

Halacha's Moment of Truth

*Evelyn Gordon
and Hadassah Levy*

In one of the Talmud's most famous stories, the invading Romans are readying their final blow to the Second Temple in Jerusalem. R. Yohanan ben Zakkai, realizing that defeat is imminent, sneaks out of the city and escapes to the tent of the Roman general Vespasian, who he announces will soon be appointed emperor. When the prophecy comes true shortly thereafter, Vespasian grants ben Zakkai a boon. Yet instead of asking the emperor to spare Jerusalem and its Temple, as might be expected, ben Zakkai pleads for a seemingly marginal coastal town: "Give me Yavneh and its sages!"¹ Less known, however, is what many scholars consider an earlier version of this story, found in Lamentations Rabba. In this telling, ben Zakkai *does* ask for Jerusalem. And when Vespasian refuses, but lets him try again, ben Zakkai *still* does not ask for Yavneh and its sages; rather, he asks that one of Jerusalem's gates be left unguarded for several hours, thus enabling the sages of Jerusalem to escape.²

The difference between these two versions reflects the wrenching change that Judaism underwent following the Temple's destruction in 70 C.E. and the Jews' subsequent exile from the Land of Israel. For more than 1,200 years, a Hebrew commonwealth had existed in that land, interrupted only by the relatively brief Babylonian exile (587-538 B.C.E.). For the last 1,000 of those years, Jerusalem had served as the Jews' political capital, and the Temple as the center of their religious life. Moreover, the Torah was clearly intended for a sovereign people in its own territory: Numerous commandments, such as those connected to the Temple service or agriculture, can be performed only in the Land of Israel. Many others, on issues ranging from commerce to the courts to a prototypical welfare system, are the type of regulation only applicable to, and enforceable by, a sovereign state. Understandably, then, in the immediate aftermath of the destruction, the idea of Judaism's surviving without sovereignty would have been almost inconceivable. It was likely hard for the author of the version in Lamentations Rabba to imagine a Jewish leader of that time making anything *but* the requests he cited: first, the survival of Jerusalem, the Jews' capital city, and second, the survival of the Jews' political leadership. (The sages of Jerusalem for whom ben Zakkai pleaded included the members of the Sanhedrin, a combination legislature/supreme court.)

As time passed, however, it became clear that the Jews faced a lengthy exile. Their rabbinic leaders therefore began a centuries-long project of converting Judaism into a form capable of surviving outside its land. The Temple service was replaced by prayer. Holidays were reinterpreted. A fixed calendar was instituted. Torah study became the supreme value, compensating for all the commandments that could no longer be performed. And the importance of sovereignty was downplayed: For the sake of Jewish survival, the message *had* to be that sovereignty was not essential so long as rabbinic leadership—"Yavneh and its sages"—remained.

Today, Judaism again confronts a shift of tectonic proportions, although this time in the opposite direction. Just as ben Zakkai and his successors

eventually transformed Judaism from a religion of sovereignty into a religion of exile, Judaism must now reconstitute itself as the religion of a sovereign nation—a religion, that is, whose legal code is ready and willing to grapple with the challenges sovereignty poses. How should a Jewish army operate? How should a Jewish state regulate marriage and divorce? What are the rules for acquiring citizenship? How should commerce, agriculture, education, welfare, and the legal system be run? The answers are not obvious. The world has changed too much in the last two millennia for many biblical prescriptions to be applied literally. In addition, even the vast corpus of subsequent halachic development has relatively little to say on many of these issues, and what it does say is often inapplicable to a modern, sovereign state. Yet unless Jewish tradition can help answer these questions, Israel will have no alternative to the wholesale adoption of the secular West’s solutions. And then, there will be nothing “Jewish” about the Jewish state at all.

To appreciate the magnitude of the change demanded of *halacha* today, it is worth examining the radical transformation that began 2,000 years ago in some detail. For ben Zakkai, the solution to the problem of how to continue Jewish life without Jerusalem and its Temple was Yavneh—that is, a new spiritual center that would fill the void left by Jerusalem’s loss. To that end, and despite the protests of other scholars, he decreed that the *shofar* be blown in Yavneh on the Sabbath, just as it had been in the Temple.³ This was a bold symbolic step: Although the Torah had mandated blowing the shofar on Rosh Hashana regardless of the day of the week, the Mishna expressly forbade shofar-blowing on the Sabbath, lest people carry the shofar to the synagogue and inadvertently violate the Torah commandment to cease from work (and specifically, from carrying) on the seventh day.⁴ The Temple, however, was exempted from this rule, since its priests could be trusted to avoid carrying. Ben Zakkai argued that the same logic should apply to the scholars of Yavneh, and to all scholars serving on a municipal *beit din* (religious court). True, the practice never became widely accepted,

and today the shofar is not blown anywhere on the Sabbath. But ben Zakkai did succeed in inculcating the idea that scholars could be equated with priests, and could thus provide the religious leadership that was once the latter's exclusive purview.

Holidays were also transformed in the decades following the Temple's destruction. During the Second Commonwealth, festivals were observed primarily through sacrifice. After the destruction, however, the sages stressed their other aspects: Passover was celebrated with a *seder* rather than a ritual offering, while on Sukkot, the daily procession with the *lulav* and *etrog*—which had taken place in the Temple—now took place in local synagogues, and the holiday's motifs of physical impermanence (eating and sleeping in temporary shelters) and spiritual redemption began overshadowing its function as a harvest festival.⁵ Shavuot, initially celebrated by the bringing of the first fruits to the Temple, now took on the function of commemorating the giving of the Torah at Sinai.⁶

Although prayer had coexisted with sacrifice even while the Temple stood, attitudes toward it also changed after the destruction. For instance, the Babylonian Talmud offers two explanations for the three daily prayer services.⁷ While the first links each service with one of the patriarchs, the second equates prayer with sacrifice: The morning and afternoon prayers replace the daily morning and afternoon *Tamid* sacrifices, and the evening prayer replaces the burning of the remains, which took place at night. *Midrash Tanhuma*, a collection of rabbinic homilies and legal discussions, also emphasized this latter connection, maintaining that while in Temple times, atonement could be achieved through sacrifice, “now we have nothing to bring but prayer.”⁸ Fortunately, it continues, that suffices, for “prayer is dearer to God than all good works and all sacrifices.”⁹

This transition from sacrifice to prayer also granted new prominence to the synagogue. While it, too, had been an important institution even before the Temple was destroyed,¹⁰ now, instead of operating alongside the Temple, synagogues became its replacement.¹¹ Likewise with Torah study, which in time became Judaism's paramount value. As the Talmud taught, “Whoever

occupies himself with the study of the laws of the sin offering, it is as though he had offered a sin offering himself.”¹² Indeed, Torah study gradually came to be seen as a replacement for all the commandments that could no longer be performed, and even for lost aspects of physical sovereignty, such as military activity. Thus, by the time the Talmud was completed in about 500 C.E., the rabbis could unselfconsciously declare the men surrounding King Solomon’s throne, described in the Bible as “sixty warriors of the warriors of Israel, all of them trained in warfare, skilled in battle,” as having in truth been Torah scholars, engaged in learned disputes.¹³

Another profound shift was that of a mutable Torah into an unchanging one. In the disastrous aftermath of the failed Bar Kochba Revolt (132-135 C.E.), rabbinic sages began the process of collecting, arranging, and editing the oral law—a process that reached its pinnacle with Yehuda Hanasi, a leader of the Jewish community in Judea toward the end of the second century. This process, which resulted first in the Mishna, the 63 tractates that codify Jewish law, continued for four centuries until its final redaction in the Talmud. In addition to the practical purpose of ensuring a uniformity of halachic doctrine and a single authority for decision making, these sages had another object in mind: the preservation of the teachings of the ancients. On account of the Jewish people’s dispersion, the sages feared the traditions would simply be forgotten through disuse.¹⁴

A final change occurred in the calendar. While the Temple stood, and for several centuries thereafter, the Sanhedrin determined the start of each month by means of witnesses’ sightings of the new moon. Consequently, the entire Jewish community was dependent on the sages of the Land of Israel to ensure the unified observance of Jewish holidays.¹⁵ According to tradition, however, when the Sanhedrin was dissolved in the fourth century C.E., the patriarch Hillel II began the process of establishing a fixed calendar based on astronomical and mathematical calculations¹⁶; by the time the preeminent medieval Jewish philosopher Maimonides authored his *Mishneh Torah* in the twelfth century, an authorized calendar was definitively in place. This innovation concluded the process to which all earlier changes

had been leading: rendering the Jewish people halachically independent not only of the Temple, but of its mother country altogether.

