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The Gentile In Relation To Jewish Custom
And Law According To Tannaitic Sources

by

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Thesis submitted in partial fulfillment
of requirements for the Master of
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II

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IV

DIGEST OF THESIS

This thesis attempts to answer the question, How did Tannaitic legislation view the Gentile? It discusses this question using as its principal sources the Mishnah and the Tosephta. It is divided into three chapters, each chapter dealing with a particular phase of Jewish-Gentile relationships.

Chapter One is concerned with the attempt of the Jew to separate himself from the Gentile, to refrain from exposing himself to the influences of those who serve idolatry. It points out that practices in themselves unobjectionable were prohibited because they were commonly thought of as being Gentile practices. It also demonstrates a basic distrust of the Gentile particularly in areas where a misplaced trust might bring serious consequences. Many of these fears can be explained by the fact that the Gentile, as a very substantial minority if not a majority in certain areas, posed a serious threat to the Jew. The Jew was afraid of physical harm; he feared contamination; he distrusted the Gentile. Therefore he avoided excessive contact with him.

Chapter Two considers the impact of Jewish Law upon the Gentile. Of course, the ritual laws do not apply to Gentiles. Neither do such laws as the prohibition against lending money on interest. However, a Jew is not permitted to direct a Gentile to violate a commandment and then to

Digest of Thesis

benefit by that violation. The ethical and moral laws apply equally to the Gentile. The Talmudic discussion relating to the applicability of the Seven Laws of the Sons of Noah is cited.

The final chapter considers what may be called the positive aspects of the Jewish-Gentile relationships. Legislation is cited showing many areas of equality between Jew and Gentile as well as certain cases in which the law is more stringent upon the Jew than upon the Gentile. The chapter concludes that "in the realm of the ethical and moral life, in the area of living a life of goodness, the Jew is a universalist. Here the Jew proclaims the universal right of all men to live together in peace and plenty, free of the tyranny of poverty and injustice. Here the Jew makes no distinctions. In this realm all are equal."

CHAPTER ONE

LEGISLATION TENDING TO INCREASE
SEPARATION BETWEEN JEW AND GENTILE

... of the ... the most important is the
very real concern that too much contact might lead the Jew
to imitate the idolatrous ways of his neighbors or at
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This desire to avoid any possibility of somehow
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Chapter One

A study of the Tannaitic literature dealing with the relationships between Jew and Gentile reveal that our Tannaim have concerned themselves with all the possibilities and intricacies of such relationships. Nothing, or at least very little, has escaped their concern. The literature reflects a deep concern about the very real dangers to which a Jew might subject himself by too much contact or perhaps improper contact with his non-Jewish neighbors. The desire to be apart from, to be completely separated from, the Gentile is a thread which runs through much of the thinking of our ancient rabbis. There were many reasons for the desire for this separation, for this ghetto-like existence, all of which are somewhat interconnected and related. Perhaps the most important is the very real concern that too much contact might lead the Jew to imitate the idolatrous ways of his neighbors or at least to stray somewhat from the beliefs and practices of Judaism. Even the slightest connection with idolatry was something to be avoided at any cost.

This desire to avoid any possibility of somehow becoming connected with idolatry is illustrated by the following succinct statement: "A man should not do business with his neighbor on the day of the festival of the Gentile because of the possibility of becoming entangled with idolatry." *אין עושה עסק עם חבירו ביום חג הגוי מפני* 1 The reason for this prohibition

is not that there is anything at all improper about doing business with one's neighbor on his festival, but it is prohibited solely because it would expose a Jew to contact with the idolatrous practices which might leave some traces upon him in his later Jewish life. Similarly, the Mishnah states, "It is forbidden to have business with them that are going on an idolatrous pilgrimage, but with them that are returning it is permitted." 2 Again the Jew must not expose himself to the danger of being taken along on that pilgrimage by doing business with those who are on their way to such a pilgrimage. Also, there is, it seems to the writer, an element of unwillingness to appear to sanction such a practice. It might appear to the onlooker that the Jews who were doing business with people while those people were preparing to embark upon an idolatrous pilgrimage were actually tacitly sanctioning and assenting to the idolatry. This is made even more clear by the following statement: "An Israelite going to the market is permitted to do business with Gentiles both ways. It is not permitted to deal with Gentiles who are on their way to idolatrous festivals, but you may deal with them coming home because it is as though they have left behind the idolatry." 3

Thus we see that the fear of appearing to consent to idolatry or idolatrous practices was a very real motivation for some of the separatistic customs presented by the Tannaim.

A few other examples will make the point clear. "we do not rent them houses, fields, and vineyards and we do not give them the priestly gifts. This refers only to Israel. In Syria we rent houses but not fields. In either place a man shall not rent his field to a Gentile according to R' Meir. R. Jose says in Palestine they rent houses and outside they rent fields---- they may sell in either place. In either place a Jew shall not rent his house to a Gentile because it is known that he will introduce therein idolatry, but it is permitted to rent them stables, storehouses and inns even though it is known that they will introduce therein idolatry." 4 So we see that a Jew must not even appear to give his consent to idolatry. It is a foregone conclusion that a gentile will introduce into his home idolatrous practices. Therefore a Jew cannot rent his home to a Gentile. As long as the Jew knows in advance that his tenant will introduce idolatry it might appear to outsiders that the idolatry was actually approved by him. Also, such an arrangement would have the effect of exposing the Jew to idolatry and might thereby lead him away from the belief and worship of the true God. Stables, storehouses, and inns fall into a different category. These involve the business rather than the personal life of the Gentile. Inasmuch as these are businesses, a Jew may rent them to a Gentile though he fully realizes that the Gentile will "introduce therein

idolatry." This is a purely business arrangement and there is less danger that the Jew will expose himself to these practices. Also there is little if any question of his appearing to sanction these practices.

In the same sense one is forbidden to speak the names of idols. By mentioning their names one gives them a certain dignity and status. " One shall not say to his comrade, 'Wait for me by _____, (the name of the idol)', or 'I will wait for you by _____ (the name of the idol)', because Scripture says, 'And ye shall not mention the names of other Gods'." 5

It was also feared that too much contact with the amusements of the Gentiles would result either in idolatrous practices or too much frivolousness. " To go up to the theatres or spectacles of the Gentiles is forbidden because of idolatry according to R. Meir. The Sages say, when they sacrifice it is forbidden because of idolatry, and when they don't it is forbidden because of the fact that it is a gathering of scoffers." 6 In this passage we see a point of great importance. One may not attend the theatres or spectacles of the Gentiles when they sacrifice because of idolatry. This is understandable for the reasons previously enumerated. What is added here is the prohibition against attending these events even when idolatrous sacrifices do not take place. The reason for this prohibition is based upon the first verse of the

Psalmist, "Happy is the man that hath not walked in the counsel of the wicked, nor stood in the way of sinners, nor sat in the seat of the scornful." Attendance at these theatres or spectacles even when no sacrifice takes place is viewed as sitting in the seat of the scornful, participating with scorers and idolators in amusements which may lead to idolatry, and which certainly do not lead to the glorification of God or to a man "whose delight is in the law of the Lord."

It seems that in Tannaitic times there were certain practices which were commonly associated with non-Jews. In themselves these practices were harmless and non-objectionable to the Jew. Their harm lay only in the fact that they were the practices of the heretics. If a Jew should perform them it might appear that he was agreeing with, sanctioning, or even actually performing a heretical practice. For this reason such acts were forbidden. "None may slaughter (in such wise that the blood falls) into the sea or into vessels or into rivers; but they may slaughter (in such wise that the blood falls) into a hollow filled with water, or over the outside of vessels on a ship (so that the blood flows into the sea). None may slaughter (in such wise that the blood falls) into any manner of (empty) hole, but a man may make a hole in his house for the blood to flow into; he may not, however, do so in the (open) street lest he confirm the

heretics in their ways." 7 One should not appear to be accumulating the blood in order to use it for idolatrous purposes and, above all, one must not confirm the heretics in their ways. Any act, no matter how harmless in and of itself, is forbidden if its ultimate effect will be to confirm the heretics in their ways.

