

CHAPTER EIGHT

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PROBLEMS OF THE DIASPORA IN THE SHULCHAN ARUCH

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מפני דרכי שלום

According to the Shulchan Aruch the support of a needy Jew is a *law*. Charity for the needy "Akkum," while considered a moral obligation, is urged on the basis of דרכי שלום as a means of maintaining peaceful relations with the non-Jewish world. This qualified motivation has become the target of widespread and indignant criticism. One of the critics, the frankly prejudiced Justus, voiced his opposition as follows: "The tendency underlying these rules is to create the belief in the "Akkum" (Christians) that they have good friends in the Jews."

This materialistic concept is pure nonsense; perhaps it is an outgrowth of wishful thinking. That it is utterly unfounded is substantiated by the oldest source of this rule, the Mishna in Gittin (59 a): "The following rules were inaugurated because of דרכי שלום: "...the release of game, birds or fish from a trap set by another person is considered robbery; objects found by a deaf-mute, mentally deficient or minor (including Jews) must not be forcibly seized; . . . impoverished heathens must not be restrained from collecting the gleanings, forgotten sheaves and the fruit left for the poor at the edge of the fields—all this "for the sake of peace."

On the basis of this Mishna it is difficult to see how any observer can side with Justus' interpretation. Are we to refrain from robbing the deaf-mute and the mentally deficient in order to appear as their good friends? Are we to support afflicted heathens merely to appear benevolent and generous in their eyes? Is this the meaning of "peace?"

The commonly accepted translation "for the sake of peace" is too vague. The Hebrew equivalent would be *מפני השלום*, and not *מפני דרכי שלום*.

The interpretation of Maimonides, founded on the Talmud and entirely uncontested, is certainly the correct one. "Even in regards to the "Akkum" the Sages have ordered that their sick be visited, their dead buried, their poor supported among the Jewish poor — all this *מפני דרכי שלום*, for it says: "God is good to all and His mercy affects all His creatures"; and it says further: "The ways (of the Torah) are lovely ways and all its paths spell peace."

Consequently, it cannot be the purpose of these rabbinical rules to *obtain* peaceful relations, but rather to *offer* and *promote* peace; not to seek *peace*, but to *create* peace. The rules have been established, not for the sake of *our* peace, but for the peace and welfare of *all men*, inhabitants of God's creation.

In ancient times the practical difference in the treatment of Jews and heathens was evident in the fact that one could be *legally* compelled to support the Jewish poor (Yoreh Deah 248, 1), while charity for the heathen was left to the voluntary agreement of the individual (Gittin 61 a). In our days, when no one can be *legally* forced to give charity, this difference is merely theoretical, even if the Christians were to be considered as "Akkum" (which they are not, according to the rabbinical decision).

The Jewish religious law empowers the Jewish poor to *demand* charity so long as he serves and worships the God of Israel. (Thus, the Jew who transgresses intentionally against the divine laws is deprived of this special right). The heathen, hostile to this God, is not covered by the law; mercy alone motivates our relationship to him. The religious Christian, serving the same God and observing the laws of his religion, must be treated like a *גר תושב* and as such, according to the strict Jewish law, can *demand* our moral and financial support.

Although as a rule the Shulchan Aruch and its supplementary commentaries are concerned with laws and not with ethics, they contain a number of indirect rules governing the relationship of the Jew with other nations, and especially the importance of mercy and pity in the Jewish attitude toward *all men*, not excluding the heathens.

Eben ha-ezer 2, 2 contains the following rule: "One must

not enter a relationship by marriage with a person who is cruel, hating society and refusing to contribute to the welfare of his neighbor." For, it must be assumed that he is a descendant of the merciless Gibeonites (Sam. II, 21). The commentary "Beth Samuel" (Yebamoth 79 a) elaborates on this rule: "Three signs distinguish the Jew: modesty, mercy and charitableness; one must refrain to associate (in marriage) with any Jew who lacks these qualities."