These changes in praxis were also accompanied by a change in the center of authority, from the Land of Israel to Babylonia. While the Temple existed, there was no question that the sages of the Land of Israel held sway over those outside of it. After the destruction, however, more and more Jews left the land. Those who remained were persecuted and impoverished, and their scholarship suffered accordingly. The Jews of Babylonia, by contrast, flourished both economically and culturally. Great Babylonian *yeshivot* were established, and in due course produced great sages. Indeed, the Babylonian Geonim eventually became the address to which Jews throughout the diaspora sent halachic questions. As a result, of the two versions of the Talmud redacted between the third and fifth centuries—the Jerusalem Talmud, compiled by the sages of Palestine, and the Babylonian Talmud, compiled by the sages of Babylonia—the latter came to be considered halachically superior, ensuring that halacha would thenceforth be determined by and for diaspora Jews.¹⁷

Of course, these innovations did not go unopposed. For generations, the battle raged between those who believed the Temple would be swiftly rebuilt and those who considered such belief folly, between those unwilling to adjust to the new realities and those who deemed adjustment essential. Prominent among the former were the priests: Determined to hold on to their leadership, they continued to maintain a state of ritual purity and to observe other priestly laws. The rabbis, by contrast, objected to this stringency, fearing it would encourage a false belief in the Temple's imminent reconstruction.¹⁸ In the last *mishna* of tractate Eduyot, R. Yehoshua, a student of ben Zakkai, even asserts that when the Messiah comes, Elijah the Prophet will turn away those who tried to approach God by force—a harsh condemnation of the priests' continued adherence to those laws that separated them from the rest of the Jewish people.¹⁹

Nor was this controversy confined to the priesthood. Rabban Shimon ben Gamliel II, a leading sage of the mishnaic period, took issue with pious

Jews who refrained from eating meat and drinking wine as a sign of mourning for the destruction, insisting that while a certain amount of grief was necessary, it must not be excessive. Deep mourning might be appropriate, the rabbis explained, if the period of bereavement were only temporary, but since they foresaw no imminent change in the status quo, this sort of behavior was dangerous.²⁰ Put simply, they did not want a Judaism mired in the past. They sought a Judaism that could move forward, and adapt to the challenges ahead.

The fact that halacha accommodated itself to the circumstances brought about by the Temple's destruction—in some cases almost immediately, as in the decisions of ben Zakkai, and in others via a process that unfolded over centuries—would seem to be ample proof of its inherent adaptability. And indeed, the historical record demonstrates as much: Throughout Jewish history, halacha has changed, sometimes dramatically, in response to changing circumstances. Three examples, each from a different time and place, should suffice to prove this point.

The first one, which took place in the Land of Israel even before the destruction of the Second Temple, concerns the laws of *shmita*, the sabbatical year. The Torah mandates that the land lie fallow every seventh year, and states explicitly that this year cancels all loans. The Torah also states that one must not abstain from loaning money as the seventh year draws near; on the contrary, the wealthy were expected to view such lending as a form of charity.²¹ In practice, however, the poor found that they were unable to secure loans shortly before the *shmita* year, since those with means were naturally reluctant to part with money they knew they would not see again. Hillel the Elder (c. 110 B.C.E.-10 C.E.) therefore devised a way to circumvent the Torah's mandate that loans be canceled. Called *prozbul*, it essentially transferred debts to a rabbinical court, thus converting them from private to public arrangements. And since courts were allowed to collect public debts during the *shmita* year, they would simply transfer the money they collected to the original lender.²²

The second example, from medieval Germany, concerns the institution of a ban on polygamy. Significantly, the Torah never prohibited polygamy; in fact, it discusses explicitly how inheritance law applies to a man with two wives and children from each.²³ Nonetheless, when the medieval German scholar Rabbeinu Gershom (960-1040 c.e.) banned polygamy, declaring that non-compliance would be punished through excommunication (*herem*), his decree was universally accepted by Ashkenazi Jewry.²⁴ Since the original text of the decree has not survived, scholars can only guess at Rabbeinu Gershom's reasoning. Some argue that he was responding to pressure from the surrounding Christian world, where polygamy was outlawed.²⁵ Others say his ban was a response to the improvement in women's status that occurred in medieval Ashkenaz beginning in the eleventh century.²⁶ Either way, Rabbeinu Gershom's decree clearly represented a drastic change in halacha.

The third example deals with the permissibility of women's studying Torah. The Talmud offers differing opinions on whether women may learn Torah, and even mentions one noted female scholar: Bruria, wife of the talmudic sage R. Meir. Moreover, according to legend, the great medieval commentator Rashi taught his daughters the sacred texts. Yet for most of the last two millennia, the opinion that forbade teaching Talmud to women was the accepted halacha.²⁷ This changed only when the Hafetz Haim (Rabbi Yisrael Meir Kagan), one of the leading scholars of late nineteenth- and early twentieth-century Poland, recognized that changing times—in particular, the fact that women were receiving secular educations, thereby being exposed to the influence of the non-Jewish world—made it necessary to educate women in Jewish texts as well. As he wrote:

When everyone lived in the place of his fathers, and the traditions of their fathers were very strong in each and every one of them... we could say, "Don't learn Torah, but rely on the behavior of your righteous ancestors." But today, when in our multitude of sins the tradition of our fathers has become very, very weak, and it has also become common for people not to live in the place of their fathers at all, and especially among those who have

become accustomed to learning the writing and language of the non-Jews, it is clearly a great *mitzva* to teach them Bible and also the Prophets and the Writings and the moral teachings of our sages... so that their holy faith will be verified for them. Otherwise, they are liable to stray entirely from the path of the Lord and transgress all the fundamentals of our faith.²⁸

What these examples—and one could cite many others—show is that throughout history, Jewish law has indeed adapted to changing circumstances. On certain issues, such adaptations are arguably even easier now than they were 2,000 years ago, since the wealth of intervening halachic developments offers a plethora of opinions from which to choose. And while one opinion may currently be the most widely accepted, this does not mean that contrary opinions, which might prove more suitable to current circumstances, are invalid. As the Talmud famously says, “These and those are the words of the living God.”²⁹ Centuries later, Rashi explained how this could be possible: Each rabbi uses a different line of reasoning to justify his conclusion, and “sometimes one argument is relevant and sometimes another, for the reasoning can be reversed in accordance with a slight change of the case.”³⁰ Given this reality, one of the cardinal rules of halachic decision making is that no *dayan* (halachic arbiter), however insignificant personally, may follow blindly precedents set by even the greatest scholars of earlier generations. On the contrary, he must be guided by his own understanding of how the principles of the Torah apply to the unique circumstances of the case before him.³¹ Thus the talmudic sage Rava (R. Abba ben Yosef bar Hama) explicitly ordered his students not to follow his rulings automatically after his death, “because a judge must be guided only by that which his eyes see.”³² Maimonides summed up the principle as follows: “For it is written: ‘and unto the judge who shall be in those days’ (Deuteronomy 17:9), that is, we are bound to follow the directions of the court of our generation.”³³

In short, not only is halachic change possible in practice, but its *own* principles mandate such change when older rulings are inappropriate to

new circumstances.³⁴ And it is hard to imagine a new circumstance with more far-reaching implications than the restoration of Jewish sovereignty after a 2,000-year hiatus.

