from danger, it is forbidden for us to return them to the place of danger. As long as we are not dealing with astronomical figures, which would create a threat to the Jewish identity of Israeli society or to the welfare of the citizens of Israel, we must allow them to settle in Israel and assist them.

4. Migrant workers

Most of the migrant workers who have arrived in recent years in the State

of Israel are migrant workers. Their presence in Israel has created a host of problems. After they entered the State of Israel, they were not dispersed around the country, but were concentrated in certain areas, in general, places with a struggling socio-economic population. In contrast, financially-stable areas had the power to prevent these people from entering their neighborhoods.

Most of the migrant workers do not have living quarters or employment and, consequently, a proportion of them turn to crime in the areas in which they are concentrated, endangering the local communities and creating a hygienic hazard for themselves and their surroundings. The security and the livelihood of the local residents of the neighborhoods where the migrant workers are concentrated have been intolerably impaired. The huge numbers of migrant workers, their religious identity, and the integration of a segment of them into Israeli society may cause an imbalance that would adversely affect the Jewish identity of a portion of the local residents and of Israeli society in general.

How can we create, in such a complex state of affairs, a worthy balance between safeguarding the identity and rights of the Jews in the State of Israel, while upholding the proper approach deserved by any human by the very fact that he is a human being?

No country is obliged to absorb illegal migrant workers, or even legal work migrant workers, without limit. The concern for the citizens of Israel is also a moral responsibility, and it even takes priority over the moral responsibility towards migrant workers, according to the halachic guidelines, "Your own takes preference to anybody else's" (Bava Metzia 30b), and "The poor of your own city take preference" (ibid, 71a). We are also responsible for strengthening the Jewish identity of the state and society.

Consequently, the State of Israel must find a solution that will place the well-being of the citizens of the state at the top of its priorities, and do whatever is necessary to minimize the threat of migrant workers in Israel. However, the solution must be implemented in a moral and humane manner, and not through mass expulsion. The solution must include concern for the welfare of the migrant workers, together with the supreme interest of protecting the citizens of the country.

The State of Israel is not responsible for solving all the troubles of the world single-handedly. The responsibility of the rights of man, and economic and cultural equality among all humankind rests on all nations collectively, and we should encourage dealing with this topic on an international level. At the same time, the holiness of Israel, and the obligation to sanctify God's Name obligates us to take upon ourselves a central role in this mission, and perhaps even lead it to the extent that is possible.

Deepening Jewish identity in the state, in society in general, and in each individual, cannot be accomplished by total disengagement from every non-Jew, but rather by strengthening Jewish identity, positively and actively, by reinforcing Torah learning, and by the nation of Israel keeping the commandments.

We do not need to create a Jewish State in which there is no place for non-Jews, nor may we do so from a moral standpoint. We must not allow our anxiety over the obscuring of Jewish identity to bring us to indifference to the moral challenges born from the economic and cultural schisms that exist in the world. The nation of Israel must be a partner and even a leader in the global struggle with this challenge, while guarding Jewish identity in the State and even strengthening it.

5. Spiritual and moral reflections as part of the practical solution of the issue

a. A governmental committee must be formed, or an alternative body, that will advance a comprehensive solution for the subject. This committee must include Torah scholars, spiritual leaders, and ethics experts, to ensure the appropriate balance between the values we have outlined.

b. The burden of dealing with the migrant workers that will remain in Israel must be scattered among the various communities in the State. It is morally inconceivable to drop this burden exclusively on the shoulders of the weaker districts.

c. Any proposed solution must include elements which solve migrant workers' basic needs, primarily housing and sanitation.

d. The harm done when employing the migrant workers and thus taking positions from local Israelis, and the encouragement of the migrant workers to remain if they can be employed, must be weighed against the mass social damage that is likely to occur if most of the society of migrant workers is unemployed and unable to earn a livelihood.

e. There is a need to form effective educational and cultural frameworks for the migrant workers, frameworks which are likely to reduce crime and alleviate their social predicament. Additionally, these separate frameworks will prevent obscuring the Jewish identity of the local population.

f. All the above refers only to law-abiding, moral migrant workers. An immigrant who harms an Israeli citizen or other migrant workers, loses his right for humane treatment from the State of Israel, and should be immediately imprisoned or expelled from the country. Nevertheless, we must be careful not to make generalizations which impugn all migrant workers for any misdemeanor.

Proper treatment of the migrant workers that remain in Israel will bring positive results, both for the citizens of Israel as well as for the migrant workers themselves.

D. Conclusion

Being God's chosen people places upon us the utmost moral responsibilities. We were fortunate to receive the Torah from Heaven, which teaches us to live holy and moral lives. It is incumbent upon us to be an example and a role model, and to spread the Torah's values of holiness and morality to all of humanity.

After 2000 years of exile and persecution, we have the privilege to live in a thriving, autonomous Jewish State in the Land of Israel, a state in which many non-Jews wish to live, and benefit from its bounties.

