

SURVEY OF RECENT HALAKHIC PERIODICAL LITERATURE

OBSERVANCE OF *SHABBAT* BY A PROSPECTIVE PROSELYTE AND BY A *GER SHE-MAL VE-LO TOVAL*

In recent years the concern of the Jewish community has been focused upon problems associated with conversion of non-Jews to Judaism. The problems that have gripped the attention of world Jewry almost exclusively involve persons who seek conversion for purposes of marriage and whose commitment to observance of commandments is quite frequently minimal or non-existent. Regardless of the auspices under which such conversions are performed, their validity even *post factum* is a matter of serious doubt and disagreement among rabbinic authorities.¹ The policies of some rabbinic practitioners, Orthodox as well as non-Orthodox, notwithstanding, Halakhah certainly does not endorse conversions undertaken for ulterior motives such as facilitating marriage to a Jewish spouse.

In most historical epochs, *gerei zedek*, observant proselytes who convert to Judaism because of deep and sincere theological conviction, have been few and far between. For unknown reasons, or better, for reasons that are shrouded in divine mystery, in recent years, the number of converts who are completely and utterly sincere has grown appreciably. Converts whose sincerity has been demonstrated beyond cavil are of course welcomed without reservation. Frequently, this genre of candidates for conversion does, however, present significant technical problems for rabbinic consideration, but, happily, they present problems that spring from religious zeal rather than the opposite. Judaism places

certain restrictions upon the *mizvot* that a non-Jew is permitted to perform. Understandably, would-be converts whose sincerity is beyond question wish to be fully observant even prior to conversion and are extremely troubled by any limitation placed upon their religious observance.

Such would-be converts experience the most keenly felt disability in the area of Sabbath observance. The Gemara, *Sanhedrin* 58b, declares that a non-Jew is forbidden to observe *Shabbat*. Over the course of the last two centuries there have been a significant number of endeavors on the part of rabbinic scholars to devise ways and means to enable such would-be converts to accomplish that which is apparently impossible, *viz.*, both to observe and not observe *Shabbat* at one and the same time. The impetus for a number of those investigations is associated with an even more unusual situation, namely, the prohibition concerning Sabbath observance as it impacts upon a person who has begun, but who has not completed, the conversion process—a person who has already been circumcised but who has as yet not undergone immersion in a *mikveh*.

HISTORICAL BACKGROUND

There have been occasions in the history of rabbinic scholarship upon which questions have been posed that, seemingly, are unlikely to arise on future occasions with

any degree of frequency but that nevertheless have sparked controversies that reverberate in the annals of Halakhah. On rare occasions some facet of a seemingly circumscribed problem generates wide-ranging discussion and receives the type of detailed attention that results in illumination of theretofore scantily plumbed areas of Jewish law.

One such event occurred in Jerusalem in 5608 (1848) on a Tuesday, the 23rd of Adar II, 5608. A certain gentile, a Moroccan émigré, underwent circumcision for purposes of conversion in the presence of the Ashkenazic *Bet Din* of Jerusalem. The incision did not heal as quickly as might have been anticipated and, as a result, the prospective convert was unable to complete the conversion process by immersing himself in a *mikveh* prior to the ensuing *Shabbat*. The gentleman in question was meticulously observant of all aspects of Jewish law and, indeed, had been observant for some time prior to commencement of the conversion proceedings. It is reported that despite the absence of any doubt that, on *Shabbat*, a non-Jew may attend to the needs of a Jew who is ill, the would-be convert refused to permit a gentile to kindle a fire in his home on that *Shabbat*.²

The Chief Rabbi of the Ashkenazic community at the time of this incident was the renowned R. Shmuel Salant. Rabbi Salant had, however, journeyed to Europe on a fund-raising mission on behalf of the nascent *yishuv*. Substituting for him as the principal rabbinic authority of the community was one of the members of his *Bet Din*, R. Asher Lemel. Late on the *Shabbat* afternoon in question, it was reported to R. Asher Lemel that the sick convert was languishing in cold and damp quarters but refused to allow a gentile to kindle a fire on his behalf. R. Asher Lemel immediately responded that, in his opinion, not only was the would-be convert himself permitted to engage in labor on *Shabbat* but, moreover, in light of the prohibition posited by the Gemara, *Sanhedrin* 58b, forbidding a non-Jew to observe the Sabbath, he was obliged to do so since he had not yet completed the

conversion process by immersing himself in a *mikveh*. After *minhah* prayers, the individuals to whom R. Asher Lemel had announced his opinion sought out the convert and informed him of R. Asher Lemel's ruling. The convert, who apparently had been scrupulous in observing *Shabbat* restrictions for a number of years prior to his conversion, complied with that directive, but tears filled his eyes at being compelled to violate the Sabbath. In compliance with R. Asher Lemel's directive he wrote several letters on a piece of paper or, according to another version, he signed his name in the vernacular.