It is also forbidden to use certain items handled by Gentiles when these items could have been contaminated or used for their idolatrous purposes, for libations and the like. Thus, without the knowledge of the Jew, he could use something which was made unfit for Jewish use by previously having been dedicated to some form of heresy or idolatry. For example, "The skin-bottles of Gentiles (^{idolaters} ~~616~~) or their jars that are filled with the wine of an Israelite are forbidden, and it is forbidden to have any benefit at all from them. The grape-stones and the grape-skins of the Gentiles are forbidden, and it is forbidden to have any benefit at all from them. So R. Meir. But the sages say: It is not forbidden to have any benefit at all from them. When moist they are forbidden, but when dried they are permitted. The fish-brine and Bithynian cheeses of the Gentiles are forbidden, and it is forbidden to have any benefit at all from them. So R. Meir. But the sages say: It is not forbidden to have any benefit at all from them." 8

"These things of the Gentiles are forbidden(["] ~~616~~),

but it is not forbidden to have any benefit at all from them: milk which a Gentile milked when no Israelite watched him, their bread and their oil (Rabbi^v and his court permitted the oil), stewed or pickled vegetables into which it is their custom to put wine or vinegar, minced fish or brine containing no fish, hilek-fish, drops of asafoetida, or salconditum. Lo, these are forbidden, but it is not forbidden to have any benefit at all from them. " 9 *v Judah II*

"Israelitish craftsmen to whom a Gentile sent a jar of libation wine as their hire are permitted to say to him, 'Give us its value in money.' But after it has come into their possession it is forbidden (to ask for its value). If a man sold his wine to a Gentile and fixed its price before he measured it(into the Gentile's vessel) its price is permitted. But if he measured it out before he fixed its price, its price is forbidden. If he took the funnel and measured out wine into a Gentile's flask and again measured out wine into an Israelite's flask and there remained in the funnel a drop of wine from what had been poured into the Gentile's flask, then the wine in the Israelite's flask is forbidden. If he poured out wine from one vessel belonging to himself into another belonging to a Gentile, then the wine remaining in that from which he pours is permitted, and that into which he empties is forbidden. " 10

These passages seem to point up the fear of using certain things used by the idolators. A Jew may make no use whatsoever of wine which has been in the jurisdiction of a Gentile without having been watched over by a Jew. The assumption is that the wine could easily have been used as libation wine. The same is true of anything else generally used by the Gentiles for these purposes. The Jew, in order to preserve his way of life, his religious beliefs, his separatism, cannot succumb to the temptation present in the environment of which he is a part. He cannot succumb to idolatry; he cannot use something which may have been used for idolatrous purposes; he cannot even appear to sanction or give assent to these practices by being closely associated either with the practice itself or with those who observe it. Specific emphasis is placed on wine since it is of religious significance both to the Jew and the idolator. The most extreme precautions were observed in order to insure that the Jew did not use wine which may have been used for libations for the religious purposes of the Gentiles. One more example will suffice. "If a Gentile (["]ע"ז) helped an Israelite to take jars of wine from one place to another, and the presumption is that the wine was watched, it is permitted; but if the Israelite has told the other that he would be gone, the wine is forbidden if he was gone a long enough time for the other to bore a hole, stop it up, and the clay to dry. Rabbi

Simeon B. Gamaliel says: Time enough for the other to open the jar and close it up and for the clay to dry." 11 Thus it is clear that separation from the Gentile was a major trend in Jewish thought at this time.

This desire for separation naturally extended to other areas. General contact was to be kept to a minimum and was not deliberately to be sought out. It is a natural occurrence for any group to seek to maintain its own distinctive character, particularly when that group exists in a more or less hostile environment. Thus, we are told that one should go forth from a city whose majority are Gentiles to a city inhabited completely by Israelites. It is not permitted to move from a city inhabited by a majority of Israelites to a city inhabited completely by Gentiles. 12 This reflects, of course, the natural desire not to expose oneself unnecessarily to alien hostile influences. Accepting charity from Gentiles was not looked upon favorably for much the same reasons. "When the number of people accepting charity from the Gentiles increased, the Gentiles began to multiply and Israel began to diminish, and there is no rest in the world for Israel." 13 Thus the Israelites are again warned to refrain from exposing themselves to excessive contact with the Gentiles particularly when that contact is in the nature of accepting charity. Such behavior would make the Jew somewhat beholden to his benefactors

thus practically inviting dire consequences.

This principle is illustrated in a story in which we are told that Rabban Gamaliel refused to accept a fish from idolators even though permitted to do so according to the halachah. It is not permitted to take animals or fish out of traps on a festival unless it is known that the animals were caught on the eve of the festival and not on the festival itself. It is related that an idolator once brought fish to Rabban Gamaliel who said, "They are permitted, but I have no wish to accept them from him." 14 Thus, Rabban Gamaliel imposes upon himself a more severe ruling than demanded by the actual letter of the law.

It has been previously stated that imitation of Gentile practices was to be avoided for several reasons. But it was not only the imitation of practices that was frowned upon, but also the taking on of Gentile names. It is easy to understand the danger that could befall the Jewish group were great numbers of its adherents to begin to take on Gentile names. The first breach would be Gentile names, then customs, then practices, then increased contact, etc. etc. We are told in the Tosephta that "A proselyte who changed his name on account of the Gentiles is kosher and the same is true of a female proselyte. And all the bills of divorcement which come from the countries of the Gentiles even though their names are

like the names of the Gentiles are valid inasmuch as the names of Israelites in foreign lands are like the names of the Gentiles." 15 The rabbis thus considered it necessary to state explicitly that a proselyte was not to be barred because of a name change, and that bills of divorcement from foreign countries were valid even though the names contained therein be Gentile names. This is justified on the grounds that it is the custom for Israelites in foreign lands to have Gentile names. Since such a statement was necessary it is certainly a justifiable assumption that native Israelites were forbidden such name changes. Such an attitude was essential in order to preserve the identity of the Jewish people and to prevent them from being assimilated into the habits and practices of the Gentile.

This is but one facet of the thought and legislation of the Tannaim on the subject of the Gentile. Thus far we have considered some of the legislation designed to maintain the distinctiveness of the Jewish group and to prevent it from becoming idolatrous or appearing to sanction idolatry. Now let us turn to a separate but related field. The Tannaitic literature evidences a certain distrust of the Gentile in areas where a mistaken trust might result in the improper performance by the Jews of certain commandments. For example, if a Gentile is believed when he says that he has tithed, and a Jew acts in accordance

with that belief, then, if it turns out that the Gentile spoke falsely it will have made it impossible for the Jew to perform the commandment. " Cities of Palestine near the boundary should be more carefully watched in order that the Gentiles shall not come in in great numbers and spoil the fruits of the seventh year." 16 Or, another example is given with regard to the performance of the ceremony of chalitza. " The ceremony of chalitza performed in the Beth Din of Israel is valid, but in the Beth Din of Gentiles it is void. With Gentiles they force him and say to him, 'Do what Mr. X told you'." 17 Or, we are told that in the case of testimony relating to family purity a man is generally believed, but "if he was a Gentile who became a proselyte, or a servant who was freed, his testimony is invalid." 18 Here again the concern seems to be that the false action of the Gentile could cause the Jew to commit a sin or fail to perform a mitzvah. The Jew could be misled with regard to the fruit of the seventh year, or by being falsely told that a valid chalitza had taken place, or by acting on the testimony of a Gentile in a case of family purity where the Gentile had testified falsely.

A number of other passages seem to substantiate this point of view. " He who grinds near a peasant or near a Samaritan does not have to be suspicious of them because of uncleanness (ritual), but he who grinds near a Gentile

must suspect him of ritual uncleanness." 19

" An Israelite shall not say to a Gentile or a Samaritan or to anyone who is not believed concerning the tithes, 'Take two hundred zuz and weigh it out for me from the storehouse', but rather he should say to him, 'Exempt me from the obligation of the storehouse'." 20
Again we see that the Gentile is not trusted with regard to matters of ritual cleanliness or with regard to tithes.