Have any equivalent halachic changes occurred in the 62 years since the State of Israel was founded? In some areas, yes, most notably those related to defense. Of course, in this case there was no exilic tradition with which to contend; the question of how a Jewish army should function was one that diaspora rabbis never needed to address. Hence, Israel's first political and rabbinic leaders easily reached a *modus vivendi* based on the only extant model, that of the last sovereign Jewish state, some 2,000 years earlier. For instance, they agreed that operations essential for *pikuah nefesh* (saving human life), which include everything from routine border patrols to hot pursuit of terrorists, would continue as usual on the Sabbath, whereas other activities, such as administrative work, would be halted.³⁵ And despite occasional slip-ups, this arrangement works well. On issues for which exilic traditions *do* exist, however, little has changed—and the disconnect between Jewish law and the needs of a modern state has become an increasing source of tension. Three issues in particular have emerged as flashpoints: conversion, shmita, and women unable to obtain a religious divorce.

Of late, the issue of conversion has become one of supreme, even existential importance. A brief review of the facts shows why: Even while Jews were in exile, individuals converted to Judaism. Consequently, a rich legal tradition regarding conversion developed. Yet for most of that time, Jewish communities were predominantly Orthodox, so anyone seeking to join one would naturally adopt an Orthodox lifestyle. This is not at all true of modern Israel, however, where the majority of Jews are non-Orthodox.³⁶ The problem came to a head after the Berlin Wall fell in 1989, and nearly one million citizens of the former Communist bloc immigrated to Israel over the following decade under the Law of Return. This law grants anyone with

even one Jewish grandparent automatic citizenship. Of these immigrants, an estimated 300,000 were non-Jews: Intermarriage had been common under Communism, which strove to suppress religious identity. Whereas non-Jewish immigration had previously been negligible, this new influx of non-Jewish immigrants—the majority of whom are integrated into Jewish society, attend Jewish schools, serve in the Jewish army, and will probably marry Jews—was anything but.

To most Israelis, the solution was simple: Non-Jewish immigrants should convert.³⁷ But the Chief Rabbinate, dominated by the *Haredim* (ultra-Orthodox), insisted on stringent conversion standards copied wholesale from exile. That is, to convert, immigrants had to adopt Orthodox lifestyles and send their children to Orthodox schools. And that, most immigrants are unwilling to do. Consequently, only a few thousand individuals convert each year, of whom more than half are Ethiopian Falash Mura, brought to Israel under a special program that includes a mandatory conversion course.³⁸

Then, in 2008, the rabbinate's chief appellate court retroactively annulled every conversion ever performed by the new Orthodox conversion courts established by the state in an effort to circumvent the Haredi-dominated rabbinate, thereby affecting thousands of people in all.³⁹ If any further deterrent to conversion were needed, this certainly provided it. Why go through an arduous conversion, the potential convert would rightly wonder, if at any moment, even decades later, a rabbi who has never met you and knows nothing about you can retroactively annul it with one stroke of a pen? Moreover, the ruling created a whole new class of non-Jews: children born to female converts after their conversion, whose Jewish status was annulled along with their mothers.

To be sure, non-Orthodox Jews do not consider themselves bound by the rulings of Haredi rabbis. Yet since the Israeli government has granted the Haredi-dominated Chief Rabbinate jurisdiction to affirm a person's Jewish identity—an affirmation that, in turn, determines whether he or she can marry another Jew, since the rabbinate holds sole jurisdiction over marriages

involving Jews—Israel’s non-Orthodox majority has no choice but to grapple with its decisions. And while more moderate Orthodox circles may not necessarily view Haredi rulings as authoritative, they are often reluctant to challenge them: They are ideologically committed to preserving the Chief Rabbinate’s authority, viewing it as a way of injecting Jewish content into the state. Yet precisely because of their avowed commitment to both halacha *and* the state, religious Zionists have a vital interest in resolving conflicts that arise between the two, and pushing for more lenient halachic solutions as a viable alternative. Unfortunately, in this instance, instead of engaging the Haredi community in vigorous halachic debate, various organizations that identify with the religious Zionist movement simply petitioned the High Court of Justice—that is, they turned to a secular authority.⁴⁰ No clearer declaration of failure was possible: Halacha, this move announced, has no solution to this problem. Only a secular court can save halacha from itself.⁴¹

Since that time, the situation has only deteriorated. In the spring and summer of 2010, a bill intended, ironically, to *ease* bureaucratic bottlenecks in Orthodox conversion—its main provision would have allowed would-be converts to undergo conversion through any municipal rabbi, rather than requiring them to use the chief rabbi of their city of residence—sparked first a coalition crisis, and then a crisis between Israel and American Jewry, which ultimately resulted in the bill’s being frozen. To be sure, most of the claims on both sides were overblown. But the very fact that a largely technical issue could elicit such fierce reactions showed just how important this issue was to the Jewish world, and just how far it was from being resolved.⁴²

Then, in September, a government attorney told the High Court of Justice that conversions performed under the auspices of the IDF rabbinate—some 4,500 in all—were *also* questionable.⁴³ Within days, the attorney denied saying any such thing, and Sephardi Chief Rabbi Shlomo Amar, responding to a Knesset committee’s request, issued a letter confirming these conversions.⁴⁴ A month later, however, after leading Ashkenazi Haredi rabbis assailed Amar’s stance, his aides insisted that he had not, in

fact, confirmed the conversions, and Amar proceeded to appoint a rabbinic committee to study the issue.⁴⁵ Things settled down in January 2011, when Rabbi Ovadia Yosef, the unquestioned spiritual leader of the Sephardi community, announced that he recognized these conversions, paving the way for Amar to do the same.⁴⁶ But thousands of other converts and would-be converts remain in limbo, with no solution to their problem in sight.

Unlike conversion, the issue of shmita would at first glance seem far less complicated; since it applies only to the Land of Israel, no exilic tradition exists. For the small Jewish community that remained in the Land of Israel throughout the exile, the solution to the injunction to let the land lie fallow was simple enough: Not being farmers themselves, they simply continued to buy produce from non-Jews, as they did in non-shmita years. Only when the Zionist movement emerged in the late 1800s did Jewish agriculture in the Land of Israel resume, bringing the shmita problem to the fore. From the need arose a solution: For the shmita year of 1888-1889, Rabbi Isaac Elhanan Spector instituted the *heter mechira*, under which land could be “sold” to a non-Jew for the year.⁴⁷ Since shmita applies only to Jewish-owned land, the arrangement allowed Jewish farmers to continue earning a living. And in every subsequent shmita year, religious Zionists simply reused this solution. True, the Haredim never accepted the heter, and continued to buy from non-Jews. But for the most part, their decision had no impact on the rest of Israel. Seemingly, then, halacha had successfully adapted to the state’s needs—until the 2007-2008 shmita year, when the Ashkenazi chief rabbi, himself Haredi, declared that he would no longer require local rabbis to grant *kasbrut* certification to stores and restaurants that used the heter, and several rabbis opted not to do so.⁴⁸

Though this decision infuriated both secular and religious Zionist Jews, it was far from being as unreasonable as it was often painted. First, neither Spector nor any of the prominent rabbis who subsequently endorsed the heter ever intended for it to be anything but a temporary solution to a temporary problem. In 1888-1889, the Jewish economy of the Land of

Israel was largely agricultural, and the community was dirt-poor; suspending farming for a year would have literally meant starvation. While that remained true for years thereafter, it would be hard to argue that it remains so today, when Israel boasts one of the world's strongest economies, and agriculture constitutes less than 2 percent of it.⁴⁹ Moreover, the solution itself—ceding ownership of the land—contradicts both the spirit of the Torah (which gave the land to the Jews in perpetuity) and that of modern sovereignty.⁵⁰

Yet the Haredi solution of buying non-Jewish produce is equally unpalatable, again from both the Torah and modern perspectives. Shmita was, after all, meant to emphasize the Jews' dependence on God, whereas the Haredi solution is to depend on non-Jews instead—something the Torah repeatedly warns *against* doing. Surely, whatever solution is ultimately found to the shmita problem, it ought at least to be consonant with the ideal that the sabbatical year represents. From the modern perspective, much of Israel's agricultural produce is exported, and export markets require a reliable supply. Should that supply disappear for a year, importers will find an alternative—and if that alternative proves satisfactory, they will not return to their Israeli suppliers.