On the morrow, a furor erupted in the city. The Sephardic as well as the Ashkenazic scholars of the city contended that requiring a candidate for conversion who had already been circumcised and who had accepted the yoke of the commandments to desecrate the Sabbath was entirely without precedent. Upon his return to Jerusalem, R. Shmuel Salant sided with those scholars. R. Asher Lemel felt compelled to author a lengthy exposition in defense of his controversial ruling. That material was later published in *Shomer Zion ha-Ne'eman*, a prestigious rabbinic journal edited by R. Jacob Ettlinger.

Now, close to one hundred and fifty years later, the Kollel Institute of Greater Detroit has performed a valuable service in collecting and reprinting the articles and responsa spawned by this intriguing controversy. The collected material, which appears in a memorial volume titled *Yad Shlomoh* (New York, 5747), includes the responsum of R. Asher Lemel, reprinted from *Shomer Zion Ha-Ne'eman*, nos. 154–158 (Altona, 5613); the rebuttal of R. Jacob Ettlinger, published in the same journal, no. 158, as well as in his *Teshuvot Binyan Zion*, no. 91; the opinion of R. Shmuel Salant, as recorded by R. Yechezkel Michal Tucatzinsky and published in R. Aryeh Leib Frumkin, *Toledot Hakhmei Yerushalayim*, IV, addenda to vol. III, p. 67; the responsum of R. Jehoseph Schwartz, *Teshuvot Divrei Yosef*, no. 24; and the responsum of the Sephardic scholar and rabbinic authority of Tiberias, R. Jacob Chai Zerichan, *Ha-Me'asef*, vol. 8, no. 1.³

AUTHORITIES WHO PROHIBIT
SABBATH OBSERVANCE

R. Asher Lemel composed an extensive treatise to bolster a position that, *prima facie*, is unassailable. The ruling of the Gemara, *Sanhedrin* 58b, forbidding a non-Jew from observing the Sabbath is unchallenged. Equally incontrovertible is the fact that the Gemara, *Yevamot* 46b, posits circumcision and immersion as the *sine qua non* of conversion. Ergo, a candidate for conversion who has as yet not immersed himself in a *mikveh* remains a non-Jew and, as such, is forbidden to observe the Sabbath.

Furthermore, the conclusion that candidates for conversion retain their status as non-Jews until they have undergone immersion is confirmed by the Gemara, *Yevamot* 46a and *Avodah Zarah* 59a. The Gemara relates that R. Hiyya bar Abba visited a certain city and became aware of a number of cases in which Jewish women had been impregnated by “converts who were circumcised but who had not immersed.” He reported this situation to R. Yohanan who directed him to announce publicly that those children were not of legitimate Jewish parentage.⁴ In that context the Gemara expressly declares with regard to the status of such a proselyte “since he has not undergone immersion he is a gentile.” Similarly, the Gemara, *Berakhot* 47b, states that such a convert cannot be counted in the quorum of those required for the blessing of *zimun* in conjunction with recitation of Grace after Meals. Moreover, the Gemara, *Yevamot* 47b, indicates that a convert acquires capacity to contract a valid marriage only upon immersion. It may readily be deduced that, were a candidate for conversion to enter into a marriage subsequent to circumcision but prior to immersion, a bill of divorce would not be required to dissolve the union.

The sole area of Halakhah in which, at least according to some authorities, such a convert does not have the status of a gentile is with regard to the permissibility of wine that he has touched. Such wine is forbidden because of a fear that the gentile may have

rendered the wine unfit for use by a Jew by virtue of having used it in the performance of an idolatrous act. *Tosafot* and Rosh, *Avodah Zarah* 67b, argue that since the convert has already accepted the “yoke of the commandments” there is no basis to fear that he may have intended to perform an idolatrous libation and hence there is no reason for the Sages to have included wine touched by such an individual in their edict prohibiting gentile wine. Nevertheless, Rabbenu Nissim, *ad locum*, disagrees. Pointing out that even the convert’s “acceptance of the yoke of the commandments” is intended as acceptance of such obligations only as of the time of completion of the conversion process, Rabbenu Nissim contends that the Sages had ample reason to include a person of such status in their edict. The ruling of Rabbenu Nissim is accepted and followed by *Shulhan Arukh*, *Yoreh De’ah* 124:2, while Rema, as understood by *Shakh*, *Yoreh De’ah* 124:4, rules in accordance with the permissive view of *Tosafot* and Rosh.⁵

THE PERMISSIVE VIEW

There is, however, one early source that appears to contradict this conclusion, at least insofar as observance of *Shabbat* is concerned. *Midrash Rabbah*, Deuteronomy 1:18 states:

Said R. Jose the son of Hanina: A gentile who observes the Sabbath prior to accepting circumcision upon himself is liable to the death penalty. Why? Because he was not commanded concerning it. And what caused you to say that a gentile who observes the Sabbath is liable to the death penalty? Said R. Hiyya the son of Abba in the name of R. Yohanan: In the practice of the world [if] a king and a courtesan sit and converse with one another, one who comes and interposes himself between them, is he not liable to the death penalty? So is the Sabbath between Israel and the Holy One, blessed be He, as it is said “between Me and between the children of Israel (Exodus 31:13).” Therefore, a gentile who comes and interposes himself between them prior to accepting circumcision upon himself is liable to the death penalty. The

Sages said: Moses said before the Holy One, blessed be He, "Sovereign of the universe! Since gentiles have not been commanded with regard to the Sabbath, if they observe it, will you be gracious unto them?" Said the Holy One, blessed be He, "Of this you are afraid? By your life even if they observe all of the commandments of the Torah I will cast them before you."