Orach Chaim 490, 4 prescribes: "During the final days of Passover one does not recite the entire Hallel." Ture Zahab (Megilla 10 b; Sanh. 39 b) comments as follows: "On the seventh day of Passover the Egyptians drowned in the Red Sea. And God said: 'My creatures drown in the sea, and you could sing a song of praise?' In his 'Beth Joseph,' R. Joseph Caro, the author of the Shulchan Aruch, comments in the words of the Midrash: 'One does not say the whole Hallel, for the Egyptians drowned in the sea, and it says: 'Do not rejoice when your enemy falls.'"

How then is it possible for this Shulchan Aruch which insists on a certain demonstration of mourning for our drowned enemies to include the following reference in Choshen Mishpat (425, 5): "One is not obliged to rescue an "Akkum" or a Jewish shepherd of small cattle from drowning?" The Baer ha-Golah proves convincingly that this strange ruling applied solely to ancient Palestine, to heathens and not to Christians. Yet, the riddle remains. We are expected to mourn the death of a nation—certainly not a Christian people—that indulged in cruel persecution of our forefathers. How is this attitude compatible with the ruling of the Chosen Mishpat? Are we on the trail of a flagrant contradiction in the Shulchan Aruch?

Our introductory analysis of דרכי שלום may help to solve the riddle. Talmud and Sh. A. prohibit "gratis-donations" (חנם) to the "Akkum." A number of commentators object by pointing to the afore-mentioned obligation to support the needy "Akkum" מפני דרכי שלום. Both sides may be reconciled by a definition of the type of "donation" referred to in the above statement. It is the motive that counts. Herod (in whose era this Pharisean rule probably originated) squandered Jewish property by making princely "donations" to the heathens in order to gain their favor and create a Herod-legend. This sort of "gratis-donation" is justly frowned upon. The practice of bene-

volence and charity, the promotion of happiness and peace—including the heathen world—can certainly not be considered as “gratis-donations”; the ethical man is richly rewarded by the good which he has created.

“The world is supported by three pillars: truth, justice and peace” (Pirke Aboth I.) The first two motives could be used as a basis for the prohibition to support the “Akkum” who abuses truth by idolatry and violates justice by brutal force. Fortunately, the world is also supported by a third pillar. Whenever “truth” hurts and “justice” condemns, smiling “peace” intervenes and calls for mercy and kindness!

John Stuart Mill once said that “from a materialistic viewpoint it would appear that a drowning man is worth saving only if he produces more than he consumes.” The talmudic law is *not* a materialistic law. Admittedly, according to the *strict* law, one is not obliged to save a man who blasphemes God and is hostile towards the human society. The principle of דרכי שלום changes all this. It is substantiated by a logical conclusion “de minore ad majus”: if it is true that one must be charitable towards the most depraved idol-worshipper מפני דרכי שלום, how, much more pressing is the obligation, on the same ground, to save his life.

In this way the Talmudic דרכי שלום - rulings act as a mitigating force against the strict treatment of the Palestinian heathens required by the Torah-law. Following the example of the Prophet Jeremiah who admonished his exiled brothers: “advance the welfare of the city to which you have been exiled,” the Sages of the Talmud have established rules promoting peace between Israel and the nations. “However fiercely they fought against me . . . I was always peaceful: I am the personified peace.”

קדוש השם

Maimonides introduces his Hilchoth Yesode ha Torah (Ch. 5) with the following statement: “The entire house of Israel is obliged to sanctify the exalted name of God, for it says: “I shall be sanctified in the midst of the children of Israel” (Lev. 22, 23). The sanctification of God’s name, קדוש השם, may be achieved in three ways.

(1) “Throughout the world we must proclaim the true faith

without fear of coercion and repercussions. We must sacrifice our lives rather than have the enemy assume we renounced our faith" (Sefer haMizvoth 9).

(2) "He who refrains from sin or performs a good deed, not because of fear or to obtain personal advantage, but in honor of his creator—he sanctifies the name of God" (H. Yesode ha-Torah 5, 10).