Neither is he to be permitted to give the heave-offering. And, should he disregard this maxim and offer the heave-offering notwithstanding, then that heave-offering is not valid. The Gentile is grouped with a deaf-mute an imbecile and a minor, all of whom are forbidden to give the heave-offering. 21 This is made even more explicit in the following passage: "A Gentile who gives the heave-offering from that which belongs to an Israelite even with the permission of the Israelite, his heave-offering is not valid....." 22 However, a dissenting opinion is given in the same passage when Rabbi Isaac says, "A Gentile who offers the heave-offering from that which belongs to an Israelite, and the owners fulfill the commandment through his hands, his heave-offering is valid". 23

However, not all of the distrust of the Gentile was predicated on the fear of his making it impossible for Jews to perform the commandments. There was also the simple naive distrust which one group has for another when the two

Jew watched him do the actual milking. 26

The fear of contamination was an ever-present fear. No matter how great the danger Jews were forbidden to turn over even one of their number to the Gentiles. It was fear of contamination and fear of actual physical danger that motivated such a custom. "So, too, if Gentiles said to many women, Give us one from among you that we may defile her, and if not, we will defile you all, let them defile them all, but let them not betray to them one soul from Israel." 27 Not even one soul may be deliberately sacrificed to the Gentiles. The risk was too great even though it was for the purpose of saving the entire group.

The fear of contamination existed even with regard to the intermingling of animals. "Do not put an animal in the stables of Gentiles, even males with males or females with females..... and it goes without saying males with females or females with males. Do not turn over an animal into their pasture. Do not turn over a child to them to teach him, and the nursemaids will teach him and he will be alone with them." 28

This fear of possible contamination was connected with the fear that there was actual danger connected with too much contact with the Gentile. The Jew was admonished that it was dangerous to allow the Gentile to be put into a position where he could cause the Jew bodily harm. "If a Jew has his hair cut by a Gentile he must look into the

mirror----- by a Samaritan, he doesn't have to look in the mirror." 29 In other words, the Jew must watch in order to be sure that while cutting his hair the Gentile does not also do him bodily harm perhaps even killing him in the process. We are similarly admonished that "An Israelite may circumcize a Gentile in order to make him a proselyte, but a Gentile may not circumcize an Israelite because of danger to life according to Rabbi Meir. The sages say, A nochri may circumcize an Israelite in the presence of others, but alone it is prohibited because we are afraid of danger to life." 30 Here the reason is specifically and unhesitatingly given as "because of danger to life". The Jew was afraid that, given the opportunities mentioned above, the Gentile would not hesitate to use them for the purpose of killing him.

Thus it is seen that the Gentile is viewed as an ever-present danger to the physical well-being of the Jew. The Jew must constantly be on his guard even to the extent of watching his barber to make sure that he does not slit his throat while seemingly trimming his beard. However, the fear of the Jew was not confined to the individual Gentile who might be in a position to do him harm. The Jew came to be wary of the entire group and to guard against providing them with armaments which might at some later date be turned against themselves. Thus, the specific legislation was laid down that, "You must not sell them weapons

or armour, nor may you sharpen weapons for them. And you must not sell them the block or footchains, or chains of iron, nor books tephilin or mezuzoth whether gentile or Samaritan." 31

Not only was the Jew forbidden to sell the Gentile armaments of war, but he was permitted to violate the laws of the Sabbath in order to protect himself from them. Among the cases for which a Jew may desecrate the Sabbath are included the situations where a city is surrounded by Gentiles or an individual is being pursued by Gentiles. 32 The threat of an attack by Gentiles or the pursuit of a Gentile is a sufficient cause for violating the fundamental commandment of observing the Sabbath.

Then, there were certain practical considerations which prompted separatistic legislation by the Tannaim. There were many technical laws and restrictions governing the items which a Jew might or might not sell to a Gentile. The general principle was that a Jew might not sell something forbidden to him to a Gentile because the Gentile might then turn around and sell it to another Jew. "One may take eggs from any place without inquiring into whether or not they are unfit for use. But one must not sell unfit eggs (*nia'ar le' nifal le p'3'2*) to a Gentile unless they were cracked into a dish. Therefore they said, Do not take from a Gentile eggs which have been cracked into a dish." 33 This was a very practical regulation to avoid being sold

back certain products which were unfit for Jewish use. This is specifically stated as follows: " They do not sell flesh which is unfit for use to a Gentile because he might turn around and feed them to an Israelite...." 34

Jews were prohibited from making agreements in certain other practical areas. For example, in order to make an erub for the Sabbath, an agreement must be made among all the inhabitants of a specific courtyard. The question arose, Could an erub be made if one of the inhabitants of the courtyard was a Gentile? The following two passages give us the answer. " If a man lived in the same courtyard with a Gentile or with one who does not admit the lawfulness of an erub, this restricts him from the use of the courtyard. R. Eliezer b. Jacob says: He can never suffer restriction unless it is two Israelites who restrict each other." 35 " If a man left his house and went to keep the Sabbath in another town, whether he was a Gentile or an Israelite, his house restricts the other occupants of the courtyard (in that no erub has been made with him and he may return on the Sabbath to occupy it). R. Judah says it does not restrict. R. Jose says, a Gentile restricts but an Israelite does not restrict since it is not the custom of an Israelite to return on the Sabbath." 36

Thus, to summarize briefly, we have seen the penchant of the Jew to remain a distinct group, without giving way to or being tempted by the idolatries of its neighbors.

To achieve this end the Jew avoided too much general contact with the Gentile. He feared contamination; he feared actual physical harm; he distrusted the Gentile and was afraid that the Gentile might cause him to commit a sin or refrain from performing a positive commandment. There were also certain practical restrictions stemming from the fact that the Gentile could not be counted upon to observe the same ritual commandments that the Jews were commanded to keep. The basic reason for this separatism is very clear and simple. The Jewish people was proud of its faith and its heritage. It desired to maintain its distinctive character and to withstand being engulfed by its neighbors who happened to be in the majority. They therefore set up obstacles to assimilation and integration. They had no desire to be assimilated, no wish to become Gentiles. This is perhaps most clearly stated by Rabbi Judah who enumerated three benedictions which should be recited daily by each Jew. Included among the three benedictions is, "Blessed art Thou O God Who hast not made me a Gentile". 37

CHAPTER TWO

THE GENTILE IN RELATION TO JEWISH
LAW AND THE PERFORMING OF COMMANDMENTS

Chapter Two

In the first chapter we have considered various aspects of Tannaitic legislation designed for or leading to the separation of the Jew from the Gentile. However, this was not the only area of concern to the Jewish people living in Tannaitic times. They were faced with many everyday problems even more practical than those previously enumerated. Jews were forbidden to lend money on interest. How did this law affect the Gentiles? The laws of the Sabbath were very strict and were not to be violated. The question then inevitably arose, Is it permissible for a Gentile to violate the Sabbath under the instructions of a Jew? Or, is a Gentile too obligated to observe the commandment of keeping the Sabbath?

These are examples of the situations which were continually cropping up during the periods in which the Mishnah and Tosephta were being written. They were problems which could not be discarded in the smokey haze of legal generalities, nor could they be solved by the mechanical application of fixed rules or exegetic principles. They had to be handled by the rabbis as they arose and they had to be decided in accordance with the spirit of Judaism as well as the spirit of the times. The general position of the Tannaitic literature on this matter seems to be that the Gentiles are not obligated to perform the ritual commandments and observances demanded of the Jew. But,

although a Gentile is permitted to violate the commandments, he may not do so at the specific direction of the Jew for the benefit of the Jew. This seems to be the rule of thumb although exceptions do exist.

" If a Gentile came to put out the fire, they may not say to him, 'put it out' or 'do not put it out' since they are not answerable for his keeping the Sabbath". 1 Here the attitude seems to be complete irresponsibility on the part of the Jews for the actions of others. Theirs is not the responsibility to see that the Gentile does not violate the Sabbath. Hence he does not have to say to him, "Do not put it out". On the other hand, neither should he be the one to cause the Gentile to violate the Sabbath and benefit therefrom. Therefore he is not permitted to urge the Gentile to put out the fire.

The same principle is pointed up in the example of a traveler traveling on Sabbath Eve. If the Sabbath arrives while he is still on his journey, then he should give his purse to a Gentile, and if there is no Gentile with him then he should place it on his ass. 2 The Jew is responsible for his beast's observing the Sabbath; he is not, however, responsible for the Gentile's keeping it. Therefore he should first try to give it to a Gentile, and then only if there is no Gentile present should he put his purse on his ass. The parallel passage in the Tosephta adds a remark of Rabbi Shimon that he should only give it to a

Gentile whom he knows, but if he gives it to a Gentile whom he doesn't know, he should follow after him until he reaches his home. 3

Although the Jew is not responsible for the Gentile's keeping the Sabbath, he may not benefit from a violation of the Sabbath expressly done for his benefit. If a Gentile performed certain acts not permitted on the Sabbath, and a Jew happened to benefit therefrom, it is permitted. What is forbidden is for the Jew deliberately to commission a Gentile to do for him what he himself is forbidden to do. This is expressly prohibited as the following passages attest.

