

Modern Models:  
The *Ger Toshav* as the Paradigm for the Non-Jewish Spouse  
in the Modern Reform Synagogue

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To Holly: my editor, my wife, and my friend.

## DIGEST

The increasing number of intermarriages in the United States has forced the American Jewish community to come to terms with the increasing number of non-Jewish spouses involved in synagogue life. A number of answers to this question have been proposed; however, none of them have attempted to provide a uniquely Jewish answer to the question of the status of the non-Jewish spouse in the modern synagogue. It is my intent in this thesis to reevaluate the history and role of this talmudic institution of the *ger toshav* in view of the modern situation.

In Chapter One, I have reviewed all of the classical sources from the Bible to the Minor Tractates in an attempt to define the concept and role of the *ger toshav*, or the resident alien. In the second chapter, I compared the differing definitions of *ger toshav* from the Rabbinic period. The major authorities discussed are: Rashi, Maimonides, Raivad, and Meiri. These authorities not only provided different definitions of *ger toshav*, but different understandings of the reality of this concept. At the end of this chapter there is a more in-depth look at the rights and privileges of a *ger toshav*.

In Chapter Three, I asked, "Are Christians and Muslims idolaters?" This was necessary, because, in order for anyone to qualify as a *ger toshav* they cannot be an idolater. Concerning this question, the rabbinic authorities fell into two separate camps. One

followed the opinion of Maimonides, the other followed the Meiri. This chapter concludes with a discussion of minority rights within the State of Israel.

Chapter Four is concerned solely with the institution of the *ger toshav* in Reform responsa. Chapter Five is my conclusions and an initial discussion of the rights of a *ger toshav* in the modern synagogue.

It was hoped that through this type of study, we in the Reform movement would be better able to provide a Jewish answer to the question of non-Jews in the synagogue. It is my belief that, by providing an answer based on Jewish tradition, it is possible constructively to face the issue of intermarriage in the synagogue.

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## Chapter One

### The Ger Toshav in the Classical Sources

Whenever beginning a study of a rabbinic concept that is based upon earlier sources, it is necessary to investigate the roots of these institutions in the earlier Jewish sources. To fully appreciate and understand who and what the *Ger Toshav* was, one must first understand the development of the concepts of conversion within the early Jewish texts. It is only fitting to begin this search with the earliest of Jewish sources the Bible. It is then necessary to continue by considering the the development of the concept of the *Ger Toshav* in the Mishnah and the Talmuds. The contents of this chapter will be exclusively dedicated to a consideration of these texts.

#### **In the Torah**

The *Ger Toshav* is never explicitly mentioned within the Biblical text. This fact can be explained by the fact that the process of conversion was developing and being refined throughout the Biblical period. The institution of the *Ger Toshav* was not developed until after a clear understanding of conversion had developed.

The Biblical text uses a number of different words to indicate those people who were not part of the "tribe." These terms include: *ger*, *nochri*, *re'a*, *sachir*, *zar*, and *toshav* . Many of these terms have had different meanings during different historical periods. "The history of the development of conversion is complicated somewhat by the fact that certain biblical terms were given new meanings in

the Rabbinic period, reflecting special needs of the later era."<sup>1</sup> It is important to consider the meanings and implications of each of these terms as one considers the development of the concept of the *Ger Toshav*.

The term *nochri* is a term that is almost universally accepted as being a complete outsider from the Israelite community. Michael Guttman defines the *nochri* as a stranger, "who has not given up his original home."<sup>2</sup> In modern terms the *nochri* is temporary resident, a traveling salesman, or a foreign national living abroad. The *nochri* had no interest in being fully integrated into his host society. The *nochri* is not subject to the law of the land, the release years, or restrictions regarding monetary matters.<sup>3</sup> "To conclude this matter, it is possible to say that the *nochri* is outside of Israelite law, there are no obligations for him or rights from me, but his situation changes if he becomes a *ger*."<sup>4</sup> He persists in keeping, politically and socially, his former status.<sup>5</sup> A *nochri* is an outsider who wishes to remain on the outside.

The meanings of the terms *re'a* and *zar* are not as clear as that of *nochri*. These terms, too, seem to indicate one who is completely outside the Israelite fold. *Zar*, like *nochri*, refers to a non-Israelite. The *zar*, however, is even further removed, because he is seen not only as different, but as hostile.<sup>6</sup> "*Re'a* is a non-Jew who is living side by side with Jews."<sup>7</sup> The text of Exodus 11:2 is the best example of the *re'a* being a non-Jew. The verse says: "Tell the people to borrow, each man from his neighbor (רֵעֵהוּ) and each woman from hers, objects of silver and gold." The neighbor in this verse cannot be understood as an Israelite. Rather, it must be understood

as the Egyptians who either lived or worked among the Israelites.<sup>8</sup> The *re'a* like the *nochri* maintains, and wishes to maintain, a distinction from the Jews. There are a number of times where *re'a* should be understood as a reference to another Israelite.<sup>9</sup> However, these few instances are not pertinent to this study. Thus, it is possible to show that the *re'a* refers to someone completely separated from Israelite tradition or a member of the Israelite tribes. The different meanings of *re'a* might reflect changes in its understanding and definition over time.

The next term that need to be considered is *ger*. This term must be understood developmentally in relation to text of the Torah and to the documentary hypothesis. The term *ger* seems to have experienced three separate and distinct stages of development. Theophile Meek, in his article "The Translation of *Ger* in the Hexateuch and its Bearing on the Documentary Hypothesis," notes:

"As is well known, a word does not necessarily mean the same wherever it is found. In different contexts the same word may have decidedly different meanings, and in the course of time a word may change quite radically and in its later usage have a sense very different from what it had originally."<sup>10</sup>

Further evidence for the tripart development of the understanding of *ger* in the Bible is provided by the Septuagint. The differing meanings of *ger* are, for the most part, translated appropriately within the Greek text.<sup>11</sup> These translators were unaware of the documentary hypothesis, yet they were able to understand and differentiate the various meanings the word *ger* covered.



In its oldest stage *ger* means "immigrant." As immigrant, the *ger*, was one who was away from his family and continued to exist under the protection of the people among whom he was living.<sup>12</sup> "He is an alien and so he does not enjoy the privileges of full membership in the tribe; but he does have certain privileges."<sup>13</sup> The status and rights of the *ger* were dependent upon those he lived with. References to *ger* as "immigrant" appear in the J and E documents of the Bible.<sup>14</sup> Examples of this stage Genesis 15:13, Exodus 2:22, and Exodus 18:3. In all three of these instances the Israelite is the foreigner or the immigrant into another population. For example, in Genesis 23:4, Abraham refers to himself using the term *ger*. The text says: "I am a resident alien (גר-ותושב) among you; sell me a burial site among you that I may remove my dead for burial." Abraham had moved into Hittite territory and as an immigrant fell under their authority and rule, despite the fact that he had not cut off ties with his native land. Exodus 2:22 says: "She bore a son whom he named Gershom, for he said, 'I have been a stranger in a foreign land.' " "Stranger," in the Hebrew is *ger*.

In later J and E documents, and in some D documents, *ger* no longer refers to an Israelite immigrant, rather it refers to the indigenous population of the land of Caanan after the conquest by the Israelites.<sup>15</sup> These texts, which are believed to be somewhat later, now speak of the Israelites as the majority people and those who lived with them are given the status of *ger*.<sup>16</sup> The biblical text does give us some information concerning this new understanding of the *ger* which can be inferred from the text. First, we must understand the *ger* as inferior to the "native" Israelite population.

This is demonstrated by the use of a possessive ending in verses like Exodus 20:10 and Deuteronomy 5:14.<sup>17</sup> Second, it is possible to infer that the *ger* was subordinate according to biblical law. We see this when *ger* is included in the category of children, orphans, and widows.<sup>18</sup> Third, the Gibeonites, a foreign nation who had a treaty agreement to live in Israelite territory, are said to be wood gathers and water-drawers (Deut. 29:10). The fact that the roles filled by the Gibeonites is explicitly stated gives us the understanding that *gerim*, in general, were seen as manual laborers. Within the biblical hierarchy, this was certainly seen as an inferior role. It becomes apparent in the J, E, and some early D documents, that the *ger* still existed, but no longer as a subordinate Israelite, but as the native nation now subject to Israelite authority.

This new understanding of the *ger* changes the meaning of *ger* from immigrant to that of resident alien. Rosenbloom says:

The Canaanites were corvee-workers par excellence and were therefore designated as citizens of a lower rank. [Johannes] Pedersen [a biblical historian] sees these reduced Canaanites as *gerim*, or sojourners. *Ger* is therefore the term used to designate anyone living in association with a community which originally was not his own. . . They then became closely, but never wholly assimilated.<sup>19</sup>

The inferiority in status, the association/dependence on the Israelite community, and their role as manual laborers were all discussed above. Thus, we can define the *ger*, for this period's understanding, as, "the stranger who lives in your midst, meaning: on Jewish land, in Jewish surroundings, in a Jewish atmosphere; he has not adopted

the Jewish faith but he has acquired Jewish customs, values and friends."<sup>20</sup>

A new understanding of *ger* emerges in the work of later biblical redactors. It is during the time period of the authors of the Holiness code and Priestly documents that *ger* begins to take on the meaning of a naturalized alien.<sup>21</sup> These redactors totally identified with Israel as their land. They, also, began to use the word *Ezrach* (אֶזְרָח) to indicate a native born Israelite. Here *ger*, who was set up in apposition to these native born Israelites, is first understood as a proselyte.<sup>22</sup> However, it is important to note that conversion is not yet a religious rite. It is these redactors who created the institution of conversion. Rosenbloom notes that it is during this period that conversion came into being, because after the Babylonian exile affiliation with the Jewish people became strictly religious--no longer a political affiliation.<sup>23</sup> It is possible to see the equality granted to the proselyte within the biblical text. Leviticus 18:26 says: "But you must keep My laws and My rules, and you must not do any of those abhorrent things, neither the citizen nor the stranger who resides among you." Citizen is *ezrach* and the stranger is the *ger*. However, it is possible to see that the *ger* in this verse is actually a proselyte, because a simple resident or stranger would not be subject to following God's laws and rules--they would only be subject to the seven Noachite laws. Thus, the stranger in the verse must be a naturalized stranger, one who has accepted God and the laws of the Torah.

Since these redactors transformed the meaning of *ger*, it became necessary for them to formulate another word to denote the

pre-proslyte status *ger* had. The H and P redactors transferred the meaning of *ger*, as resident alien, to the word *toshav*. In the Deuteronomist's documents, the *toshav* was a serf; someone tied to the land. "If a fellow countryman of yours fails, and you force on him the status of a resident alien or a serf(גר ותושב), and he lives under you, take no interest from him in money or in kind."<sup>24</sup> The *toshav* was a person of inferior status, not an Israelite; as evidenced by the second half of the verse. If he was a non-Israelite *toshav*, then it would be permissible to exact interest from him. Thus, it is apparent that the *ger* of the J, E, and D documents becomes the *toshav* of the later H and P documents. Therefore, it would seem then, that *toshav* was an alternate term for *ger* during the latter period of the bible.

When the term *ger* appeared in apposition to *toshav* it appears that this indicates a somewhat inferior status to that of the proselyte *ger*. The book of Numbers says: "These six cities shall serve the Israelites and the resident aliens among them for refuge, so that anyone who kills a person unintentionally may flee there." (Num. 35:15) The Hebrew uses three terms: *Yisra'el*, *ger*, and *toshav*; these last two terms are understood together as resident alien. I believe that it is these instances, when *ger* and *toshav* were used together that became the foundation for the status that came to be known as the *ger toshav*. This idea is supported by *Makkot* 9a where a verse which uses גר ותושב is applied to the *ger toshav*.

## In the Prophets and Writings

The concepts of the *ger toshav* and *gerim* within the Prophets and the Writings are not a major concerns. There is one very clear reference to proselytes in the latter two-thirds of the *Tanakh*. This reference is in Ezekiel. In this instance the prophet is speaking to the people. He says:

"You shall allot it [the land] as a heritage for yourselves and for the stranger [*gerim* ] who resides among you, who have begotten children among you. You shall treat them as Israelite citizens; they shall receive allotments along with you among the tribes of Israel." (Ezekiel 47:22)

Ezekiel's understanding of strangers reflects the priestly conception of *ger*, because if the Israelites were expected to treat these "strangers" as equal, they must have been naturalized in some way. In other words, they are converts. It is important to note that the conversion process here is not a religious one, rather it requires the stranger to throw their lot in with the plight of the Israelite people. Lawrence Schiffman, in his book Who Was a Jew?, comments: "Y. Kaufman is probably correct in assuming that there could not have been an institution for religious conversion at this time [approximately the time of Ezra] . . . Conversion was originally accomplished by attachment to the land and collective fate of the Jewish people."<sup>25</sup> The fact that Ezekiel was addressing, in this verse, the Jews who from the Babylonian exile appears to make sense according to the critical dating of the book.<sup>26</sup> Thus, it is possible to

see that the Priestly understanding of *ger* continued through the time of Ezekiel.

Besides this references to specific types of *gerim*, there are numerous references to a group of people who may be called "God-Fearers," or "Those who have attached themselves to the Lord." This phrase is unique to the Prophets and the Writings, because these constructs do not exist in the Torah. For example, Isaiah says: "Let not the foreigner say, who has attached himself to the Lord, 'the Lord will keep me apart from his people.'; and let not the eunuch say, 'I am a withered tree.'" (Isaiah 56:3) This group is also clearly mentioned in the book of Ezra. "The children of Israel who had returned from exile, together with all who joined them in separating themselves from the uncleanness of the nations of the land to worship the Lord God of Israel, ate of it." (Ezra 6:21)

These God-fearers appear to be people who wished to be associated with the ritualistic/religious aspects of Judaism--they did not desire any sort of status. "Apparently, these semi-proselytes did not desire legal status within the Jewish community."<sup>27</sup> They choose only to do what they wanted and they were not in any way expected to repudiate, or reject, their original backgrounds.

The appearance of these God-fearers appears to be a later historical development, because they seem to be the most prevalent during the Hellenistic period, beginning in 330 B.C.E. "Such God-fearers or semi-proselytes were found throughout the Hellenistic world in substantial numbers, and it may be that the Jewish community actually encouraged this behavior especially in the Diaspora."<sup>28</sup>

## In the New Testament

Although the New Testament is outside the focus of this thesis, it would be irresponsible not to briefly discuss the God-fearers. These appear to be people in a similar situation as above. These are non-Jews who have been attracted by various aspects of Judaism. A pair of New Testament scholars note: "Judaism bore witness to a high sense of morality and attracted proselytes and 'God-fearers.'"<sup>29</sup>

The reason these God-fearers appear in the New Testament is that they were one of the main targets for Jewish-Christian and Gentile Christian missionaries. The attraction of Christianity to these God-fearers was the fact that they could maintain a "Jewish" morality without having to undergo circumcision or observing the dietary laws.<sup>30</sup> Some of the Pauline epistles and Paul's actions, as recalled in Acts of the Apostles, are directed in part to the God-fearers. In Acts there is an example of the type of speech Paul would have presented to a Jewish/God-fearer audience.<sup>31</sup> "So Paul stood up, and motioning with his hand said: 'Men of Israel, and you that fear God, listen. . . . Brethren, sons of the family of Abraham, and those among you that fear God, to us has been sent the message of salvation.'" (Acts 13:16,26) In both of these verses Paul recognizes the Jews and the God-fearers; thus indicating that both groups were sizeable and regularly found in Paul's audience.

The importance of this in this study is to show that outside sources confirm the existence of these semi-proselytes during the first few centuries of this era. This indicates that when the Tannaim

discuss the status of the *ger toshav*, they are not dealing with something foreign or unheard of in their world.

### In the Mishnah and Tosefta

By the early parts of the Common Era, the process of conversion to Judaism had become a more formalized ritual and concept. "Conversion . . . became a highly formalized and articulated ritual during the rabbinic period. . . Jewish leaders saw the Jewish people as a holy enclave, the carriers of a divine message. The people and the message were to be kept pure at all costs in the face of dramatic political and cultural threats."<sup>32</sup> It is during the period of the Mishnah that the concept of the *ger toshav* begins to take shape.

The Mishnah and Tosefta do not provide a large amount of information about the *ger toshav*, but they do begin to use the term, as well as, define certain limitations. There appears to have been a change that required a redefinition of certain terms. Since there was a change in the status of *ger* from a civil to a religious understanding, it became necessary for the rabbis to develop a distinctive term for the resident alien; this term was *ger toshav*.<sup>33</sup> We are told that the *ger toshav* may eat carrion, does not contract ritual impurity due to flux (Tosefta Zavim 2:1) or leprosy (Negaim 3:1), he may not live in Jerusalem (Tosefta Negaim 6:4), he may be charged usury (Baba Metziah 5:6), and if he is killed by a Jew exile is not required, but a *ger toshav* who kills a *ger toshav* does require exile (Makkoth 2:3). However, there does not appear to be any agreement on an exact definition. Bernard Bamberger makes an interesting observation.



"The law regarding the *ger toshav* describes the way in which the rabbis would have liked to regulate the conduct of pagans dwelling in Palestine, if they had the power to do so."<sup>34</sup> According to George Foot Moore, "Whatever definitions and rules the rabbis made applied only to the land of Israel and to times when it lay in the power of the Jews to determine upon what conditions aliens should be allowed to establish residence among them."<sup>35</sup> Both quotes agree that the laws and definitions concerning the *ger toshav* were only to be enforced during a time of Jewish ascendancy. For the rabbis in the Mishnah and Tosephta, this could have been up to a hundred and seventy years earlier. If this were the case then the laws and definition provided by the rabbis are completely theoretical in nature. On this point, both Bamberger and Moore agree. Despite this seemingly apparent fact the rabbis of the Talmuds continue to deal with and define the status of the *ger toshav*.

### In the Jerusalem Talmud

By the time of the Palestinian Talmud, the amount of literature discussing the *ger toshav* had grown. In tractate Yebamot there is a fairly lengthy discourse on the nature of the *ger toshav*.

R. Shmuel bar Bar Hiyah bar Yehuda [and] R. Hannina said in the name of Rabbi: "A resident alien needs to accept them [the commandments] despite the fact that he eats forbidden meats." . . . There is a Tanna who taught: "We do not accept a *ger toshav* until he has accepted all the mitzvot that are written in the Torah." There is a[nother] Tanna who taught: "We do not accept a *ger toshav* until he has repented for his idolatry." Rabbi

came in the name of R. Hiyah bar Ashi: "We do not accept him [the *ger toshav* ] until he has repented for his idolatry like a gentile." . . . It is taught concerning a *ger toshav* [must accept] the negative commandments, this is the opinion of R. Yossi bar R. Yoda. R. Yoda says: "A *ger toshav* on Shabbat is like an Israelite on a holiday. Just as an Israelite on a holiday may bake and cook and he is forbidden from any kind of work, so too, is a *ger toshav* like this on Shabbat." R. Yossi says: "A *ger toshav* on Shabbat is like an Israelite during the intermediary days of a festival; just as an Israelite during the intermediary days of a festival can gather [food] from the ground and is forbidden from all types of work, so too, is a *ger toshav* [like this] on Shabbat." R. Shimon says: "A *ger toshav* on Shabbat is like an Israelite on the regular days of the year. Just as an Israelite during the year plows, seeds, and harvests, so too, a *ger toshav* acts [thusly] on Shabbat." R. Ada, R. Hamuna, and R. Ada bar Ahuva [said] in the name of Rav: "The law is according to R. Shimon."<sup>36</sup>

The first part of this discussion centers on what is required by Judaism for this person to be considered a *ger toshav*. One opinion is that the potential *ger toshav* must accept all the commandments, like a *ger tzedek*, but is still permitted to eat forbidden meats. Another authority suggests that simply by rejecting his pagan past does this person become a *ger toshav*. The second portion of the discussion centers around the status of the *ger toshav*. Three differing opinions are offered. In each case the *ger toshav* is of a lesser status than the Israelite or the full convert. This discussion is concluded by Rav giving his halachic opinion stating that a *ger toshav* on Shabbat is equivalent to an Israelite on a regular day. This decision places the *ger toshav* the farthest from the believing

Israelite community. We learn that the Tannaim were in serious dispute concerning the very definition of *ger toshav*. Obviously, this institution had long since passed out of existence.