The clear inference of the phrase "prior to accepting circumcision upon himself" would indicate that the prohibition against observance of *Shabbat* is suspended not only subsequent to circumcision, even though immersion has not occurred, but even upon mere "acceptance" of circumcision, i.e., upon resolute determination to convert to Judaism.

R. Jehoseph Schwartz bases his opposition to the ruling of R. Asher Lemel upon these midrashic comments. Moreover, contends Rabbi Schwartz, were the convert to have been forbidden to refrain from "labor" on the Sabbath day, he should not have been directed to write on *Shabbat* but should have been instructed to perform some other act of labor. Rabbi Schwartz advances the novel view that a gentile who performs no forms of "labor" on the Sabbath other than writing is in violation of his obligation to desist from observing the Sabbath as a day of rest. The Gemara, *Sanhedrin* 58b, derives this prohibition from the verse "day and night shall not cease" (Genesis 8:22) which in talmudic exegesis is rendered "day and night they shall not rest."⁶ Noting the context in which the verse appears, Rabbi Schwartz understands the talmudic statement as requiring gentiles to engage in acts contributing to "settlement of the world" every day of the week, i.e., acts relating to agriculture or manufacture that are productive in nature.⁷ In his opinion, acts such as writing, erasing, or even dyeing, do not satisfy that requirement. Thus, according to Rabbi Schwartz, forcing the convert to write on the Sabbath was both unnecessary and, if necessary, of no avail.

In response to the argument based upon the midrashic statement, R. Asher Lemel notes that, apart from the general principle that normative halakhic rulings

are not to be derived from aggadic statements, the words of the Midrash are explicitly contradicted by talmudic statements. The prohibition formulated by the Midrash is predicated entirely upon the unique relationship that exists between God, Israel and the Sabbath. However, the Gemara, *Sanhedrin* 58b, clearly prohibits a non-Jew from observing *any* day of the week as a day of rest. Moreover, he argues, mere "acceptance" of circumcision does not turn a gentile into a Jew. Hence, logically, such an individual should continue to be categorized as an interloper "between Me and the children of Israel." Accordingly, argues R. Asher Lemel, the term "acceptance," as employed by the Midrash in this context, must be understood as connoting, not merely acceptance of circumcision, but as the carrying out of that acceptance, i.e., actual circumcision followed also by immersion in a *mikveh*.

Curiously, R. Asher Lemel does not cite the position of *Tosafot Yeshanim*, *Yevamot* 48b, which is identical to that of *Midrash Rabbah*. *Tosafot Yeshanim* declares that a gentile who has firmly resolved to convert to Judaism may observe *Shabbat* with impunity. Although this view is rejected by virtually all later authorities, it is apparently accepted by *Teshuvot Erez Tovah*, no. 2, sec.3.

An immediate response was published by R. Jacob Ettlinger in *Shomer Zion ha-Ne'eman*, no. 158. Rabbi Ettlinger, who was also the editor of that journal, candidly concedes that R. Asher Lemel's ruling was "apparently" based upon "foundations of law and truth." Nevertheless, upon further investigation, he discovered that it was never the wont of rabbinic authorities involved in the conversion of proselytes to insist that the candidates for conversion not observe *Shabbat* prior to immersion.⁸ Accordingly, he seeks to uncover a source for that practice. He also points out that the Gemara, *Shabbat* 132a, describes observance of the Sabbath as a "covenant" and comments that, logically, it would be inappropriate for one who has entered the "covenant" of circumcision to be required to abnegate another "covenant," i.e., the Sabbath.

R. Jacob Ettlinger finds support for the accepted practice in the words of *Tosafot, Keritut 9a*. *Tosafot* describe the nature of circumcision as practiced by our ancestors prior to the Exodus from Egypt and remarks that they circumcised themselves for the purpose of “entering into the covenant and in order to become separated from other peoples.” Through this act of “separation” from other peoples, opines R. Ettlinger, the convert acquires an intermediate status between that of gentile and Jew. The accepted practice is thus apparently based upon a presumption that the prohibition against observance of a day of rest is limited only to gentiles, but not to a candidate for conversion who has undergone circumcision and who has thereby placed himself in this intermediate state between gentile and Jew.

