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SURVEY OF RECENT HALAKHIC PERIODICAL LITERATURE

SETTLEMENT IN ISRAEL

The Six-Day War and the accompanying liberation of the Holy Places has brought in its wake renewed interest in settlement in Israel and resulted in a vast increase, in the number of individuals, particularly among observant Jews, committed to *aliyah*. The exigencies of the present political situation in Israel are in themselves sufficient cause for us to welcome and foster any such *aliyah*. But aside from questions of immediate practical need Jews have always viewed residence in the Holy Land as a unique privilege. To live in Israel is clearly a religious ideal. The establishment of a Jewish commonwealth following the crossing of the Jordan by our ancestors constituted the fulfillment of a Biblical commandment. But does this commandment retain its binding force throughout the epoch following the destruction of the Temple and subsequent exile?

In a paper contributed to the most recent issue (5729) of *Torah She-be'al Peh,* Rabbi Ovadiah Yosef analyzes the various halakhic views with regard to the commandment concerning dwelling in Eretz Yisrael and the applicability of this *mitzvah* in our own day. Rabbi Yosef, newly appointed Sephardic Chief Rabbi of Tel Aviv, is the author of *Teshuvot Yabi'a Omer,* a voluminous work exhibiting encyclopedic mastery of rabbinic scholarship. The various positions regarding this question are outlined by Rabbi Yosef as follows:

1. Chief among the authorities who maintain that the commandment to reside in Israel remains in force throughout the period of the dispersion is Nachmanides. In his commentary on the verse, "And you shall inherit the land and dwell therein (Numbers 33:53)," Nachmanides states that the passage is to be understood as a positive commandment to dwell in the land of Israel while at the same time enjoining Jewry from establishing a national settlement outside of Israel. This view is reiterated by Nachmanides in his glosses appended to Maimonides' *Sefer ha-Mitzvot.* In the latter work Maimonides enumerates each of the commandments, both positive and negative, which in their totality comprise the corpus of the 613 precepts of Judaism. Nachmanides remonstrates that Rambam in cataloguing the various precepts did not include the commandment concerning dwelling in the land of Israel.

Further evidence that residence in Israel constitutes fulfillment of a *mitzvah* in our own day as well may be gleaned from various halakhic provisions which are apparently predicated upon this rationale. Examples cited by Rabbi Yosef

include permission to allow a gentile to draw up a bill of sale on the Sabbath on behalf of a Jew acquiring property in Eretz Yisrael from a non-Jew (*Gittin* 8b) and the obligation of one renting a dwelling in Eretz Yisrael to affix a *mezuzah* immediately upon taking up residence rather than thirty days thereafter as in the Diaspora (*Menachot* 44a). Rabbi Joseph Karo in *Bet Yosef, Yoreh De'ah* 286, explains that in the Diaspora a new residence is not considered to be a permanent dwelling place prior to the thirtieth day, whereas in Israel a new home is immediately deemed to be a permanent domicile because the act of residing therein constitutes the fulfillment of a *mitzvah* and hence acquires the characteristic of permanence.

2. R. Isaac de Leon, the author of *Megillat Ester,* an early commentary on Maimonides' *Sefer ha-Mitzvot,* maintains that Rambam omitted the commandment to dwell in the land of Israel in cataloguing the 613 precepts of Judaism because he was of the opinion that the obligation to dwell in Israel lapsed with the dispersion of Israel following the destruction of the Temple. *Megillat Ester* points out that the Gemara, *Ketubot* 111a, interprets the verse, "I cause you to swear, O daughter of Jerusalem . . . that ye awaken not nor stir up love until it please (Song of Songs 2:7)," as an admonition not to rebel against the conquerors of Israel or to seize the land by force.

Rabbi Yosef rejects this analysis of Maimonides' position because a) Maimonides includes in his enumeration of the 613 commandments precepts such as the rebuilding of the Temple which in Maimonides' own opinion are not operative prior to the Messianic era and b) none of the numerous statements contained in Talmudic and Midrashic works supporting the view that settlement in Israel is a positive commandment in any way intimates that this commandment may be binding only in certain epochs. Of particular note is the statement in *Bereshit Rabbah* 76:2 explaining the reason for Jacob's fear that he might be vanquished in battle by Esau. Jacob's foreboding was based on the fact that Esau had acquired greater merit by virtue of having dwelt in *Eretz Yisrael* uninterruptedly throughout the years spent by Jacob in the house of Laban.