Before the citation from Yebamot above, there is another less complimentary position is taken by the text. It says: "A resident alien, behold he is like a gentile in every way." (P. Tal. Yebamot 8d) This opinion reflected by Moore: "It may, therefore, be said at the outset that Jewish law knows no semi-proselytes, nor any other kind of proselytes than such as have, by circumcision and baptism, not only become members of the Jewish church."<sup>37</sup> According to Moore and this unattributed statement in the Talmud, the *ger toshav* is outside of the Israelite community, and has no status better than that of a normal gentile, regardless of any measures taken by the *ger toshav* to move closer to the Jewish people.

There is a troublesome reference to the *ger toshav* that needs to be mentioned. It is from tractate Baba Metziah: "It is written, 'You shall not oppress you neighbor. This is to exclude the *ger toshav*.'" (P. Tal. B.M. 12b) The reason this citation is troublesome is that it seems to allow the Jews to oppress the *ger toshav*. This is very difficult to understand when in other instances the *ger toshav* is considered one of the righteous of the gentile nations. How can the Talmud be allowing for the oppression of another people, let alone a group who, at least politically, is attempting to bring themselves closer to the Jewish people? The text does not supply a satisfactory answer and either can I.

## In the Babylonian Talmud

The Babylonian Talmud provides the most information about the *ger toshav*. The Encyclopedia Talmudit defines a *ger toshav* as, "a non-Jew who has accepted particular commandments and because of this he is permitted to live amongst us in the land of Israel."<sup>38</sup> This definition is useful as a guide, but in its generality it fails to recall the specific definitions found in the Talmud. First, one must consider the Talmudic definition of *ger toshav*, then, the laws, responsibilities, and rights of the *ger toshav*. Finally, other random comments made about the *ger toshav* need to be considered.

In tractate *Avodah Zarah* the rabbis, in a baraita (= Tannaitic, same as Jerusalem Talmud passage), attempt to define *ger toshav*. The text reads:

Who is a *ger toshav* ? Any [gentile] who takes upon himself in the presence of three members [of the court] (in Hebrew: חברים) not to worship idols.<sup>39</sup> Such is the statement of R. Meir, but the Sages declare: Any [gentile] who takes upon himself the seven precepts which the sons of Noah undertook. Still others maintain: These do not come within the category of a *ger toshav* ; but who is a *ger toshav* ? A proselyte who eats animals not ritually slaughtered; i.e., he took upon himself to observe all the precepts mentioned in the Torah apart from the prohibition of animals not ritually slaughtered. We may leave such a man alone with wine, but we may not deposit wine in his charge even in a city where the majority of residents are Israelites. We may, however, leave him alone with wine even in a city where the majority of residents are heathens; and his wine is like

his oil. . . . but in every other respect he is like a heathen.  
(A.Z. 64b)<sup>40</sup>

Thus, three possible definitions for *ger toshav* emerge. Rabbi Meir requires the prospective *ger toshav* to declare his repudiation of his previous pagan ways. The Sages require the rejection of paganism, and that the *ger toshav* to adhere to the other six Noachite laws, too. Finally, the unnamed "other authorities" hold that the only separation between a *ger tzedek*, a righteous proselyte, and a *ger toshav* is the fact that the latter has not yet undertaken to eat only those meats that are ritually slaughtered. Although these definitions vary widely, there is a common denominator shared amongst them that should not be ignored. All three definitions expect the *ger toshav* to reject idolatry. This rejection is of great importance to the Talmudic authorities, because it affects our relationships, both social and business, with the *ger toshav*.

The requirement that a prospective *ger toshav* must present himself before a Jewish court, is discussed on the following page of Gemara. It says:

"Rab Juda sent a present to Abidarna on a heathen feast day, saying, 'I know that he does not worship idols.' Rabbi Yoseph said to him, 'But it has been taught: Who is a *ger toshav* ? Any [gentile] who takes upon himself not to worship idols before three members [of the court] (in Hebrew: חברים). [Rab Yehuda] replied, 'This teaching only applies concerning sustaining him.'" (A.Z. 64b-65a)

Thus, the purpose of the court visit concerns the Israelites' responsibilities concerning the *ger toshav*, not with the ability of the prospective *ger toshav* to change his status. Therefore, it is possible

to reason that one could become a *ger toshav*, according to the opinion of Rabbi Meir and the other Tannaim, as interpreted by Rabbi Yehuda, an Amora, by simply rejecting idolatry. This would seem to confer the status without obligating the Israelites as far as sustaining him. However, this baraita could also be interpreted to mean that Rabbi Meir, the Sages, and the other authorities all require the *ger toshav* to appear before a *beit din*.

There are three additional comments made in other tractates that shed some light on the rabbis' feelings towards idolatry and those who reject it. In *Horayot* it says: "All the commandments of the Torah were compared to the prohibition against idolatry." (*Horayot* 8a) The rabbis felt that violation of the prohibition against idolatry, in this case by a Jew, is very grave. A non-Jew who rejected this idolatry may have gained favor in the eyes of the rabbis. To support this supposition, another comment in *Hullin* says: "Grave is idolatry in that he who denies it is as if he accepts the whole Torah." (*Hullin* 5a) Unlike the statement from *Horayot*, it is reasonable to assume that this statement is referring to a non-Jew, because a Jew would already have accepted Torah in its entirety. Finally, a statement in *Megillah* says something very interesting. "For anyone who repudiated idolatry is called 'a Jew,' as it is written, 'There are certain Jews' etc. {Dan. 3:12}" (*Megillah* 13a) Although this statement should not be taken at face value, especially in the light of the later commentators, it does tell us how highly the rabbis viewed one who rejected idolatry. This view is also clear from the material cited from *Avodah Zarah* 64b-65a. Rabbi Meir, the most

lenient of the Tannaim in the definition of *ger toshav*, at least requires him to reject idolatry.

Having attempted to define *ger toshav*, it is then necessary to discuss the status of the *ger toshav* in relation to Judaism and other gentiles. Five areas of concern emerge from the text: the right to be judged under Israelite civil law, the ability to live within the borders of the land of Israel, protection of the *ger toshav* as a laborer, his ability to work on the Sabbath, and lending and borrowing money on interest. According to *Baba Kama* 113b, a *ger toshav* may be judged under Israelite law. The editors of the Soncino translation of the Talmud note, "a resident alien, of a different race and of a different religion, since he respects the covenant of the law made by God with all the children of Noah . . . he is a citizen enjoying all the rights and privileges of civil law."<sup>41</sup> The *ger toshav*, here conceived of as a Noachite, may be judged according to Israelite civil law, because he accepts God's covenant with Noah. Earlier in *Baba Kama* there is a statement which says: "God beheld the seven commandments which were accepted by all the descendants of Noah, but since they did not observe them, He [God] rose up and declared them to be outside the protection of the civil law of Israel." (B.K. 38a) If the *ger toshav* does observe the Noachite commandments then it appears that he falls within the protection of Israelite civil law. There is one problem with this acceptance. These texts make the assumption that the *ger toshav* is defined according to the opinion of the Sages; this is not definitively concluded in the text quoted above. However, assuming the definition of the Sages, the *ger toshav* does fall under Israelite civil protection.

An example of the way in which the *ger toshav* falls under Israelite civil law, at least in part, is in reference to his rights as a wage earner. In the case of an Israelite worker two biblical laws apply to his hire and payment: first, "In his day you shall give him his hire," (Deut. 24:15) and second, "The wages of a hired servant shall not abide with you all night until the morning." (Lev. 19:13) As part of the discussion of these laws The Mishnah *Baba Metziah* discusses their relation to the *ger toshav*. The text says: "The law 'In his day you shall give him his hire,' applies also to the resident alien, but not the law 'The wages of a hired servant shall not abide with you all night until the morning.'" (B.M. 9:12) This, according to the Talmud, is the opinion of the Tanna Rabbi Yose b. Yehudah, who said: "In respect to a resident alien one is subject to [the law], 'In his day you shall give him his hire'; but not that of, 'You shall not keep it all night.'" (B.M. 111b) Rabbi Yose's statement is followed by a discussion of whether or not the *ger toshav* should be included in both laws or not. The outcome of this discussion is not overly important, what is important is the fact that, at least in some way, the *ger toshav* is protected by Israelite civil law because of his status.

If the *ger toshav* is translated as "resident alien," then he must live in the confines of the Jewish state. The complete gentile was feared lest he turn Jews away from God and towards idolatry. The *ger toshav*, however, must reject idolatry, and therefore, is not considered as great a threat as a gentile. A baraita in *Gittin* says:



"For it has been written: 'They shall not dwell in your land lest they make you sin against me, etc.' (Ex.23:33) Shall I say that the text speaks of a heathen who has undertaken not to practice idolatry? [This cannot be, because] it is written, 'You shall not deliver unto his master a servant which is escaped from his master unto you' (Deut. 23:16) What is to be done with him? 'He shall dwell with you, etc.'" (Gittin 45a)<sup>42</sup>

There are no other non-Jews who reject idolatry within the corpus of Jewish texts; therefore, it is reasonable to assume that the heathen in the citation from Gittin is the *ger toshav*. Other instances that show that the *ger toshav* has residency right in Israel, is a discussion of the reference in the biblical phrase, "within your gates." The Talmud understands this to be one who eats unclean foods. (B.M. 111b) Since, at least in theory, no other gentiles are allowed to dwell in the land, the one who eats the unclean meat must be a non-Jew with the status of a *ger toshav*. The resident Ishmaelite and Gibeonite have the status of a *ger toshav* and the right to dwell in the land.<sup>43</sup> However, as mentioned in the Mishnah, the *ger toshav* may not live within the city of Jerusalem.

One way in which the *ger toshav* is different from an Israelite under Jewish law is in terms of the observance of the Sabbath. Since the *ger toshav* is not a Jew the laws concerning the Shabbat are not applied to him. The question is then how is the "stranger who is within you settlements," (Ex. 20.10) understood in the fourth commandment? Not only this but the Talmud quotes, in the name of Rish Lakish, the following: "An idolator who keeps a Sabbath is liable to death." (Sanh. 58b) The apparent contradiction between these two citations can be easily answered. In tractate *Keritot* it says:

"A resident alien may do work for himself on the Sabbath in the same measure as an Israelite may do on the intermediate days of the festivals. Rabbi Akiva says: 'As an Israelite on the festival.' Rabbi Yose says: 'A resident alien may do work for himself on Shabbat in the same measure as an Israelite on weekdays.' Rabbi Shimon says: 'Both a resident alien and a male or female sojourning heathen slave may do work for themselves in the same measure as an Israelite may do on weekdays.' (Keritot 9a)

Because the Torah commands only Jews to keep the Sabbath day, he may do things for himself. A *ger toshav* may perform work for himself on the Sabbath, however, an Israelite is forbidden from having a *ger toshav* do work on his behalf on the Sabbath. If the *ger toshav* chooses to do something for an Israelite, without being asked, then this is permitted by the rabbis.<sup>44</sup>

Another difference is the fact that a *ger toshav* can be lent money on interest. "One may borrow from and lend [money] to them [gentiles] on interest; the same applies to the resident alien. Rav Nachman ben Isaac replied: 'Is it not written: Take not usury of them?' 'of him' is written [meaning] of an Israelite." (B.M. 71a) Here, the *ger toshav* is considered equal to any other non-Jew, despite the difference in status.

Having defined *ger toshav* and his status is, it is then necessary to examine when the institution of the *ger toshav* may exist. According to the Talmud one may only be a *ger toshav* at such times as the Jubilee is celebrated.

"Rabbi Shimon Ben Eleazer said: 'The law concerning the resident aline applies only at the time when the law of

the Jubilee applies.' Said Bibi, 'What is the reason?' 'Because it is inferred from the analogous 'well.' Here it is written: 'because it is well for him with you,' (Deut. 15:16) and there it is written: 'where it is good [well] for him, do not wrong him.(Deut. 23:17)" (Arakin 29a)

Through the use of this *gezerah shavah* the rabbis determine that a *ger toshav* should only be accepted at a time when the Jubilee year was practiced. The Jubilee is only celebrated when all of Israel is free upon the land. The Jubilee may not have been celebrated since the exile in 587 B.C.E, because two and a half tribes remained in exile upon Ezra's return.<sup>45</sup> David Novak comments: "Hence [Arakin 29a] we see that the institution of the *ger toshav*, namely the law-abiding gentile, having an official legal status in the Jewish polity, only has legal force when the whole people of Israel is in full possession of its own land."<sup>46</sup> "In situations of less than full Jewish sovereignty, the *ger toshav* did not constitute a complete political status because the Noahide laws which defined that status were not fully enforceable."<sup>47</sup> This forces us to ask the question did the *ger toshav* exist, in reality. The majority of modern scholars do not believe it ever existed.

William Braude theorizes that the *ger toshav* did not exist in the time of the rabbis. He says: "Second and third century Palestinian teachers (=Tannaim) wrangle in several places on the definition of the resident alien. . . Such discussions bears an unmistakable air of unreality. Very likely the *ger toshav* disappeared as a legal entity even before the first century."<sup>48</sup> Yehezkel Cohen agrees with Braude's conclusions when he says: "The Tannaim do not agree among themselves as to the definition of a *ger*

*toshav* (inhabitant proselyte), and the mitzvot which he has to fulfill. In any case, this halakhic category does not seem to have actually existed during the Second Temple period or afterwards."<sup>49</sup> Moore believes that the legislation about the *ger toshav* is academic rather than of a practical nature.<sup>50</sup> It will only apply in a future golden age when Israel, in its entirety, once again lives in the land. Bamberger holds: "the law regarding the *ger toshav* describes the way in which the rabbis would have liked to regulate the conduct of pagans dwelling in Palestine, if they had the power to do so. This legislation is theoretical, and proved by the fact that the Tannaim disagree completely as to the requirements make of a legitimate *ger toshav*."<sup>51</sup> Thus, modern scholars seem to cast doubt on the reality of *ger toshav* as a political status during the time of the Second Temple--let alone the Talmud. This may be true, but its continuance as a concept throughout Jewish life cannot be denied.

There are a few miscellaneous comments made by the Talmud concerning the *ger toshav* that should be mentioned. First, there are two references to individuals who were considered, by the rabbis, *gerei toshavim*.: Naaman and Araunah.<sup>52</sup> This is noteworthy because the rabbis, at least theoretically, were willing to confer the status of *ger toshav* upon deserving gentiles.

Second, a comment in *Hullin*, by Rabbi Yochanan is very important for the thesis under investigation. He says: "The gentiles outside of the land [land of Israel] are not idolaters; they only continue the customs of their ancestors." (*Hullin* 13b) If what Rabbi Yochanan said is true then the Christians and Moslems of today are not to be considered idolaters.

### In the Minor Tractates

Besides the sixty-three standard tractates of the Babylonian Talmud, there are a number of smaller tractates. These tractates, which are known as the minor tractates, were, according to some scholars, composed in geonic times; however, more recent scholarship assigns an earlier date to them.<sup>53</sup> "Their appellation as minor or smaller tractates does not necessarily refer to their size, but rather to the fact that they were not canonized."<sup>54</sup> In standard editions of the Talmud these tractates are added to the end of the fourth order, *Nezikin*. "They consist of material which is only found in part in the existing tractates, and seven brief treatises which collate all the material scattered throughout the Talmud on the specific topics with which they deal."<sup>55</sup> One of the seven treatises, *Gerim*, offer information on the *ger toshav*.

Chapter three of *Gerim*, supplies the greatest amount of information concerning the *ger toshav*. Mishnah One attempts to define the *ger toshav*. It says: "What is a 'resident proselyte'? Whoever undertakes to abstain from idolatry, in the view of R. Meir; R. Judah said: Whoever undertakes not to eat flesh that has not been ritually slaughtered." (*Gerim*, 3:1) This statement provides us with some interesting information. First, the opinion of R. Meir is different here from his position in *Avodah Zarah* 64b, quoted above. According to *Gerim*, R. Meir only requires the *ger toshav* to reject his idolatry, the reader is not given the impression that here, R. Meir requires an appearance before a *beit din*. This is further evidence that R. Meir did not include the requirement of the *beit din* in his

definition of the *ger toshav* in *Avodah Zarah*.<sup>56</sup> Second, an opinion attributed to R. Judah appears that appears nowhere else in the Talmud.<sup>57</sup> It is also interesting to note that the opinion of R. Judah here, is in direct contradiction to the opinion of the "other authorities," cited above. The "other authorities" say that the *ger toshav* is one who has accepted everything except the eating of ritually slaughtered animals. R. Judah, here, holds that the only requirement for the *ger toshav* is that he agrees to eat ritually slaughtered animals. One explanation for this is that the opinion of R. Judah was to represent the opinion of the "other authorities." When the collating occurred there was an error in transmission of his opinion. In his commentary to *Gerim*, the author of נחלת יעקב contends that R. Judah's opinion, is in fact the opinion of the "other authorities."<sup>58</sup> However, his commentary was written after the fact and, although convincing, cannot be conclusively proven. Another possibility, the opinion of R. Judah may have represented an opinion which was edited out of the baraita in *Avodah Zarah*. However, it is impossible to know for certain, because we have no further information with which to work.

"His [a *ger toshav* 's] spittle, his seat, his couch and his urine are unclean; his bread, his oil and his wine are clean. The prohibitions: 'You shall not do him wrong,' (Lev. 19:33), 'you shall not oppress,' (Deut. 24:14), and 'the wages of a hired servant shall not abide with you all night,' (Lev. 19:13) apply to him." (*Gerim*, 3:2) Here too, there are inconsistencies between the text and the Talmud cited above. In the second half of this Mishnah, it says that the law "the wages of a hired servant shall not abide with you all night," applies

to the *ger toshav* ; however, earlier it was discussed that this law does not apply to the *ger toshav*. (B.M. 111a & b)

The third mishnah says: "We do not marry him [to a Jewess] or take to wife women from him. We do not lend to him or borrow from him on interest." (*Gerim*, 3:3) Here too, the information provided by *Gerim* is in direct contradiction to the Talmud. As we learned in *Baba Metziah*, "One may borrow from and lend [money] to them [gentiles] on interest; the same applies to the resident alien." (B.M. 71a) In one we are told that we may lend and borrow money from a *ger toshav* on interest, and in another we are not.

The fourth mishnah is the only one which does not pose a problem. It says: "We do not settle him on the frontier on in an unhealthy district, but in a pleasant district in the center of the Land of Israel, where he can find scope for his occupation, as it is stated, 'With you he will dwell, in your midst, in a place he shall choose, in one of your gates, you shall not wrong him.' (Deut. 23:17) This ensures that the *ger toshav* is allowed to truly live among the Israelite population, and is not treated, legally, like a second class citizen.