" If both Israelites and Gentiles live in a city, and in it was a bathhouse which was open and heated for bathing on the Sabbath, if most of the people of the city were Gentiles, an Israelite may bathe there at once after the close of the Sabbath. But if most of them were Israelites he must wait time enough for water to be heated. If they were equal he must wait time enough for the water to be heated. R. Judah says: If it was a small bathhouse and there was some Gentile of high estate, an Israelite may wash therein at once." 4 In other words, if the majority of the people were Gentile, then it can be assumed that the water which was heated on the Sabbath day was heated for them. Therefore at the close of the Sabbath a Jew may use that water even though it was heated on the

Sabbath. If, however, most of the inhabitants were Jews, any water that is hot at the conclusion of the Sabbath must have been heated on the Sabbath for Jews. Therefore they may not use it but must wait and use hot water which was heated after the Sabbath.

" If a Gentile brought the flutes on the Sabbath, an Israelite may not play dirges on them unless they had been brought from nearby (within the Sabbath limit). If a coffin had been made on the Sabbath for a Gentile and a grave dug for him, an Israelite may be buried therein; but if it had been prepared for an Israelite, no Israelite may ever be buried therein." 5 Here again the principle is the same. The Israelite may not use that which has been prepared for him on the Sabbath. In order even to make use of a flute brought by a Gentile on the Sabbath it is necessary that the flute be brought from within the Sabbath limit. If the Gentile had transgressed the Sabbath limits in order to bring the flute, that flute may not be used by Jews.

" If he (a Gentile) filled up (a trough) with water in order to water his cattle, a Jew may follow after him and water his cattle. But if he filled up the trough for the sake of the Israelite, then it is forbidden. If a Gentile gathered grass in order to feed his cattle, a Jew may follow after him and feed his cattle. But if he gathered the grass for the sake of the Israelite, then it

is forbidden. Under what circumstances do these rules apply? They apply with regard to a Gentile who is not an acquaintance of the Jew, but in the case of a Gentile who is an acquaintance of the Jew it is prohibited. It is prohibited because it will become a habit and he will do the same thing with him on another Sabbath, and all things done by an Israelite whether unavoidable or unknowingly or deliberately or by mistake are forbidden." 6 The interesting point here is that the arrangement which is permissible with a Gentile who is a stranger is forbidden with a Gentile who is an acquaintance. The Gentile acquaintance will come to realize that his Jewish neighbor cannot pour the water or gather the grass on the Sabbath. So, it is quite conceivable that he will come to habitually do these things for his Jewish neighbor even at times when he might not have done them for himself. Thus, perhaps unconsciously he will be violating the Sabbath on account of his Jewish neighbor.

A parallel passage from the Mishnah states the same principle and gives an explicit example of its being followed. " If a Gentile lights a candle, an Israelite may make use of the light, but if he lit it for the sake of the Israelite, then it is forbidden. If he filled up water with which to water his cattle, an Israelite may follow after him and water his cattle, but if he filled up the water for the sake of the Israelite then it is

prohibited. If a Gentile makes a bridge on which to descend (from a ship) then an Israelite may follow after him. But if he made it for the sake of the Israelite, then it is prohibited. It is related that Rabban Gamaliel and the Elders were arriving on a ship and a Gentile made a bridge on which to descend, and Rabban Gamaliel and the Elders descended upon it". 7

Or, another example, "One does not send letters by a Gentile messenger on the eve of the Sabbath, but it is permissible on Wednesday or Thursday. It was said concerning Joseph the Priest that nothing in his handwriting was ever found in the hand of a Gentile." 8 Here again the principle is that a Jew may not, by his own action, and for his own benefit, cause a Gentile to violate the Sabbath. The Jew may benefit by the Gentile's violating the Sabbath as was the case with Rabban Gamaliel when he descended from a ship on a bridge made by a Gentile, but not if the action was performed specifically for him.

Let us turn our attention for a moment to the area of legislation regulating the conduct of the Jew with regard to the lending of money on interest. A Jew is not permitted to lend money to other Jews on interest. But he is allowed to lend money or to borrow money from Gentiles on interest. Neither is a Jew permitted to turn over his money to a Gentile in order that the Gentile lend it out on interest. An Israelite who says to a Gentile, 'Take

your commission and go out and lend my money on interest', this is forbidden. But if a Gentile said to a Jew, 'Take your commission and go out and lend my money on interest', this technically would be permitted but it is forbidden because it could be misinterpreted." 9 In other words, technically, a Jew could become the agent of a Gentile and lend out the Gentile's money on interest. He would not be violating the law against the taking of interest because the money is not his own. However, this might not be public knowledge. Someone might think that he was lending his own money on interest. Therefore even the lending of a Gentile's money on interest is forbidden.

"The money of an Israelite which is held by a Gentile as security may be lent out on interest. But the money of a Gentile held by an Israelite as security may not be lent out on interest. This is the general principle on these matters: Everything that is in the possession of an Israelite is prohibited (to lend on interest) and everything that is in the possession of a Gentile is permitted (to lend on interest)." 10 Here the general rule of thumb is clearly expressed. A Gentile may lend his money on interest; A Jew may not. "An Israelite is not allowed to borrow for a shekel or lend for a sela, but a Gentile is permitted to borrow for a shekel or lend for a sela." 11

Or again, the case of a Jew who becomes the administrator of the estate of a Gentile is discussed. We are told,

"An Israelite who becomes a guardian or an administrator for a Gentile, it is permitted to borrow from him on interest. But if a Gentile becomes a guardian or an administrator for an Israelite it is prohibited to borrow from him at interest. An Israelite may borrow from a Gentile and a Gentile may borrow from an Israelite..." 12

Let us consider one final passage on this matter which is of interest. "A flock may not be accepted from an Israelite on 'iron' terms since that counts as usury, but it may be accepted from a Gentile. Money may be borrowed from Gentiles on usury and lent to them on usury, and the same applies to a resident alien (but not if it was money which the Gentile had borrowed from an Israelite even with the knowledge of the Israelite.)" 13

Here we see that the important thing is the ownership of the money. It matters not whether the actual lender, that is the person who actually handles the mechanics of making the loan, is a Jew or a Gentile. As long as the money is not the property of a Jew it may be lent out on interest by a Jew to a Gentile. This seemingly contradicts the passage previously cited which states that if a Gentile commissions a Jew to lend out his money on interest it is forbidden because it might be misinterpreted although technically it is permissible. There is, however, a subtle difference. If a Jew is the administrator of an estate belonging to a Gentile, then in all likelihood it

would be public knowledge. Hence there is very little danger that people will think that he Jew is lending his own money at interest. They all know that he is administering the estate of a Gentile. However, a private arrangement between a Jew and a Gentile is not common knowledge. It is a private business arrangement. It is therefore very likely that the outsider might think the Jew was lending his own money at interest and violating the prohibition. Hence this restriction is given because of the possibility of misinterpretation. The restriction against borrowing or lending money on interest applies only between Jew and Jew. Jews may borrow money from or lend money to Gentiles on an interest basis.

A similar principle applies with regard to the use of hametz after Passover. According to the halachah a Jew is permitted neither to use nor to derive benefit from any hametz which remains in his possession during Passover. The prohibition applies also to after Passover. Now, what would happen if, before Passover, a Jew borrowed money from a Gentile and left with him hametz as security? After Passover when the Jew pays his debt and receives his security (the hametz), is he permitted to use it? " If a Gentile lent something to an Israelite on the security of his hametz, it is allowed to derive benefit from it after Passover. (It was in the Gentile's possession and technically could be considered as belonging to him. Until the

Jew paid his loan it was in fact as well as in theory the property of the Gentile.) But if an Israelite lent something to a Gentile on the security of his hametz, it is forbidden to derive benefit from it after Passover." 14 (Because the hametz was in the Jew's possession having been left there as security by the Gentile. Until the time that the Gentile paid his loan the hametz was the property of the Jew. Hence he may not benefit from it after Passover.)