Sadly, the Ashkenazi Haredi leadership frequently seems unconcerned by whatever problems—economic or otherwise—their rulings cause the secular state. Sephardi Haredim, by contrast, definitely *are* concerned by these problems: Rabbi Amar initially opposed the conversion-annulling ruling (albeit unsuccessfully), and Rabbi Yosef publicly defended the legitimacy of the heter mechira, even though he stressed that he viewed buying from non-Jews as preferable. But whenever the Ashkenazi Haredim have pushed back forcefully, their Sephardi counterparts have generally opted to preserve pan-Haredi peace.⁵¹ Religious Zionists, while also clearly concerned, have generally proved equally unwilling to push their own positions; despite initially promising signs, the case of shmita was no exception. For example, Tzohar, an organization of moderate religious Zionist rabbis, at first

offered a frontal challenge, threatening to break off from the Chief Rabbinate and issue its own kashrut certifications for produce grown by Jewish farmers in Israel during the shmita year.⁵² Such a move would have not only been a declaration of independence from Haredi authority, but also presumably forced a serious halachic debate on the issue. Instead, Tzohar opted to await the outcome of a petition to the High Court of Justice by an association of Israeli farmers. Thus did the state witness the spectacle of its highest court ordering the Chief Rabbinate to rescind its ruling—in other words, of a secular court ordering a religious body to rule in a particular way on a religious matter.⁵³ But clearly, no ruling by a secular court can produce a viable halachic solution; for that, the creativity of serious rabbinic scholars is needed. And thus far, Israel is still waiting.⁵⁴

The third problem, of women unable to obtain a divorce, ironically stems from a well-meant attempt to infuse the modern-day Jewish state with Jewish character. Since such a state has an obvious interest in promoting Jewish marriage, its secular founders agreed to the religious parties' demand that the rabbinate control marriage and divorce for Jews.⁵⁵ Consequently, there is no legal way to intermarry in Israel; mixed-faith couples must marry abroad. Moreover, because Jews can obtain a legally recognized divorce only through the rabbinate, this system ensures that all Jewish divorces meet halachic requirements, thus preventing the creation of *mamzerim*, who are barred from marrying most Jews.⁵⁶ But since halacha requires both parties to consent to a divorce, it creates the potential for *agunot*, women whose husbands' consent cannot be secured because their whereabouts are unknown, and *mesoravot get*, women whose husbands either refuse to grant them a divorce or condition the divorce on the woman's consent to unreasonable financial or custody demands.⁵⁷

Overseas, this problem affects mainly the Orthodox community, which considers itself bound by halacha.⁵⁸ In Israel, however, it potentially affects everyone, and in practice it affects hundreds or even thousands of women each year.⁵⁹ The result is ugly scenes of women being blackmailed into

ceding custody of their children, or paying exorbitant ransoms to obtain a divorce—scenes that generate contempt for halacha and, by extension, for Judaism.⁶⁰ Moreover, unlike a religious woman, a secular woman whose husband refuses to grant her a divorce will not let her life be put on hold forever. Even if she cannot legally marry a new partner, she can cohabit with him. Thus, in order to uphold the most stringent possible rabbinic interpretation of “consent”—one that rejects any possibility of coercion—the rabbinate is actually *encouraging* violation of the far more serious Torah prohibition of adultery.⁶¹

Granted, this is a problem for which many rabbis *have* proposed halachic solutions, including prenuptial agreements that impose financial penalties for refusing to grant a *get* (bill of divorce); provisional gets, which automatically take effect under predefined circumstances; and even “conditional marriages,” in which predefined circumstances cause the marriage to be annulled, thus obviating the need for a *get* altogether. Unfortunately, none has gained widespread acceptance. There have also been efforts to solve the problem by granting rabbinical courts access to the state’s coercive power: A 1995 law allowed these courts to impose various sanctions on recalcitrant husbands, such as revoking their drivers’ licenses, depriving them of check-writing privileges, and even jailing them—measures that, when applied, do boast a positive record, though hardly a perfect one. Yet rabbinical courts have proven reluctant to use them, fearing that a husband who grants a *get* under the pressure of such sanctions is not consenting freely. In 2009, for instance, out of the 180 cases that the Rabbinical Courts Administration defined as *seruv get* (refusal to grant a divorce), sanctions were applied in only 44. The administration’s director general at the time, Rabbi Eliyahu Ben Dahan, explained that “sanctions are enacted only in extreme cases, like those involving a violent, ill, or sterile husband.”⁶²

And so this problem, too, awaits a halachic solution. True, the introduction of civil marriage in Israel—a move for which there is growing pressure, on account of halacha’s failure to solve the problem of converting

non-Jewish immigrants—would render the problem moot. But this would not be a success. On the contrary, it would be yet another failure on the part of Jewish tradition to cope with the demands of revived Jewish sovereignty.

Fortunately, this bleak picture is not the whole story. While even a decade ago it would have been, several developments over the last few years show that certain religious circles *are* starting to internalize the need for halachic change, and to think about how to effect it.

One important development in this regard is the renaissance in studying the “Torah of the Land of Israel,” the Jerusalem Talmud. On account of both its difficult, terse language and its focus on laws relating to the Land of Israel—which naturally made it less relevant to diaspora Jewry—it had been neglected for centuries.⁶³ Rabbi Abraham Isaac Kook, one of the twentieth century’s most influential Jewish figures, famously wrote in 1921 that for the Jewish people to elevate itself spiritually from exile, the Jerusalem Talmud must be restored to its former glory.⁶⁴ But only in 1980 did a Hasidic rabbi—the Gerrer Rebbe, Simcha Bunim Alter—institute a regimen of daily study for the Jerusalem Talmud in the same way the Babylonian Talmud is studied: a page a day (*daf yomi*).⁶⁵ Studying the Jerusalem Talmud has also become popular in religious Zionist yeshivot. Websites with daf yomi classes on the Jerusalem Talmud are further evidence of this trend.⁶⁶ This renewed interest in a Talmud created by and for inhabitants of the Land of Israel, rather than by and for those in exile, reflects a search for a halacha better adapted to modern Israel’s needs.⁶⁷

A few pioneering rabbis and scholars also began talking openly of the need to adapt halacha to the requirements of revived Jewish sovereignty, even offering detailed arguments for why halacha itself makes such change both necessary and possible. One was Rabbi Eliezer Berkovits, a scion of the pre-war European yeshiva world who studied under Rabbi Yehiel Jacob Weinberg in Berlin’s Hildesheimer Rabbinical Seminary.⁶⁸ In 1983, he published his seminal work *Not in Heaven*, a detailed exposition of how halacha

has changed over time in response to society's needs, and of the halachic mechanisms that make such change possible. It is also a *cri de coeur* for similar change to occur in modern-day Israel:

Halacha, which in exile had to be on the defensive, building fences around communal islands, now ought to resume its classic function and originate new forms of relevant Torah realization in the State of Israel. It should concern itself with questions of social justice, economic honesty, and fairness, with problems of labor relations and the work ethos, with the social gap, with ethics and morality in public life, even with such matters as traffic laws.... The Oral Torah has to be freed from its exile-imposed shackles.⁶⁹

Sadly, Berkovits' book had little impact at the time, and much of his opus remained out of print for years. Recently, however, interest in his halachic thought has revived, and the religious Zionist community's flagship publishing house, Mossad Harav Kook, has reissued both of his Hebrew-language halachic works: *Halacha: Its Authority and Function*, a more detailed version of the arguments made in *Not in Heaven*, and *Conditionality in Marriage*, his proposed solution to the problem of agunot.

At the liberal end of the Orthodox spectrum, the Shalom Hartman Institute in Jerusalem has produced several works by Orthodox scholars on the topic of halachic change. Its 2007 anthology *Judaism and the Challenges of Modern Life*, for instance, includes an article by Zvi Zohar of Bar-Ilan University describing mechanisms of halachic change and using the halachot of marriage as a case study in how this process has played out over the centuries.⁷⁰ Zohar and Avi Sagi, another Hartman fellow and Bar-Ilan lecturer, also co-authored *Transforming Identity: The Ritual Transformation from Gentile to Jew—Structure and Meaning*, which proposes halachic methods of making the conversion process more flexible.⁷¹ The institute's avowed commitment to pluralism—it produces works by Orthodox and non-Orthodox scholars alike—and its reputation for being on Orthodoxy's liberal fringe are formidable barriers to its acceptance in the mainstream religious Zionist community; moreover, centrist Orthodox scholars have

voiced substantive disagreements with Hartman scholars' work.⁷² Yet the very fact that centrist scholars are reading and responding to their efforts demonstrates their awareness of the need for a conversation on these issues—itsself a significant change.