The information provided in *Gerim*, I believe, should be accepted cautiously. Facts seem to be inconsistent with Talmudic sources, if not in direct contradiction to them. The authors of the minor tractates may have made these changes on purpose, but their reasons are not apparent. Perhaps this information represents differing traditions than those recorded in the Bavli. Regardless, this text is useful, because it shows us that the gaonim felt that it would

be inappropriate to leave the *ger toshav* out of the collection of materials on *gerim*.

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- <sup>1</sup>Joseph B. Rosenbloom, Conversion to Judaism (Cincinnati: HUC Press, 1978) p. 50.
- <sup>2</sup>Michael Guttman, "The Term 'Foreigner' Historically Considered," HUCA, vol. 3 (1926), p. 1.
- <sup>3</sup>Guttman, p. 19.
- <sup>4</sup>Mordechai Zar-Kavod, "The *Nochri* and the *Ger* in the *Mikrah*," Oz L'David: A Collection of Essays in Honor of David Ben-Gurion (Jerusalem: 1964), p. 553.
- <sup>5</sup>Guttman, p. 1.
- <sup>6</sup>Elie Wiesel, The Stranger in the Bible, (Cincinnati: HUC-JIR, 1981) p. 28.
- <sup>7</sup>Ernst Simon, "The Neighbor Whom We Shall Love," in Modern Jewish Ethics, ed. M. Fox (Columbus: Ohio State University Press, 1975), p. 30.
- <sup>8</sup>Simon, pp. 29-30.
- <sup>9</sup>See Lev. 19:17 and Ex.21:35, et. al., for examples.
- <sup>10</sup>Theophile J. Meek, "The Translation of *Ger* in the Hexateuch and its Bearing on the Documentary Hypothesis," Journal of Biblical Literature, vol. 111 (June 1930), p. 172.
- <sup>11</sup>Meek, p. 178.
- <sup>12</sup>Rosenbloom, p. 18.
- <sup>13</sup>Meek, p. 172.
- <sup>14</sup>Meek, p. 172.
- <sup>15</sup>Meek, p. 173.
- <sup>16</sup>For examples of this see Ex. 20:10, 22:20 and Deut. 1:16, 5:14 et. al.
- <sup>17</sup>Meek, p. 173.
- <sup>18</sup>Meek, p. 173.
- <sup>19</sup>Rosenbloom, p. 7.
- <sup>20</sup>Wiesel, p. 27.
- <sup>21</sup>Meek, p. 174.
- <sup>22</sup>Meek, p. 174.
- <sup>23</sup>Rosenbloom, p. 21.
- <sup>24</sup>Lev. 25:35, translation by Meek, p. 175.
- <sup>25</sup>Lawrence H. Schiffman, Who Was a Jew? (Hoboken: Ktav Pub. House, 1985), p. 15.
- <sup>26</sup>J. Kenneth Kuntz, The People of Ancient Israel (New York: Harper and Row Publishers, 1974), pp. 362-3.
- <sup>27</sup>Schiffman, p. 38.
- <sup>28</sup>Schiffman, p. 37.
- <sup>29</sup>Norman Perrin and Dennis S. Duling, The New Testament: An Introduction (New York: Harcourt, Brace, Jovanovich, Inc., 1982), p. 35
- <sup>30</sup>Perrin, p. 138.
- <sup>31</sup>Perrin, p. 295.
- <sup>32</sup>Rosenbloom, p. 37.



- <sup>33</sup>George Foot Moore, Judaism (Cambridge: Harvard University Press, 1970), pp.329-330.
- <sup>34</sup>Bernard Bamberger, Proselytism in the Talmudic Period (New York: Ktav Pub. House, 1968), p. 135.
- <sup>35</sup>Moore, p. 340.
- <sup>36</sup>P. Talmud Yebamot 8d.
- <sup>37</sup>Moore, pp. 326-27.
- <sup>38</sup>Rabbi Solomon J. Zevin, ed., Encyclopedia Talmudit vol. 6 (Jerusalem: Encyclopedia Talmudit Pub., 1954), p. 389.
- <sup>39</sup>According to דקדוקי סופרים on this passage, the requirement to appear before a religious court probably should not appear in our text. This is evidenced by the fact that it is missing in both the Munich and Pizaro manuscripts. This may be an interpolation of the baraita on 65a, which is cited below. The baraita on 65a concerns procedure. There are two possible ways to interpret this information. First, all the authorities quoted this baraita agree with the baraita on 65a saying that a *ger toshav* must appear before a religious court. The second possibility, is that none of these authorities believe that the court appearance is necessary and the baraita on the following page is completely separate from this baraita.
- <sup>40</sup>The seven Noachite laws are discussed in B. Tal. Sanhedrin 56a & b. The seven precepts are: the creation of a legal standard, laws against blasphemy, idolatry, adultery, bloodshed, robbery, and eating a limb cut from a living animal. A full explanation of the Noachites and the Noachite laws is outside the scope of this paper. For a full discussion of the Nachite laws see, David Novak, The Image of the Non-Jew in Judaism (New York: Edwin Mellen Press, 1983).
- <sup>41</sup>Note A5 to B.K. 113b.
- <sup>42</sup>The verse from Deuteronomy, quoted above, plays an important role in understanding the status of the *ger toshav*. The gentile running from idolatry was equated with the slave running from his master. Just as the biblical verse prohibits the Israelite from returning the slave to his master, so too, do the rabbis forbid the returning of a gentile to his idolatry. The reason this verse is not considered with the biblical material is due to the fact that the biblical verse does not have this meaning without the rabbis use of this *g'zayrah shava*.
- <sup>43</sup>Encyclopedia Talmudit, p. 291.
- <sup>44</sup>Encyclopedia Talmudit, p. 298.
- <sup>45</sup>Arakin 32b.
- <sup>46</sup>David Novak, "The Origin of the Noahide Laws," in Perspectives on Jews and Judaism, p. 303.
- <sup>47</sup>Novak, p. 303.
- <sup>48</sup>William G. Braude, Jewish Proselyting in the First Five Centuries of the Common Era (Providence: Brown University Press, 1940), p. 136.
- <sup>49</sup>Yehezkel Cohen, "The Attitude to the Gentile in the Halakah and in Reality in the Tannaitic Period," in Immanuel vol. 9, p. 35.
- <sup>50</sup>Moore, vol. III, p. 112, note 104.
- <sup>51</sup>Bamberger, p. 135.
- <sup>52</sup>Gittin 57b and A.Z. 24b, respectively. Naaman appears in II Kings 5 and Araunah in II Samuel 24.

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<sup>53</sup> Aaron Rothkoff, "Minor Tractates," in Encyclopedia Judaica vol. 12 (Jerusalem: Keter Publishing House, 1972) p. 49.

<sup>54</sup> "Minor Tactates," Encyclopedia Judaica, p. 49.

<sup>55</sup> Eliezer Berkovits, "Babylonian Talmud," Encyclopedia Judaica vol. 15, p. 763.

<sup>56</sup> See note 39.

<sup>57</sup> נחלת יעקב holds that the opinion of R. Judah, here, is stated incorrectly, because if his statement were correct it would be in contradiction with the commandment to give meat not ritually slaughtered to the *ger toshav* within you gates. Therefore, we know that this text should read, "R. Judah said: Whoever undertakes all the mitzvot except for the mitzvah not to eat flesh that has not been ritually slaughtered."

<sup>58</sup> נחלת יעקב to *Gerim* 3:1.

## Chapter Two

### The *Ger Toshav* in the Period of the Rabbis

The existence and difficulties with the *ger toshav* in the earlier Jewish sources were noticed by later rabbinic authorities. For these later authorities, the *ger toshav* did not exist as a reality. They pondered the question of whether the *ger toshav* was a historical reality or simply an exegetical necessity to satisfy a theological need. Saying that the institution of the *ger toshav* was an exegetical necessity to satisfy a theological need means that the rabbis, and the earlier authorities, had to come to grips with this material in order to protect their belief in the perfection of the written and oral law. The rabbinic understanding of the *ger toshav* is as unclear, for the most part, as was the understanding of the Tannaim and Amoraim.

A good place to begin a discussion of the rabbinic interpretations of the sources in chapter one is with the writings of Rabbi. Solomon ben Isaac, better known as Rashi, was a leading commentator both on the Bible and the Babylonian Talmud.<sup>1</sup> His biblical commentary is characterized by an attempt to compromise between literal and Midrashic interpretations of the text. He also had a great desire to understand and explain the *Peshat*, the plain meaning of the text. In the Talmudic commentary, he was more interested in explaining the text of the Talmud to allow students to follow the course of the Talmudic argument.

Rashi's comments concerning the institution of the *ger toshav* indicate that the meaning and understanding of this term were no

clearer to him than they were to the Tannaim or Amoraim. He defines the term in a number of different ways; each time with slightly different requirements.

Although some of Rashi's requirements for the *ger toshav* are in flux, there is one requirement that he demands across the board: the rejection of idolatry is the minimum. In three places he defines a *ger toshav* by his rejection of idolatry. In his commentary to *Avodah Zarah* 64b (see גר תושב), cited in the previous chapter, he says: "He does not worship idols but is of the category of pagan concerning all the remaining commandments." In *Gittin*, commenting on the phrase, "He was a *ger toshav*," he notes: "He did not accept all the commandments except the one concerning idolatry, as it says in scripture: 'For your servant will never again offer up burnt offering or sacrifice to any god, except the Lord.' {II Kings 5:17}" (*Gittin* 57b). And in *Keritot* 9a (see גר תושב), Rashi uses Naaman as an example of one who is a *ger toshav* because he has rejected idolatry. In all three of these cases, Rashi simply defines *ger toshav* as one who rejects idolatry--making no further demands upon the prospective *ger toshav*.

However, in a number of other instances Rashi further refines his definition of *ger toshav*. In two comments, both in tractate *Baba Metziah*, he notes that the *ger toshav* eats forbidden meats. (B. M. 71a & 111a, see גר תושב) In these two instances, Rashi seems to follow the opinion of R. Meir (A. Z. 64b) rejecting that of R. Judah (*Gerim* 3:1).

In *Yebamot*, Rashi is more stringent concerning his definition of *ger toshav*. He says, "[A *ger toshav* is] one that agrees not to

worship idols, but eats unclean foods, and Scripture warns him concerning the Sabbath, because profaning the Sabbath is like idolatry." (Yeb. 48b, see גר תושב) Adding to the requirements above, here he adds the need to observe Shabbat. Rashi may have understood this requirement as stemming from the equation of *hilul Shabbat* and idolatry in *Hullin* 5a. It is unclear from this comment whether Rashi was concerned with the *ger toshav*'s observance of Shabbat or the performance of work by a *ger toshav* for an Israelite. In either case, of the three definitions discussed, this is clearly the strictest.

Finally, in another comment on *Avodah Zarah*, he says: "[a *ger toshav* is] one who has accepted the seven commandments of the children of Noah and, bestiality is included in these." (A. Z. 24b, see גר תושב) Bestiality is mentioned specifically, here, because bestiality is the topic under discussion in the Talmud text. It appears here, that if Rashi got his way a *ger toshav* would be required to observe all seven Noachite laws. This is the most stringent of the definitions offered by Rashi; however, it is impossible to conclude which opinion was primary. Rashi's confusion in defining this term indicates that the concept of the *ger toshav* was far from clear to the commentators of his day. There are two possible explanations for this confusion. First, it is possible that for Rashi the *ger toshav* was no more than an exegetical necessity used to explain certain unclear biblical concepts. Second, it may reflect the confusion within the Talmud itself, because Rashi's commentary was an attempt to explain each argument on its own terms. However, from the evidence

available it is difficult to determine which of these reasons is the correct one.

The descendants and students of Rashi comprise the group known as the Tosaphists, beginning with Rashi's grandchildren--he had no sons--and continuing until the time of Meir of Rothenberg. "The concept of the *tosafot* was originally bound up with the method of study characteristic of the schools of Germany and France in the 12th-14th centuries."<sup>2</sup> The comments of the Tosaphists began as additional comments to Rashi's commentary, but it grew to become an important commentary in its own right.<sup>3</sup> The commentary by the Tosaphists is characterized by keen thought and originality. They often disagree with Rashi's conclusions by pointing to different cases and distinctions. They also, many times, made new halachic decisions.

In terms of the *ger toshav*, the Tosaphists make a couple of valuable comments that should be mentioned.

"It is explained by Rashi, [that] one who agrees not to worship idols and [who accepts that] profaning the Sabbath is like idolatry [is a *ger toshav*]. A difficulty arises, that if this is so they impose upon him more than seven commandments. In *Avodah Zarah* 64b, the implication that [one] who accepts the seven Noachite commandments is a *ger toshav*. Further in *Sanhedrin* 58b, they said that an idolater [who observes] a day of rest is liable to death. In *Keritot* 9a, R. Eliezer said: 'A *ger toshav* is not warned concerning Shabbat.' It seems that concerning work [by an idolater] for an Israelite's need is similar to the 'Son of your maidservant shall be refreshed' {Ex. 23:12}." (Tosafot to Yeb 48b, זה גר תושב)

However, in this comment, the tosafists disagree with Rashi. They hold the opinion that a *ger toshav* is one who keeps the seven Noachide laws, not merely the abstinence from idolatry or its equivalent, Shabbat. Also, the problem for the tosafists is that Shabbat is not one of the seven commandments incumbent upon the *ger toshav*.

In a comment in tractate *Keritot*, the Tosafists refine this understanding further. They say:

A resident alien that does work for himself\* From here there is a difficulty with the explanation of Rashi in Yeb. 48b. There it says: 'And the son of your maidservant will be refreshed and the stranger' {Ex. 23:12} that is the resident alien. Rashi explains: 'not to worship idols and that the profaning Shabbat is like idolatry.' But here it says a resident alien may do work. Therefore, the resolution is that the *Yebamot* passage means that he cannot do work for his masters, but for himself it is permitted. From here R. Yitzhak decided that it is permissible to let an idolater do his work on Shabbat in an Israelite's house for himself. (Keritot 9a, מלאכה לעצמו, גר תושב עושה)

From this text it is possible to conclude that a *ger toshav*, in the opinion of the Tosaphists, is an idolater who rejects idolatry and does not break the Sabbath for an Israelite's benefit. Here too, the minimum requirement for a *ger toshav* is the rejection of idolatry. Rabbi Yitschak may learn from the issue of *ger toshav*, a halachah that applies to contemporary life--a non-Jewish servant who lives with a Jewish employer. If he bases this decision on the institution

of *ger toshav*, then the *ger toshav* is not merely a theoretical construct.

Having discussed the *ger toshav* in the major commentaries to the Talmud, we move from these rabbis to Rambam. Rambam, also known as Rabbi Moses ben Maimon or Maimonides, is probably one of Judaism's greatest scholars, and certainly one of its most prolific.<sup>4</sup> In his great work, the *Mishneh Torah*, Rambam attempts to record all the law set down in the Talmud in one organized framework. Among the topics discussed is that of the *ger toshav*.

Under the section called "Forbidden Relations," Rambam provides a good definition of his understanding of *ger toshav*. He says:

What is a *ger toshav*? This is an idolater who has agreed not to worship idols along with the rest of the commandments that the children of Noah were commanded and [who] has not been circumcised or immersed [in a ritual bath]. Behold we receive him and he is one of the righteous of the nations of the world. Why do we call him תושב? Because, we permit him to settle among us in the land of Israel, as we made clear in the laws concerning idolatry. (Issuerey Biah 14:7)

Rambam believes that the opinion of the Sages as stated in *Avodah Zarah* is correct. To qualify as a *ger toshav*, one must accept and fulfill all seven of the Noachite precepts. However, just as inconsistencies in Rashi's definition existed, so too, are there problems in Maimonides' definition.

In another section of the *Mishneh Torah*, we have what may be a third definition for *ger toshav*. Although the above definition may



assume the requirements of this third definition it does not make this explicit. Under the heading of "Laws for the Kings," he notes:

"Moses, our teacher, was commanded by God to compel all human beings to accept the commandments which were commanded to the children of Noah, and anyone who does not accept [them] will be put to death. If he accepts them he is called a *ger toshav* everywhere and he needs to accept it before three members [of a religious court] (*Melachim* 8:10)

The reason this may be understood as a third alternative definition because this is the first time the necessity of appearing before a Jewish court is mentioned. Not only does Rambam require the acceptance of all seven Noachite laws, but the must be done before a court. The consequences for failure to do so seem to be, as stated in this text, death. It should be noted, however, numerous sections of "Laws for Kings," deal with a future state; not the reality of Rambam's day.

The variety of definitions does not end with the three stated above. As part of his discussion of the "Laws of Forbidden Relations," Rambam adds an additional nuance that has not appeared in any of the material cited above. He says that it is permissible to maintain an uncircumcised slave provided the slave accepts the seven Noachite precepts, because this makes him as if he were a *ger toshav*. However, here Maimonides adds a new twist to our understanding by stating that we do not accept a *ger toshav* except at a time when the Jubilee is celebrated. (*Issurei Be'ah* 14:8)<sup>5</sup> From this information we may draw two different conclusions. First, Rambam believed that the requirement for the Jubilee was self-explanatory

and did not need to be stated in the other definitions. Second, Rambam was unsure about the need for the Jubilee to accept a *ger toshav*, and therefore he only mentioned this requirement a few times. However, this is somewhat of a problematic understanding because the requirement of the Jubilee is stated in *Arachin* 29a. This problem is noted by the *Magid Mishneh* in his commentary of this section. Regardless of how one chooses to understand the necessity of the Jubilee, one thing is clear. The greatest quantity of material seems to indicate that in Rambam's view, to qualify as a *ger toshav* a person needed to accept and observe all seven Noachite laws.

In another section of the *Mishneh Torah*, Rambam discusses non-Jewish servants. "However, slaves [or servants] that are not circumcised or immersed, but they have only accepted the seven commandments that were commanded to the Son's of Noah. Behold, they are like a *ger toshav* (כגר תושב) and they are permitted to do work, on Shabbat, for themselves in the courtyard [of an Israelite's house] as and Israelite the rest of the week" (Shabbat 20:14) It is important to note that here Rambam says that servants who accept the seven Noahite laws--in our time--are כגר תושב. That is, even though the actual status does not exist today, as explained above; the theory behind the *ger toshav* is utilized to determine the law in our time.

The *Magid Mishneh*, a commentary on the *Mishneh Torah*, expands this idea even further.<sup>6</sup> He says concerning the status of the unimmersed, uncircumcised slave:

The second [case] is an uncircumcised slave [or servant] that stipulates that he will not be circumcised or immersed, but he will observe the seven noahite commandments. This one is called a "resident slave" (עבד תושב). In a few places he is called an "uncircumcised slave." His legal status is כגר תושב. (*Magid Mishneh* to Shabat 20:12, towards beginning of his comment.)

Here the *Magid Mishneh* explicitly states that this servant is of the same legal status as the *ger toshav*. Thus, it can be understood that Rambam resorts to the category of *ger toshav* in order to distinguish between types of servants in our time. The category of the *ger toshav* is not understood as a purely theoretical construct; it is a real, and valid, status which can be used today or a category which can be used to describe other people who are כגר תושב. Thus, despite his belief in the necessity of the Jubilee to accept *gerei toshav*; Rambam finds it necessary to use the status of *ger toshav* despite the Jubilee.

Finally, Rambam makes an interesting comment regarding the reasons behind one's acceptance of the laws. The motive behind the person's acceptance of the status of *ger toshav* has not been questioned to this point.