3. Rashbam, *Baba Batra* 91a, states that while dwelling in Israel is not a commandment *per se,* the statement contained in the Gemara that it is forbidden to leave *Eretz Yisrael* other than in times of famine is based upon the consideration that living in the land of Israel is a preparatory step to the fulfillment of commandments (*heksher mitzvah*), there being numerous commandments which can be fulfilled only in Israel.

4. *Tosafot, Ketubot* 110b, records the opinion of Rabbenu Chaim Kohen who maintains that in our time it is not obligatory to dwell in Israel because of the difficulties in observing the many commandments specifically associated with the land of Israel. Rabbi Yosef points out that the authorship of this statement has been disputed and that in all likelihood the com-

ment attributed to R. Chaim Kohen was an addition appended at a much later date. Furthermore, the recorded comment does not deny that dwelling in Israel *does* constitute fulfillment of a *mitzvah;* it merely notes that under certain conditions other halakhic considerations may vitiate against fulfillment of this commandment. Such considerations were predicated upon economic and agricultural realities prevalent in days gone by but which fortunately are now considerably changed.

5. Rabbi Moses Feinstein, *Igrot Mosheh, 'Even ha-'Ezer,* no. 102, distinguishes between two distinct categories of positive commandments. There are precepts whose performance is mandatory, e.g., circumcision, the donning of phylacteries, etc., and others which are not mandated as obligatory responsibilities, but, nevertheless, when indeed performed constitute the fulfillment of a commandment. Rabbi Feinstein maintains that even according to Nachmanides residence in *Eretz Yisrael* is not obligatory because this commandment is not a mandatory one. According to this interpretation, Nachmanides' position is that the act of dwelling in Israel constitutes the voluntary fulfillment of a commandment rather than the discharge of an obligation. Dissenting sharply, Rabbi Yosef asserts that the commandment constitutes a mandatory obligation and that even in our own day there exists "a definite obligation upon all who fear the word of God and His commandments to ascend to the land of Israel."

Delayed Burial

The recent cemetery strike which affected the New York City metropolitan area caused untold anguish to the many bereaved who were unable to bury their dead. For observant Jews bound by the halakhic requirement of speedy burial this grief was compounded by distress at violation of religious scruples. Fortunately, a court order was forthcoming assuring that no attempt would be made to interfere with private arrangements for the digging of a grave by individuals who demanded immediate burial as a matter of conscience.

Jewish law clearly stipulates that every possible effort be made to assure immediate interment. However there were cases where, for whatever reason, such arrangements were not made and burial was perforce postponed until the resolution of the labor dispute. The bodies were turned over to the custody of the cemetery officials who assumed responsibility for interment. In such instances questions of when the laws of mourning become applicable and when recitation of the *Kaddish* is begun are germane.

The precedents for conduct in such circumstances are reviewed by Rabbi Meir Amsel, editor of the *Ha-Ma'or,* in the Kislev-Tevet-Shevat issue of that journal. The Rosh in his work on the third chapter of *Mo'ed Katan* records that Rabbenu Kalonymos died during a period of siege and his body could not be transported to the cemetery outside the city and therefore his coffin was placed in the ritualarium for the duration of the hostilities.

The Rosh records that the ritual of mourning commenced immediately upon deposit of the body in the ritualarium despite the intention of the family to effect proper burial upon the lifting of the siege. Even though in accordance with Halakhah mourning is deemed to begin only after burial has actually taken place, in this case the sealing of the coffin and its deposit in a specific shelter are tantamount to burial with regard to the laws of mourning. This ruling is cited by the *Shulkhan Arukh, Yoreh De'ah* 375:44.

There is yet another consideration that would mandate immediate observance of mourning. In cases where the mourners do not accompany the bier, where, for example, burial takes place in a distant locale, the laws of mourning become effective as soon as the coffin has been "delivered to the porters," i.e., mourning commences immediately after the mourners have completed all funeral arrangements and are no longer personally responsible for funeral procedure. The status of the deceased during the period of the strike is literally that of having been "delivered to the porters" since the family has already completed all funeral arrangements and has left the body in the custody of the cemetery authorities and empowered them to make the actual burial.