Another welcome phenomenon is grassroots organizations such as Bema'aglei Tzedek, founded in 2004 on the premise that Judaism *must* have something to say about the issues confronting a modern state. Its flagship initiative, the Tav Chevrati, has little to do with halacha per se; the requirements for obtaining this “social kashrut certificate” stem entirely from secular law: Businesses must uphold their employees' legal rights and be accessible to the handicapped.⁷³ But in its aspiration for an entire society “informed and inspired by Jewish values,”⁷⁴ rather than one in which Judaism is confined strictly to “religious” issues, the initiative has articulated an important demand.

But far more significant, the religious establishment itself has begun internalizing the need to look beyond narrow “religious” concerns. A salient example is the shift in rabbinical attitudes toward the Temple Mount. The traditional religious view forbade Jews from ascending the Mount, both because no Jew is today in the proper state of ritual purity, and because the exact location of the Holy of Holies, where only the high priest may enter, is unknown. Therefore, when Israel captured the Mount in the 1967 Six Day War, the religious parties urged the government to bar Jews' access; the secular government, eager to avoid confrontation with the Muslim world, gladly acquiesced. The Muslim *waqf* (religious trust) thus retains de facto control over the Mount, where two Muslim holy sites, the Dome of the Rock and the Al-Aqsa Mosque, were built six centuries after the Temple's destruction.⁷⁵ Today, Jews are allowed on the Mount only in very small groups, and only if they refrain from praying, reading the Bible, reciting Psalms, or other such activity deemed “provocative” by the waqf—except, that is, when barred entirely due to “security constraints.”⁷⁶ For years, only a few fringe activists ever protested this situation.

Recently, however, a sea change has occurred. In October 2009, rabbis from across the religious Zionist spectrum, including several from the *hardal*, or Zionist ultra-Orthodox, faction, held a conference at which they publicly urged Jews to ascend the Mount frequently and in large numbers.⁷⁷ To be sure, there remain a few important religious Zionist dissenters,⁷⁸ and almost all Haredi rabbis still object. But for the first time, ascending the Mount is being encouraged rather than discouraged by a wide swath of mainstream religious leaders. The reason is clear: They have finally realized that in a Jewish state, halachic decisions have real-world consequences.

As long as the Land of Israel was ruled by the Romans, Ottomans, or British, all of whom forbade Jews to ascend the Mount, the halachic prohibition against doing so had no practical impact. But when a Jewish state controls the Mount, and thus could enable Jewish worship there if it so chose, the fact that Jews rarely visit, and certainly never pray there—even as thousands of Muslims pray there every week—naturally leads the world, and many Israelis as well, to conclude that the Mount is far more important to Muslims than it is to Jews. In fact, the very opposite is the case: The Mount is Judaism’s holiest site, to which Jews have prayed three times a day for millennia, while for Muslims, it is the third-most-important site, after Mecca and Medina. But since truth often matters less than perception, we should hardly be surprised that every peace proposal of the last decade—from President Bill Clinton’s in 2000 to Prime Minister Ehud Olmert’s in 2008—has placed the Mount in Muslim rather than Jewish hands. As Rabbi Yaakov Medan of the Har Etzion Yeshiva told the 2009 conference, what finally convinced him of the need for action was being harangued by a senior security official about his community’s failure to understand that this was an “existential struggle,” and Israel was losing it.⁷⁹

That same realization—that in a Jewish state, halacha has real-world consequences—prompted an even more remarkable development in September 2009: a proposal by someone at the heart of the religious establishment for significantly easing the conversion of people of Jewish descent,

namely the vast majority of the 300,000 non-Jews who have immigrated to Israel under the Law of Return. In a massive, two-volume work, sent to 1,000 rabbis from every Orthodox sect in Israel for feedback, Rabbi Chaim Amsellem, then a Knesset member from the ultra-Orthodox Sephardi party Shas, argued that the main acts of conversion are circumcision and immersion in a mikveh; as such, accepting the commandments is not actually necessary so long as the convert expresses belief in God and forsakes his former religion.⁸⁰ Nor is this a novel interpretation. Maimonides, Amsellem pointed out, insisted in his *Mishneh Torah*:

[Even] a convert who wasn't investigated, or who wasn't informed of the mitzvot and their punishments, and who was circumcised and immersed [in a mikveh] before three ignoramuses, is still a convert. And even if it is known that he converted to obtain some benefit, because he was circumcised and immersed, he has left the community of non-Jews.... Even if he returns to worshipping idols, he is like an apostate Jew, whose marriage is a valid marriage, and it is a mitzva to return him from his lapsed state, for because he was immersed, he became a Jew.⁸¹

Amsellem also countered the traditional rabbinic opposition to conversion for the purpose of marriage, arguing that non-Jews in Israel are usually either living with their partners already or have married them in a civil ceremony, so that when they express interest in conversion, it is not because they *need* to convert in order to be with their partners. Rather, it is because they truly want to belong to the Jewish people.⁸² And while accepting the commandments was the obvious way to demonstrate a desire to join the Jewish people back when most Jews were observant, today “it is proper to see service in the IDF and the connection to the nation of Israel as proof of their true wish to convert.”⁸³ Finally, while conversion should require *some* lifestyle changes, Amsellem stressed that this need not mean the adoption of a full Orthodox lifestyle; it would be enough for converts “to become ‘traditional’ by reciting the blessing over wine on the Sabbath, fasting on Yom

Kippur, avoiding non-kosher food, eating kosher-for-Pesach foodstuffs on Pesach, and respecting the holidays that symbolize Judaism.”⁸⁴

Alongside these halachic arguments, however, Amsellem stressed the problematic real-world consequences of stringency in conversion. First, he argued, making conversion difficult for immigrants who serve in the army and risk their lives defending the Jewish people distances other Jews from Judaism. He supported this view with a statement by Rabbi Ovadia Yosef: “What will the ‘free’ [secular Jews] who do not observe Torah and mitzvot say when they see that we push away from us those who risk their lives for Israel?”⁸⁵ But perhaps more important, the children of these non-Jewish immigrants attend Jewish schools, serve in the army, and generally integrate into Israel’s Jewish community—and, as such, will probably marry Jews. Without urgent action, intermarriage will soon become a pervasive problem.⁸⁶

Perhaps not surprisingly, the Haredi world was incensed by Amsellem’s work. *Yated Ne’eman*, the newspaper of the stringent Lithuanian faction of Ashkenazi Haredim, lambasted it as contradicting the opinions of all the great rabbinical authorities, and termed Amsellem himself a “low-grade political hack.”⁸⁷ Partly as a result of this onslaught, Amsellem’s own party distanced itself from his proposal in June 2010,⁸⁸ and in November, it kicked him out altogether. Now, Amsellem sits in the Knesset as an independent MK. Yet the very fact that such a proposal was circulated by someone at the heart of the religious establishment represents an important step forward. And several developments of the past few years could potentially advance the conversation he has begun.