Anyone who accepts the seven commandments and who accepts not to violate them, behold, he is from the righteous of the nations, and he has a place in the world to come [provided] that he accepts them and observes them because God commanded them in the Torah and made them known through Moses, our teacher, that the children of Noah were commanded concerning [them, the observance of the seven laws] earlier. However, if he observes them because of rational thought, he is not a

*ger toshav* and he is not one of the righteous of the nations nor one of their wise men. (*Melachim* 8:11)

For Rambam, the appearance before the religious court is a religious action. One who observes the seven commandments because they are a "good idea" is not performing a religious act. As Rambam understands this, any type of *ger* must accept the existence of God and Torah.

An older contemporary of Rambam, the Rabad, wrote an important commentary to Rambam's *Mishneh Torah*.<sup>7</sup> He comments the statement concerning the necessity of the Jubilee year in *Issurei Be'ah* 14:8. He says:

"Except at the time when the Jubilee is practiced": The Rabad, may his memory be a blessing, wrote, 'The opinion of this author [Rambam] is vague and he does not explain what he means by, "We do not accept a *ger toshav* except at a time when the Jubilee is practiced." What are the commandments [regarding] the *ger toshav*? We do not settle him within a city, as is explained in *Sifrei*: "with you he will dwell, {Lev. 25:6}" and not in a city by itself. It is also a commandment to sustain him, as it is written, "and your brother will live with you. {Lev. 25:36}" He acquires a Hebrew slave as well as a Canaanite slave. These are laws that are not practiced concerning him except at a time when the Jubilee is practiced. Some of these are lenient on and others strict. When the Jubilee is not practiced, he may dwell, even in a city by himself [of all *gerei toshav*], because there is not the holiness of the land as there was. He may acquire an Israelite slave for as long as he wants, because there is no special time (i.e., Jubilee year). These are the things that are lenient concerning him. But we are not commanded to sustain him, this is what we

are strict about concerning him. The reason seems to be, because at the time of the Jubilee there were Sabbatical years and he was able to earn a living without undue pressure on [lit. troubling] the public. Now we cannot support one that will not become circumcised and immersed at any time.

This commentator believes that the requirement of the celebration of the Jubilee year does not affect the acceptance of a *ger toshav*. He may be accepted at any time. Rather, the observance of the Jubilee does affect the rights and responsibilities of the *ger toshav*. If a *ger toshav* is accepted at a time when the Jubilee is not celebrated, that *ger toshav* may live in the land of Israel, even in Jerusalem, but, as the Rabad explained, the commandment concerning the responsibility of the Jewish community to sustain this person is no longer in effect, because it would cause hardship.

This opinion, that the *ger toshav* may be accepted at a time when the Jubilee is not observed, is emphasized in another comment to the same passage. The Magid Mishneh, Rabbi Vidal Yom Tov of Tolosa, says: "This is not apparent from the words of our Rabbi [Rambam] in chapter ten of 'Laws concerning Idolaters,' and also I did not see [it] in the word of our Rabbi from what is written, that 'we do not settle him within a city by himself during the time the Jubilee is celebrated.'" (Magid Mishneh to I.B. 14:8) Rabbi Yom Tov notes that Rambam does not accept Rabad's distinction concerning the *ger toshav*.

Rabbenu Nissim Gerondi, a fourteenth century commentator, comments on the need for the *ger toshav* to appear before a

religious court.<sup>8</sup> At the beginning of his commentary to Alfasi on tractate *Avodah Zarah*, he notes:

*Ger toshav* is one who has undertaken before three scholars not to worship idols. Although non-Jews are forbidden to worship idols, since they do not observe the prohibition, a formal undertaking is required. Hence, without an explicit undertaking, he is presumed to be an idolater.<sup>9</sup>

Here, Nissim provides a definition of *ger toshav*, as well as, an attempt to explain the purpose of the appearance before a religious court. It appears that the purpose of the court appearance is simply to reinforce the previous prohibition concerning idolatry.<sup>10</sup> This appearance does not create any actual change of personal status. Thus, for one who is accepted as a non-idolater does not need to appear before a court to become a *ger toshav*.

Rabbi Menachem ben Solomon Meiri lived in Provence from the middle of the thirteenth century to the beginning of the fourteenth century.<sup>11</sup> He was an halachic scholar and a halachic innovator, as we shall see in the next chapter. His great work was his commentary to the Babylonian Talmud entitled, *Beit HaBechirah*. In this commentary he makes a number of comments that are pertinent to this study. His comment on *Avodah Zarah* 64b, the passage cited in the previous chapter, provides his definition of *ger toshav*. He says:

Who is called a *ger toshav* for this purpose [for the acceptability of wine]? Anyone who has accepted not to worship idols. All the Sephardic sages [according to Rambam (M. A. 11:7) these are the Gaonim] agreed that also the Ishmaelites [Muslims] are not idolaters and we

may leave them alone with wine in our houses, but we may not deposit it [wine] with them. But the remainder of the nations, although it is said concerning them that a custom of their ancestors is in their hands [*Hullin* 13b], they make libations [that is, they turn wine into "nesekh" (=forbidden) by their touch]. Even regarding *gerei toshav*, and similar categories, and their wine is forbidden, because of their daughters [i.e., a rabbinic prohibition designed to limit social contact with them], even though we know that a gentile [a non-Muslim] did not touch it, but only for drinking, and wine deposited with them without its seals is forbidden for drinking as well. [ed. A. Sofer, Jerusalem 1964, p. 255]

Thus, from this text one could conclude that a *ger toshav* is simply one who rejects idolatry, like the opinion of R. Meir in the Talmud. Another comment on the same page of Talmud confirms and elaborates Meiri's definition of the *ger toshav*.

Anyone we know that does not practice idolatry is called a *ger toshav* [in terms of the ability to trade their wine]. But the commandment to sustain him, he is not called a *ger toshav* until he accepts the seven precepts before three, although he is not circumcised or immersed, [he is] a regular *ger toshav* by keeping the seven precepts.

This definition creates two categories of *gerei toshav*. First for wine, one can be a *ger toshav* simply by rejecting idolatry. However, before the Jews have any responsibility to sustain this *ger toshav* he must agree to accept all seven of the Noachite commandments before a religious court--this is the secondary definition. It seems that Meiri has coalesced the two major traditions concerning the *ger toshav*. Meiri allows both those who

follow the opinion of Rabbi Meir and those who follow the opinion of the Sages to be correct in certain cases. At the same time, he validates the opinions above and the opinions of the earlier authorities he does allow the reader to see his own preference--that a true *ger toshav* observes all seven Noachite laws to be "a regular *ger toshav*."

In a comment earlier in *Avodah Zarah*, he again confirms that a *ger toshav* is a Noachite. He says: "He [a *ger toshav* ] is a total Noachite fulfilling the seven precepts as they are written in the Torah." (Meiri on A. Z. 20a)

In terms of the questions of the Jubilee and the observance of the Sabbath, Meiri provides his answer in a comment on *Yebamot* 48b. In a very long comment he answers both questions, as well as, again confirming his definition of a *ger toshav*. He wrote:

Rashi, who wrote that a *ger toshav* is liable [to observe] Shabbat, this is because of idolatry [i.e., the analogy of idolatry with the breaking of Shabbat]. I ask his pardon, but this is not so, a *ger toshav* is one who accepts the seven commandments of the sons of Noah, and Noachites are not commanded concerning Shabbat . . . And for the *ger toshav* what is the case [when] his work is not prohibited? If he does it of his own accord, but if he [an Israelite] told him it is forbidden from the Torah. . . We have already explained that a *ger toshav* is a gentile who accepts the seven commandments, although he is not circumcised or immersed--we accept him. Behold he is from the righteous of the nations of the world. . . The Rambam wrote: We do not accept a *ger toshav* except at the time of the Jubilee; thus, since there is not Jubilee, even if he accepts the entire Torah except for one little



rabbinic technicality we do not accept him. Even if he is a slave we do not sustain [keep] him more than twelve months except at the time of the Jubilee. The Rabad wrote that: 'We do not accept a *ger toshav* except at a time when the Jubilee is practiced. This means that he does not have the legal status of a *ger toshav*, and we are strict on some things and lenient on others. Strict [on the fact] that he [is not totally] a *ger toshav* although he may live in the Land of Israel after he has forsaken idolatry, he is what is called a resident. . . . And thus a *ger toshav* that we are commanded to sustain, clearly at a time of the Jubilee, since there are sabbatical years and Jubilees and we can support him without undo stress on the public, but as for the matter of acceptance we accept [him] at any time.

Here Meiri is simply repeating the debate between the earlier authorities--he, in this citation, does not take a position of his own. The fact that he chooses not to state his own opinion can be understood in a number of ways. First, it is possible that the Meiri did not believe that this comment required him to state his opinion. Second, it is also possible that this section shows the difficulty the rabbis had in attempting to understand the concept of *ger toshav*. Thus, Meiri may not have stated his opinion here, because he was uncomfortable or unable to clearly decide.

Another Talmudic commentary, *Shittah Mekubetzet*, comments on an issue raised in the Meiri concerning the definition of *ger toshav* and his working on Shabbat.<sup>12</sup> He quotes a *Baraita*, "That our Rabbis taught: A *ger toshav* is one who accepts the seven commandments [of the sons of Noah] and does not observe a day of rest. In any case, they are strict with him that he should not do

work for others only [lit.-rather] himself." (Note 8 on *Keritut* 9a) This commentator includes the prohibition of Shabbat in the definition of a *ger toshav*. The second part of his comment follows the opinion of earlier authorities when it delineates between work done by the *ger toshav* for himself and work done for a Jewish neighbor or master at their request.

In *Sefer HaChinuch*, an anonymous work, the author offers another definition of *ger toshav*.<sup>13</sup> He says: "A resident [this is a *ger toshav*. He uses the term resident because he is discussing the biblical verse Ex. 12:45, where resident is used.] is a man from the nations who accepts not to worship idols but eats unclean food." (*Sefer HaChinuch* #14) Here the definition seems to follow that of R. Meir, because the rejection of the idolatry is all that is expected from the *ger toshav*. The fact that he eats unclean food is, I believe, purely informational, because it does not change the actions of the gentile unlike the rejection of idolatry.

The material in the Jewish legal codes does not significantly differ from any of the material previously cited. However, it is important to note a few passages. In the *Shulchan Aruch*, Joseph Karo offhandedly defines *ger toshav*.<sup>14</sup> He says: "A *ger toshav* that has accepted upon himself the seven commandments, and so too, the circumcised, unimmersed proselyte, his touch forbids [it, wine] from drinking." (Y.D. 124:2) Here, at least in terms of wine, Karo defines a *ger toshav* as a Noachite. It is interesting, however, that Karo seems to take the status of *ger toshav* for granted, simply defining it as a matter of clarity.

In his commentary to the *Shulchan Aruch*, the *Biur HaGra*, better known as the Vilna Gaon, summarized the opinion of various earlier authorities concerning the *ger toshav*.<sup>15</sup> He concludes that although there is a disagreement concerning the exact definition of the *ger toshav*. Wine produced by any non-idolatrous gentile, like an Ishmaelite, is prohibited from drinking but for trading it is permissible. (*Biur HaGra* to Y.D. 124:2, note 4) What one learns from this is that, at least concerning benefitting from wine, a non-idolater is equal to a *ger toshav*. This conclusion can be reached because clearly wine produced by a gentile is forbidden; unless he does not worship idols and is thus a *ger toshav*.

Finally, when considering the definition of a *ger toshav* it is important to contrast this status with any other status that might be regarded as similar by the rabbis. In a number of places there is a comparison between the *ger toshav* and the unimmersed, circumcised proselyte. This comparison is based upon the fact that both groups have a quasi-Jewish status; thus, the question is asked if there is a relation between the two groups. The rabbis in their discussion decided that although both of these groups do have this quasi-Jewish status that they are not truly comparable, because one, the *ger toshav*, is an end state and the unimmersed, circumcised proselyte is not--his end state is that of a *ger tzedek*. Joseph Karo, in, the *Beit Yosef*, his commentary to the *Arba'ah Turim*, quotes from R. Nissim Gerondi's commentary to the Alfasi.

I have already written above that there is no resemblance between an unimmersed, circumcised proselyte and a *ger toshav*. Because, a *ger toshav*

accepts [the seven commandments] now and the proselyte does not accept until after the immersion. (Beit Yosef to Tur Y.D. 124)<sup>16</sup>

Another commentator, Shabbetai ben Meir HaKohen, commenting on the same material in its appearance in the *Shulchan Aruch*, also rejects the comparison between the *ger toshav* and the unimmersed, circumcised proselyte.<sup>17</sup> In his best known work, *Siftei Kohen*, he, too, cites Rabbenu Nissim Gerondi, saying:

That an unimmersed, circumcised proselyte is below [of a lower status] the *ger toshav*, since a *ger toshav* accepts [the seven commandments] now and the unimmersed, circumcised proselyte does not accept [the mitzvot] until after immersion. (*Siftei Kohen* on Y.D. 124:2)

Here, too, the seeming similarities between the *ger toshav* and the incomplete proselyte are spurned. The fact is the *ger toshav*, by accepting the seven commandments has done exactly what is required of him. The incomplete proselyte, on the other hand, has yet to complete his requirements.

Having looked at the various definitions offered by rabbinic authorities throughout the rabbinic period we can conclude a number of things. First, the most likely definition of *ger toshav* was one who accepted the seven Noachite commandments. This opinion follows the ruling of the Sages in *Avodah Zarah* 64b. Although there are other opinions offered, each of the authorities quoted above does use the Noachite laws as a definition at some point. Thus, using a majority rule principle, it appears that the acceptance of the seven Noachite laws was the preferred definition.

Second, just as the case of the Talmud it is apparent by all the disagreement and contradiction that the status of the *ger toshav* was not a reality during this period. However, one cannot ignore the fact that it is considered in some detail within the corpus of rabbinic literature. It is also clear that the rabbis were willing, at times, to compare other people living with us to the *ger toshav*. It is unclear whether the rabbis understood the *ger toshav* as a historical reality or just as an exegetical necessity. Whichever is the case, they in no way attempt to exclude the possibility that this status may become valid and useful at some time in the future.

I believe that many of the rabbis of this period were aware of the correspondence of the *ger toshav* and the majority gentile population that surrounded them. It is this possibility that will be discussed in more detail in the following chapter.

### The Rights of a *Ger Toshav* According to the Rabbis

Having reviewed the various definitions offered by the rabbis for the *ger toshav*; it is necessary briefly to review the rights, privileges, and responsibilities inherent in this unique status within the Jewish community. They include: the right to live in the land, the right to do work for themselves on Shabbat, and protection if forced to transgress any of the laws that govern their status. The Israelite community is responsible for sustaining the *ger toshav* and providing a fair legal system.

The earlier Jewish texts agreed that one of the rights that a *ger toshav* earns is the ability to live among the Israelites. This attitude

is echoed in the later rabbinic literature. *Sifra* says: "Resident--this is the proselyte that eats unclean meats and lives with you." (*Sifra* Behar Sinai 5:1 on Lev. 25:35) The proselyte described in this citation should be understood as the *ger toshav*, as evidenced above.

In *Sifrei*, a comment on the verse "with you he shall dwell, etc.," (Deut. 23:17) expands the concept of the *ger toshav*'s right to live among the Jewish people where ever they are. It says:

"With you he shall dwell,"--in the city itself, "in your midst,"--and not in an outlying district, "in the place that he chooses,"--where he can find sustenance, "in your gates,"--and not in Jerusalem, "in one of your gates,"--and not in exile from city to city, "where it is good for him,"--from an inferior location to a superior one. (Torah Temmima on Deut. 23:17)

This text shows that a *ger toshav* has the right to dwell with Jews wherever they may reside. Not only does he have the right to settle among the Jews, he has the right to choose where he wishes to live and the Jewish community has the responsibility for making him welcome. The only exception to this rule is at a time when the Jubilee is celebrated. At such a time a *ger toshav* may not live within Jerusalem, because Jerusalem has an even greater sanctity than the rest of the land. (*Mishneh Torah, Beit HaBichira* 7:14) Outside this one exception, which was never in force during the time of the rabbis, clearly the *ger toshav* had the right to choose anywhere he wanted to reside.

Much of the material concerning the *ger toshav*'s right to work on Shabbat was discussed above. *Magid Mishneh*, a commentary to the *Mishneh Torah*, states the position of the rabbis very

succinctly.<sup>18</sup> "A resident slave (עֶבֶד תּוֹשָׁב) and a *ger toshav* they cannot do work for any Israelite whether it is his master or not this is a matter from the Torah, but they may do work for themselves like an Israelite during the rest of the week." (*Magid Mishneh* to Shabbat 20:14) The restriction of the Sabbath is enjoined upon the Israelites and their gaining benefit from the work of either the slave or the *ger toshav*. The *ger toshav* himself is not bound to the laws of the Shabbat and, therefore, acts as if it were any day of the week.

In the *Mishneh Torah*, Maimonides makes an interesting observation concerning the Noachite, whom he equates with the *ger toshav*. He notes: "A Noachite that is forced to break one of his commandments, it is permissible for him to break [it] even if he is forced to commit idol worship; because, they are not commanded concerning the sanctification of the Name. We never punish a Noachite minor, deaf-mute, or simpleton because they are not [enjoined to observe] the commandments." (*Melachim* 10:2) Under duress a *ger toshav* may transgress any of the laws that qualify him as a *ger toshav*. Thus, it appears that a Noachite differs from a Jew because they are not responsible for protecting the sanctity of God's name, since it is not one of the seven commandments of the Sons of Noah.

The responsibilities of the Jewish community to the *ger toshav* are very interesting. The first one is the responsibility of the Israelite courts to see to the fair settlement of a case involving a *ger toshav*. "An Israelite court is required to provide judges for *gerei toshav* to decide for them according to their laws so the world will not be destroyed. It is within the court's authority to appoint a *ger*

*toshav* or Israelite judges for them." (*Melachim* 10:11) Furthermore, "It seems to me that [settle a dispute between a Jew and a gentile according to which laws (religious/secular) is in the Israelite's advantage] we do not do so with a *ger toshav*, rather we always judge him by their laws. Thus it seems to me that we should practice consideration and kindness to the *ger toshav* as to an Israelite." (*Melachim* 10:12) Since the *ger toshav* is granted a higher status than most gentiles we may not take advantage of the laws, by using which ever laws are most advantageous to the Jew, when a *ger toshav* is involved. This person has taken a step closer to Judaism and, therefore, we have a responsibility not to take unfair advantage of this person.

The other major responsibility we have to the *ger toshav* is the commandment of sustaining him. Although many of the texts above assume that sustaining means that we must help him earn a living, but the understanding of this commandment does not end there. Rabbenu Gershom stated: "That they are commanded to sustain him [the *ger toshav* ] and they are prohibited against oppressing him." (On Arakin 29a)<sup>19</sup> It appears that according to Gershom sustaining him can include anything that does not qualify as oppression. Rambam understands that "sustain" can also include the right to receive gifts. "It is forbidden for an Israelite to give something free to a gentile, but [he may] give it to a *ger toshav*, as it is written: 'to the stranger that is within you gates you will give it to him and he will eat or sell it to a foreigner.' Selling is not giving it, but to a *ger toshav* either selling it or giving it, because you are commanded to



sustain him, as it is written: 'stranger and sojourner will live with you.'" (*Zekhiyah u'Matanah* 3:11, see also *Melachim* 10:12)

Another of Maimonides' understandings of the commandment to sustain the *ger toshav* deals with our responsibility to provide medical and birthing care to them. Rambam draws a very clear distinction between the gentiles and the *gerei toshav*. He says: "From here you learn that it is forbidden to tend to idolaters medically even for a salary. If he [the doctor] was afraid of them or there was fear of animosity he tends [to him, the gentile] for payment, but for free it is forbidden. A *ger toshav*, behold you are commanded to sustain him, we tend to him for free." (A. Z. 10:2) In terms of providing obstetrical aid, he says the following: "We do not birth idol worshippers on Shabbat even for a fee and we do not fear animosity, despite the fact that there is not profaning there [by birthing them]. But we birth the daughter of a *ger toshav* because we are commanded to sustain him, and we do not profane the Sabbath because of her." (Shabbat 2:12) Thus, the distinction between a gentile and a *ger toshav* is apparent. We have a greater responsibility to the *ger toshav*, because he has undertaken to observe the Noachite laws.