AUTHORITIES WHO MAINTAIN THAT SABBATH OBSERVANCE IS OBLIGATORY

R. Shmuel Salant similarly postulates an intermediate status between that of Jew and gentile and bases that position upon a comment of Rashba, *Yevamot 71a*. The Gemara notes that, according to R. Akiva, a convert who is circumcised but who has not completed the conversion process by undergoing immersion may not partake of the paschal sacrifice, but only because of an exclusionary pleonasm in the verse restricting participation in the consumption of the paschal sacrifice. Rashba tentatively objects that no specific exclusion should be required since such an individual remains a non-Jew, but immediately counters with the remark that a pleonasm is required since “although he has not completed his conversion, nevertheless, he has already begun and entered somewhat into the Jewish religion (*nikhnas kezat be-dat yehudit*).” Rabbi Salant further writes, albeit without any specific evidence, that, upon completion of the conversion process by means of immersion in a *mikveh*, the convert is regarded as having acquired the status of a Jew retroactively from the time of circumcision. He

may, of course, abjure the conversion at any time until its completion. The availability of the option of renouncing conversion prior to immersion led Rabbi Salant to a remarkable conclusion: Violation of one of the Sabbath restrictions during this period is tantamount to renunciation of the conversion procedure and serves to negate the act of circumcision with the result that a would-be convert who fails to observe the Sabbath subsequent to conversion cannot be regarded as a Jew even if he subsequently undergoes immersion.⁹ Presumably, such an individual retains the option of beginning the process anew by “letting blood of the covenant.”

Rashba’s comment did not go unnoticed by R. Asher Lemel. He cites Rashba’s statement but regards it as merely an analysis of the provisions of Jewish law that would have been applicable in the absence of a verse designed to exclude the unimmersed convert from partaking of the paschal offering. The effect of that exclusion, argues R. Asher Lemel, is to establish that the status of such a convert is identical to that of a non-Jew in every respect. This is presumably the position of *Tosafot, Yevamot 46b*, who raise the same question as posed by Rashba and declare that the biblical phrase in question serves to establish the principle that there cannot be conversion other than through both circumcision and immersion. R. Asher Lemel cogently argues that Rashba’s comment can readily be understood in a similar vein and, accordingly, there is no reason to posit a controversy between these early authorities.

R. Jacob Ettlinger notes that members of the generation of the Exodus acquired status as Jews by means of circumcision and immersion, i.e., circumcision before their departure from Egypt and immersion immediately prior to the giving of the Torah at Sinai. Hence, at the time of the offering of the first paschal sacrifice on the eve of the Exodus from Egypt, their status was that of circumcised converts who had as yet not undergone immersion. Yet the Gemara, *Shabbat 87b*, declares that the commandment concerning Sabbath observance was given at Marah, before revelation at Sinai. Indeed, a literal reading of the sequence of

events described in Exodus 16:22–30 indicates that our ancestors were commanded to observe the Sabbath prior to experiencing revelation at Mount Sinai.¹⁰ Accordingly, argues Rabbi Ettlinger, it may be deduced that the commandment concerning Sabbath observance is binding upon all who enjoy a similar status, i.e., upon converts who have undergone circumcision but who have as yet not undergone immersion. Thus, according to R. Jacob Ettlinger, such individuals are not only permitted to observe the Sabbath but are required to do so. Indeed, he argues, if not for a specific exclusion of the circumcised but unimmersed convert, such an individual would be required to participate in the paschal offering as well, since his status is identical to that of those who offered the first paschal sacrifice.¹¹

Avnei Nezer, Yoreh De'ah, no. 351, also compares the status of an unimmersed convert to that of our ancestors at the time of the giving of the commandment concerning *Shabbat* at Marah¹² but notes that, although *Tosafot, Yevamot* 46b, and Rashba, *Yevamot* 71a, disagree regarding an extraneous matter, both employ language implying that circumcision imposes no obligations upon a candidate for conversion. *Avnei Nezer* leaves unresolved the question of whether a circumcised but unimmersed convert is bound by Sabbath restrictions.¹³

R. Jacob Chai Zerichan rebuts R. Jacob Ettlinger's arguments in asserting that prior to the giving of the Torah at Sinai "conversion" was effected by means of circumcision alone. In support of that position he argues that even the circumcision referred to by *Tosafot, Keritut* 9a, is not identical with circumcision as commanded at Sinai. *Tosafot, Yevamot* 71b, indicates that Abraham and his progeny were commanded only to sever the foreskin. Removal of the pupis, i.e., the membrane under the foreskin (*peri'ah*), was commanded for the first time at Mount Sinai and hence, even though it is now an integral part of circumcision, *peri'ah* was not previously practiced. Nevertheless, *Tosafot, Keritut* 9a, describes circumcision as practiced in

Egypt as serving to "separate" Jews from other peoples. This must be, argues R. Zerichan, because, prior to Sinai, severance of the foreskin was itself sufficient to accomplish "conversion."