One is the secular public’s renewed interest in Jewish sources. In 2008, for instance, the Education Ministry reported that the number of secular schools offering additional hours of elective Jewish studies had doubled over the previous two years, while the number of students enrolled in these classes jumped by 92 percent, from 18,000 to 34,500.⁸⁹ The TALi school system—secular schools with an enhanced Jewish studies curriculum—is

also booming: From 2004 to 2007 alone, it grew by 30 percent, to 165 schools with 35,000 children.⁹⁰ Several secular *mechinot*, in which students spend a year between high school and army service studying Jewish sources, have also opened in recent years, as has the first “secular yeshiva,” along with numerous programs that offer adult Jewish education. True, all these programs study traditional religious texts from a secular perspective. But the texts themselves are the same—and, perhaps surprisingly, so are some of the goals. “We want to build a generation of male and female scholars who know the texts, to make them desire Torah study for its own sake,” declared Eran Baruch, head of the Bina Center for Jewish Studies, which runs the secular yeshiva.⁹¹ Ruth Calderon, director of Tel Aviv’s Alma College—an institution founded “to acquaint Israelis with the wealth of Jewish heritage” and to make “Hebrew culture” a “meaningful, living element” of Israeli Jews’ identity⁹²—similarly explained, “The appropriation of the Jewish canon by so-called seculars may be regarded as a new version of ‘to build and be built in’ (*livnot u’lehibanot*), the motto of the early pioneers. For Israelis whose life in their own land is something they take for granted, ‘in it’ no longer means ‘in the land,’ as it did for their parents and grandparents, but rather ‘in their own culture’—that includes the Torah.”⁹³ To be sure, Orthodox Jews will not accept even a knowledgeable secular Jew’s interpretation of halacha. But if secular Jews begin delving into Jewish sources with the aim of applying them to real-world issues, religious Jews will be forced to follow suit.

Another development is the Ashkenazi Haredi community’s gradual opening up to the modern world. It is no accident that it was a Sephardi rabbi who sought to revamp conversion and Ashkenazi rabbis who objected: Sephardi Haredim are far more connected to the life of the state. Though Shas’s ideology is primarily Haredi, its voters are largely traditional Jews who work and serve in the army. Many Shas MKs also do army service. The Ashkenazi Haredi party United Torah Judaism, by contrast, represents a constituency in which most men neither work nor serve in the army. Thus, while Shas’s rabbinic leaders are aware of what is happening

out in the “real world,” UTJ’s rabbinic leaders are largely isolated from such feedback. This is likely why Rabbi Yosef, Shas’s spiritual leader, is so much more concerned about the potential contempt for Judaism caused by halachic stringency on conversion than his Ashkenazi counterparts seem to be: His voters, unlike theirs, mix regularly with secular Jews in the army and at work. As a result, they can more accurately gauge the mood of the general population on a given issue.

Over the course of the last decade, however, the monolithic isolation of Ashkenazi Haredim has begun to crack. The first Haredi army unit, Nahal Haredi, celebrated its tenth anniversary in 2009; some 2,500 soldiers have thus far served in it.⁹⁴ The air force opened a program to train Haredi technicians in 2007, and it was so successful—60 percent of its approximately 250 graduates subsequently applied for officer training⁹⁵—that military intelligence opened its own Haredi program in 2009, with an initial 70 recruits.⁹⁶ To be sure, compared to the 5,000 yeshiva students who request draft deferrals every year, the numbers are still tiny, but the trend is clearly moving in the right direction. The same goes for Haredim in the working world: The first Haredi college opened in 2001 to prepare Haredim for jobs requiring academic degrees; there are now two Haredi colleges and two secular colleges with Haredi campuses. In 2009, some 2,000 Haredim, both men and women, began their bachelor’s-degree studies in these programs, a fourfold increase over four years earlier.⁹⁷ Again, the numbers are small as a percentage of Israel’s total Haredi population, but the trend is positive.⁹⁸ And as more Haredim enter the army and working world, they, too, will begin experiencing the real-world consequences of halachic decisions, and exerting grassroots pressure on their rabbis.

It took centuries after the Temple’s destruction to transform Judaism from the religion of a sovereign state into one adapted to the needs of exile. Moreover, this change was fiercely resisted by certain groups, such as the priesthood, which was reluctant to acknowledge its necessity. Seen from

this perspective, it is perhaps unsurprising that, sixty-two years after the establishment of the State of Israel, the process of transforming Judaism back into a religion focused on the needs of sovereignty has barely begun, and what little steps have been made have been met with fierce resistance from some elements of Israeli society.

Nevertheless, it is vital to accelerate this process, and not only because of the state's needs. It is also essential for the sake of halacha itself. Currently, there is a remarkable consensus among secular Israelis that Jewish law and tradition *should* be part of the Jewish state's answer to real-world questions. Indeed, several recent polls reveal the degree to which this consensus currently exists: In 2007, for instance, *Yediot Aharonot* reported that 79 percent of Israeli Jews do not want the Sabbath to be a regular work day, even though only 33 percent of this group observe the traditional day of rest.⁹⁹ Perhaps more telling, a 2008 poll commissioned by the Absorption Ministry found that a full 74 percent of secular Jews think non-Jewish immigrants from the former Soviet Union should undergo an Orthodox conversion through the official rabbinate, but without being required to adopt a full Orthodox lifestyle.¹⁰⁰ In short, they're pleading for a halachic solution that will offer immigrants a viable conversion track *and* simultaneously be recognized by most segments of Israeli society. Yet if viable halachic solutions to the state's problems fail to materialize, this consensus will eventually evaporate. The secular majority will simply impose secular solutions, and halacha will find itself increasingly marginalized in the very place it ought to call home.

Halacha's successful adaptation to the needs of exile preserved the Jews for 2,000 years. But by stymieing its readaptation to the needs of revived Jewish sovereignty in the Land of Israel, its most zealous adherents are doing it a disservice. Not only are they preventing it from fulfilling its original mission—i.e., providing Jewish solutions to the problems of a sovereign Jewish state—but they are also undervaluing the purpose of its exilic adaptation: The preservation of the Jewish people as a people. For if halacha continues to have nothing constructive to say about the burning issues confronting

the modern Jewish people in its state, many Israelis may eventually become convinced that only by *severing* the state from its Judaism can it survive. Should that happen, of course, Israel will cease to be “Jewish” in any meaningful sense. And the disappearance of the world’s only Jewish state—even if the State of Israel were to physically survive—could prove as devastating for the Jewish people as the loss of its state was in 70 C.E.

For now, the window of change remains wide open: Most Israelis want a halacha that can address burning national issues. But this window will not stay open forever. For the sake of both the Jewish state and the Jewish people, we should lend our support to this change before it is too late.

Evelyn Gordon is a journalist and commentator on public affairs. Hadassah Levy is website manager for Jewish Ideas Daily.

Notes

1. Gittin 56a-b.

2. Lamentations Rabba 1:31. Scholars offer two reasons for concluding that the version in Lamentations Rabba predates the version in the Talmud. First, the request for Yavneh was clearly an anachronism, since Yavneh was not a center of Torah scholarship at the time the Temple was destroyed; it became one only after the destruction, when the sages fled Jerusalem and resettled there. Second, while scholars generally agree that neither version of the story reflects an actual historical event, even stories must be internally coherent. To anyone living at or near that time, the idea of ben Zakkai’s asking for Yavneh rather than for Jerusalem would have been inconceivable. Only much later could such a request have seemed plausible. See Gedaliah Alon, *Jews, Judaism, and the Classical World: Studies in Jewish History in the Times of the Second Temple and Talmud*, trans. Israel Abrahams (Jerusalem: Magnes, 1977), pp. 269-313, and Jacob Neusner, *A Life of Yohanan ben Zakkai, ca. 1-80 C.E.* (Leiden: Brill, 1970), p. 245. A more contemporary analysis of

this issue can be found in Amram Tropper, "Yohanan ben Zakkai, Amicus Caesaris: A Jewish Hero in Rabbinic Eyes," *Jewish Studies Internet Journal* 4 (2005), pp. 133-149, www.biu.ac.il/JS/JSIJ/4-2005/Tropper.pdf.

3. Mishna Rosh Hashana 4:1.

4. Rosh Hashana 29b.

5. On the lulav and etrog, see Lawrence H. Schiffman, *From Text to Tradition: A History of Second Temple and Rabbinic Judaism* (Hoboken, N.J.: Ktav, 1991), p. 163. On the holiday's changed meaning, see Yoav Sorek, "Torah of Israel, Torah of Exile," *AZURE* 2 (Summer 1997), p. 87.

6. See Ronald H. Isaacs, *Every Person's Guide to Shavuot* (Lanham, Md.: Aronson, 1999).

7. Berachot 26b.

8. Tanhuma, Korah 12. Tanhuma also makes this connection in reference to the bringing of the first fruits: Since Moses was aware that the bringing of the first fruits and other sacrifices would one day cease, he ordained thrice-daily prayer. Tanhuma, Ki Tavo 1.