The following issue of the *Ha-Ma'or* contains an article on the same topic by Rabbi Chananya Yom-Tov Lippa Dreisinger. Rabbi Dreisinger states that his responsum was originally written in reply to identical questions raised during an earlier strike on the part of gravediggers in 1967. The sources cited and conclusions reached parallel those of Rabbi Amsel. *Chavrusa,* April, 1967, published by the Rabbinic Alumni of Yeshiva University, contains an article entitled "The Cemtery Strike — Some Halakhic Considerations" by Rabbi Fabian Schonfeld in which the author presents a conflicting view.

Sale of Commercial Enterprises to Sabbath Violators

In one of the Halakhah-briefs published in the Tishri 5730 issue of *Ha-Darom,* Rabbi Nachum Rabinovitch, principal-designate of Jews' College in London, discusses a question which arises frequently in connection with commercial undertakings. The proprietor of an insurance firm found the volume of business too burdensome to handle personally and therefore wished to sell his agency to a larger firm and to accept employment as an insurance salesman with the purchasing company. The contemplated sale would involve transfer of the existing business to a Jewish firm whose business activities are openly conducted on the Sabbath.

The question poses two halakhic issues. 1) Is it permitted to sell or transfer a business undertaking with the knowledge that the purchaser will henceforth conduct the firm's commercial activities on the Sabbath? 2) Is the insurance agent, now to be employed by a Sabbath-violating firm, permitted to profit from the desecration of the Sabbath entailed by clerical work performed on his behalf and on behalf

of his clients?

The second problem is readily resolved by Rabbi Rabinovitch by reference to a responsum of Rabbi David Hoffmann, *Melamed le-Ho'il, Orach Chaim,* 40. Rabbi Hoffmann states simply that the agent's profit in the form of a commission is paid solely for his efforts as a broker and any activities on the part of those employing his services are in actuality conducted for their own convenience and benefit and not on behalf of the broker.

The first issue, the basic question regarding transfer of a commercial enterprise to Sabbath violators, is more involved and is a recurrent one in modern responsa literature. The earliest discussion of the subject appears to be that of the *Melamed le-Ho'il, Orach Chaim,* no. 46. The issue centers around the question of whether such action involves a transgression of the Biblical injunction "Thou shalt not place a stumbling block before the blind" or of the rabbinic prohibition against "abetting evildoers." Rabbi Hoffmann quotes R. Jacob Ettlinger, *Binyan Zion,* no. 15, to the effect that these categories apply only in cases where (1) transgression would be impossible without the aid of another person, (2) a request is made for aid with specific reference to a transgression or (3) despite the absence of the above conditions the aid rendered is nevertheless utilized for purposes of transgression. Rabbi Hoffmann rules that in the case at hand the first two factors are totally absent and since the aid rendered is not proximate to the transgression there is no halakhic impediment to the sale. He cautions, however, that if the purchaser will henceforth conduct the affairs of the firm on Sabbath the firm's name should be changed. Responding to a similar query in an article published in three parts in the Iyar, Sivan and Tammuz issues of *Ha-Pardes* 5713 the late Rabbi Yechiel Yaakov Weinberg reaches an identical conclusion. A precis of this responsum appears in *Seridei Esh,* II, no. 19.

In this connection it should also be noted that Rabbi Moses Feinstein, *Igrot Mosheh, Orach Chaim,* no. 67, addresses himself to the more limited question of selling a list of customers to a Sabbath violator. Despite the fact that the sales contacts can be made equally well on weekdays without desecration of the Sabbath and hence there is no reason why this business should necessarily be transacted on the Sabbath, Rabbi Feinstein recommends that the sale be made to a Sabbath observer if this involves but a small loss. If the potential loss is great or if no other purchaser is to be found, Rabbi Feinstein regards the sale as being permissible.