(3) "He who is on friendly terms with his fellowmen, receives everyone kindly, insults none, refrains from participating in the shallow pleasures of the world; busies himself constantly with God's teachings, living in a manner that causes all that know him to praise and love him and to attempt to live in his ways—he sanctifies the name of God, and of him Isaiah proclaims (49, 3): "My servants are you, oh Israel, through you I will be glorified."

Of the Patriarchs and their selection to form the people of God, the Torah says: ". . . through them and their descendants all generations on earth shall be blessed. . . ." This then is to be Israel's convocation: to carry the banner of God in the midst of the nations and to glorify his faith. Whenever the Jew performs an act of kindness and goodwill, he promotes the idea "that the Jewish people consists of righteous men," and neither his personal nor the national glory matters. The glorification of Divinity, the message of absolute Divine rulership must be the sole motive of our actions, the sole basis for our relationship with men of different faith.

The immediate and practical aspects of "Kiddush Hashem" are vividly illustrated by the following accounts in Yerushalmi Baba Mezia II.

"Simon ben Shetach owned a flax business. One of his disciples decided to acquire a donkey to spare the master the burden of carrying his wares. They bought the donkey from a Sarazene and found a precious pearl hanging from the neck of the animal. Overjoyed, they rushed to Simon. "Master, your troubles are ended. Behold, we bought the donkey and found this jewel." "Does the owner know about it?", asked the Rabbi. "No." "Return the jewel at once," ordered the master. Then the disciples returned it, the Sarazene exclaimed: "Praised be the God of the Jews." Comments Yerushalmi: "The law permits to keep an object lost by a heathen. But to Simon ben Shetach the heath-

en's reaction was more precious than all the treasures in the world."

"R. Chanina related: Our old teachers bought a pile of wheat from several soldiers. In the pile they found a bag of money. When they returned it, the soldiers exclaimed: "Praised be the God of the Jews"."

"Abba Osia from Turia was a washerman. One day he found at the bank of the river a precious jewel left there by a matron. The lady said: "You need not have returned it; I have many more beautiful jewels." R. Osia retorted: "The Torah commands us to return a lost object." And the matron exclaimed: "Praised be the God of the Jews."

"R. Samuel ben Suzarti once found jewels in Rome that the Empress had lost. She had issued the following proclamation: "Anyone returning the jewels within thirty days will receive a generous reward. If the finder keeps the treasure longer, he will have forfeited his life." R. Samuel returned the jewels on the thirty-first day. Surprised, the Empress inquired whether he had not heard of the proclamation. R. Samuel replied: "I have heard of it. Yet, neither the promised reward nor the fear of punishment caused me to return the treasure, but solely the fear of God." And the Empress exclaimed: "Praised be the God of the Jews."

The importance of sanctifying the Divine name indirectly annuls the heathen-laws that do not harmonize with the principles of righteousness and love for humanity. These laws were mainly designed for the judge whose finding must take into account the heathen viewpoint. To the religious individual the divine command of "I will be hallowed" was always guide and measure for all his actions.

Where is the son of the Jewish people who could refuse the demand of Kiddush Hashem? Our history is saturated with the bloody sacrifices of countless men, women and children who offered their lives on the altar of Kiddush Hashem. The history of the Jewish people is the history of a continuous and heroic Kiddush Hashem.

הלול השם

While the law to sanctify the Divine name calls on us to practice justice and love towards all men, regardless of their

creed; there exists an even stronger motive to restrain every Jew in whose heart still lives a spark of his faith from mistreating his non-Jewish fellowmen in any manner. We refer to the prohibition of *deseccrating the name of God*.

Whereas the sanctification of the Divine name is a duty which we must strive to perform at all occasions, the contrasting action of the desecration of the Divine name constitutes the worst possible crime against Judaism, a crime that must be prevented with the combined force of the individual and the community.