9. Tanhuma, Ki Tavo 1.

10. The earliest evidence for the synagogue as an institution in Palestine is from the first century C.E.; the synagogues of Masada, Herodian, and Gamla all date to this period.

11. Schiffman, *From Text to Tradition*, pp. 164-166. For synagogue inscriptions, see Lawrence H. Schiffman, *Texts and Traditions: A Source Reader for the Study of Second Temple and Rabbinic Judaism* (Hoboken, N.J.: Ktav, 1998), pp. 472-474.

12. Menahot 110a.

13. Sorek, "Torah of Israel," pp. 89-90.

14. Tractate Eduyot is a prime example: It deals extensively with Temple-related rituals such as the laws of purity, laws dependent on the Land of Israel, and laws relating to the festivals. As such, many of these laws could obviously no longer be practiced by Jews in exile.

15. The details of this process, originally prescribed by the Torah in Exodus 12:1-2, are extensively documented in Mishna Rosh Hashana.

16. Scholars disagree about the reasons for this change. Some posit that it was a result of persecution, which made it hard for messages about the sighting of the new moon to be transmitted from Palestine to Babylonia. Others argue that only at this time did scientific progress make a fixed calendar possible, while still others posit that the Jews of Babylonia were influenced by the Christian world, which

already had a fixed calendar. See Sacha Stern, *Calendar and Community: A History of the Jewish Calendar, 2nd Century B.C.E. – 10th Century C.E.* (Oxford: Oxford, 2001), pp. 212-227. Regardless of the reason, the effect of this change is clear. See Ellis Rivkin, "Some Historical Aspects of Authority in Judaism," *Yearbook* (The Central Conference of American Rabbis) 61 (1951), pp. 365-383.

17. In addition to the claim that the Jerusalem Talmud suffered from the persecution of its scholars and redactors, R. Isaac Alfasi (1013-1103), one of the leading early codifiers of Jewish law, claimed that the Babylonian Talmud had taken into account the rulings of the Jerusalem Talmud before making its final decision, thus rendering the conclusions of the Jerusalem Talmud irrelevant. On this subject, see Robert Brody, "The Talmud in the Geonic Period," in Sharon Liberman Mintz and Gabriel M. Goldstein, eds., *Printing the Talmud: From Bomberg to Schottenstein* (New York: Yeshiva University Museum, 2005), p. 34; Schiffman, *From Text to Tradition*, pp. 220-239; Schiffman, "The Making of the Mishnah and the Talmud," in *Printing the Talmud*, pp. 3-18; Jeffrey L. Rubenstein, *The Culture of the Babylonian Talmud* (Baltimore: Johns Hopkins, 2003), p. 159; Gideon Libson, "Halakhah and Law in the Period of the Geonim," in Neil S. Hecht et al., eds., *An Introduction to the History and Sources of Jewish Law* (Oxford: Clarendon, 1996), pp. 197-250.

18. See tractate Eduyot, especially chapter 8.

19. Mishna Eduyot 8:7. Avraham Aderet, "Tractate Eduyot as Evidence of Methods of Rehabilitation and Revitalization After the Destruction of the Second Temple," in Aharon Oppenheimer, Yeshayahu Gafni, and Menahem Stern, eds., *Jews and Judaism in the Time of the Second Temple, the Mishna, and the Talmud* (Jerusalem: Yad Yitzhak Ben-Zvi, 1993), pp. 251-265 [Hebrew].

20. Rabban Gamliel did, however, allow more modest mourning rituals, such as leaving one wall in the house unpainted, or omitting one item of jewelry from a woman's costume. Tosefta Sota 15:10-15.

21. Deuteronomy 15:9.

22. Mishna Shvi'it 10:3-4.

23. Deuteronomy 20:15-18.

24. *Talmudic Encyclopedia*, vol. 17, s.v. "Herem D'Rabbeinu Gershom," p. 378 [Hebrew].

25. One argument for this theory is that no comparable development occurred among Jews in Islamic countries, where polygamy was common. Only in 1950 was polygamy outlawed for all Jews (except under very special circumstances) by a rabbinical conference convened by Israel's Chief Rabbinate. See Menachem Elon, "Bigamy and Polygamy," in *Encyclopedia Judaica*, rev. ed., 2008.

26. This improvement in status is reflected in the higher payments to which women were entitled in the event of divorce, as detailed in their *ketubot* (marriage contracts), as well as in the increased roles women played in the economy and the family. See Avraham Grossman, *The Early Sages of Ashkenaz: Their Lives, Leadership, and Works, 900-1096* (Jerusalem: Magnes, 2001), pp. 147-149 [Hebrew].

27. Sota 21b. For an in-depth analysis of the issue of women and Torah study, see Moshe Weinberger, "Teaching Torah to Women," *Journal of Halacha and Contemporary Society* 9 (Spring 1985), pp. 19-52.

28. Hafetz Haim, *Likutei Halachot* (Jerusalem: Yefe Nof, 5765), vol. 3, Sota 21a-b, p. 105 [Hebrew].

29. Eruvin 13b.

30. Rashi on Ketubot 57a.

31. Eliezer Berkovits, *Not in Heaven* (Jerusalem: Shalem, 2010), pp. 80-81. See also Rosh Hashana 25b, which notes that the Bible, in one place, categorizes three minor judges—Jerubbaal, Bedan, and Jephthah—with the prophet Samuel, and in another compares Samuel to Moses and Aaron. It then concludes that the Torah equated these lesser figures with the Jewish people's greatest leaders "to show that Jerubbaal in his generation is like Moses in his generation, Bedan in his generation is like Aaron in his generation, Jephthah in his generation is like Samuel in his generation. This is to teach you that the most worthless, once he has been appointed a leader of the community, is to be accounted like the mightiest of the mighty."

32. Bava Batra 130b-131a.

33. Maimonides, *Mishneh Torah*, Laws of Rebels 2:1, based on Rosh Hashana 24b. The discussion in this paragraph of halachic mechanisms for change is based on Eliezer Berkovits's *Not in Heaven*.

34. Berkovits cites a fascinating example of just how vital individual circumstances are to deciding which halachic principle is appropriate: Under biblical law, if a woman's husband dies without ever fathering a child, she must either contract a levirate marriage—i.e., marry her husband's brother—or reject such a marriage via the *halitza* ceremony. Normally, if she did have a child by her late husband, no such obligation applies, even if the child died shortly after birth; if, however, the child who died was born prematurely, then the same is true only if the baby was in principle viable. The Talmud offers two conflicting opinions on what constitutes viability: R. Shimon ben Gamliel says that only if the baby lived for thirty days can we be sure he was viable; the other rabbis deem this condition unnecessary. The Talmud then asserts that the halacha depends on whom the widow remarries: If she remarries a Kohen (a member of the priestly caste), the halacha goes according to the rabbis; if she marries an ordinary Israelite, the halacha goes according

to ben Gamliel. How can the rule be different based solely on whom the woman remarries? The Talmud explains that since a Kohen is not permitted to marry someone who has undergone halitza, ben Gamliel's rule is "not possible"—i.e., it might bar the widow from remarrying the man of her choice. But since an Israelite *may* marry someone who has undergone halitza, ben Gamliel's ruling will not have any tragic consequences. Therefore, it is possible. See Berkovits, *Not in Heaven*, pp. 16-17, based on Yevamot 36b-37a.

35. While this arrangement may seem obvious, the historical record shows that it was not. The book of Maccabees relates how, at the height of the Jewish revolt against the Greeks, a fierce dispute raged between those who argued for an arrangement of this sort and those who argued that warfare was never permissible on the Sabbath, even in self-defense. The argument was ultimately settled by the Greeks, who swiftly eliminated the latter group in a series of Sabbath raids. See also Moshe David Herr, "The Problem of War on the Sabbath in the Second Temple and the Talmudic Periods," *Tarbiz* 30:3 (1960), pp. 242-256, and 30:4 (1961), pp. 341-356 [Hebrew].