It is specifically the hametz of an Israelite from which it is forbidden to derive benefit after Passover. The reason as given in the Mishnah¹⁵ is because of the statement of Scripture, "Unleavened bread shall be eaten throughout the seven days; and there shall be no leavened bread be seen with thee, neither shall there be leaven be seen with thee in all thy borders." 16 Since the Biblical command specifically states "with thee" the law is literally interpreted to refer only to the hametz of an Israelite and not to the hametz of a Gentile. The deciding factor in doubtful cases is the actual possession and ownership of the hametz. Hametz owned by a Gentile is permissible to a Jew after Passover; hametz owned by a Jew is prohibited.

There are many other commandments which may be affected by the action of a Gentile. For example, "If a Gentile gave dough to an Israelite, to prepare for him, it is exempt from the dough-offering. If he gave it to him as a

gift and it was given before it was rolled out, it is liable; If, after it was rolled out, it is exempt. If a man prepared his dough together with the dough belonging to a Gentile, and the portion belonging to the Israelite was less than the measure liable to dough-offering, it is exempt from dough-offering." 17 The dough-offering was required only of the Israelite. Only if it was used by a Jew did it require the traditional offering.

Just as the Jew is not responsible to give a dough-offering for dough used by Gentiles, neither is he responsible for tithing that which belongs to the Gentile. "If a man leased a field from an Israelite, a Gentile, or a Samaritan, he must divide the produce in their presence." 18 He is responsible only for tithing his share regardless from whom he leased the field. Or, "He who receives or leases a field from a Gentile, tithes and gives to him. Rabbi Shimon ben Gamaliel said, If the Gentile doesn't desire to tithe, then they divide and he gives him his in his presence." 19 Inasmuch as a Gentile is not obligated to tithe, a Jew cannot base his actions on the assumption that the Gentile has tithed. That is, if he bought a field from a Gentile, and the Gentile states that he has tithed, the Jew must still tithe because a Gentile is not believed when he says he has tithed.²⁰ This is the case because if the Gentile should speak falsely the Jew would be led to a violation of the tithing laws.

"If there was a storehouse into which both Israelites and Gentiles cast their produce, and most of them were Gentiles, it must be deemed produce certainly untithed; If most of them were Israelites it must be deemed Demai produce; If they were equal it must be deemed certainly untithed. So R. Meir. But the Sages say: Even though all were Gentiles and but one Israelite cast his produce therein the whole may be deemed Demai produce." 21 In the case where Jews and Gentiles are equal the produce is deemed untithed. If the majority are Jews the produce is Demai. The underlying presumption is that the produce belonging to the Gentile has in all probability not been tithed.

These general principles also apply to related areas.

"If a Gentile sold his standing corn to an Israelite to cut, he is obligated to the peah. If an Israelite sold his standing corn to a Gentile to cut, he is exempt from the peah. If a Jew and a Gentile were partners in the corn, then the Jew's part is obligated and the Gentile's part is exempt." 22 Those things in the possession of the Jew require that ritual offerings be made from them. The fact that they may have been purchased from a Gentile does not alter their status in the slightest degree. Those things in the possession of a non-Jew do not require that ritual offerings be made from them. The fact that a Jew may have sold them does not alter their status.

"If a Gentile sold his vineyard to an Israelite to

pluck, then he is obligated in the gleaning reserved for the poor. And an Israelite who sold his vineyard to a Gentile to pluck is exempt from the gleaning reserved for the poor. If an Israelite and a Jew were partners in a vineyard, then the portion of the Jew requires that gleaning be reserved for the poor, and the portion of the Gentile is exempt." 23 Here again the same principle is illustrated. Those things bought by Jews from Gentiles require the various offerings. Those things sold by Jews to Gentiles are exempt from them.

A certain portion of the produce of the harvest was required to be set aside for the priest. Until this portion had been taken out and reserved for the priest the remainder could not be used. This portion is called the Teruma or heave-offering. And Gentiles were not permitted to set aside the heave-offering for an Israelite. " There are five that may not give the heave-offering, and if they do so their heave-offering is not valid: a deaf mute, an imbecile, a minor, he that gives heave-offerings from what is not his own, and a Gentile who gives heave-offerings from what belongs to an Israelite--- even if it is with his consent the heave-offering is not valid." 24

It is interesting to note, however, that a Gentile is permitted to give his own heave-offering. It is only when he gives the offering from that which belongs to an Israelite that it is forbidden. " Heave-offerings or Tithes or

Hallowed Things that are given by a Gentile or a Samaritan are valid. R. Judah says: The Law of the Fourth Year Vineyard does not apply to Gentiles. But the Sages say it does apply. The Heave-offering of Gentiles renders (other produce with which it is mixed) subject to the law of Heave-offering, and (if it is eaten in error by a non-priest) is subject to the law of the (Added) Fifth. But R. Simeon declares it exempt (from the law of the Added Fifth)." 25

If, then, the Gentile is exempt from all of these ritual matters which apply to the Jew, what commandments are the Gentiles bidden to obey? We are told that the sons of Noah were given seven commandments, commandments dealing with social laws, idolatry, blasphemy, incest, spilling of blood, stealing, and eating a limb from a living animal. "How were they commanded concerning the interpretation of social laws? Just as the Israelites were commanded to go to the courts in their cities so were the sons of Noah commanded to go to the courts in their cities.

"How were the sons of Noah commanded concerning idolatry and profanation of God's name....?

"How were they commanded concerning incest? Every incestuous act for which the Jewish court inflicts the death penalty, the sons of Noah are warned about it according to R. Meir. The Sages say there are many incestuous acts about which the sons of Noah are warned for which

the Jewish Court does not inflict the death penalty.... In the case of these incestuous acts the nations are judged in accordance with the laws of the nations, but this refers only to the betrothed maiden....

"And how are they commanded concerning a limb from a living animal? A limb which is hanging down from the animal and which does not contain enough to be restored is prohibited to the sons of Noah and certainly to an Israelite. If there is enough to be restored it is permitted to an Israelite and most certainly it is permitted to the sons of Noah." 26

These, then, are the laws which apply to the Gentile. These ethical maxims apply to all peoples. The Talmud discusses these prohibitions in great detail in the book Sanhedrin. In Sanhedrin some additions are also presented as when R. Jose declares that everything mentioned in Deuteronomy 18:10 ff. with regard to sorcery is also prohibited to the Gentile.²⁷

To summarize briefly, we have seen that Jewish ritual was not meant to apply to the Gentile. He was not bound to observe the various bits of legislation which regulated the life of the Israelite. Nor could a Gentile be asked by a Jew to violate a Jewish commandment in order that the latter might benefit thereby. If, for example, the Gentile violated the Sabbath for his own benefit, then the Jew might make use of the violation for his own benefit as is attested

to by the story of Rabban Gamaliel mentioned previously. However, in the realm of ethics and morals, seven laws were given to the sons of Noah to observe. These they are commanded to keep. And these were recognized as authoritative by the earliest Fathers of the Church.

CHAPTER THREE

UNIVERSALISM IN TANNAITIC LITERATURE

Chapter Three

We have now considered the two major areas of legislation regarding the Gentile, those laws tending to set the Jew apart and separate him from the Gentile, and those laws relating to the responsibility of Gentiles to fulfill the commandments and how certain commandments relate to Israelites and Gentiles. Now, in the third and final chapter we turn to the more practical area of everyday relationships. Here our concern is not so much with theory as with practice. Law is not something created from a vacuum. It has its roots in the life situation and grows in accordance with the needs of the times. As Louis Ginzberg put it, "The development of the halachah, at least of the most ancient halachah, is not a creation of the House of Study, but an expression of life itself".¹ In other words the halachah stems from the situation and the stresses and strains of the times. It is not simply promulgated by scholars who have isolated themselves in their ivory towers from the urgencies of the times.

It is not always simple for us to understand the local factors which lay behind certain laws. The tenor of the legislation was not anti-Gentile. The Jew, living in the midst of Gentiles, could not have afforded to be anti-Gentile even had he so desired. The legislation relating to these matters can only be understood in direct reference to the history of the times, to the exigencies which it was

designed to meet.