Yehiel Michael ben Aaron Isaac HaLevi Epstein provides a good general summary of his understanding of the commandment of sustaining him.<sup>20</sup> He says: "And it is also written; that we treat them [*gerei toshav*] fairly and with lovingkindness as [we would treat] and Israelite, because we are commanded to sustain them." (*Aruch HaShulchan le-Atid* 80:15) He generalizes a great deal, but we are to understand that, in terms of the *ger toshav*, they are to be treated

almost as if they were an Israelite. Judaism requires a much greater commitment to those who have taken steps to come nearer to Judaism.

<sup>1</sup>Solomon ben Isaac--Rashi--(b. 1040-d. 1105), lived in Troyes, France. Besides his commentaries he also wrote Responsa as well as studied grammar based upon the work of Menachem b. Jacob ibn Saruq and Dunash b. Labrat. However, his lack of Arabic prevented him from studying the grammar books of the Sephardic grammarians.

<sup>2</sup>Israel M. Ta-Shma, "Tosafot," Encyclopedia Judaica, vol. 15 (Jerusalem: Keter Publishing House, Ltd., 1972), p. 1278.

<sup>3</sup>The Tosaphists did not only rely on Rashi's commentary but other texts like the Geonic works were used as well.

<sup>4</sup>The Rambam (b. 1135-d. 1204) lived in many different places during his lifetime including Morocco and Egypt. Rambam was a rabbinic authority, legal codifier, philosopher, and physician. His most well known works include: Mishnah Torah, Sefer HaMitzvot, and Guide for the Perplexed.

<sup>5</sup>See also, "Laws of Circumcision," 1:8.

<sup>6</sup>Rabbi Vidal Yom Tov of Tolosa lived during the second half of the fourteenth century in Spain. His commentary to Maimonides' *Mishneh Torah*, the *Magid Mishneh*, has been published with the text since 1509. Mostly, he deals with the *hassagot* (criticisms) of Abraham b. David of Posquieres, answering their objections and seeming disrespect for Rambam.

<sup>7</sup>The Rabad, Rabbi Abraham b. David of Posquieres (c. 1125-1198), was an authoritative rabbinic scholar in his day. One of his greatest works was commentary to Rambam's *Mishneh Torah*. Besides being a commentator he also collated a number of important codes, including a work known as *Ba'al HaNefesh*.

<sup>8</sup>Rabbenu Nissim Gerondi (c. 1310-1376), popularly known as the Ran, was one of the most important Talmudic scholars of his native Spain. His best known work is a commentary on the *Alfasi*.

<sup>9</sup>Yehuda Gershuni, "Minority Rights in Israel," Crossroads (offprint), p. 22.

<sup>10</sup>Gershuni, p. 22.

<sup>11</sup>Menachem b. Solomon Meiri: 1249-1316.

<sup>12</sup>*Shittah Mekubetzet* are emendations and comments by Rabbi Betzalel Ashkenazi (16th Century). He bases his commentary upon the commentaries of the Rishonim. His commentary is only on *Seder Kodashim*.

<sup>13</sup>*Sefer HaChinuch* is believed to be a thirteenth century Spanish work. It has wrongly been attributed to Aaron haLevi of Barcelona. It was first printed in Venice in 1523.

<sup>14</sup>See note 14.

<sup>15</sup>HaGra, Elijah b. Solomon Zalman or the Vilna Gaon, (1720-1797) was one of the greatest spiritual and intellectual leaders of Jewry in modern times. Under his guidance and leadership Vilna became the center of the *Misnagdim*, the anti-Hasidic movement.

<sup>16</sup>Joseph Karo's *Beit Yosef* was first published in 1555. It is a commentary on Jacob b. Asher's work the *Arba'ah Turim*. The *Beit Yosef* follows the development of talmudic laws from their beginnings until the 16th century. Joseph Karo's *Shulchan Aruch* is an halachic synopsis of his commentary the

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*Beit Yosef*. First printed in 1565 in Venice, Italy, it soon became accepted as the Jewish law code par excellence after the emendations and comments of Moses Isserles were added.

<sup>17</sup>Shabbetai ben Meir HaKohen (1621-1662) was a Lithuanian rabbi, *posek*, and commentator on the *Shulchan Aruch*. *Sifte Kohen*, his work, is a commentary on the section *Yoreh Deah* of the *Shulchan Aruch*.

<sup>18</sup>See note #8.

<sup>19</sup>Rabbenu Gershom: Gershom b. Judah, Me'or Ha'Golah (c. 960-1028) one of the earliest German talmudic scholars and creator of German Jewry. Little biographical information is known for sure about him.

<sup>20</sup>Yehiel Michal Ben Aaron Isaac HaLevi Epstein (1829-1908) was the author of the *Aruch HaSchulchan*. This work contains novella and halachic rulings based on the four sections of the *Schulchan Aruch*. His desire was to bring the law up to date, by dealing with only matters of practical importance. However, he also published a work, posthumously entitled *Aruch HaSchulchan le-Atid*. This work deals with halachah that will be in force when the Jews again have control over the land of Israel and the exiles are returned.

## Chapter Three

### Christians and Muslims as Non-idolaters and

#### Gerei Toshav

Having discussed the definition of *ger toshav* in the Jewish sources and in the eyes of the later rabbinic authorities; it becomes necessary to ask the next question raised by the hypothesis of this paper. Are Christians and Muslims considered idolaters? Can modern day Christians and Muslims be granted the status of a *ger toshav*?

To test this hypothesis fully, it is necessary to break the question down into two separate parts. First, the question is whether Christians and Muslims are considered idolaters. Second, if they are not idolaters; is it then possible that they may qualify as *gerei toshav*? To answer this second part it will be necessary not only to consider classical Jewish sources but modern Jewish sources. Materials from the time of the foundation of the State of Israel can provide this modern information.

A number of times in the previous two chapters the statement is made that idolatry is no longer what it used to be. This attitude was part of the Jewish struggle to deal with their non-Jewish neighbors. To answer the question of whether gentiles, especially Christians and Muslims, are to be considered idolaters one must consider comments in classical Jewish texts as well as by modern halachists and scholars.

The Tosafists<sup>1</sup>, in a comment to *Hullin* 13b (לאו עבודת כוכבים הם) expand the understanding of the text of the Talmud.<sup>2</sup> On the phrase, "Gentiles that are outside the land, they are not idolaters," they remark: "Therefore, within the land of Israel, too, they do not really intend [lit. attached-fervent] that their actions will be in the name of idolatry." Since the idolatry that is observed outside the land of Israel is simply a continuation of the worship patterns of one's ancestors, it does not fully qualify as idolatry. The Tosafists make the point that this is also true for those gentiles living nowadays within the borders of Israel. They, too, are simply carrying on the customs of their ancestors and are not truly engaged in idol worship.

Furthermore, another comment to tractate *Bekhorot* 2b (שבועה), (שמא יתחייב לו עובד כוכבים), Rabbenu Tam, one of Rashi's grandsons, expands this idea. He says that oaths taken by non-Jews that do not include God's name are not idolatrous, because they believe that they are said in the name of God. They may mention an intermediary, because they are not forbidden associationism. This means that what was once idolatry has been transformed and is not to be considered idolatry today.

Another commentator on the Talmud, Rabbenu Asher accepts the opinion of the Tosafists stated above.<sup>3</sup> In a comment to the first chapter of *Avodah Zarah*, he says:

All this (the prohibition concerning business) raises a difficulty with our custom for we do not refrain from doing business with them [gentiles], or lending and borrowing from them, or to collect or pay them, even on

their festival day. [This halachah is based on A. Z. 1:1] Rashbam [a Tosafists], in the name of his teacher [his grandfather], Rashi, explains: 'Now the gentiles amongst us are not idolaters and they do not worship, as it says in the first chapter of *Hullin*, "Gentiles outside the land of Israel, they are not idolaters, rather they follow the customs of their ancestors."' (*Hullin* 13b) . . . Now that we see that gentiles outside the land of Israel do not go out and give thanks even on their festival days, there is [room] to permit [business with them even on their festival days]. Additionally, the main issue is our making a living from them and we do business with them all the days of the year. If we separated from them [all the day of the year] their festival days, there would be enmity. (Rosh to A.Z. 11b)

It appears that Rabbenu Asher accepts that idolaters now are not the same as the idolaters spoken about by the earlier texts. First, using the argument that idolatry, in his day, was only a custom of one's ancestors, agrees with the opinion of the Tosafot cited above. However, Asheri's use of a secondary argument, that of enmity, indicates that he was not completely satisfied by the initial argument. Rabbenu Asher is uncomfortable stating categorically that modern gentiles are not idolaters; to provide additional support to the custom of doing business with gentiles even on their festival days, he adds the secondary argument of enmity.

Within the comments of Maimonides one finds that Christians are idolaters.<sup>4</sup> In *Hilchot Avodah Zarah*, he makes the following statement: "Canaanites are idolaters and Sunday is their [festival] day. Therefore, it is forbidden to do business with them in Israel on Thursday or Friday every week. There is no need to say on Sunday

itself, [since] it is forbidden everywhere." (Rambam A.Z. 9:4) From this statement, it is possible to infer that the "Canaanites" are really Christians. Further proof of this comes from the Yemenite manuscript of Maimonides' *Mishneh Torah*.<sup>5</sup> In this edition, the word "Canaanites," appears as "Christians." Rambam's decision is probably based on two things. First, he explicitly mentions Christians in his commentary to the *Mishnah* (A. Z. 1:3). Second, the Talmudic passage upon which this rule is based (A. Z. 6a) probably used the term *notzrim*.<sup>6</sup> Therefore, Rambam is simply continuing a Talmudic tradition.

The difference in the *Mishneh Torah* texts can probably be attributed to Christian censors who edited the version available in Europe. Thus, it seems that Rambam very clearly considers Christians to be idolaters. Regarding Muslims, Maimonides believed that Islam was not truly idolatry. In fact, he uses the Ishmaelites as examples of non-idolaters a number of times.<sup>7</sup> It should be noted that Rambam lived and worked in countries where Christians were minorities; therefore, he had no reason to be lenient concerning the Christians who lived around him.

One of the commentators to the Yemenite versions of the *Mishneh Torah*, *Perush Makif*, agrees that Maimonides did consider Christians to be idolaters.<sup>8</sup> He says: "Know, that this Christian nation that claims a messianic claim to all who study their scriptures, all of them are idolaters, and all their festivals are forbidden, and we treat them in every way as we treat idolaters." (*Perush Makif*, to A.Z. 9:4-Yemenite version) This commentator leaves little doubt concerning

his beliefs about Christianity. For him Christians are clearly idolaters and must be treated appropriately.

Another Sephardic commentator, Isaac ben Sheshet Perfect or Rivash, disagrees with the opinion of Rambam.<sup>9</sup> Rivash provides his opinion in the response to a question about why we are allowed to conduct business with gentiles, even on their festival days. He says:

From there [A.Z. 64b] it will become clear to you that one who does not worship idols, we do not fear to do business with him even on his festival days. Behold he is like a *ger toshav* (כגר תושב) except since he has not accepted before three members [of a religious court] not to worship idols we are not commanded to sustain him. . . . It is written in *Sefer HaTerumah*, in Rashi's name, may his memory be a blessing, the reason was that now, they are not really idolaters, and they will not go out and thank their god . . . . This was ordained according to the times and the places . . . rather everything is according to the time, and according to the place, and according to the people. (Responsum #119)

Not only does Rivash confirm that he does not believe that the gentiles of his time were really idolaters, he provides us a binary definition for *ger toshav*, too. Any non-idolater is considered like a *ger toshav*; however, if he wishes the formal protection of the Jewish community; he must appear before the religious court. Most of what Rivash says is cited from other places; he quotes earlier authorities and affirms their position. For Rivash, Christians and Muslims were not idolaters, but had a legal status of "like a *ger toshav*."



In a aggadic midrash to the book of Genesis, *Seder Eliyahu Rabbah*, the anonymous author makes an interesting comment.<sup>10</sup> He says: "I call heaven and earth to witness that whether one be gentile or Jew . . . according to the merit of his deeds does the Holy Spirit rest on him."<sup>11</sup> The author appears to be attempting to remove the traditional stigma Judaism has placed on its non-Jewish neighbors by admitting that God's spirit may rest upon Jew and non-Jew alike. Non-Jews may, according to this author's understanding, be blessed by God and earn God's presence and protection.

Moses Isserles believed that the gentiles of today were not truly practicing idolatry as their ancestors did.<sup>12</sup> For Isserles, this was especially true concerning wine. In a gloss to the *Shulchan Aruch*, he notes: "Because the decree [against benefiting from the wine of an idolater] is concerning wine that is poured out for idols, but at this time we do not find nations practicing libation." (Y.D. 123:1) Isserles believes, at least concerning wine, that the gentile nations are not truly idolaters; therefore, it is permissible for Jews to trade their wines. This particular understanding, I believe, was an attempt to explain something that was already happening. By permitting benefit from gentile wine, Isserles was simply explaining, and allowing, a current practice among the Jews.

Shabbetai ben Meir HaKohen, the author of the commentary *Siftei Kohen* to the *Shulchan Aruch*, expands the explanation above in his comment to Isserles' gloss.<sup>13</sup> For this comment (#2), *Siftei Kohen* cites an earlier authority, the Bach.<sup>14</sup> He writes:

'At this time,' etc.: The Bach wrote that even if they poured it out before idols in the fashion of libations, in any case, since it has been established that idolatry outside the land of Israel is not idolatry, [it is] rather a practice passed down by their ancestors. If so, then one who pours out wine for idolatry it is not called libational since we say of them that they do not know the [true] nature of idolatry. Substances that, because of this reason too, are not regularly used for idol worship, that is to say, that they are not accustomed to pouring out libations regularly, rather only on occasion. (To Y.D. 123:1)

Thus, it appears that the opinion of the Bach and *Siftei Kohen* concur with the opinion of Moses Isserles above. However, these two authorities are willing to stretch the limits even further. Stating that even if they do perform idolatrous rituals--their meaning has now been transformed and is no longer truly idolatrous. Therefore, wine that is occasionally used in a libational way does not truly qualify as libation wine, and, therefore, may be traded by Jews. As with Isserles' explanation above, this too seems to be an after the fact understanding of something that is already occurring.

In another comment concerning the fact that one may benefit from wine left alone with a non-idolater, *Siftei Kohen* offers two definitions of a person who qualifies as a non-idolater. "'One who does not worship idols': Like a *ger toshav* and Ishmaelites [a Moslem] (He cites this in the name of the Tur, Rashba and Rambam)." (To Y.D. 128:1) The definition that is implied is that one who does not worship idols is either a *ger toshav* and/or Ishmaelite. It is unclear, however, whether Ishmaelite and *ger toshav* are mutually exclusive terms or if they are related.

In one of his responsa, the Hatam Sofer deals with the issue of Jews birthing gentile children.<sup>15</sup> Sofer, who accepts the ruling of Maimonides (Shabbat 2:12), believes that on weekdays it is permissible for Jews to birth gentile children out of fear of enmity.<sup>16</sup> However, he forbids this on Shabbat, although birthing is not a violation of Shabbat, because we should not aid in increasing the gentile nations. Sofer agrees with Rambam's contention that gentiles are idolaters and they are only non-idolaters concerning doing business with them on their festival days. They are, in reality, non-observant pagans, and this clearly includes Christians. Sofer finally allows Jews to birth gentile children for a fee since the gentiles will have children anyway and why shouldn't a Jewish doctor or midwife receive the money. Thus, the gentiles are to be considered as idolaters, except when it concerns business matters. In terms of business matters, we allow it because it is better for a Jew to earn that money, rather than it be given to another idolater.

The work of Menachem ben Solomon Meiri is a turning point in the rabbinic understanding of Christians and Moslems as non-idolaters.<sup>17</sup> Meiri, as mentioned in the last chapter, was a halachic innovator concerning Jewish-Gentile relations. His greatest innovation in this field was the creation of a new phrase to differentiate between the gentiles of the Talmud and the gentiles of his day. The phrase, "the nations that are controlled by the ways of religion [and law]" (אומות הגדורות בדרכי הדתות), grants Christians and Muslims a positive religious status that was a great innovation in Jewish law. This phrase seems to mean that these other religions maintained juridical and moral institutions.<sup>18</sup> "Ha-Meiri did not

intend to abolish any precepts concerning the relationship between Jews and gentiles which were not already disregarded in practice and had not been justified by other Halachists."<sup>19</sup> What was truly unique about the Meiri was he developed an overarching category for people of other religions; whereas, before these matters were dealt with on a case by case and incident by incident basis.

In his commentary, *Beit HaBechirah*, to *Avodah Zarah*, he comments:

They [the laws regarding non-Jews] all concern ancient nations that were not delineated by the ways of religion . . . it [the Torah] is referring to idolaters were not delineated by the ways of religion. . . Therefore, every individual who worships the Deity even though he is not of the [our] religion, is not, heaven forbid, included under this law [of the idolatrous nations]. And, as you know, in the case of the resident stranger, i.e., the one who has accepted the seven Noahide laws, you are commanded to keep him alive. (ed. A. Sofer, Jerusalem, 1964, pp. 59-60)

In the Meiri's opinion the biblical and Talmudic laws no longer concern the gentiles of his day. The gentiles these laws were created for no longer exist. The gentile of the biblical and Talmudic law was a gentile with no regard for the seven Noachite laws. Jacob Katz notes: "Ha-Meiri is almost glad to notice the obsolescence of the talmudic precepts."<sup>20</sup> This observation is illustrated in Meiri's commentary to *Baba Kama* 37b. It says:

And according to what is stated in the Talmud, this only applies to nations who are not delineated by the ways of religion and laws, as the Talmud said of them: 'God beheld the seven commandments which were accepted

by all the descendent of Noah, but since they did not observe them, he [God] rose up'(B.K. 38a) . . . All of those who keep the seven commandments are treated in accordance with our law just as we would be treated under their law, and we are not to treat ourselves with partiality. (K. Schlesinger, Jerusalem 1961, p. 122)

This passage is important because it defines what Meiri believes is the definition of the nations that are controlled by the ways of religion [and law]. Any national group that observes the seven commandments of the sons of Noah fall into this new category. It must be noted, however, that Meiri's new category has the same requirements as his definition of the *ger toshav*. Thus it appears that the nations that are controlled by ways of religion and law are, in reality, *gerei toshav*.