In this fortunate and even blessed state of affairs, we must steer our steps with responsibility and insight. We must aspire to cultivate a multifaceted path of loyalty to God's Torah and humane morality, which will sanctify God's Name in the world, through the State of Israel and Israeli society. Our prayer to God is that He guides us on the straight and narrow path, upon which we shall succeed in implementing this aspiration, which will in turn sanctify His Name in Israel and the entire world.

(Continued from page 6 - SHMITTA YISRAELIT)

parts of civilian life as well. They promote increasing charitable deeds, by doing voluntary work for the sake of the needy, or by foregoing part of the debts they owe, or by volunteering professional work hours for the disadvantaged, to name a few examples.

There are others who wish to expand these ideas to include wonderful activities in the field of safeguarding God's special estate, namely the Land of Israel, for the generations to come. They dedicate this year to actively protecting the environment and its natural resources; spreading awareness about restraining our domination over land, animals, and nature; and increasing modesty and consideration towards the resources that we benefit from during the years of toil.

Writing about the Shmitta year, Rav Avraham Yitzhak Hakohen Kook noted: "It is a special need for this nation, that from time to time its internal Divine light should reveal itself in its full splendor, so that it should not be extinguished by the routine grind of toil and anxiety of civilized life, with the rage and competition that characterizes it, so that the nation's unsullied soul will be able to appear internally in its full purity. A Sabbatical year is necessary for the nation and for the land. A year of peace and tranquility, without oppressor or tyrant, a year of equality and calm ... there is no private property and no right to demand one's rightful possession, and Divine peace rests upon all that have a soul. There is no desecration of holiness by demanding one's rightful possession from any of the produce of this year, and the craving of wealth, which is apparent in business, is forgotten ... and Man returns to his invigorated true nature."

(Continued from page 10 - Halachic Perspectives on Non-Jews Living)

obligation of an individual towards his Jewish brother is greater than his obligation to members of other nations, at the same time it is the obligation of the State – whether due to the law of ger toshav (assuming that non-Jews have that status in our days), or for the sake of harmonious relations, and a concern for animosity or desecration of God's name, or in the name of basic moral and humane duty – to make sure that all residents of the State of Israel can live in dignity. Obviously, should the State demand of its individuals to assist with the livelihood of its non-Jewish residents, it is the individual's obligation to answer this call.

E. Renting and selling houses to non-Jews

There is a prohibition in the Torah (Shmot 23:33) that states: "They shall not dwell in your land." Simply speaking, it seems that this prohibition is directed towards whomever it is that rules the Land, and the sovereignty must prevent foreign nations from settling in the Land of Israel. On this matter, the halachic authorities wrote that the prohibition today only refers to idol worshippers. Alternatively, the prohibition does not apply when Israel's hand is not dominant. Another possibility is that the nations that dwell among us today have the status of Ger Toshav; and therefore the prohibition does not apply.

However, there is another prohibition, namely "Lo Techanem," which was interpreted by the Sages as, "Do not give them land for 'chanaya' (residing)." This prohibition falls upon each individual, and it is possible that some of the reasons given above for leniency (obligation of the State, concern for desecrating God's name) are not applicable here. Nevertheless, one can still say that this prohibition does not apply in certain cases:

1. The prohibition applies only when the Jew does so for the benefit of the non-Jew, but if he does so for his own benefit, it is not considered "Lo Techanem."
2. Even if the prohibition of Lo Techanem applies today, it is intended only to include idol worshippers (see the book "Mizbe'ach Adama, p.12, side 1.)
3. In the Rashba's responsa (vol. 1, sec. 8), he allowed giving a gift to a non-Jew who is not an idol worshipper and, accordingly, one may possibly also permit selling such a person property in the Land of Israel.
4. It is possible, according to what we explained above, that some or most of the non-Jews living in Israel today are considered to be in the category of Ger Toshav.
5. If we issue a general prohibition, there is a concern over causing animosity, and we have already explained that due to animosity, various prohibitions concerning relations with other nations should be waived.

It should be noted that regarding renting houses, one should be lenient, for the basis of the prohibition is to avoid providing a place in the Land of Israel for members of other nations to settle permanently. As rental is temporary, the rented apartment still belongs to the Jew and not to the non-Jewish tenant.

As stated above, for any practical decision, it is necessary to consult halachic and security experts, since the halachic ruling is dependent upon considerations of place and time. Whenever there is likely to be a desecration of God's name or a wave of hatred towards Jews, there is room to be lenient. On the other hand, when leniency may allow the entrance of a population that is antagonistic toward the Jewish community, the result could be increased security risk as well as spiritual and/or social danger to the local residents. In such a case, one should abide by the strict letter of the law.



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NPO # 58-0559441

office@beithillel.org.il | P.O. Box 520, Ra'anana, Israel 4310401

Rabbi Ronen Neuwirth | Executive Director | ronen.neuwirth@gmail.com | +972-52-771-0121 | Fax: +972-3-761-7477