SABBATH OBSERVANCE BY THE PATRIARCHS

Prior to the controversy surrounding the Jerusalem convert, the ambit of the prohibition against Sabbath observance on the part of a non-Jew was the subject of considerable discussion in an entirely different context. The Gemara, *Yoma* 28b, declares that Abraham observed all the commandments, including rabbinic decrees, despite the fact that the commandments had as yet not been revealed. Thus, Abraham observed the Sabbath. Since our ancestors are depicted by the Gemara, *Keritut* 9a, as having been "converted" to Judaism at the time of revelation at Sinai, Abraham and his progeny enjoyed the status of Noahides. As such, they were ostensibly bound by the injunction forbidding gentiles to observe *Shabbat*. How, then, was it possible for Abraham to observe the Torah in its entirety?¹⁴

Some latter-day authorities, including *Parashat Derakhim, Derush* 1, and R. Joseph Engel, *Bet ha-Ozar, Ma'arekhet Alef*, marshal a variety of sources in support of the position that the Patriarchs enjoyed the status of full-fledged Jews for all purposes. If so, the problem is immediately resolved. However, even those authorities cite midrashic sources that serve to render the issue a matter of doubt or controversy.

Resolution of the problem of Sabbath observance on the part of the Patriarchs has engaged the attention of numerous scholars over the centuries. Renewed discussion of that topic followed in the wake of the Jerusalem controversy. The resolutions of the problem that emerge from those discussions, a number of which will be noted presently, tend to escape between the horns of the dilemma by positing modes of conduct that constitute "labor" insofar as non-Jews are concerned but that nevertheless do not constitute violation of Sabbath

restrictions for Jews. R. Jacob Ettlinger, *Teshuvot Binyan Zion*, no. 126, points to a statement of the *Tosefta* in a different context in order to show that such a possibility must indeed exist. The *Tosefta*, *Makhshirin* 1:7, states that an abandoned child found in a city in which the Jewish and non-Jewish populations are exactly equal must conduct himself in accordance with the stringencies applicable both to Jews and to gentiles. The implication, contends *Binyan Zion*, is that it is possible simultaneously to follow the stringencies of both a Jew and a gentile with regard to Sabbath observance.¹⁵ If such a thesis is accepted, the entire controversy could be skirted by giving the circumcised but unimmersed convert the option of engaging in an act of that nature. The same option might also be offered to a prospective convert who feels uncomfortable engaging in conduct that profanes the Sabbath.

1. Me'iri

The comments of Me'iri, *Sanhedrin* 58b, are valuable not only for the intriguing insight presented therein but also for the manner in which they illuminate this issue and suggest a resolution of an entirely different order. Me'iri addresses the underlying rationale of the talmudic ban prohibiting gentiles from engaging in the performance of two specific *mizvot*, viz., observance of *Shabbat* and study of Torah. The prohibition against establishing a day of rest, asserts Me'iri, is predicated upon a concern that, in doing so, the non-Jew "would appear as if he is one of our nation and others will learn from him." Similarly, comments Me'iri, if a gentile engages in the study of Torah "he deserves to be punished because people will think he is one of ours for they will see that he is knowledgeable and, following him, they will come to err." Proficiency in Torah and observance of *Shabbat* are the unique hallmarks of a Jew. According to Me'iri, the fundamental concern underlying this prohibition is that Jews will mistakenly assume that a non-Jew who becomes proficient in Torah or who observes *Shabbat* is a coreligionist and

hence they may seek to emulate his conduct in other areas as well. Since such a person does not conduct himself as a Jew with regard to other matters, those who would pattern their own conduct upon his might easily become enmeshed in activities prohibited to Jews. According to Me'iri, these prohibitions reflect a concern that is germane only in an epoch in which there exist Jews who might be misled. Prior to Sinai, there simply were no Jews to be misled. Moreover, no one could conceivably be misled by a person such as Abraham who observed the Torah in its entirety. Hence, Abraham would have had no cogent reason to refrain from either Torah study or Sabbath observance.

It is certainly arguable, although less convincingly so, that this concern does not pertain in the case of a circumcised but unimmersed convert. Although Me'iri is silent with regard to Sabbath observance, he adopts an even more radical position with regard to Torah study in declaring that a non-Jew, even if he does not contemplate conversion, may engage in Torah study for the purpose of fulfilling the "fundamental commandments" of Judaism. Quite apparently, Me'iri feels that no one will be led astray by such an individual and that such anomalous situations are not encompassed within the formal prohibition. The same would appear to be the case with regard to circumcised but unimmersed converts. Regrettably, since the commentary of Me'iri was published only in recent years, Me'iri is not cited by the many scholars who have discussed this issue. It is nevertheless clear that many early authorities understand these prohibitions in a manner that is at variance with Me'iri's interpretation.¹⁶