Having established that gentiles of his time were not idolaters; Meiri begins to discuss some of the proper treatment of these people. Much of the treatment for the nations that are controlled by ways of religion and law is similar to the rights of the *ger toshav*. First, Meiri establishes that these nations must be treated equally in terms of legal judgments. He says: "Anyway, this [the idea of judging a dispute between a gentile and Israelite, under whichever set of laws is most beneficial to him, an Israelite] does not apply to those [nations] restricted by the ways of religions, rather, if they come before us for judgment, we do not move the path of justice even a stitch." (Meiri to B.K. 113a) Just as the *ger toshav* is to be treated fairly in legal matters, so too, are these other "believing" nations.

In a comment to the following page of Talmud, Meiri reminds us that we are expected to act correctly towards the *ger toshav* and

the nations controlled by religions. He says: "We are not subject to pious behavior towards one who has no religion. Not [so] towards the Noahides. Rather, they are like full Israelites in all these cases, even in cases of loss or mistake, and all other matters without distinction." (Meiri to B.K. 113b) Although only Noachites are mentioned in this citation; it must be understood to include the *ger toshav* and the religious nations. It is possible to say this, because Meiri has already established that to qualify for either group it is necessary to accept the seven precepts.

Leo Jung, a scholar of human relations and Judaism, has translated a certain portion of the work of the Meiri. One quotation summarizes the Meiri's view of these nations controlled by religion. He says:

Nations that are controlled by religious or ethical tradition must be considered as such who have accepted the Noahide laws. No matter how far removed we are from their creeds, they must be treated like Jews in that their lost property must be returned, an error to their disadvantage must be corrected and all similar righteousness and kindness must be observed.<sup>21</sup>

Again the Meiri is equating the nations that are controlled by religion to the institution of the *ger toshav*. Clearly for him these two institutions are synonymous, and that all the laws that applied to the *ger toshav* when the Jubilee was not observed are applicable to these nations.

One of the major accomplishments of the Meiri was the popularization of the views of Maimonides.<sup>22</sup> "Maimonides appraised the achievements of the two other monotheistic religions, Christianity

and Islam, as historic extensions of Judaism, and conceived their historic task to be the dissemination of Jewish ideas in preparation for the messianic era, when a pure monotheistic doctrine of Judaism would be universally accepted."<sup>23</sup> Maimonides believed that Christianity was contaminated with idolatrous elements, but here Meiri disagrees with him. Meiri believes that since both Christianity and Islam have Jewish roots, therefore both groups have accepted the responsibility to observe the seven Noahide commandments. This acceptance provides both religions with their unique status. In a number of places the Meiri argues that the term *נוצרי*, usually understood as a Christian, in the Talmud as a reference to the kingdom of Nevuchadnezar.<sup>24</sup> Thus, any of the laws that refer to the *notzrim* are clearly not references to Christians.

For the first time in Jewish history, both Christianity and Islam have been cast in a positive light by a major Jewish scholar. Katz explains: "Once again, heartfelt conviction proved stronger than the written word."<sup>25</sup> Others changed grudgingly, "Ha-Meiri could do so whole heartedly, since in his opinion it was not a concession, but a clear case based upon a firm principle."<sup>26</sup> The Meiri had no intention of demolishing the social and religious barrier that stood between the Jewish and non-Jewish worlds. "He [Ha-Meiri] was influenced in his view of gentiles by the socioeconomic realities with which he was confronted in his own diaspora experience."<sup>27</sup> He was only interested in liberalizing the understanding of the necessary interaction between the two communities.

What makes what Meiri did truly unique is not only the fact that he casts these other religions in a positive light, but the fact that

was willing to make a single generalization concerning both religions. Before this time, halachic authorities indulged in a type of apologetic. They needed to explain things that were happening, while maintaining tradition. One of the clearest examples of this quasi-apologetic is Rabbenu Asher quoted above. First he provides a halachic argument that allows Jewish businessmen to trade with gentiles even on their festival days. However, after this argument he finds it necessary also to add the additional argument of enmity. Meiri, on the other hand, is comfortable simply creating this new category. He does not believe any additional arguments are necessary to support his idea; this is what truly made Menachem Meiri an innovator.

Approximately three hundred years later, Jacob Emden again supported Maimonides' claim that the original intent of Christianity was to disseminate Jewish values.<sup>28</sup> In one of his many anti-Shabbatean papers, he wrote concerning Christianity: ". . . [The purpose of the apostles was] to establish for them [Christians] a religion from that day onward, and even it was not new [concerning the prohibition against religious change]; rather it was old, consisting of the seven Noahide commandments that they had forgotten; and the apostles reestablished them [the seven Noahide laws]."<sup>29</sup> Here too, Christianity is cast in a positive light. This is evident because God originally intended all non-Israelite nations to observe these seven laws, but the nations forgot them. The reinstitution of these laws can only be seen in positive light, because it brings the world closer to God's original plan. In another comment, Emden states that non-Jews may worship intermediary beings, as long as they



acknowledge that ultimate power rests in God, a view Christianity does hold.<sup>30</sup>

Emden's comments do not include any specific references to Muslims, but, I believe, that it is fair to argue that he would hold Muslims in a similar position to that of Christians, because their religion, too, involves the re-establishment of the Noahide laws. His comments regarding Christianity were necessary, because to polemicize against the Shabbateans he found it necessary to deal with Christianity and its Messianic concepts.

About fifty years later, the Jews of France were asked by Emperor Napoleon concerning their relationship with their fellow Frenchmen. In an interesting document, "The Transactions of the Parisian Sanhedrin," the members of that Sanhedrin make a comment that is worthy of repetition here.<sup>31</sup> In a comment regarding marital law the assembly declared: "This prohibition [against marrying any of the seven Canaanite nations, Amon, Moab, and Egypt] in general applies only to nations in idolatry. The Talmud declares formally that modern nations are not to be considered as such, since they worship, like us, the God of Heaven and Earth."<sup>32</sup> Although this statement must be understood in its historical context, it explains the Sanhedrin's desire to distance itself from the view that their countrymen were considered by their tradition as idolaters. It is noteworthy, however, that according to these authorities what separates their countrymen from idolaters is the fact that they share Judaism's belief in monotheism. This citation also breaks down the traditional view against inter-marriage. This material is important because it vividly illustrates the desire of Jews

to alter the understanding of their tradition to insure better relations between themselves and the non-Jewish world in which they lived. It must be understood, however, that this document was written under severe government pressure. The halachic decisions were never taken seriously by subsequent halachic authorities.

Rabbi Zevi Hirsch Chajes<sup>33</sup>, a nineteenth century scholar, wrote a pamphlet in response to the Damascus Blood libel of 1840.<sup>34</sup> Although his response was an attempt to cool anti-Semitic and anti-Jewish feelings, his statement is still important. He said:

The seven commandments [of the sons' of Noah] are the natural laws which both Christians and Moslems use in their courts, and both see that they are fulfilled. . . and everyone who keeps the seven commandments, because they were given in God's Torah by the hand of Moses, is a *ger toshav*. Also, Rambam (*Hilchot Melachim* 12:4, Venice edition) and the *Kuzari* (4:34) write that these religions are a prelude and a preparation for the hoped-for Messiah, who is the principle fruit. Then they will all become his fruit when they acknowledge Him and the tree will become whole and they will hold dear the root which they despised at first. (*Tiferet Yisrael*, in *Kol Sifrei Maharatz Chajes*, vol. 2, p. 490)

Chajes provides proof from Jewish tradition that Christians and Moslems are not to be considered idolaters. In fact, he goes as far as the Meiri by equating these religions with *gerei toshav*. Both Christianity and Islam, according to Chajes, will return to the proper faith with the arrival of the Messiah, and the "tree" of Judaism will again be restored and whole. Despite any motives Chajes may have had for writing this pamphlet, the fact that he was able to find

supporting evidence and build this argument indicates that this type of thought did, at least, exist within Jewish tradition.

Abraham Isaac Kook, the first chief Ashkenazic rabbi of Palestine, had to deal with some real issues related to this topic.<sup>35</sup> In one of his volumes of responsa he discusses the issue of Muslims as idolaters. He concludes that Moslems are not idolaters.<sup>36</sup> He says that Moslems are not idolaters with respect to giving them something for free. Therefore, they must fall into the category of a *ger toshav*, because if not we would be required to sell to them--not give. It appears that Kook is following the opinion of earlier authorities like Maimonides. However, unlike Rambam's situation, Rav Kook was faced with real questions concerning practice and civil rights within Palestine.

Rabbi Joseph Henken, a modern Orthodox scholar and *posek*, offers two other arguments against considering modern non-Jews as idolaters.<sup>37</sup> He reminds the reader that Jewish tradition holds that the associationism (שיתוף) of Islam and Christianity is not something that is prohibited to them by the seven Noahide laws (however, associationism is prohibited to Jews).<sup>38</sup> Their use of intermediaries or a belief in a triune divinity is associationism, but it is still considered the worship of the one God. Second, in another comment, he notes:

"Beloved is man for he was created in the image of God." This applies even to idolaters. Certainly the people of the world in our time are not idol worshippers, and with the passage of the generations, idolatry has been progressively uprooted from their hearts . . . and even if

there are some who worship idols, in my opinion, the overwhelming majority are in the category of *Ger Toshav*. . . As for the rule in the Talmud (Yeb. 46, A.Z. 64b) that a *Ger Toshav* must accept the seven commandments before a tribunal of three as a decree from God through Moses, this is only with respect to our obligation to provide him with a livelihood and the privilege to reside in the Land of Israel. But, to the extent that being removed from the class of idolaters is concerned, anyone who denies idolatry and acknowledges that the seven commandments are obligatory, is a *Ger Toshav*.<sup>39</sup>

Thus, clearly for Henken the vast majority of non-Jews, not just Christians and Muslims, are not to be considered equal to the idolaters of the Bible and Talmud. Those people who accept the seven commandments as part of a divine requirement, like Christians and Moslems, have actually achieved the status of *gerei toshav*. As Henken argues, the need for an appearance before a religious court is only for those *gerei toshav* that wish to gain residency rights in Israel and the social protections that accompany the legal recognition of the status of *ger toshav*. Concerning the appearance before the court, Henken is following the opinion of the Ran.

Another Orthodox scholar, Rabbi Isaac Herzog, Kook's successor as Ashkenazic Chief Rabbi of Israel, believes that since associationism is not forbidden to Noachites, Christians do, therefore, not fall under the law of idolaters.<sup>40</sup> He holds, "That anything that can be said concerning the Muslims is true for them [Christians], as well."<sup>41</sup> In Herzog's opinion, one must consider Christians and Muslims as non-idolaters. Muslims, as he explains, have been understood as non-

idolaters throughout Jewish tradition. Concerning Christians he uses the argument stated above, and he also says:

In any case, according to the method of Razal [Our rabbis, may their memories be for a blessing], an idolater who is outside the land of Israel, they are not really idolaters, rather theirs is the practice of their ancestors. (*Hullin* 13b) So, in any case, the Christians of our times, even the Catholics, are not idolaters in the Biblical sense, rather their minds [are directed] to heaven, although they, themselves, do not understand the hidden equality between the singular and tripart.<sup>42</sup>

Christians may not understand the fact that they are directly worshipping the One God, but it is apparent to Herzog that they are. Concerning the practice of Christianity within the land of Israel, Herzog is far less certain. He contends that we allow Christians to dwell in the land of Israel for two reasons. First, our tradition is not sure that Christianity within the land of Israel is idolatry and, therefore, we allow them to live in the land. The second reason is for fear of enmity that would be created if the practice of their religion was curtailed.<sup>43</sup> One of his final comments in this work of Herzog's cited is, "Now the time has arrived to look at the situation as it really is and to examine the Halacha from a realistic standpoint."<sup>44</sup>

Ernst Simon, a modern scholar of Jewish ethics, has summarized much of the change in attitude towards non-Jews. Although Simon is not a halachic scholar, he does summarize the opinions of the great halachic scholars. He notes: "All legislation that seems to discriminate against non-Jews is now taken to refer exclusively to barbaric idolaters."<sup>45</sup> Simon believes that later Jewish

authorities were attempting to alter the understanding of the law to deal with the reality that existed in their day. In attempting to explain the changes that took place he comments: "Although there is surely some element of apologetics underlying these cases of extreme liberality, that does not seem to be a sufficient explanation for this new tendency. Perhaps it is also symptomatic of the feeling on these morally sensitive men that the Halakha is not sufficient to answer all of our needs."<sup>46</sup> Simon holds that the liberalization by some halachic authorities was a valid response to the changing world in which these authorities lived.

Both Herzog and Simon have argued that although the *halachah* holds a particular view, it is now necessary to reevaluate it. As was explained above, modern scholars do believe that the laws concerning idolatry were valid concerning the religions of old, but the "great" religions of the western world are not to be considered similar in type or kind. The various attempts at reevaluation of the traditional *halachah* show that Jewish scholars through the ages have struggled with their desire to fulfill the law to its fullest while living in the society of their time. Most of the scholars discussed above are not willing clearly to contradict the *halachah*, rather they use other traditions and explanations to reconcile Judaism with the world in which they lived.

In my opinion, the intent of the majority of scholars cited above is to free Christians and Muslims from the stigma of idolaters, and in many cases, grant them the status of *ger toshav* or its modern equivalent. This opinion is not at all unanimous, however, as many of these authorities noted. The laws concerning idolatry were

established for a particular time, a particular place, and with particular people in mind. They believed that change, for whatever reason, was necessary and proper. It seems clear to me that some Jewish authorities desired to see, or at least appear to see, the Christians and Muslims of their day in a more positive light. The majority of the evidence indicated this tendency, and I believe it is incumbent upon us to continue and strengthen this tendency as the needs arise. Many of the great authorities of our tradition, for whatever reason, did not believe that the Christians and Muslims of their day were idolaters. I do not believe that we can think differently than they did.

Having established, for the most part, that the Christians and Muslims of our day are not idolaters; the question of their ability to be *gerei toshav* must be addressed. A number of the later scholars all agreed that the worship of Christians and Muslims is worship of the one and only God. Both groups also believe in the divinity of the Torah, and therefore, the revelation of the seven Noachite commandments by God. The seven Noachite laws are incumbent upon all mankind; however, a nation who chooses to follow them because they were revealed by God, is a nation of *gerei toshav*.

Second, the question of a formal appearance in a religious court must be answered. Rabbi Meir Dan Plotzki of Ostrova, known by his most famous work as *Chemdat Yisrael*, believes that not only is the court appearance not a necessity, but that *gerei toshav* exist today.<sup>47</sup> Plotzki claims that the requirement of the *ger toshav* to make a formal appearance in court only applies to an idolater who wishes to become a proper non-Jew.<sup>48</sup> However, a non-Jew who has always

worshipped God has no need for the formal appearance. On this basis, he concludes that one who has always observed the seven Noahide commandments is to be automatically considered a *ger toshav*.<sup>49</sup> Here Plotzki is following the opinion of Rabbenu Nissim discussed in the previous chapter. Plotzki, then, believes that there are *gerei toshav* today, and that Christians or Moslems may automatically be considered a *ger toshav*. Based on all the opinions discussed above, it does not seem unreasonable to accept Plotzki's opinion; thus, the Christians and Muslims of today should be considered *gerei toshav* in the eyes of Jewish law

### Christians, Muslims, and Gerei Toshav in the Land of Israel

Having established, for the most part, that Christians and Muslims are not to be considered idolaters and may be understood as *gerei toshav*, it is helpful to see how this was put into practice in the modern state of Israel. In the previous two chapters it was established that one who is considered a *ger toshav* has certain rights and privileges. Chief among these privileges is the ability to live within the land of Israel.<sup>50</sup> However, for many of the authorities discussed above the question of settlement was a moot question. For the rabbinic authorities in Palestine, and then Israel, the question of the settlement of non-Jews was a real question that needed to be answered.

The first chief Ashkenazic rabbi of Palestine, Rabbi Abraham Kook, was one of the first modern responders to deal with the



question of non-Jewish settlement within the confines of Israel. In his legal work *Mishpat Cohen*, he notes:

A *ger toshav* is included, like this slave [the runaway slave], in these laws concerning settlement in the land. . . . Just as we found with the slave, there is a definite stage between *ger tzedek* and a *ger toshav*. So too have we found a definite difference between a *nochri* and a *ger toshav*. He [the *ger toshav* ] accepts not to worship idols, and he is like a *ger toshav* with respect to the laws of settling in the land. (#63)

Thus, according to Rav Kook, anyone who agrees not to worship idols, regardless of acceptance by a religious court, may have settlement rights within the land of Israel. These "idolatry rejecters" qualify for a quasi-*ger toshav* status that allows them settlement.

In the commentary to this responsum, the editors of the work make an interesting comment:

"Behold, before us is a law of a specific type, 'a foreigner that agrees to to practice idolatry,' he is not a full *ger toshav*, but in any case, in reference to the subject of settlement in the land, he is like a *ger toshav* and he is not forbidden it [the opportunity to dwell in the land] . . . . In any case, behold, we learn that this status, of a 'stranger who has agreed not to practice idolatry,' is a reality."<sup>51</sup>

Thus, it is clear, that the students of Rav Kook agreed that a quasi-*ger toshav* status exists to allow non-Jews settlement rights in the land. Both Rav Kook and his students use the Hebrew term כּוּר תּוֹשָׁב to describe this quasi-*ger toshav* status.

Yehiel Charlaf, in his article "The Settlement of Idol Worshippers in the Land of Israel," holds that it is permissible to allow a *ger toshav* to dwell in the land. He argues that, unlike idolaters, one does not need to fear that we will learn his ways and become idolaters ourselves.<sup>52</sup> However, Charlaf believes that Christians should, in fact, be considered idolaters. He says: "With the Christian, he is an idolater, we fear that we should learn from him, God forbid, not to believe in a single, unique creator, and he commanded us to obligate us to all of his commandments and teachings."<sup>53</sup> It appears that Charlaf follows Maimonides' opinion that Christians are idolaters. Muslims, on the other hand, can qualify as *gerei toshav* and, therefore, they may live in Israel.

Rav Yehuda Gershuni holds a similar opinion to that of Charlaf. Gershuni accepts that Moslems are to be considered *gerei toshav*, at a minimum, regarding wine and residency.<sup>54</sup> He understands this because, as the *Cesef Mishneh* explained, because the rabbinic prohibition of benefit from non-Jews' wine applies only to idolaters. If we know that he is not an idolater, even without formal "conversion," his wine is permissible for benefit.<sup>55</sup> Concerning residency, just as the wine of a non-idolater is permitted, so too, does a non-idolater qualify for limited *ger toshav* status that allows residency in the land. Thus, the Moslem maintains a quasi-*ger toshav* status that allows Muslims to live within the confines of the modern state of Israel.

Concerning Christians, Gershuni follows Rambam's opinion that Christians are idolaters. He arrives at this decision based upon Christianity's use of *shituf*, or associationism. Citing Yakov Emden,

Gershuni draws the conclusion that, although associationism may be permissible outside of Israel, within its borders it is forbidden.<sup>56</sup> Since it is forbidden, its practice within the confines of Israel constitutes idolatry, and, therefore, Christians must be considered idolaters and prohibited from settlement within Israel. In my opinion, Gershuni's restatement of the differences between Meiri and Rambam does not adequately deal with the halachic innovations of the Meiri. Gershuni finally admits that we cannot remove the Christians currently living in the land.<sup>57</sup> He reasons that we allow these people to stay because of the principle of peaceful coexistence. However, Rambam established that at a time when there is a Jewish polity we do not tolerate idolaters living among us, regardless of the principle of *darchei Shalom*. (*Avodah Zarah* 10:6) Finally, Gershuni suggests that the topic of Christian settlement within Israel deserves further study. I, personally, find Gershuni's arguments weak and unconvincing, because he is attempting to ignore a reality in the Jewish state.