Rabbi Rabinovitch treats the entire problem *de nouveau* and marshals evidence from various primary sources in sanctioning the proposed sale of the insurance firm in question to Sabbath violators. At the same time he emphasizes that all clients should be informed of the transfer and of the change in status of the former owner from proprietor to that of an employee of the new firm.

THE *AGUNAH* PROBLEM

The problem of the *agunah,* a woman whose husband has disappeared or is otherwise unable to terminate the marriage by executing a bill of divorce, has long been the source of much hardship and heartache. In addition to the toll taken in human lives, war has the disastrous side-effect of increasing the incidence of *agunah.* Since Halakhah does not sanction remarriage in the absence of positive proof of death, wives of soldiers missing in action may become bereft of their husbands yet forbidden to remarry.

Judaism has always been keenly aware of the anguish suffered by the *agunah* and has consequently sought every possible means to alleviate her plight. The entire subject is one of utmost gravity and it is of importance to examine methods that have been advocated as a means of avoiding this tragic situation while yet remaining within the letter and spirit of the law. The measures taken during the course of Jewish history in order to alleviate this problem are reviewed by Rabbi Shiloh Rafael in a contribution to the 5729 edition of *Torah She-be'al Peh.*

Earliest attempts to mitigate the *agunah* problem date to Biblical times. The Gemara, *Ketubot* 9b, states that participants in the wars of King David delivered bills of divorce to their wives before leaving for battle. According to Rashi such divorces were conditional — becoming effective retroactively in the event of the husband's failure to return; according to Rabbenu Tam these divorces were absolute — the couple of course having the prerogative of remarrying upon the husband's release from military service. The Gemara, *Shabbat* 56a, cites this practice in explanation of the dictum, "One who claims that David was a sinner is naught but mistaken." Bat-sheva, according to the Talmud, was no longer the wife of Uriah since Uriah had followed the usual procedure and had presented his wife with a bill of divorce before undertaking his military assignment.

The *Ba'al ha-Turim,* in his commentary to Numbers 32:21 presents the novel view that this practice was not King David's innovation but was originally introduced by Moses prior to the military engagements leading to the conquest of the land of Canaan. However, the purpose of the practice as instituted by Moses was somewhat more limited and was employed merely to obviate the necessity for levirate marriage or *chalizah* in the case of a childless widow. The *Ba'al ha-Turim's* argument is predicated upon the philological relationship *"chaluz ha-na'al* — unshod" of Deuteronomy 25:10 and the similar term *"chaluz* — armed warrior" in the previously cited passage. A warrior, according to this commentator, is called a *chaluz* because his occupation often necessitates the ceremony of *chalizah* entailing the removal of a shoe.

Throughout the years conditional divorces were at times granted in order to obviate other causes of the *agunah* situation. We find this remedy utilized in the case of a childless couple in instances in

which the husband was gravely ill and the wife wished to avoid the difficulties of *yibum* and *chalizah*. Rabbi Rafael notes that one of the *Ba'alei ha-Tosafot*, R. Yechiel of Paris, decreed that the husband execute an unconditional bill of divorce in such instances. This course of action was advocated by R. Yechiel because the halakhah governing the formulation of stipulations is extremely complicated and he wished to preclude invalidation of the divorce due to lack of expertise in effecting a conditional divorce. In order to assuage the husband and to eliminate any hesitancy on his part lest in the event of his recovery the wife refuse to remarry her former husband, R. Yechiel provided for a formal sworn acceptance of this obligation upon pain of anathema.

At a later date a question arose with regard to the prerogatives of the wife under this arrangement. The widespread controversy surrounding the famed "Divorce of Vienna" centers around this problem. The details were as follows: A young man, sixteen years of age, became afflicted with a severe illness and agreed to present his wife with a bill of divorce in order to avoid the eventuality of *chalizah*. At the time of the divorce proceedings the husband's consent was obtained by convincing him that the divorce was being executed solely for the purpose of exempting his young wife from *chalizah* but that upon his recovery his wife would return to him. The young man was restored to health but his wife refused to resume the marital relationship. The matter was brought before the renowned Maharam of Lublin who ruled that in light of this understanding the husband's recovery invalidated the original divorce (*Teshuvot Maharam Lublin*, nos. 102-106).