2. R. Meir Dan Plocki

R. Meir Dan Plocki, *Hemdat Yisra'el* (Pietrkow, 5687) *Kuntres Ner Mizvah*, p. 227, addressing himself to the question of Abraham's observance of the commandments, posits a limitation upon the ambit of the prohibition against Sabbath observance on the part of a non-Jew that would also

render the prohibition inoperative insofar as a circumcised convert is concerned. *Shabbat* constitutes not only a commemoration of God's creation of the universe but also of his ongoing providential guardianship. The people of Israel enjoy a unique relationship with God in that He exercises a direct and individual form of providence over them. In contradistinction, divine guardianship of non-Jews is less direct and is channeled through the stellar constellations or forces of nature. This distinction is paraphrased in the talmudic dictum, *Shabbat* 156a and *Nedarim* 32a, "Israel is not governed by the constellations (*Ein mazal le- Yisra'el*)." Jews, who are under the guardianship of God himself, are commanded to emulate Him by resting on the seventh day. Non-Jews, whose destiny is regulated by the constellations, must pattern their conduct upon that of the stars, i.e., they dare not rest on any day of the week just as the celestial bodies have not ceased from their divinely ordained tasks since the moment of their creation. Thus the comment of the *Midrash* describing a non-Jew who observes *Shabbat* as an interloper interjecting himself into the unique relationship between God and Israel is equally applicable to a situation in which a non-Jew observes any day of the week as a day of rest. In observing any day as a day of rest, the non-Jew, in effect, announces that he does not emulate the celestial bodies because he is not dependent upon them as the conduits of providence but enjoys the unmediated guardianship of God as do the people of Israel.

Sabbath observance posed no problem for Abraham, asserts *Hemdat Yisra'el*, because he was commanded by God, "Exit from your stargazers! Israel is not governed by the constellations" (*Shabbat* 156a and *Nedarim* 32a). Upon renouncing idolatry, Abraham became the recipient of God's direct providential guardianship and, as such, became entitled to emulate Him in observing *Shabbat* as well. *Hemdat Yisra'el* applies the same thesis in elucidating the problematic position of Rashi, *Yevamot* 48b, who maintains that a resident alien (*ger toshav*) is obliged to observe *Shabbat*.¹⁷ The *ger toshav*, in accepting the

Seven Commandments of the Sons of Noah, has renounced idolatry and, asserts *Hemdat Yisra'el*, thereby acquires a status similar to that of Abraham. It may certainly be argued that a circumcised convert who has accepted the "yoke of the commandments" is similarly no longer bound by the constraint against Sabbath observance on the part of gentiles.¹⁸

3. Hatam Sofer

An ingenious solution to the problem of how the Patriarchs licitly observed the Sabbath is recorded in the name of Hatam Sofer by his disciple, R. Moshe Schick, *Teshuvot Maharam Shik, Orah Hayyim*, no. 145.¹⁹ As evidenced by the ruling of *Shulhan Arukh, Orah Hayyim* 13:1, a garment to which *zizit* have been improperly attached may not be worn in a public thoroughfare (*reshut ha-rabbim*) on *Shabbat*, not only because of the abrogation of the commandment concerning *zizit*, but also because wearing a garment of that nature constitutes "carrying" on *Shabbat*. *Zizit* are attached to a garment solely for purposes of fulfilling a religious obligation; when that obligation is fulfilled they become an integral part of the garment. However, when the *zizit* fail to satisfy the stipulated requirements, the *mizvah* is not fulfilled and, since they serve no purpose, the *zizit* do not become an integral part of the garment but instead constitute a "burden."

Hatam Sofer argues that the Patriarchs needed only to don a garment to which *zizit* had been attached and, so attired, walk from a private domain into a public thoroughfare. From a perspective that regards the Patriarchs as Jews intent upon fulfilling the commandment of *zizit*, no infraction was incurred. For Jews, *zizit* become an integral part of the garment to which they are attached and garments are not deemed a "burden." However, if the Patriarchs are regarded as Noahides who are under no obligation to affix *zizit* to their garments, those appendages do not become an integral part of the garment and, accordingly, constitute a "burden." Hence, argues Hatam Sofer, as Noahides, the act of

transporting *zizit* affixed to a garment from a private domain into a public thoroughfare served to nullify their observance of *Shabbat*.

Hatam Sofer's solution appears to this writer to be problematic. His reasoning is based upon the assumption that *zizit* do not constitute a burden only because their presence is an absolute requirement. It may well be argued that *zizit* become an integral part of a garment not only when necessary to discharge an absolute obligation (*hiyyuv*) with regard to a commandment but even when they serve as voluntary fulfillment (*kiyyum*) of a nonobligatory commandment. As reflected in the plain meaning of Rambam's ruling, *Hilkhos Melakhim* 10:10, and even more explicitly in one of his responsa,²⁰ non-Jews may fulfill *mizvot* on a voluntary basis for purposes of receiving reward.²¹ *Zizit* affixed to a garment and worn by a non-Jew for the purpose of fulfilling a *mizvah* should logically be regarded as an integral part of the garment since they serve a purpose and their permanent attachment is clearly desired by the wearer. Their status should not be inferior to that of decorations permanently affixed to a garment for aesthetic purposes. Such embellishments are deemed to be an integral part of the garment and not a "burden."