We are told in the Tosephta that a man shall live in Palestine even in a city whose majority are Gentiles and not outside of Palestine even in a city whose majority are Jews.² At first glance this seems to be an astounding statement. The important thing is to live in Palestine even when to do will result in living among Gentiles. In order to understand this law we must understand the historical circumstances under which it was written. Much of Palestine was inhabited by Gentiles. The Jewish leaders felt the necessity for encouraging Jewish settlement and discouraging Jewish emigration. One of the ways to accomplish this was by stressing the importance of living in Palestine even in a city whose majority are Gentiles rather than to go outside of Palestine even to live among Jewish people. The very phraseology of this passage proves that there were cities with Gentile majorities in Palestine and cities with Jewish majorities outside of Palestine.

In this light another regulation forbidding the sale of animals and the sale or rental of houses or fields to Gentiles can be understood. "Where the custom is to sell small cattle to Gentiles they may sell them; where the custom is not to sell them, they may not sell them. And nowhere may they sell them large cattle, calves, or foals whole or maimed. R. Judah permits a maimed beast (to be sold) and Ben Bathyra permits a horse."³ "None may hire

houses to them in the land of Israel or, needless to say, fields; in Syria houses may be hired to them but not fields; while outside the land houses may be sold and fields hired to them. So R. Meir. R. Jose says: In the land of Israel houses may be hired to them but not fields; and in Syria houses may be sold and fields hired to them; while outside the land either may be sold to them."⁴ These passages can be understood when it is realized that there were many sections of Palestine in which the Gentiles constituted the majority. And there were many other areas in which they composed a substantial minority. Naturally this situation produced great competition between Jew and Gentile, and the danger even existed that the Gentiles might be able to drive the Jew from the land. It was in this situation that the Jewish leadership acted to urge Jews to live in Palestine even if it meant living among Gentiles. As an additional weapon Israelites were urged to impose upon their Gentile neighbors what Louis Ginzberg termed "an economic boycott", that is they were urged not to rent them houses or fields and not to sell them large animals. This prevented the Gentiles from gaining control of more land, and since it became more difficult for them to purchase the necessary animals with which to carry on agriculture, it had a tendency to cause them to sell some of their land to the Jews.⁵ Thus, these laws were motivated by the existing historic and economic conditions.

This reasoning would also account for the statement of R. Shimon b. Elazar, "An Israelite outside of Palestine is an idolator."⁶ It might also reasonably explain the prohibition against hiring Gentile workmen because they are not expert in matters concerning leket.⁷ This type of legislation would discourage the Gentile from settling in areas which were predominantly Jewish because he would have difficulty in finding work. These are all interrelated aspects of the "economic boycott".

The Jewish people lived in neither an economic nor a social vacuum. They realized that many of their neighbors were not of the Jewish faith. Much of Jewish custom and law reflects that knowledge and understanding, reflects a desire to live in peace and tranquility with the neighboring Gentile while at the same time preserving the Jewish identity. Rabbi Akiba permitted the taking of public sacrifices from Gentiles as well as the acceptance from them of burnt offerings, peace offerings, fowl and gift offerings. Rabbi Jose the Galilean disagreed and stated, "Even if you expound all day it is permissible to accept from them only burnt offerings and peace offerings."⁸ The more stringent view of Rabbi Jose the Galilean may be explained by the fact that until very late most of Galilee remained in Gentile hands, and even during the latter days of the Second Temple it was still inhabited by a substantial number of Gentiles. "All public and private

sacrifices may come from Palestine or from outside Palestine even from among the Gentiles except for the offering of the first born and the tithe which may come only from Palestine and only from Israelites."⁹

If a Gentile brought a peace-offering and gave it to a priest, the priest is permitted to eat therefrom. If he gave it to an Israelite the Israelite is permitted to eat therefrom.¹⁰ Again this is a realistic approach to life, not an ivory tower legalistic approach without regard for the actual necessities of living. By the same token we are told that the participation of a Gentile in the process of ritual slaughtering does not make the slaughtering unfit provided that it was otherwise fit. "An Israelite and a Gentile who were holding the slaughtering knife and killing, even if one was holding it from the top and the other from the bottom, their slaughtering is kosher."¹¹ Thus we see that the Tannaitic legislation was not designed completely to separate Jew from Gentile. There were many areas of contact which were permitted and even encouraged. It was only where such contact might expose the Jew to alien influences or prevent him from properly observing the commandments that it was prohibited.

In the realm of ethical requirements and punishments the rabbis insisted on equality between Jew and Gentile. "If you take an animal from them on trial, you may return it to them all that day. And just as you do this, you

may take from them cattle, servants, female servants, for a test and you may return them all of that day. As long as you are permitted to return them to an Israelite, you are permitted to return them to a Gentile. If you are not permitted to return them to an Israelite, you are not permitted to return them to a Gentile."¹² Here there is absolutely no distinction between Jew and Gentile. The same rules which apply to one, apply equally to the other.

Similarly, we are told that the same punishments will be meted out to capital offenders whether they be Jews or non-Jews. "Capital offenders among the Israelites or capital offenders among the nations of the world will descend to Gehinom and there be judged for twelve months, and after twelve months their souls will be destroyed, and their bodies burned, and Gehinom will discharge them, and they will become dust, and the wind will spread them and scatter them under the soles of the feet of the righteous, as Scripture says, 'And ye shall tread down the wicked; for they shall be ashes under the soles of your feet in the day that I do make, Saith the Lord of Hosts'."¹³ Thus, the punishment does not vary whether the offender be Jew or Gentile.

Neither is the Gentile always suspected of being about to attack the Israelite. We are told that only under certain circumstances should Jews violate the Sabbath and go out to meet with weapons the Gentiles who come upon

their cities. What are the circumstances under which this is permitted? It is permitted "when they come for the purpose of killing. If they did not come for the purpose of killing, then (it is not permitted) to go out against them with weapons and (it is not permitted) to violate the Sabbath on account of them. If they come upon cities near the boundary even to take the straw, then we go out against them with weapons and violate the Sabbath on account of them."¹⁴ Thus we see that the principle is somewhat similar to the idea of the presence of a clear and present danger. If there is reason to believe that the Gentile is coming for purposes which are not peaceful as, if they advance upon a city near the boundary, or if they come for the purpose of killing, then it is permitted to violate the Sabbath and meet them with force. Again it is evident that these laws took into consideration the environmental conditions of the small country of Palestine.

Practical considerations merge with a higher sense of Israel's mission in the case of handling the problem of a Jew stealing from a Gentile. It is obvious that Jewish law from a practical standpoint could not afford to condone theft from Gentiles. This would have caused insurmountable difficulties within the Gentile population of Palestine. It is not surprising, therefore, to read, "He who steals from a Gentile is obligated to return (the theft) to him."¹⁵ But the latter part of this statement, apparently having no

connection with the law itself, gives us an inkling of the feeling of the rabbis regarding the role of Israel.

"Stealing from a Gentile is far more serious than stealing from a Jew because of the profanation of God's name."¹⁶ The Jew was to set an example of ethical and moral living. The mission of the Jew was to lead an exemplary life. To steal denies all for which the Jew stands. It denies the perfectness of the God served by the Jewish people. It is, in effect, a profanation of the name of God. The Gentile will feel that the God of the Jews is no more just than are those who serve Him. For this reason stealing from a Gentile is deemed to be a more serious offense than stealing from a Jew.

Much the same reasoning is involved in another regulation which is more stringent upon the Jew than upon the Gentile. "A Gentile who made an idol, the idol is permissible until it has actually been served because until then it may be nullified. Rabbi says in the name of Rabbi Jacob, If an Israelite made it first he may not nullify it."¹⁷ The passage is referring to deriving benefit from the idol. Benefit may be derived from an idol made by a Gentile but not yet served by him. But if a Jew made the idol it is prohibited to derive any benefit whatsoever from it. This is in contrast to the Mishnaic passage which reads, "The idol of a Gentile is straightaway forbidden, but that of an Israelite is not forbidden until it has been worshipped.

A Gentile can desecrate his own or his fellow's idol, but an Israelite cannot desecrate a Gentile's idol."¹⁸ The latter part of the Mishnah presents a more severe restriction on the Jew than on the Gentile.