Concerning the deplorable tendency to evade payment of taxes, R. Bechai ben Asher ("Kad hakemach") has this to say: "The profanation of the Divine name is a crime which may be erased neither by repentance nor by physical suffering. For, thus our Sages taught (Yoma 66): "He who transgresses a law will be forgiven at once by repentance and the Day of Atonement. Deadly sins may be atoned for by repentance, the Day of Atonement and physical suffering. Desecration of the Divine name, however, can be forgiven only by death."

"Evasion of taxes is a desecration of the Divine name—how great is this crime!"

Hundreds of admonitions such as these may be found in the Jewish religious law. All designate "Chillul Hashem" as the worst crime that a Jew can commit. All commentators agree that *any action performed by a Jew that serves to falsify, disparage and ridicule the Jewish religion in the eyes of the world constitutes a desecration of the Divine name*.

We must be careful not to draw the conclusion that the term חלול השם applies exclusively to actions that result in *public* "scandal." Our Sages teach in Aboth 4, 5: "Whoever desecrates the name of God in *secret* will be publicly punished. . . ." Even in the remotest corner of the world we must not treat a single non-Jewish individual in a manner that might cause defamation of the Jewish religion. It matters little whether the non-Jew would ever voice his indignation publicly or not. We must work to erase prejudice towards Judaism in the mind of every single individual, however low his station.

There can be no doubt that a number of rules in the Shulchan Aruch, the practice of which would be frowned upon today as a possible defamation of the Divine name, were welcomed by the non-Jewish world of medieval times. As an example we refer

to a ruling of the Sh. A. which must have found critical acclaim in the 16th century but which today this same Sh. A. would surely consider a step in the direction of a Chillul Hashem.

Shortly before the destruction of the second Temple, the leaders who were responsible for the edition of the Jewish law saw fit to abolish the death penalty. Since then no Jewish court as a rule had the power to decree a sentence of death even if the state indicated its approval. An exception are heretics and apostates. Their crimes, according to the Sh. A., are still punishable by death.

The Sh. A. was codified at a time when heretics and apostates were most cruelly persecuted by the Christians. Thus, the Jewish attitude towards heretics must have found the wholehearted approval of the non-Jewish world. On the contrary, a more conciliatory treatment of the heretics would have been branded as being godless and irreligious, unworthy of the Jewish rabbis.

We are firmly convinced that the Sh. A. would have strictly prohibited the persecution of heretics and apostates because of a possible Chillul Hashem, were it not for the fact that the principles of tolerance and religious freedom found few followers in medieval times. Nowadays, when a majority of the civilized countries upholds the principle of tolerance as a basic concept of democracy, the execution of the Sh. A.—paragraph concerning the heretics and apostates would constitute a major injury to the Jewish religion, a veritable Chillul Hashem.

In this connection it is noteworthy that the idea of the "desecration of the Divine name" also motivates Christian thinking. When Thomas of Aquino was asked whether it was permissible to confiscate the property of the Jews, he replied as follows: "By their own guilt the Jews are condemned to eternal slavery. Hence their masters are entitled to take possession of their property at any time. However, since even those outside the Church must be treated decently in order to *protect the name of the Lord from desecration*. . . . it is advisable to refrain from overtaking the Jew. . . ."

There is no point in criticizing the famous saint for condemning the Jews to eternal slavery. His views are in accord with the beliefs of his time and it would be unjust to judge a medieval teacher of religious doctrine by modern conceptions of tolerance and equality. Rather, we are grateful to Thomas of Aquino for

formulating a principle which not only is essentially Jewish but should serve as a warning signal for the modern Antisemite.

The following passage in the Talmud (Baba Mezia II) clearly indicates the importance of practicing greater restraint towards the non-Jew than towards the Jew in order to avoid a Chillul Hashem. "A worker who is hired by a non-Jew to gather in the grapes must refrain from partaking of the fruit except when the master's custom permits it. Although the Jewish law permits the worker to eat of the fruit while reaping the harvest, this ruling is suspended in the case when the master is a non-Jew who has no knowledge of the Jewish law and must necessarily look upon the Jew as a thief. . . ."