An intriguing and unprecedented argument forbidding the woman to remarry was forwarded by R. Mordecai Jaffe, author of the *Levush*. Scripture states, ". . . and if it come to pass that she does not find favor in his eyes . . . and he should write her a bill of divorce and give it into her hand and send her out of his house. And she shall go out of his house and became a wife to another man . . . (Deuteronomy 24:1-2)." Rabbi Jaffe contended that a woman may "become a wife of another man" only if she has been divorced by her husband because "she does not find favor in his eyes." A bill of divorce whose presentation is not motivated by a loss of "favor" but by other considerations — a "divorce of love" is the term coined by R. Jaffe — is not effective as an instrument empowering marriage to another.

These opinions notwithstanding, a synod of the Polish and Russian rabbinate convened by the Maharsha upheld the validity of the "Divorce of Vienna." The issue developed into a *cause célèbre* with controversy continuing unabated for many years.

In modern times this form of divorce was again employed as a means of curtailing the instances of *agunot*. Changing circumstances and the need to find measures adaptable to large numbers of conscripted soldiers gave rise to added halakhic complications. In times of

mass conscription it was difficult for inductees to appear before a rabbinic court in person in order to appoint court functionaries as scribes and witnesses for the drawing up of a bill of divorce. The *Divrei Malki'el* sanctions the appointment of scribes and witnesses in the presence of any two individuals even though the functionaries named are not present in person. To avoid error he advises that a general designation be made appointing all residents of the city as agents of the husband so that any one of them may be the scribe and any two may serve as witnesses. This proposal has an added advantage in that the bill of divorce itself need not be executed until a question of remarriage becomes actual. Forms incorporating the formula proposed by the *Divrei Malki'el* were prepared by the Chief Rabbinate of Palestine and used in that country during World War II. In the United States a formula containing the names of individuals designated to serve as scribes and witnesses was prepared by the Agudat ha-Rabbanim and published in the *Ha-Pardes,* Iyar 5702.

In recent years a further difficulty arose with regard to this procedure in view of the fact that soldiers now receive frequent furloughs. Both Rambam and *Shulchan Arukh* state that if the husband and his spouse are secluded together before a bill of divorce is delivered to the wife the divorce is invalidated. The act of seclusion gives reason to suspect that the husband may have annulled the previously prepared document. In a letter to Rabbi Herzog, R. Chaim Ozer Grodzinski of Vilna wrote that in his city he required each soldier to renew the appointment of proxies at the close of each furlough. Similar provisions were made in Palestine by Rabbi Herzog. Rabbi Yechezkel Abramsky, then head of the London Beth Din, maintained that these provisions were unnecessary. Dayan Abramsky argued that since the husband grants such a divorce for the sole purpose of precluding the eventuality of his wife becoming an *agunah* there is no reason to suppose that he will annul his proxy while on leave.

While these procedures received the approbation of most halakhic authorities one scholar of world repute expressed dissent. The *Chazon Ish* was strongly opposed to the accepted mode of appointing proxies and court functionaries but devised an alternate method of effecting such divorces.

In concluding his summary, Rabbi Rafael notes that for psychological reasons this practice has fallen into disuse and is no longer the standard procedure in the Israeli Defense Forces. But the realities of life continue. Unfortunately, Israel is enveloped in a seemingly endless state of warfare and the *agunah* problem is both real and heartrending. Under these circumstances every possible measure should be taken to prevent any such unfortunate occurrence. The formula adopted in the past is one which may understandably generate feelings of distaste and hesitation. In reality it represents an emergency measure expressing the acme of forethought, concern and devo-

tion — a veritable "divorce of love." Any precaution is clearly worthwhile if only to avoid a single case of anguish and tragedy.