It is noteworthy that the majority of modern scholars, cited above, do not consider Christians to qualify as *gerei toshav*. This disqualification means that Christians are then idolaters forbidden to live within the confines of a Jewish state. Concerning, Moslems there is generally complete agreement that they qualify as *gerei toshav*, at least regarding their ability to dwell in the land of Israel.

When evaluating all the opinions quoted above it is important to note one thing. With the exception of Rav Kook and Herzog, none of the other authorities served in a role that would make the question being posed a reality. Rav Kook and Herzog were forced to

deal with the reality at hand in Palestine. As the Meiri did, Rav Kook, consulting the Jewish tradition and social reality was able to support the residency of Christians and Moslems within Israel. In my opinion, it is necessary to understand, accept, and adapt the *halachah*, if possible, to the situation at hand. The authors besides Kook Herzog, had the luxury of being able to prescribe what should be done without having to enforce it. I believe, that if roles had been reversed the conclusions may have been very different. Meiri, the Maharatz Chajes, and Rav Kook all understood the realities of their day and of their world and attempted to adapt Judaism to meet these new realities. I believe that it is the responsibility of modern commentators to do the same.

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<sup>1</sup>The Tosafists were 12th-14th century Ashkenazic authorities whose comments are arranged according to the order of the Talmudic tractates. For further information: see notes 3 & 4 in chapter two.

<sup>2</sup>B. Tal. *Hullin* 13b: "The gentiles outside the land [of Israel] are not idolaters; they only continue the customs of their ancestors." (This is said by R. Yochanan)

<sup>3</sup>Rabbenu Asher--Asher b. Jehiel was also known as Asheri and Rosh (c. 1250-1327). He was very influential because, at one point, he became the *posek acharon* for both Ashkenazi and Sefardi Judaism. His commentary appears in the back of most volumes of Talmud.

<sup>4</sup>Maimonides was also known as Rambam and R. Moses b. Maimon. (1135-1204) For further information, see chapter two note five.

<sup>5</sup>Rambam, *Mishneh Torah* : According to the Yeminite Manuscript. (Jerusalem: The Institute for the Legal Studies of the Rambam, 1984), pp. 520-521.

<sup>6</sup>This is evidenced by נוצרי חסופרים on *Avodah Zarah* 6a. The term נוצרי appears in the Munich manuscript, as well as in a Talmudic fragment.

<sup>7</sup>See *Malachot Asurot* 11:7, for example.

<sup>8</sup>*Perush Makif*--commentary of Rabbi Joseph David Kafach (1917- ). He is an Israeli Rabbi, born in Yemen, who has become one of the foremost experts and translators of Yemenite Judaism.

<sup>9</sup>Rivash, Isaac b. Sheshet Perfect, (1326-1408) was a Spanish halachic authority. From 1391 he served as chief rabbi of Algiers. He is considered one of the foremost Spanish responders and his responsa are the basis for many rulings in Karo's *Schulchan Aruch*.

<sup>10</sup>*Seder Eliyahu Rabbah*, also known as *Tanna de-vei Eliyahu* or *Huppat Eliyahu*, is a homiletical Midrash constructed in an unusual way. It consists of eighty-three sections in cycles of three parts, the first interpreting a verse from Genesis, the second a verse from the Prophets, and the third a verse from Psalms. The Genesis citations are generally the first line of each weekly portion according to the Palestinian triennial Torah cycle. Its date of composition and author are unknown, but internal evidence shows a late date. It first appeared at the end of *Shetei Yadot* by Menahem di Lonzano in 1618.

<sup>11</sup>E. Simon, "The Neighbor Whom We Shall Love," in Modern Jewish Ethics: Theory and Practice, ed. M. Fox, (Columbus: Ohio State University Press, 1975), p. 46.

<sup>12</sup>Moses Isserles (c. 1525-1572) was also known as the Rema. He was a Polish rabbi, codifier, and great halachic authority. His major works include the *Darchei Moshe* upon which he based is *Mappah*, glosses to the *Schulchan Aruch*.

<sup>13</sup>Shabbetai b. Meir HaKohen (1621-1662) was a Lithuanian rabbi, *posek*, and commentator on the *Schulchan Aruch*. *Siftei Kohen*, his work, is a commentary on the section *Yoreh Deah* of the *Schulchan Aruch*.

<sup>14</sup>Bach, Joel Sirkes, (1561-1640) was one of the greatest talmudic scholars of Poland. Sirkes' great work was a commentary on the *Arbaah Turim*, of Jacob b. Asher.

<sup>15</sup>Moses Sofer (1762-1839) was the man known as the Hatam Sofer. He was a rabbi, halachic scholar, and authority of Orthodox Judaism. He founded a Yeshiva in Pressburg, Hungary that became a center for Orthodox Judaism's struggle with the Reform movement.

<sup>16</sup>This information comes from responsum #131 to *Yoreh Deah*.

<sup>17</sup>Menachem b. Solomon Meiri (1249-1316) is usually referred to as Meiri. He lived in Provence, France. He was a rabbi, commentator, and halachic innovator. His major work, which is a commentary on the Talmud, is called the *Beit HaBechirah*.

<sup>18</sup>Jacob Katz, "Men of Enlightenment," in Exclusiveness and Tolerance (New Jersey: Behrman House, 1961), p. 121.

<sup>19</sup>Katz, p. 118.

<sup>20</sup>Katz, p. 116.

<sup>21</sup>Leo Jung, Human Relations in Jewish Law (New York: Jewish Education Press, 1970), p. 36.

<sup>22</sup>Katz, p. 119.

<sup>23</sup>Katz, pp. 119-120.

<sup>24</sup>See: *Beit Ha Behirah*, A. Z., p. 4. This is based on Jeremiah 4:16. The word *notzri* is missing from the printed version of the Talmud.

<sup>25</sup>Katz, p. 123.

<sup>26</sup>Simon, p. 47.

<sup>27</sup>Simon, p. 49.

<sup>28</sup>Jacob Emden (1697-1776) was a rabbi, halachic scholar, eminent kabbalist, and ardent opponent of the Shabbatean movement. Emden was regarded as one of the outstanding scholars of his generation. His most famous anti-Shabbatean controversy was a dispute with Jonathan Eybeschuetz, then the rabbi of Altona.

- <sup>29</sup>Jacob Emden, "Letter concerning the Shabbateans." For more information see Oscar Z. Fasman, "An Epistle of Tolerance by a 'Rabbinic Zealot,'" in The Jewish Library, ed. Leo Jung, London: Soncino Press, 1971.
- <sup>30</sup>Yehuda Gershuni, "Minority Rights in Israel," (Offprint) p.30.
- <sup>31</sup>The Parisian Sanhedrin was an assembly of seventy-one Jewish scholars in Paris during February-March 1807. The purpose of this assembly was to change the secular responses of the Assembly of Jewish Notables (1806) into doctrinal decisions that would be religiously binding upon the Jews.
- <sup>32</sup>Diogene Tama, The Transactions of the Parisian Sanhedrin, trans. by Ellis Rivkin (Cincinnati: Hebrew Union College, 1956), p. 12.
- <sup>33</sup>Zevi Hirsch Chajes (1805-1855) was a rabbinic scholar born in Brody, Galicia. Chajes devoted his time to introducing modern critical methods of study in the study of Jewish literature. He wished to de-emphasize *pilpul*, without compromising Orthodox principles. Chajes was unusual in that he was one of the few Orthodox rabbis of his day to earn a secular doctorate. He was a staunch opponent of the early Reform movement.
- <sup>34</sup>The Damascus blood libel, or simply the Damascus affair, was a notorious blood libel in which Christian anti-Semitism and Muslim anti-Jewish sentiments came to a head when aggravated by the political struggle of the European powers for control of the Middle East.
- <sup>35</sup>Abraham Isaac Kook (1865-1935) was born in Latvia. He was a halachic scholar, as well as an avid student of Judaism. He immigrated to then Palestine in 1904, where he became the chief rabbi of Jaffa. He, also, played an important role in the early Zionist movement. In 1921, he was elected chief Ashkenazi rabbi of Palestine. He was a prolific writer who authored no less than nine works during his lifetime.
- <sup>36</sup>Abraham Isaac Kook, משפט כהן #63.
- <sup>37</sup>Josef Elijah Henken (1881-?) was born in Klimovichi, Belorussia. He was a student of Jechiel M. Epstein and others. In 1922, he emigrated to the United States where he settled in New York and became a major figure in the American Orthodox movement.
- <sup>38</sup>Yosef E. Henken, "The End of Days," HaDarom vol.10 (1959) p.7.
- <sup>39</sup>Henken, p. 8.
- <sup>40</sup>Isaac Herzog, תחוקה לישראל על-פי התורה chapter 2, vol. 1 (Jerusalem: Mossad Rav Kook, 1989), p. 17.
- <sup>41</sup>Herzog, p. 17.
- <sup>42</sup>Herzog, p. 17.
- <sup>43</sup>Herzog, pp. 17-18.
- <sup>44</sup>Herzog, p. 18.
- <sup>45</sup>Simon, p. 46.
- <sup>46</sup>Simon, p. 51.
- <sup>47</sup>Meir Dan Plotzki of Ostrova (1867-1928) was a Polish rabbi. The publication of the first part of his work *Chemdat Yisrael* in 1903 established his fame throughout Poland. In 1926, he was appointed the *Rosh Yeshiva* of the "Metivta" of Warsaw.
- <sup>48</sup>Gershuni, p. 32.
- <sup>49</sup>Gershuni, p. 32.

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<sup>50</sup>See *Arachin* 29a, et. al. and Rashi to *Arachin* 29a "The laws concerning the . . ."

<sup>51</sup>כהן to #63. הערות-משפט כהן

<sup>52</sup>Yehiel, M. Charlaf, "The Settlement of Idol Worshipers in the Land of Israel," אור המצרח vol. 19, (Sept. 1969), p. 6.

<sup>53</sup>Charlaf, p. 4.

<sup>54</sup>Gershuni, p. 32.

<sup>55</sup>Gershuni, p. 31.

<sup>56</sup>Gershuni, p. 30.

<sup>57</sup>Gershuni, p. 33.

## Chapter Four

### The *Ger Toshav* in Reform Responsa

Although there is not much information on the *ger toshav* in modern Reform responsa, there are a number of instances where it is discussed. One can draw a number of conclusions from this material that will be helpful for this study.

A useful source for much of the Reform responsa concerning non-Jews and the *ger toshav* is in a new book published by the Commission on Reform Jewish Outreach of the Union of American Hebrew Congregations and the Central Conference of American Rabbis. The book is entitled: Defining the Role of the Non-Jew in the Synagogue: A Resource for Congregations. This book, which was published in 1990, attempts to answer some of the questions this study has raised, as well as, provide a broad-based resource for Jews struggling with the issue of non-Jews in the American Synagogue.

In the responsum entitled "Congregational Membership for a Non-Jewish Spouse," the question concerns whether the category of *ger toshav*, or one of the close equivalents, can be used to answer any of our modern problems concerning the non-Jewish spouse of an intermarried couple.<sup>1</sup> The questioner asks if a reinstitution of these categories would be a valid response to the pressures and situations presented by the modern world. In responding to the question, Rabbi Walter Jacob, the author of the responsum, says:



Relatively little space in these volumes [of Reform responsa] is given to our categories that existed only for a few centuries. These categories play no more role in rabbinic literature after the Talmud, and when these terms are used they are synonymous with *benei Noah*, in other words, a gentile who had accepted basic human morality and was no longer a pagan. The term also designates individuals who had accepted certain Jewish thoughts in the post-Talmudic period. No special status has been accorded to them.

Using the above reasoning this responsum concludes that these categories are not useful in responding to the needs of our modern experience. These categories have no value for us, since they did not exist in the post-Talmudic period and because these groups achieved no special standing within the Jewish community. This answer might be satisfying, if the information on the *ger toshav* ended here; however, this is not the case.

In another responsum, "Conversion without Formal Instruction," Rabbi Walter Jacob and the responsa committee respond to a question concerning the necessity of formal "Introduction to Judaism" classes for a woman who has lived a "Jewish" lifestyle for many years.<sup>2</sup> The conclusion of this responsum is not as important to this study as a comment made in its closing line. "This step [the conversion without formal training] should be made as easy as possible, and we should do everything in our power to bring *Gerei Toshav* completely into the sphere of Judaism."<sup>3</sup> I find it interesting, although this responsum antedates the one quoted

above, that a term that was later determined to have no value or status is used as a means of classifying a particular group of people.

In another responsum, from the same collection as the first one cited in this section, the committee says something very intriguing. They consider "a gentile who lived basically a Jewish life," to be a *ger toshav*.<sup>4</sup> It goes on to say, "Christians and Muslims, as monotheists, have been classified as *gerei toshav* since the Middle Ages rather than idolaters."<sup>5</sup> Thus, it appears that non-Jews have been granted the status of *ger toshav* in post-Talmudic times. To prove this, the author refers to works by Meir of Rothenberg, Maimonides, and the *Shulchan Aruch*. This responsum continues by saying: "A *ger toshav* is considered equal to a Jew in all legal matters, but he has no status in connection with ritual obligations, for they are not incumbent upon him."<sup>6</sup> For this reason, the responsum's author holds that non-Jews should not be allowed membership in synagogues, because members have rights to be involved in all aspects of synagogue life. Since the *ger toshav* is not commanded concerning the ritualistic aspects of Judaism, he must be excluded from membership.

Further information on this question is provided in two additional Reform responsa. The first deals with "Temple Membership of a Mixed Couple," and the second concerns "Participation of Non-Jews in a Jewish Public Service." The first responsum comments: "In the Middle Ages, the fear of pagan idolatry was no longer real, since Christians and Mohammedans are not in Jewish law deemed to be idolaters. Yet these laws [the laws concerning idolatry] continued in force, since the small Jewish

communities had to protect their identity against a hostile majority."<sup>7</sup> The author of this responsum, clearly accepts the opinion of authorities like Meiri and Chajes, while rejecting Rambam's opinion, *de facto*, by not discussing it at all. The second responsum holds: "The classification of Christians as *gerei toshav* had theological implications and also important economic consequences."<sup>8</sup> It continues to say: "In secular relationships Christians could be treated as *Benei Noach* [*gerei toshav*], but in religious matters distinctions were to remain."<sup>9</sup> Again, the responsa confirm that the Christians and Muslims were, in fact, granted the status of *gerei toshav* by earlier rabbinic authorities. Here we are also told that it was advantageous for the rabbis, politically and economically, to grant these non-Jews this status.

### Conclusions

The majority of these responsa conclude that the status of *ger toshav* did exist in the post-Talmudic period and was granted to Christians and Moslems who lived in the surrounding communities. According to the statements made in these responsa, this status was granted to non-Jews when the rabbis believed that it was advantageous to do so. What escapes my understanding here is how is it not in the best interests of the modern liberal Jewish community to uphold this earlier precedent? The medieval situation, where non-pagan gentile societies surrounded a Jewish community which was composed solely of Jews, may not be a precedent for the contemporary situation of massive intermarriage, where non-Jews are seeking membership within the Jewish community. However, I

believe that the intent of these earlier laws was to control the interaction between the Jewish community and the non-Jewish community that surrounded it. These laws were an attempt to explain and control the reality of their time. Therefore, I believe that just as these laws regulated the real interaction between communities, so too, can it help us deal with the reality of outsiders seeking access to our communities today. By granting this "associate" status, we would be welcoming members and encouraging gifts and other financial aid for our Jewish institutions. Judaism may not, and should not, condone intermarriage, but the fact remains that we will recognize the validity of a civil marriage. The existence of the non-Jewish spouse within the intermarried couple is a reality we must accept.

I disagree with the findings of the first responsum that holds that the *ger toshav* was neither a status nor a reality in the post-Talmudic literature. The existence and discussion of this concept by post-Talmudic authors, especially those dealing with the question of the settlement of non-Jews within the State of Israel, show at least the desire for this status to be a reality. The existence of a quasi-*ger toshav* status (כגר תושב) in the *Shulchan Aruch* and other post-Talmudic works satisfies a need, of the later Jewish authorities, to utilize the concept in order to describe an existing reality.

I do not necessarily disagree with the conclusion that non-Jews should not be involved in the ritual aspects of a congregation; however, there is an objection that should be considered. If, as in America, the synagogue is a non-profit corporation, then the synagogue has a legal status. If a *ger toshav* is equal in legal

matters, as stated above, then it is impossible for us legally to exclude these people from synagogue membership. If from a halachic standpoint we are bound by the rabbinic dictum *dina malchuta dina* (the law of the land is the law), then following American civil law, it is not permissible to segregate according to religious affiliation within corporations. If this, too, is the case; we cannot halachically exclude these *gerei toshav* from membership in our "corporate synagogues." Although the synagogue is not a typical "corporation," it does still fall under many of the same laws as a standard company. I do not have the answer to this question, but it is certainly one worthy of further study. These assumptions only hold true to a point; there are two problems with these arguments. In reality, most courts recognize the separation between church and state and have never presumed to tell religious institutions whom they may and may not accept as members. Second, the dictum of *dina malchuta dina* is limited. For example, traditional Judaism does not accept civil divorce regardless of the fact that civil divorce is part of American law. Therefore, *dina malchuta dina* is not in effect in this case.

Another issue concerning the *ger toshav*, that is not dealt with directly in the corpus of the Reform responsa, is the matter of the jubilee year and the acceptance of the *ger toshav*. There is a short responsum entitled "The Jewish Jubilee," that can provide an interesting possibility for us as Reform Jews.<sup>10</sup> It says:

"According to the Talmud (Archin 32b), the laws about the Jubilee year prescribed in Leviticus were to be observed only as long as all Israel lived in Palestine, but

not after some of the tribes had been exiled. . . . But while not observing the Jubilee year in practice, the Jewish people may have preserved the memory of it in their reckoning of the years."<sup>11</sup>

According to this responsum, in Archin 12a, the memory of the Jubilee year was recorded. It says: "the fourteenth year after the city was smitten, referred to in Ezekiel 40:1 was a Jubilee year."<sup>12</sup> If "the city," is understood as Jerusalem, then the Jubilee year would have been 573 B.C.E.<sup>13</sup> Using this date as a reference, the last Jubilee year would have been 1977 and the next one will be in the year 2027.

Currently, in Israel, the seventh year sabbatical year is observed as a remembrance of the Jubilee and sabbatical year cycle. Many of the laws set down for the *shmita* year are being observed, although there is no agreement in the sources whether the observance of the sabbatical year is a rabbinic decree or required from the Torah. "According to Judah II it is only observed today because of rabbinic enactment to 'perpetuate the memory of the Sabbatical Year.' However, the rabbis held the operation of the Sabbatical Year nowadays to be biblical (MK 2b; Git. 36a-b). Later commentaries and codes remained divided on this issue; Maimonides seemingly ruled in accordance with the viewpoint of Judah (Shemittah 9:2,3 and Kesef Mishneh ad loc.)"<sup>14</sup> If some of the laws concerning the sabbatical year is being observed as a memory, then it is not unreasonable to suggest that some of the laws of the Jubilee year could be "re-instated." If this was to be the case, then, from a traditional standpoint, the re-instatement of the status of *ger toshav* may be possible.