The prohibition of a Chillul Hashem, considered by Jewish teaching as the most severe religious crime, entails the duty to treat the non-Jew with infinitely greater restraint than the Jew whenever rules are concerned which the law of the state or the general concept of ethics accept as unjust. This prohibition neutralizes every rule of the Sh. A. involving non-Jews and idol-worshippers, as long as they are certain to be rejected by the current concepts of justice and morale.

דינא דמלכותא דינא

These three guardian spirits which guide Israel on its journey through the Diaspora and prevent it from being unjust and unkind towards its non-Jewish fellow men—they are joined by a fourth, faithful councilor: the talmudic law of דינא דמלכותא דינא, "the law of the land is the (valid) law.

In its general outline this law, so vitally important for Jewish life in the Galut, was first introduced by Mar Samuel in Babylonia. Under the Resh Galuta, the Jewish society was largely autonomous except for the payment of special taxes to the Babylonian government. This situation changed when the Sassanides assumed power. They issued new and uniform laws which penetrated the life of every individual and racial community in the kingdom. As a result, Mar Samuel formulated and defended the principle that the law of the land—so long as it did not flagrantly contradict any part of the Torah-law—was a perfectly valid law. This rule, accepted as Halacha by all teachers of the Talmud, obligates the Jew to adhere to the laws of the land as a *religious duty*.

Taken too literally the principle of Mar Samuel would eventually eliminate the Jewish law and replace it with the law of the state. Hence the rule *דינא דמלכותא* was confined by the Sh. A. to laws by which the government and the people benefited the most. (Many communities bestow legal power upon the rabbis to settle internal Jewish controversies on the basis of the Talmudic-rabbinic law). This was the case when the Jews, as a minority, were taxed more heavily than the other citizens; the state-law had to be accepted without reservation (Choshen Mishpot 369, 6).

The recognition of the non-Jewish federal law on the part of the rabbinical leaders often caused the legal concepts of other nations to exert a decisive influence on the Jewish praxis. Thus, in order to evaluate the legal maxims of the Sh. A. it is imperative to be acquainted with their historical origin.

The Romans established different laws for citizens (*jus civile*) and foreigners (*jus naturae*). The Jewish state also recognized the necessity of creating a law that could regulate the relationship between the Jewish citizens and the excessive number of foreigners living on Palestinian soil. The *Jewish* law could not be employed to include the non-Jews, for it was intimately tied with the Jewish religion and pre-supposed the practice of religious duties. Whenever the Talmud speaks of "their laws" *דיניהם*, it refers to the Jewish laws pertaining to the foreigners rather than the laws of a foreign nation.

A number of Talmudic laws applying to foreigners have been incorporated in the Sh. A. that a modern observer might consider an encroachment upon the human rights of an alien. Yet, at close inspection, many of these laws are actually revealed as being advantageous for the non-Jew. As an instance we cite the ruling that makes it permissible to lend a foreigner (Nochri) against interest and also to grant him an interest on a loan advanced by him. During the period of the Jewish state this law certainly proved more advantageous for the non-Jew than it did for the Jew; for the latter were mainly landowners and farmers while the former were established in trade and money-dealings. Although this situation was almost exactly reversed at the time when the Sh. A. neared its completion, the rabbinical authorities of the medieval age had neither power nor desire to neutralize or retract the old Jewish law. In cases where the practice of the Talmudic law was likely to result in misinterpre-

tations and possible clashes with the government (as in the aforementioned instance) they called upon their people to consider the demands of דרכי שלום, of דינא מלכותא, and the danger of a הלול השם. They could do no more than that. How could we respect rabbinical leaders who would stoop so low as to falsify the Torah or the old law of the Talmud as an act of appeasement towards the non-Jews, and who proclaim in the name of the Torah what they have actually derived from modern concepts of ethics?—

These are the four protective walls erected by the rabbinical authorities, the faithful fathers of their people, to regulate the relations of the Jewish people in the Diaspora with its non-Jewish fellow-citizens. Their common motive is peace. May these four thunderous voices of the Jewish conscience help to achieve lasting peace in the world.