YOM TOV SHENI

Abrogation of the second and last days of the various festivals was one of the earliest innovations of the German founders of the Reform movement. The primary contention advanced was that the observance of *Yom Tov Sheni* was an anachronism having long since outlasted its original purpose. Historically the institution of *Yom Tov Sheni* arose before holidays were observed on the basis of a permanently established calendar. The precise days on which festivals are to be observed depend upon the day proclaimed as *Rosh Chodesh.* Each month contains either twenty-nine or thirty days. In times gone by the Beth Din proclaimed the beginning of a new month on the basis of the testimony of witnesses who had actually sighted the new moon. The inauguration of a new month invariably took place on either the thirtieth or thirty-first day following the previous *Rosh Chodesh.* Thereafter messengers were dispatched to inform far-flung communities that a new month had begun. Communities too distant to be reached prior to the advent of the festival had no means of ascertaining whether the previous month was of twenty-nine or thirty days' duration. Thus they were always confronted by the possibility of an error of one day with regard to determination of the correct day of the month. Hence the observance of a second day was necessary in order to guarantee proper observance of the holy day. With the lapse of sanctification of the New Moon each month by an act of Beth Din and the promulgation of a calendrical system by Hillel the Second such errors can no longer occur. Since there is no longer any question with regard to the exact day of the month, runs the argument, there is no cogent reason for retaining the second day of *Yom Tov.* This contention was sharply rejected by nineteenth-century halakhic authorities whose views were publicized in the periodic literature of the day. The halakhic ramifications of the issue are exhaustively discussed in *Teshuvot ha-Ge'onim,* no. 1, and by Rabbi Isaac Baer Bamberger, *Yad ha-Levi,* no. 99.

Since 1933 repeated proposals have been made within the Conservative movement in this country to drop the observance of the second days of festivals. Recently the Law Committee of the Rabbinical Assembly, rather than either affirming the sanctity of *Yom Tov Sheni* or abrogating its observance, adopted the curious position that the observance of the second and last days of festivals is to be optional at the discretion of local congregations. The various "responsa," both pro and con, considered by this body have been published in the Winter 1970 issue of *Conservative Judaism.* A review of this material would not ordinarily be presented in these pages particularly since a recent article, "The Second Days" by Rabbi Norman Lamm, *Chavrusa,* June 1969, contains an excellent formulation of the Orthodox

response to the Conservative position.

We should, however, take note of two salient points which emerge from the discussions included in this issue of *Conservative Judaism*. First, attention should be drawn to the intense opposition to this innovation expressed by some members of the Law Committee and other Conservative leaders. It is heartening to observe that this opposition displays a sensitivity to and an understanding of basic Jewish spiritual values. Thus a Conservative spokesman, arguing for the continued observance of *Yom Tov Sheni*, emphasizes the importance of preserving the centuries-old unity of *kellal Yisrael* and shows a deep appreciation of the concept of *galut* and spiritual exile and of our consequent need for "a permanent reminder of the spiritual superiority of *Eretz Yisrael* in Jewish life (p. 39)." The same author incisively underscores the practical realities of Jewish religious life on this continent and asserts, "The formidable challenge we face is not to the second day of *Yom Tov*, but to the idea of holy days in general. In the struggle to maintain the second day we are fighting the battle of *Yom Tov* in the Diaspora (p. 42)."

Secondly, it is one matter to bemoan the strictures of Halakhah as being excessively demanding or to advocate concessions to the spirit of the times. It is quite another thing to hallow the compromise by clothing it in the garb of normative Halakhah and to crown the results with the extravagant declaration that "the second day is *halakhically indefensible* (p. 32)." It is this conceit which provokes one to recoil with the feeling of *"Ha-gam likhbosh et ha-malkah immi babayit* — Will he even force the queen before me in the house!" The discussion which is presented in the framework of halakhic dialectic makes use of invalid reasoning in order to substantiate false conclusions based upon erroneous premises and in so doing becomes a travesty of the very process it seeks to employ. One or two examples will suffice.

A brief paragraph on page 29 reads:

> Actually the medieval Polish scholar, Moses Isserles, (sixteenth century) . . . pointed out that where the reason for an enactment (*gezeirah*) is no longer operative, the enactment itself is nullified. If this is true with a *gezeirah* it is even more so with a *minhag*, and *Yom Tov Sheni* is only a *minhag*, as Maimonides has made clear.