In the Reform movement we have eschewed the celebration or commemoration of sabbatical and Jubilee years. If we do not believe that it is necessary to observe the requirements of these time periods, there is no reason we should hesitate to reinstate the category of *ger toshav*. If, as stated in the responsa above, Christians and Muslims were considered *geri toshav* by the rabbis of the Middle Ages because they believed it to be advantageous to them, then there is no reason the Reform movement cannot make the same judgment as the medieval rabbis, if it is concluded that these categories can play a beneficial role in answering the problems faced by Reform congregations today.

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Walter Jacob, ed., Contemporary American Reform Responsa, #162 (New York: CCAR Press, 1987), pp. 242-245.

<sup>2</sup>Walter Jacob, ed. "Conversion without Formal Instruction," American Reform Responsa (New York: CCAR, 1983) pp. 211-215.

<sup>3</sup>"Conversion without Formal . . .," pp. 214-215.

<sup>4</sup>Defining the Role of the Non-Jew in the Synagogue: A Resource for Congregations (New York: UAHF, 1990), p. 49.

<sup>5</sup>Defining the Role, p. 49.

<sup>6</sup>Defining the Role, p. 49.

<sup>7</sup>Solomon Freehof, ed. Reform Responsa and Recent Reform Responsa (Hoboken: Ktav Pub. House, 1973), p. 64.

<sup>8</sup>Defining the Role, p. 57.

<sup>9</sup>Defining the Role, p. 58.

<sup>10</sup>"The Jewish Jubilee," American Reform Responsa, p. 128.

<sup>11</sup>"The Jewish Jubilee," p. 128.

<sup>12</sup>"The Jewish Jubilee," p. 128.

<sup>13</sup>Nebuchadnezzar destroyed Jerusalem in 586 B.C.E.; fourteen years after that would be 573 B.C.E. ("The Jewish Jubilee," p. 128.)

<sup>14</sup>Aaron Rothkoff, "Sabbatical Year and Jubilee," Encyclopedia Judaica, vol. 14 (Jerusalem: Keter Publishing House, 1972), p. 582.

## Chapter Five

### Conclusions

The four preceding chapters have been an attempt to clarify and define the institution and status of the *ger toshav*. While this study has not been exhaustive, it has attempted to introduce the various "major players" and their opinions concerning the *ger toshav*. Also, I attempted to probe the relationship between Jews and their non-Jewish neighbors, concentrating especially upon the Christians and the Moslems. This study has revealed a wide variety of viewpoints, although with a majority, in some way, trying to balance the *halachah* and their societal situation. It must be understood that the task of balancing belief with reality is no simple matter. I personally have great respect for those authorities who recognized and tried to adapt Judaism to keep it a viable and maturing religion. The task at hand now, is to see if, like many of the earlier authorities, we can find the classification of *ger toshav* a useful institution for dealing with the challenges of today.

For Jews today, one of the biggest concerns is intermarriage. Currently, the intermarriage rate for Jews has exceeded fifty percent.<sup>1</sup> "At many Reform Shabbat services a third or more of the participants are unconverted spouses."<sup>2</sup> The intermarried couple and the non-Jewish spouse have become major issues within congregational life. The question must now be asked, "Can Jewish tradition offer us any guidance in dealing with the relations between the ever increasing number of non-Jews in our congregations?" This



question has been the underlying hypothesis behind this paper, and it is now time to test the hypothesis and draw some conclusions.

To respond to this question fully, one must approach the answer from a number of perspectives. First, does a traditional understanding of Judaism offer any information or advice? This approach is appropriate and necessary. Without consultation with traditional Jewish sources any decision would not truly be Jewish. However, a second understanding is also available to us as liberal Jews. Just as liberal Judaism has continued to evaluate Jewish tradition in view of the modern world and its developments, so too, can traditional understandings, cast in new light, help us deal with the difficulties of being a "modern" Jew. Choosing either path, I believe, is not wrong; however, I do believe that it is necessary to consult both types of answers when attempting to reach a solution.

Most of the traditional sources cited in the preceding chapter could never have envisioned the situation the Jewish people now face in terms of the question of intermarriage. The large majority of texts do not approve of intermarriage. One must remember that according to Jewish law, *kiddushin*, or betrothal, can not take place between a Jew and a non-Jew. Although there is tacit acceptance of civil marriage in traditional Judaism, this too, is not encouraged. In fact, many halachic authorities do not require a *get*, a Jewish divorce decree, when a civil marriage is dissolved. Jewish tradition and custom are very clear concerning intermarriage.

There is only one citation, in all the materials I surveyed, that even mentions the idea of marriage to non-Jews is the citation from the proceedings of the Parisian Sanhedrin. They said:

"This prohibition [against marrying any of the seven Canaanite nations, Amon, Moab, and Egypt] in general applies only to nations in idolatry. The Talmud declares formally that modern nations are not to be considered as such, since they worship, like us, the God of Heaven and Earth."<sup>3</sup>

This statement was written to allay the fears of Napoleon and the French people that the Jews of France could be good French citizens. Although, it seems to allow for intermarriage between Jews and the non-Jewish population, it is in no way supporting or encouraging intermarriage. Jewish authorities have never taken this statement as a serious halachic precedent. I must also wonder if the members of the Parisian Sanhedrin could see the state of Judaism, today, would it have affected their decision in any way.

The majority of the authorities cited in the preceding chapters, even those with very liberal views, conceived of these laws as regulating the interaction between the Jewish and non-Jewish communities. The traditional separation, in Judaism, between these two communities may have been liberalized, but the intermingling was an alien concept to these authorities. Liberal authorities, like the Meiri and Chajes, had no intention of demolishing the social and religious barrier that stood between the Jewish and non-Jewish world. They were reacting to the realities of the times in which they lived, that required, for the most part, economic interdependence between Jews and their non-Jewish neighbors. Despite any positive light in which the non-Jewish community may have been cast by a re-interpretation of Jewish sources; the reality remains that this

liberalization was for the benefit of the Jewish community. None of these authorities would have seen the rise of intermarriage as a positive force in Jewish life.

It must then be concluded that the utilization of the category of *ger toshav* as a response to the question of intermarriage, from the sources I found, was never contemplated. Theorizing, I would have to argue that despite the possible acceptance of the individual non-Jew as a *ger toshav*; the use of this category by earlier Jewish authorities would not extend to a non-Jewish spouse from a civil marriage. The distinctions of the status of *ger toshav* were social and economic; however, the social did not include integration within the Jewish community. The residency rights discussed in the sources, mainly, deal with the question of settlement in the land of Israel, not within a Diaspora community.

It should not be inferred, however, that these authorities would approve of the mistreatment of this person. Numerous times rabbinic literature informs us that we should treat the non-Jews around us with respect to maintain the peace between us and them. We are told in the *Shulchan Aruch* : "It is permissible to support their [the non-Jews] poor, visit their sick, bury their dead, eulogize them, and to comfort their mourners in the interests of peace." (Y. D. 151:12 based on *Gittin* 61a) This concept of peaceful coexistence was expanded to include even known idolaters. The *Mishneh Torah* says:

The sages ruled that even for idolaters, one should visit their sick, bury their dead with Jewish dead, and support their poor along with the poor of Israel, out of the

principle of *darchei shalom*. For it is written, "God is good to all and his mercy is on all his creatures," {Psalm 145:9} and it is written "Its ways are ways of pleasantness and all its paths are peace." {Proverbs 3:18} (*Hilchot Melachim* 10:12)

Thus it appears that the rabbis believed that it was in the best interests of the Jewish community to show compassion to all the gentile nations, not just those who observe the seven Noahide laws.

There is a basis within Jewish tradition that requires the Jewish community to act properly regarding a non-Jew in its midst. However, I do not believe that the imperative of *darchei shalom* would require different treatment for a non-Jewish spouse in an intermarried couple. In fact according to a modern orthodox scholar, co-habitation with a gentile is considered forbidden from the Torah.<sup>4</sup> I can only conclude that traditional Jewish authorities would reject the underlying hypothesis of this thesis.

A liberal movement, however, allows for further exploration of this hypothesis within a liberal Jewish context. Liberal Judaism believes that a continuing re-interpretation of Jewish law is necessary to help us deal with the questions and problems of our day. Also, the belief of scholars in the literary heritage of the Bible and the Oral Law has freed Reform Judaism, at least, from the necessity to follow Jewish law when Jewish law is in conflict with modern values, concerns, and situations. I believe that scholars who disregard Jewish tradition when faced with problems can arrive at useful and edifying answers. However, they are ethical and humanistic answers not Jewish answers. Thus, just as it was important to examine this hypothesis from a traditional standpoint; it

becomes necessary to reevaluate it in terms of a liberal Jewish perspective.

Jewish integration with the secular world is at its highest levels in Jewish history. The increased mixing of Jews with members of the other religions has led to an increase in intermarriage, especially non-sectarian civil marriages. These civil marriages have forced modern Judaism, which wishes to welcome the Jewish partners of these couples back into synagogue life, to try to come to terms with an ever expanding pool of non-Jewish spouses. In my opinion, there are few or no adequate Jewish responses or understandings have been formed to welcome and deal with this growing group. "It is a fact of life that increasing numbers of intermarried couples are choosing to join us. As these couples begin to strengthen their ties with the Jewish community, we are challenged to define the role of the non-Jew in the synagogue."<sup>5</sup>

I believe that this new phenomenon requires a uniquely Jewish response and to achieve this type of response one must turn to the heritage of Judaism--its literary tradition. Having seen that many traditional scholars were willing to accept the non-Jews around them as *gerei toshav*; we can learn about this category from our tradition and we may reinterpret this ancient concept to respond<sup>to</sup> the needs of our day. This rediscovering and reinterpretation of this ancient status can provide liberal Judaism with the type of uniquely Jewish answer this situation requires.

The founders of the Reform movement believed that the traditional understanding of Jewish law was not responding to the questions and concerns posed by the time in which they lived. They

believed that more liberal interpretations of the law must be created to save Jewish law from becoming an out-of-date, unimportant relic. Many believed that it was impossible to "Reform" the *halachah*, but others believed that the reinterpretation of the law was necessary to help provide Jewish responses to the ever changing world in which they lived.<sup>6</sup>

I believe that this process of reinterpretation can be effectively used to aid modern Judaism in addressing the problem of the ever-increasing number of non-Jewish spouses in our communities. The concept of the *ger toshav* was originally applied to those gentiles who agreed to observe the seven Noachite laws.<sup>7</sup> Later authorities, like the Meiri and Chajes, interpreted *ger toshav* to include Christians and Muslims. They believed that this was necessary, because the interaction between the Jewish community and these groups was unavoidable and, therefore, needed to be allowed by Jewish law. Following in this tradition, I believe that it is not wrong to expand further the understanding of *ger toshav* to include the non-Jewish spouse of an intermarried couple. This is so because the interaction between the Jewish community and the secular world has expanded from merely an economic one to a much more complex interrelationship. Beginning at the time of the Enlightenment, instead of interaction, the Jewish community, at large, was intermingled with the secular population; creating new questions and problems. Therefore, I contend that the expansion of the category of the *ger toshav* to include the non-Jewish spouse of an intermarried couple is valid and consistent with continuing reinterpretation of Jewish tradition in view of modern needs and concerns.

The greater need to accept and recognize civil marriages and the understanding that Jewish tradition is dynamic and can adapt to changing times can allow us to take a concept out of our Jewish tradition, while creating a new, and valid understanding of it. Therefore, I believe that the reestablishing and re-interpreting of the concept of *ger toshav* by liberal Jewish scholars, allows us to create an innovative solution to a growing problem from the context of our ancient tradition. This type of response allows liberal Judaism to provide Jewish answers to the questions of our day.

Having accepted the thesis that *ger toshav* can be a valid status for the non-Jewish spouse of an intermarried couple; one must then begin to theorize concerning the implications of this type of decision. If one accepts that a reinstitution of the concept of *ger toshav* may be an effective way to deal with the problem of non-Jewish spouses in liberal congregations, it is incumbent upon us to determine how this will be integrated into modern synagogue life.

Traditionally, the status of *ger toshav* granted the person particular rights. These rights included: residency with the Jewish community, judicial equality under Jewish law, the ability to trade with members of the Jewish community, and the right to be sustained by his Jewish neighbors.<sup>8</sup> One who was a proper non-Jew, was allowed to live within the Jewish community as a tolerated outsider. They are expected to help maintain and participate in many of the affairs of the community, but they are not at all an equal member of the Jewish society in which they lived. Their right to judicial equality was to protect them within the Jewish courts; they may have been legally protected, but ritually they were still

considered outsiders. Their right to do business with the Jewish community, meant that the products they were selling were not forbidden to Jewish merchants by Jewish law. The right to be sustained by the Jewish community meant that the *ger toshav* could expect financial support during hard economic times.

One of the most obvious parallels is the rights of minority groups living in the State of Israel. The first chief Ashkenazi rabbi of Israel, Abraham Isaac Kook, considered the Muslim minority within the state of Israel to have the status of modern *gerei toshav*.<sup>9</sup> Yehuda Gershuni, another modern Israeli halachist, confirms Kook's opinion stating that Moslems are *gerei toshav*, at least, with respect to wine and residency.<sup>10</sup> Thus in terms of Moslem the ancient concept of *ger toshav* was ressurected to define the rights of these people within the modern political state of Israel.<sup>11</sup> Therefore, the use of the concept of *ger toshav* has a modern political parallel that, I believe, can rightly be applied to the modern synagogue.

In terms of the modern synagogue, many of these rights can be translated into modern terms. The right to settle and dwell within the Jewish community as a resident alien, can also be transferred to the non-Jewish spouse of an intermarried couple. Despite the rise in intermarriage, modern congregations desire to welcome these intermarried couples to affiliate with them. Clearly it is not proper for a non-Jew to be an equal member of the congregation.<sup>12</sup> However, some type of associate status should be granted to these people. In American law, a resident alien is one who has not formally abolished ties to his country of origin, but who have certain rights and responsibilities. A resident alien is required to pay taxes



and observe American law, but also enjoys police protections and other social services provided by federal, state, and local governments. The major distinction between the resident alien and the naturalized citizen is that a citizen has the right to vote and participate in the governance of this country. On a synagogue scale, the *ger toshav* may qualify for an associate status that requires a certain financial responsibility to the synagogue, but in return the associate member can enjoy many of the benefits of synagogue membership. These benefits can include: the ability to call on synagogue staff and use synagogue facilities (library, catering hall, etc.), member privileges for adult education courses, and possibly membership in synagogue affiliates (sisterhood, brotherhood, etc.). However, the *ger toshav* should not be allowed to hold an elected office in the synagogues governing bodies or participate in any type of ritual decision making.

Regarding business relations, the synagogue can act as a clearing house for people in different business. The *ger toshav* may be part of the pool of professionals from which members of the congregation can draw. People will, many times, try to support the businesses of other members of their congregation. The *ger toshav*, or associate members of a congregation, should be included in this group for two reasons. First, they are traditionally allowed to conduct business with members of the Jewish community. Second, by supporting the businesses of these associate members we are helping to sustain the *ger toshav* without any undue burden on the community.

The responsibility to sustain the *ger toshav* can be understood in a variety of ways. First, it can be understood as helping the *ger toshav* in monetary terms. For example, the patronage of businesses owned by *gerei toshav* in the community. It can also include financial assistance in hard economic times through charity or assistance. This type of assistance is not only benefitting the *ger toshav*, but the Jewish partner as well. So by helping to sustain the *ger toshav* we are providing assistance to a fellow Jew at the same time.

The second type of sustenance that can be provided for these associate members are programs specifically designed to aid them and their spouses in facing the additional questions and problems being a partner in an intermarriage can bring. I believe that it is our responsibilities as Jews to help these couples create strong, happy and healthy homes for themselves and their children. In this area the joint commission on outreach of the Union of American Hebrew Congregations and the Central Conference of American Rabbis has begun to create this type of program. Programs like "Times and Seasons: A Jewish Perspective for Intermarried Couples," offers support and opportunities for learning which can help make the life of an intermarried couple easier.<sup>13</sup> Although we do not have to sanction these marriages, I believe that it is our responsibilities as Jews, and members of the Reform movement, to help support and sustain these marriages to the best of our abilities.

Thus, clearly many of the traditional rights granted to one who was a *ger toshav* can be re-interpreted in a modern context. This re-interpretation may not only allow us to deal with the question of

the non-Jewish spouse in an intermarried couple, it may help us gain access to the Jewish spouses as well. By accepting an unavoidable reality and creating a uniquely Jewish response we may be able to deal with a reality of our times, as well as, welcome many new people, both non-Jewish and Jewish, into our communities.

The welcoming of this new group or *gerei toshav* can have a number of beneficial results for the Jewish community. First, by bringing the non-Jewish spouse closer to Judaism, the possibility of the *ger toshav* choosing to become a *ger tzedek*, a Jew by Choice, is increased. The other possible result of the proliferation of a category like the *ger toshav* is that while we learn to accept the non-Jewish spouse that we will be bringing the Jewish spouse closer to their Judaism. Many intermarried couples, in my experience, feel congregational ambiguity regarding a non-Jewish spouse. I contend that when the Reform movement, as a whole, has adequately defined the role and status of a non-Jewish spouse within congregational life we will be able to welcome greater numbers of intermarried couples back into synagogue life. Finally, my hope is that the more intermarried couples integrated into synagogue life will foster greater identification the children of these marriages as Jews. Through exposure to Jewish education and a supportive Jewish environment, these children may help us stem the increasing tide of intermarriage that Judaism now faces.

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<sup>1</sup>Kenneth L. Woodward and others, "The Intermarrying Kind," Newsweek (July 22, 1991), p. 48.

<sup>2</sup>Newsweek, p. 49.

<sup>3</sup>Diogene Tama, The Transactions of the Parisian Sanhedrin, trans. by Ellis Rivkin (Cincinnati: Hebrew Union College, 1956), p. 12.

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<sup>4</sup>J. David Bleich, Journal of Halacha and Contemporary Society I (1981), p.

<sup>5</sup>Commission on Reform Jewish Outreach of the UAHC and the CCAR, Defining the Role of the Non-Jew in the Synagogue: A Resource for Congregations, (New York: UAHC, 1990), p. 5.

<sup>6</sup>Lou H. Silberman "Various 'Reform' Perspectives," in Encyclopedia Judaica Yearbook 1975/6 (Jerusalem: Keter Publishing House, 1976), p. 157.

<sup>7</sup>Although the definition of the *ger toshav* is not clear, see chapter two, the majority of Jewish sources hold that the acceptance of the seven precepts of the Sons' of Noah.

<sup>8</sup>The right of sustenance is not universally accepted without the Jubilee or an appearance before a Jewish religious court. However, to examine fully the possible implications of the use of the category of *ger toshav*, I will follow the opinions of Rabbenu Nissim (Chapter 2) and *Chemdat Yisrael* (Chapter 3) who hold that the appearance before the religious court is not necessary. As for the issue of the celebration of the Jubilee year, see the conclusions section of chapter four.

<sup>9</sup>משפט כהן #63. For Biographical information on Rav Kook see note #33 of chapter three.

<sup>10</sup>Yehuda Gershuni, "Minority Rights in Israel," (offprint, 1987), p.32.

<sup>11</sup>The status of Christians in Israel is not equated in the modern sources I consulted. Christian residents were felt to be idolaters, but it is not necessary to remove them from Israel based on the enmity it would cause.

<sup>12</sup>See "Gentiles in a Jewish Congregation," Contemporary American Reform Responsa, ed. Walter Jacob, CCAR, 1987.

<sup>13</sup>Times and Seasons: A Jewish Perspective for Intermarried Couples: A Guide for Facilitators, Commission on Reform Jewish Outreach of the UAHC and the CCAR, 1987.

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