R. Jacob Chai Zerichan develops a novel thesis on the basis of which he dismisses the solution offered by Hatam Sofer. Of the thirty-nine forbidden categories of "labor" on *Shabbat*, thirty-eight are derived from the verse "you shall do no work" (Exodus 20:10). The thirty-ninth, transfer of an object from a private domain to a public thoroughfare or transport of an object over a distance of four cubits in a public thoroughfare, is not derived from that verse but is the subject of a tradition received by Moses at Sinai (*halakhah le-Mosheh me-Sinai*). Based upon Rambam's ruling, *Hilkhos Melakhim* 9:10, it has become a well-established principle that such traditions are directed solely to Jews, but are inapplicable and of no effect insofar as Noahides are concerned.²² Accordingly, argues Rabbi Zerichan, since "labor" is

only that which is defined as such by Scripture, carrying a "burden" in a prohibited area does not constitute a form of "labor" insofar as non-Jews are concerned. Hence performing an act of this nature would not negate the "rest" which is forbidden to non-Jews over a twenty-four hour period.²³

4. R. Pinchas ha-Levi Horowitz

The earliest reference to the desire of a would-be convert to observe all the tenets of Judaism, including *Shabbat*, and its attendant problem is probably that recorded by R. Akiva Eger in the index (apparently composed by R. Akiva Eger himself) to his responsa collection. The indexed responsum, no. 121, deals with an entirely different problem related to a particular case of conversion. However, in a concluding note inserted in the index to that responsum, R. Akiva Eger states his desire to point out by way of *obiter dictum* his dissatisfaction with regard to a practice that was apparently not uncommon in his day. He refers disparagingly to householders who maintained in their employ non-Jewish maids who contemplated conversion and conducted themselves as Jews in every regard. R. Akiva Eger censures those householders on the grounds that in countenancing Sabbath observance by their servants they encourage transgression. Accordingly, he counsels that the women in question be restrained from conducting themselves in such a manner and that they be counseled either to undergo immersion for the purpose of conversion or to perform some act of "labor" on *Shabbat*.

Subsequently, R. Akiva Eger had occasion to qualify and defend his exhortation. In a short item included in a series of addenda appended to later editions of his responsa collection, R. Akiva Eger, addendum to responsum no. 121, reports that "a long time" after his original note was published there appeared in print the work of R. Pinchas ha-Levi Horowitz on the Pentateuch, *Panim Yafot*. In a comment on *Parshat Noah*, that scholar remarks that the "day" which a non-Jew is forbidden to

observe as a day of rest is not a “day” of the Jewish calendar which begins in the evening and ends the following evening but consists of a twenty-four hour period beginning and ending at daybreak as indicated by the order of the words of the verse “day and night shall not cease” (Genesis 8:22). *Panim Yafot* elaborates upon this thesis in explaining that the “day” of the pre-Sinaitic era referred to in early sections of the Bible is consistently a day beginning with daybreak and concluding with the ensuing night. The identical thesis is reiterated by R. Pinchas ha-Levi Horowitz in his work, *Ha-Makneh, Kiddushin* 37b. Accordingly, the talmudic rendition of the verse, “day and night they shall not rest” should similarly be understood as positing a prohibition against observance of a twenty-four hour period of rest beginning with daybreak. Since Sabbath restrictions commence on Sabbath eve and continue until the next evening, a non-Jew who performs an act of “labor” during daylight hours on Friday and also on Saturday after nightfall has refrained from desecration of the Sabbath without violating the admonition not to rest for the span of an entire “day.” If this thesis is accepted, observes R. Akiva Eger, it follows that his earlier admonition regarding Sabbath observance by non-Jewish maids was misplaced.

R. Akiva Eger, however, rejects *Panim Yafot*’s definition of a “day” for purposes of this prohibition on the basis of a comment of *Tosafot, Sanhedrin* 59a. *Tosafot* remark that, subsequent to receiving the Torah at Mount Sinai, Jews are not bound by the prohibition against refraining from labor for the period of a full day only because they were subsequently explicitly commanded to the contrary. *Panim Yafot* himself cites *Tosafot*’s comment in his own discussion and points out that, if his position is correct, there is no inherent contradiction between a commandment to observe the Sabbath from Friday evening until Saturday night and a prohibition against refraining from work during a twenty-four hour period beginning and ending at daybreak. *Tosafot*, who posit a contradiction, must then have regarded the “day” on which rest is forbidden as

coextensive with the “day” on which the Sabbath is to be observed. *Panim Yafot* dismisses that objection with the observation that since, technically, *Yom Kippur* may fall on a Friday or a Sunday, situations may well arise in which a Jew is commanded to abstain from all labor for a consecutive forty-eight hour period. Therefore, argues *Panim Yafot, Tosafot* regard the commandments concerning *Shabbat* and *Yom Kippur* as abrogating the prohibition against resting from labor for an entire day.