There is evidence that the social contact between Jew and Gentile did not remain in a static condition. Social contact increased or decreased in accordance with the conditions of the moment. This is shown by the reference in the Tosephta that to sit on a bench of the Gentiles on the Sabbath is permitted. And the very same passage interestingly points out that previously this practice was not permitted.¹⁹ The story is told that Rabban Gamaliel once sat among the Gentiles on the Sabbath in Accho. Others told him that this practice was not permitted. And, Rabban Gamaliel, not wanting to tell them that it was permitted, arose and walked away.²⁰ Thus we see that a custom which had severely limited all social contacts had become more relaxed during the times of Rabban Gamaliel. The times no longer demanded such strict measures.

Since the population contained large numbers of Gentiles problems of proselytization inevitably occurred. Perhaps one of the most ticklish situations involved the status of children born of mothers who had become proselytes. The rabbis recognized this and legislated on terms of equality. "If the child was both conceived and born after her mother became a proselyte, then she is

regarded as a daughter of Israel in every respect."²¹

"If a man had no children and married a woman that had already borne young, even if she was a bondwoman and was then made free, or a Gentile and then became a proselyte, and she bore (male offspring) after she was married to the Israelite, such is deemed a firstborn in what concerns inheritance but not in what concerns the right of the priest. R. Jose the Galilean says: Such is deemed a firstborn in what concerns both inheritance and the rights of the priest."²² Thus we see that no extreme penalties were placed upon the children of proselytes. The legislation was not designed to discourage such action. It placed the proselyte under no disadvantage. It certainly could not be construed as punitive in nature. As long as the mother was a proselyte when the child was conceived and born the status of the child does not suffer. The child is regarded in all respects as a child of Israel.

The question would naturally arise as to the effect of the testimony of Gentiles on matters affecting Jewish law. Would the testimony of a Gentile be accepted and made the basis for decisions by Jewish courts? "Concerning a Gentile, if he had intended to testify his testimony is not valid. Abba Judon of Tyre tells of a Gentile and an Israelite who were walking along the road. The Gentile said, Woe unto an Israelite who died here and I eulogized him and buried him. And this episode came

before the Sages and they permitted his wife to remarry."²³ (In other words, they accepted the testimony of the Gentile as valid, and relying upon this evidence, they permitted his wife to marry another husband.) So the testimony of the Gentile is valid as regards these very serious matters. Because if the testimony is later proved false, very serious consequences ensue inasmuch as the woman must then leave both husbands, and the children from the second husband are in serious doubt as to status. Hence it is very significant that the Tosephta passage indicated the complete acceptance of the testimony of a Gentile as valid as long as he did not come for the specific purpose of giving testimony.

It is also significant that a Gentile court is permitted to enforce the decision of a Jewish court even though the Gentile court cannot validly force compliance with Jewish law. "A bill of divorce given under compulsion is valid if it is ordered by an Israelitish court, but if by a Gentile court it is invalid. But if the Gentiles beat a man and say to him, 'Do what the Israelites bid thee', it is valid."²⁴ In other words, a Gentile court is permitted to enforce a compulsory decree of an Israelite court. The Gemara discusses this principle and wonders why if the Gentile court may actually enforce a decree should not they be able to order a bill of divorce-ment themselves? The accepted answer, then, seems to be:

" (A Get enforced by a heathen court) on legal grounds is liable to be confused with (A Get enforced by) an Israelite court on legal grounds, but (a Get enforced by a heathen court) without proper grounds will not be confused with (a Get enforced by) a Jewish court with legal grounds."²⁵

All of these laws and customs led to more friendly and more peaceful relationships between Jew and Gentile. It is only normal that such relationships should have been cultivated because of the fact that both groups lived in such physical proximity to each other. The Jew sought to avoid arousing the anger and wrath of his neighbor. He was willing to go out of his way to maintain good relationships and avoid ill feeling. It was this desire for friendly and peaceful relationships, this desire to avoid unpleasantness and misunderstandings, which gave rise to the final classification of laws and customs presented here for our consideration. This classification is applied to those rules and customs which were adopted "in the interests of peace." (משנ' אורי' פס'). In these ordinances are evident the most liberal tendencies of the rabbis as well as their sense of closeness to the everyday life of the people. We shall now examine a sampling of those laws and customs that were adopted "in the interests of peace."

"A city in which there are Gentiles and Israelites, the officials of the city collect both from the Israelites

and from the Gentiles in the interests of peace.

"One feeds the poor of the Gentiles in the interests of peace.

"One eulogizes the dead of the Gentiles and comforts the mourners of the Gentiles and buries the dead of the Gentiles in the interests of peace."²⁶ In these matters there are no distinctions. The poor are to be fed regardless of whether they be Jew or Gentile. The dead must be buried and the mourners must be comforted whether they be Jew or Gentile. Regarding these matters there is no particularism. There is only the universalism of the need which must be satisfied.

Similarly we are told that not only must the poor be fed, but that the poor of the Gentiles must be eligible for the gleanings of the fields which Jewish farmers reserve for the poor. These gleanings are reserved for all the poor, not merely the Jewish poor. To keep these gleanings from the Gentile is the equivalent of stealing from him what is rightfully his. "The law of theft applies in every respect. They do not try to prevent the poor among the Gentiles from gathering gleanings, the forgotten sheaf, and the Peah, in the interests of peace."²⁷ Here again there is no distinction between the poor among the Israelites and the poor of the Gentiles.

In the same vein the Jew was not permitted to ignore plot of his neighbor whether he be Jew or Gentile. The

principles of humanity apply to all. A Jew cannot stand idly by and watch the troubles of his Gentile neighbor. He must help him in the same way that he would help a fellow Jew. "If he sees the ass of a Gentile he is obligated to concern himself with it (in other words, to help take care of it) in the same way that he would concern himself with the ass of an Israelite. If it was carrying libation wine it is not permitted to touch it."²⁸ As noted the only exception is in the case where the ass is carrying libation wine. In such a case the Jew would not be obligated to help because he would become involved in prohibited activities.

The Jew is commanded to respect the Gentile, his festivals and Holydays, and always to ask about and be seriously concerned about his welfare. "A person shall not do business with a Gentile on the day of his festival, and he shall not deal with him lightly, he should ask concerning his welfare seriously."²⁹ "We inquire about the welfare of the Gentiles on their festivals in the interests of peace."³⁰ "Moreover greetings may be offered to Gentiles in the interests of peace."³¹

These passages indicate the attitude of the legislators of the Tannaitic period toward the Gentile. These passages indicate a universalistic outlook, a concern for the welfare of all men, not a narrow minded concern only for the Jew. Yet, in the first two chapters many instances

have been cited in which the Gentile appears to be placed in a separate position from the Jew. We have noted that many Gentile practices were prohibited because of fear of the taint of idolatry. In regard to the fulfillment of the commandments Jew and Gentile were not considered equal. Observance of the commandments was not required of the Gentile. It was deemed necessary that he only keep the Seven Laws of Noah. How, then can the apparent universalism of this chapter be reconciled with the particularism of the first two chapters? The answer seems clear. The Jew was not, is not, and will never be a universalist in the realm of ritual practice. In this area Judaism is particularistic, desiring to preserve itself and its identity among the peoples of the world. But in the realm of the ethical and moral life, in the area of living a life of goodness, here the Jew is a universalist. Here the Jew proclaims the universal right of all men to live together in peace and plenty, free of the tyranny of poverty and injustice. Here the Jew makes no distinctions. In this realm all are equal. Thus does the Jew reconcile his universalism and particularism. With the same breath the Jew announces to the world his particularism in ritual, his right to maintain his distinctive identity, and proudly proclaims the universal right of all mankind to live in decency and righteousness under the Living God.