Actually, Rambam states exactly the opposite and does so with utmost clarity. In *Hilkhot Kiddush ha-Chodesh* 5:5 Rambam unequivocally terms *Yom Tov Sheni* a rabbinic edict. In specific reference to the observance of the second day he states, ". . . however, it is an edict of the Sages (*takkanat chakhamim*) that they observe the custom of their fathers which is in their hands." In the section immediately following Rambam reiterates, "Hence the second day of *Yom Tov* which we observe in the Diaspora in our day is *mi-divrei soferim* who ordained this." Every student of Rambam is well aware of his usage of the term *"divrei soferim"* as a synonym for "rab-

binic decree."

In support of the statement, "where the reason for an enactment is no longer operative the enactment itself is nullified," the authors, in a footnote, give as their source *Shulkhan 'Arukh, Orach Chaim* 339:3. The citation as presented is misleading and incomplete. In the statement to which reference is made the substantive reason given by the Rama is based upon a totally different principle. The comment cited is carefully presented as *"yesh omrim,"* a minority view listed only as a secondary consideration. Indeed, the preponderance of authoritative halakhic opinion is that rabbinic decrees remain in force until formally annulled by a Beth Din "greater in wisdom and number" even when the original considerations no longer apply. Furthermore, in instances — such as *Yom Tov Sheni* — where the enactment is for purposes of erecting "a fence around the Torah" in order to prevent transgression of a Biblical prohibition, Rambam, *Hilkhot Mamrim* 2:3, declares that even if the original reasons are no longer valid the decree cannot be revoked even by a Beth Din "greater in wisdom and number."

The authors' error is further compounded by their conclusion that, "If this is true with a *gezeirah* it is even more so with a *minhag* . . ." It remains for a Reform spokesman, whose observations are included in the same publication, to note, ". . . the fact that the second day is 'only' a *minhag* does not invalidate its religious significance. It may even enhance it (p. 53)." Apparently neither the authors nor the critic are aware of the provision of *Yoreh De'ah* 214:2 that if a practice be accepted as a "fence" to prevent transgression of a Biblical ordinance it is to be deemed a vow of a category which, as stated in *Yoreh De'ah* 228:28, cannot be annulled. Hence a mere *minhag* under such circumstances acquires the status of an irrevocable vow. The manifold errors in this short paragraph call to mind the popular joke concerning the mispelling of the two-letter Hebrew word *"Noach"* with seven mistakes.

Elsewhere in the same paper we are informed:

> . . . the second day, unlike the first, has no *inherent* holiness, and our approach to it may take into consideration local needs, local custom and local sensitivity. This might almost lead to the inference that each congregation is talmudically entitled to deal with the second day of *Yom Tov* independently . . . (p. 27).

This remarkable conclusion is deduced from an incident recorded in *Pesachim* 51b. Rabbi Safra, who, as *Tosafot* explains, lived in an area where only one day *Yom Tov* was observed because it was accessible to messengers of the Beth Din, was visiting in a locale which observed two days of *Yom Tov*. The Talmud establishes the principle that in such circumstances the visitor is obliged to observe two days in order to prevent quarrel and dissension. Rabbi Safra asked a colleague whether he might work on the second day of *Yom Tov* in an uninhabited area where nobody could possibly witness his actions and hence there was no reason to fear

that dissension might arise. The reply was in the affirmative. It is on the basis of this *Gemara* that we are told, "The obvious inference is that the second day, unlike the first, has no *inherent* holiness." That this conclusion is not at all "obvious" goes without saying. The fact that *Yom Tov Sheni* was ordained for the Diaspora and not for the land of Israel and its environs certainly does not mean that "each congregation is talmudically entitled to deal with the second day of *Yom Tov* independently."

That a halakhic framework be utilized to camouflage reforms which obviously run counter to the basic principles of that Halakhah is lamentable. That inaccurate scholarship and specious reasoning be employed in those endeavors is an affront to intellectual integrity.

We, of course, are certain that *Yom Tov Sheni* will not be abrogated before the ingathering of the exiles. It is perhaps reassuring to note that even the Messiah will fail to be impressed by the pilpulism of Conservative "halakhists." A short note in the Tammuz 5729 issue of the *Ha-Ma'or* draws the reader's attention to a statement in the commentary of the Radbaz on Rambam's *Hilkhot Nezirut* 4:11 to the effect that the Messiah himself, while in the *golah,* will observe *Yom Tov Sheni!*