R. Akiva Eger refutes that argument in a rather ingenious way. In a talmudic controversy between himself and R. Yohanan, Resh Lakish maintains that any act that goes unpunished because the infraction involves a measure or quantity below the limit for which punishment is stipulated (*hazi shi’ur*) is biblically permissible and forbidden only by virtue of rabbinic edict. Indeed, *Mishneh le-Melekh, Hilkhot Shabbat* 18:1, asserts that insofar as Sabbath restrictions are concerned Resh Lakish’s position is undisputed.²⁴ If so, notes R. Akiva Eger, it is entirely possible to observe both *Shabbat* and *Yom Kippur* and yet not rest for an entire twenty-four hour period. If *Yom Kippur* occurs on Sunday it is possible, for example, to harvest half of the proscribed quantity of produce on the Sabbath and again to harvest half of the proscribed quantity on Saturday night after the conclusion of *Shabbat*, i.e., on *Yom Kippur* eve. Since the “labor” is not completed on either *Shabbat* or *Yom Kippur* there is no biblical violation of the sanctity of either day whereas, insofar as the prohibition “day and night they shall not work” is concerned, an act of labor has been performed in its entirety on a single “day,” i.e., within the span of a twenty-four hour period measured from daybreak to daybreak. The result, argues R. Akiva Eger, is that observance of both *Shabbat* and *Yom Kippur* on consecutive days is possible without “resting” on a single “day” as the latter term is defined for purposes of the prohibition of enjoyment of a complete “day” of rest. Since *Tosafot* does posit a contradiction, argues R. Akiva Eger, *Tosafot* must reject *Panim Yafot*’s thesis

regarding the definition of a “day” in the pre-Sinaitic era.²⁵

5. R. Jacob Ettlinger and *Minhat Hinnukh*

R. Jacob Ettlinger, *Teshuvot Binyan Zion*, no. 126, points out that a facile solution to this problem may be found in the fact that Jews are culpable for Sabbath violation only if a specified measure of “labor” is performed. Rambam, *Hilkhot Melakhim* 9:10, declares that minimum quantities (*shi'urim*) with regard to violation of biblical commandments are stipulated only with regard to commandments directed to Jews. The Gemara, *Sukkah* 6a, indicates that the concept of a minimum quantity is rooted in a *halakhah le-mosheh me-Sinai*, an oral tradition transmitted to Moses at Sinai. According to Rambam, those traditions were transmitted only to Jews, but not to non-Jews, with the result that there is no concept of a minimum quantity with regard to any rule of law addressed to Noahides.²⁶ Accordingly, a non-Jew might harvest less than the forbidden quantity of produce (*hazi shi'ur*) and thereby have refrained from “rest” as that concept applies to non-Jews since even minimal labor constitutes labor for Noahides, but nevertheless not have breached the sanctity of the Sabbath as that concept is defined for Jews. *Binyan Zion* offers this suggestion only according to the talmudic opinion that regards *hazi shi'ur* as not only excluded from punishment but as entirely permitted.

A similar line of reasoning is presented by *Minhat Hinnukh*, no. 32, toward the end of his *Kuntres Mosekh ha-Shabbat*. *Minhat Hinnukh* adds that, granted that an act involving less than the culpable measure or quantity is biblically forbidden even with regard to Sabbath prohibitions, nevertheless a gentile who performs an act of that nature in order not to transgress the biblical commandment prohibiting rest for an entire day would not be in violation of Sabbath regulations. Those who maintain that even acts involving minimal quantities are biblically forbidden regard such actions as forbidden because of the fact that, when additional quantities are added, the aggregate

constitutes a biblical prohibition. Thus, for example, it is forbidden to write a single letter because subsequent writing of a second letter results in culpability. Since there could be no culpability without the writing of the first letter, it follows that the writing of the first letter must also have been biblically forbidden. *Minhat Hinnukh* argues that this reasoning is cogent only in a situation in which the first act may potentially be combined with a second in a manner that would lead to culpability. However, an individual who desires to observe the Sabbath but who performs an act involving less than the culpable quantity in order not to be guilty of a transgression will assuredly not repeat the act in a manner that will render him culpable for transgression of the Sabbath. Hence, argues *Minhat Hinnukh*, since there will never be an aggregate quantity for which the individual would be culpable, an act involving a lesser quantity is not biblically proscribed.

6. R. Jacob Ettlinger's Second Approach

An entirely different solution is advanced in the same responsum by *Binyan Zion*, no. 126. As noted earlier, *shi'urim* were transmitted to Moses at Mount Sinai. Prohibitions addressed to Noahides at an earlier time were not predicated upon particular *shi'urim*. Since, as Rambam maintains, those prohibitions were not modified at Sinai they remain in effect precisely as they were originally instituted. Similarly, argues *Binyan Zion*, since the thirty-nine categories of forbidden labor were formulated only at Sinai, the concept of “rest” forbidden to Noahides at an earlier time could not have been defined in terms of “rest” from those thirty-nine categories of labor. The definition of “work” or “labor” must have been a colloquial one, i.e., any activity requiring exertion or travail. The concept of “labor” as delineated by the thirty-nine categories of labor prohibited to Jews on *Shabbat* is entirely divorced from the colloquial meaning of that term. Thus, transporting a needle in a public thoroughfare or striking a match is a form of “labor” forbidden on *Shabbat*,