In conclusion, the following passage is perhaps most

illustrative of the heights of universalism reached in Tannaitic thought. "Rabbi Jeremiah said: Whence do we know that even a Gentile who occupies himself with the study of the Torah is like a high-priest? From the words: 'which if a man do he shall live by them.' Likewise it is not stated: 'This is the law of the Priests, Levites, and Israelites', but 'This is the law of man O Lord God.' It is also said: 'Open ye the gates that the righteous nation that keepeth faithfulness may enter in.' It does not say 'Priests, Levites and Israelites', but 'that the righteous nation..... may enter in.' Likewise it is said 'This is the gate of the Lord; the righteous shall enter into it.' It does not say: 'Priests, Levites and Israelites', but 'the righteous shall enter into it.' Similarly it is said, 'Do good O Lord unto the good.' It does not say 'unto the Priests, Levites and Israelites', but 'unto the good.' This shows that even a Gentile who devoted himself unto the Torah is like unto a high priest."³²

NOTES

1. Mishnah Berachot 1:13 (ed. Zuckermandel).
2. Ibid. 2:7.
3. Ibid. 3:13.
4. Ibid. 4:1.
5. Ibid. 5:1.
6. Ibid. 6:1.
7. Ibid. 7:1.
8. Ibid. 8:1.
9. Ibid. 9:1.
10. Ibid. 10:1.
11. Ibid. 11:1.
12. Ibid. 12:1.
13. Ibid. 13:1.
14. Mishnah Berachot 3:1.
15. Tosephta Berachot 8:4.
16. Tosephta Berachot 4:7.
17. Tosephta Berachot 12:13.
18. Tosephta Berachot 3:3.
19. Tosephta Berachot 4:7.
20. Ibid., 6:4.
21. Mishnah Berachot 1:1.
22. Tosephta Berachot 1:15.
23. Ibid.
24. Tosephta Berachot 1:1.

NOTES

NOTES TO CHAPTER ONE

1. Tosephta Abodah Zarah 1:13 (ed. Zuckermann).
2. Mishnah Abodah Zarah 2:3.
3. Tosephta Abodah Zarah 1:15.
4. Ibid., 2:8,9.
5. Ibid., 6:11.
6. Ibid., 2:5.
7. Mishnah Hullin 2:9.
8. Mishnah Abodah Zarah 2:4.
9. Ibid., 2:6.
10. Ibid., 5:7.
11. Ibid., 5:3.
12. Tosephta Ketuboth 13:2.
13. Tosephta Sotah 14:10.
14. Mishnah Betzah 3:2.
15. Tosephta Gittin 8:4.
16. Tosephta Shebiith 4:7.
17. Tosephta Yebamoth 12:13.
18. Tosephta Ketuboth 3:3.
19. Tosephta Demai 4:27.
20. Ibid., 6:4.
21. Mishnah Terumoth 1:1.
22. Tosephta Terumoth 1:15.
23. Ibid.
24. Tosephta Peah 1:1.

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25. Mishnah Abodah Zarah 4:11.
26. Ibid., 2:27.
27. Mishnah Terumoth 8:12.
28. Tosephta Abodah Zarah 3:2.
29. Ibid., 3:5.
30. Ibid., 3:12.
31. Ibid., 2:4.
32. Tosephta Erubin 3:8.
33. Tosephta Hullin 3:24.
34. Ibid., 7:3.
35. Mishnah Erubin 6:1.
36. Ibid., 8:5.
37. Tosephta Berakoth 7:18.2.

Notes to Chapter Two

1. Mishnah Shabbath 16:6.
2. Ibid., 24:1.
3. Tosephta Shabbath 18:1.
4. Mishnah Makshirin 2:5.
5. Mishnah Shabbath 23:4.
6. Tosephta Shabbath 13:14.
7. Mishnah Shabbath 16:8. The episode of Rabban Gamaliel is repeated in Tosephta Shabbath 14:11.
8. Tosephta Shabbath 14:13.
9. Tosephta Baba Metzia 5:18.
10. Ibid., 5:19.
11. Ibid., 5:6.
12. Ibid., 5:20.
13. Mishnah Baba Metzia 5:6.
14. Mishnah Pesachim 2:3.
15. Ibid., 2:2.
16. Bible Exodus 13:7.
17. Mishnah Hallah 3:5.
18. Mishnah Demai 6:1.
19. Tosephta Demai 6:1.
20. This point of view is presented in Tosephta Demai 7:11.
21. Mishnah Makshirin 2:10.
22. Tosephta Peah 2:9.
23. Ibid., 3:12.
24. Mishnah Terumoth 1:1.

Notes to Chapter Two

25. Ibid., 3:9.
26. Tosephta Abodah Zarah 8:4,5,6.
27. b. Sanhedrin 56a.
28. Ibid., 4:1.
29. Ibid., 4:2.
30. Ibid., 4:3.
31. Ibid., 4:4.
32. Ibid., 4:5.
33. Ibid., 4:6.
34. Ibid., 4:7.
35. Ibid., 4:8.
36. Ibid., 4:9.
37. Ibid., 4:10.
38. Ibid., 4:11.
39. Ibid., 4:12.
40. Ibid., 4:13.
41. Ibid., 4:14.
42. Ibid., 4:15.
43. Ibid., 4:16.
44. Ibid., 4:17.
45. Ibid., 4:18.
46. Ibid., 4:19.
47. Ibid., 4:20.
48. Ibid., 4:21.
49. Ibid., 4:22.
50. Ibid., 4:23.
51. Ibid., 4:24.
52. Ibid., 4:25.
53. Ibid., 4:26.
54. Ibid., 4:27.
55. Ibid., 4:28.
56. Ibid., 4:29.
57. Ibid., 4:30.
58. Ibid., 4:31.
59. Ibid., 4:32.
60. Ibid., 4:33.
61. Ibid., 4:34.
62. Ibid., 4:35.
63. Ibid., 4:36.
64. Ibid., 4:37.
65. Ibid., 4:38.
66. Ibid., 4:39.
67. Ibid., 4:40.
68. Ibid., 4:41.
69. Ibid., 4:42.
70. Ibid., 4:43.
71. Ibid., 4:44.
72. Ibid., 4:45.
73. Ibid., 4:46.
74. Ibid., 4:47.
75. Ibid., 4:48.
76. Ibid., 4:49.
77. Ibid., 4:50.
78. Ibid., 4:51.
79. Ibid., 4:52.
80. Ibid., 4:53.
81. Ibid., 4:54.
82. Ibid., 4:55.
83. Ibid., 4:56.
84. Ibid., 4:57.
85. Ibid., 4:58.
86. Ibid., 4:59.
87. Ibid., 4:60.
88. Ibid., 4:61.
89. Ibid., 4:62.
90. Ibid., 4:63.
91. Ibid., 4:64.
92. Ibid., 4:65.
93. Ibid., 4:66.
94. Ibid., 4:67.
95. Ibid., 4:68.
96. Ibid., 4:69.
97. Ibid., 4:70.
98. Ibid., 4:71.
99. Ibid., 4:72.
100. Ibid., 4:73.

NOTES TO CHAPTER THREE

1. Louis Ginzberg: On Jewish Law and Lore, p. 79.
2. Tosephta Abodah Zarah 4:3.
3. Mishnah Pesahim 4:3 and Abodah Zarah 1:6.
4. Mishnah Aboda Zarah 1:8.
5. This point of view is presented by Ginzberg, On Jewish Law and Lore, p.85.
6. Tosephta Abodah Zarah 4:6.
7. Tosephta Peah 3:1.
8. Both the views of Rabbi Akiba and Rabbi Jose the Galilean are presented in Tosephta Shekalim 1:7.
9. Tosephta Menahoth 9:1.
10. Tosephta Shekalim 3:12.
11. Tosephta Hullin 1:3.
12. Mishnah Abodah Zarah 2:1.
13. Tosephta Sanhedrin 13:4.
14. Tosephta Erubin 4:5.
15. Tosephta Baba Kamma 10:15.
16. Ibid.
17. Tosephta Abodah Zarah 5:4.
18. Mishnah Abodah Zarah 4:4.
19. Tosephta Moed Katan 2:14.
20. Ibid., 2:15.
21. Mishnah Ketuboth 4:3.
22. Mishnah Bekhoroth 8:1.
23. Tosephta Yebamoth 14:7.
24. Mishnah Gittin 9:8.

Notes to Chapter Three

25. b. Gittin 88b.
26. Tosephta Gittin 5:4,5.
27. Mishnah Gittin 5:8.
28. Tosephta Baba Metzia 2:27.
29. Tosephta Aboda Zara 1:2.
30. Ibid., 1:3.
31. Mishnah Shebiith 4:3 and Mishnah Gittin 5:9.
32. Sifra on Leviticus 18:5.

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