36. In 2009, 8 percent of Israeli Jews defined themselves as ultra-Orthodox, 12 percent as religious, 13 percent as religious-traditional, 25 percent as not-so-religious traditional, and 42 percent as secular. See www.cbs.gov.il/reader/newhodaot/hodaa_template.html?hodaa=201019101. Another major difference between then and now is that in exile, Jews frequently suffered severe persecution; consequently, no one who was not sincerely committed to Judaism would want to join the community. By contrast, modern Israel is a wealthy state that attracts many non-Jews seeking greater economic opportunity. This difference lies at the crux of a separate debate over whether Israel should recognize non-Orthodox conversion. Much of the state's opposition to doing so stems from the fear that the far less stringent requirements of non-Orthodox conversion would make it easy for economic migrants with no real commitment to a Jewish state to obtain citizenship via a "quickie" procedure. It is also relevant to the question of *how* halachic conversion ought to adapt: Clearly, conversion needs to retain enough barriers to filter out people with no real interest in or connection to Judaism. But since existing halachic conversion already features plenty of barriers, the growth of economic migration to Israel is not one of the factors driving demands for halachic change.

37. An alternative solution, proposed by several politicians at the time, was to amend the Law of Return to restrict entry to people with one Jewish parent (rather than one Jewish grandparent). This would indeed have reduced the influx, but would not have eliminated it. And in a country founded in part to serve as a refuge for any Jew in need, no Israeli would seriously have contemplated an amendment that denied entry to all non-Jews, thereby forcing a Jewish man fleeing the uncertainties of the imploding Soviet Union to choose between refuge in the State of Israel and leaving his non-Jewish wife and children behind.

38. In 2009, 5,507 people converted, of whom 60 percent were Ethiopian. See Jonah Mandel, "Report Reveals Stagnation in Country's Conversion Mechanism," *Jerusalem Post*, May 18, 2010. Unlike the Soviet immigrants, the Falash Mura are not entitled to automatic citizenship under the Law of Return: They are of Jewish descent, but their ancestors converted to Christianity generations ago. Thus, only by converting to Judaism can they obtain citizenship quickly; otherwise, they must undergo the often laborious procedures dictated by the Law of Entry.

39. Yair Ettinger, "Sephardic Chief Rabbi to Revoke Ruling Invalidating Thousands of Conversions," *Haaretz*, May 5, 2008.

40. Yair Ettinger, "High Court Asked to Overturn Rabbinical Court's Voiding of Druckman Conversions," *Haaretz*, June 6, 2008. The petition was filed by several leading religious Zionist organizations, including Emunah and Ne'emanei Torah Va'Avodah, and widely praised by prominent members of the religious Zionist community. Amnon Shapira, former secretary general of the Bnei Akiva youth movement, for instance, termed the petition "the first time that the religious Zionist public has told the ultra-Orthodox outright that they have gone far enough." Yair Ettinger, "Jewish Converts Are Pawns in Religious-Sector Power Struggle," *Haaretz*, June 8, 2008.

41. The court has yet to rule on this issue. Meanwhile, Haredi-dominated rabbinical courts have continued annulling conversions. See, for instance, Yair Ettinger, "High Court to Rabbinical Courts: Explain Annulment of Druckman Conversions," *Haaretz*, May 20, 2009 [Hebrew]; Yair Ettinger, "Rabbinical Court Proves Subservience to Ultra-Orthodox," *Haaretz*, June 23, 2009.

42. The Haredi parties were concerned that the original bill would loosen their control over the conversion process, since while all municipal rabbis are subordinate to the Haredi-controlled Chief Rabbinate administratively, not all follow the Chief Rabbinate's stringent halachic line. This fear seems largely ungrounded, however, given that the rabbinate's control over both the rabbinical courts and marriage licenses effectively gives it the last word. Nevertheless, to satisfy them, the bill was amended to give the Chief Rabbinate explicit control over all conversions in Israel—a move that outraged America's Reform and Conservative movements, which charged that it effectively banned their conversions. In fact, however, the bill applied only to conversions within Israel, and would thus have had no impact on the recognition of non-Orthodox conversions overseas (non-Orthodox conversions within Israel are not recognized).

43. See Dan Izenberg and Gil Shefler, "IDF Conversions Invalid from Religious Point of View," *Jerusalem Post*, September 7, 2010.

44. On the attorney's retraction, see Jonathan Lis, "Prosecution Denies Questioning Legitimacy of IDF Conversions," *Haaretz*, September 14, 2010. On Amar's

letter, see Johan Mandel, "Military Conversions Are Halachically Valid, Says Amar," *Jerusalem Post*, September 17, 2010.

45. See Yair Ettinger, "Sephardi Chief Rabbi Under Fire for 'Lenient' Approach to IDF Conversions," *Haaretz*, October 12, 2010; Yair Ettinger, "Rabbinat Sets Up Advisory Committee on IDF Conversions," *Haaretz*, October 22, 2010.

46. See Yair Ettinger, "Shas Spiritual Leader Approves Disputed IDF Conversions," *Haaretz.com*, January 14, 2011, www.haaretz.com/news/national/shas-spiritual-leader-approves-disputed-idf-conversions-1.336954.

47. See www.jewishencyclopedia.com/view.jsp?artid=18&letter=S&search=sabbatical.

48. See Yair Ettinger, "Shmita Laws at Center of Billion Dollar Dispute," *Haaretz*, September 10, 2007.

49. See Israel Central Bureau of Statistics, *Statistical Abstract of Israel 2009* 60 (Jerusalem: Central Bureau of Statistics, 2009), p. 618, www.cbs.gov.il/reader/shnaton/templ_shnaton_e.html?num_tab=st14_03&CYear=2009. Clearly, the farmers themselves would still suffer from a year without income, and the sudden enforcement of a strict observance of shmita, without first devising some mechanism of compensation, would be untenable. But that does not make the Haredi solution untenable in principle. A wealthy state in which farmers account for a very small fraction of the economy could theoretically afford to subsidize their year of inactivity, just as some Western countries pay farmers *not* to produce a certain crop in order to prevent overproduction that would drive down prices.

50. As the Haredi Rabbi Moshe Sternbuch wrote in his 1978 commentary on this issue, "It seems the prohibition of 'Thou shalt not let them dwell'—thou shalt not grant them permanent residency in the land, lest they cause the land's inhabitants to sin—also applies to the Ishmaelites [i.e., Arabs]... and therefore, as the Chazon Ish [Rabbi Avrohom Yeshaya Karelitz, one of the leaders of Israel's Haredi community until his death in 1953] said, those who sell their lands to spare themselves the rabbinic prohibition of *shvi'it* [cultivating the land during the sabbatical year] are violating the Torah prohibition of 'Thou shalt not let them dwell.'" Moshe Sternbuch, *Shmita K'hilchata* (Bnei Brak: Agudat Netivot Hatorah Vehahesed, 5739), p. 100 [Hebrew]. Interestingly, two of the prominent rabbis who vehemently opposed Spector's heter mechira when he first issued it are regarded by modern-day religious Zionists as their intellectual and spiritual forefathers: Rabbi Chaim Soloveitchik of Brisk and Rabbi Naftali Zvi Yehuda Berlin. See Sternbuch, *Shmita K'hilchata*, p. 93.

51. One salient example of the Sephardi Haredim's tendency to back down in the face of Ashkenazi Haredi pressure will be discussed later in this article. Another is the conversion bill mentioned above. Shas, the Sephardi Haredi party, initially

agreed to grant local rabbis autonomy in performing conversions, but then, under pressure from the Ashkenazi Haredim, recanted, insisting that it would support the bill only if it were changed to give the Chief Rabbinate exclusive control over conversions. On Amar's opposition to annulling conversions, see Ettinger, "Sephardic Chief Rabbi to Revoke Ruling." On Yosef's stance on shmita, see Yair Ettinger, "Ex-Chief Rabbi Defends Shmita Sale," *Haaretz*, October 15, 2007. On the conversion bill, see, for instance, Yair Ettinger, "Conversion Bill Crisis Threatens Coalition," *Haaretz*, March 8, 2010; Gil Hoffman and Rebecca Anna Stoil, "Shas: Conversion Bill Crisis Solvable," *Jerusalem Post*, March 8, 2010; Dan Izenberg, "Why Nobody's Happy with Conversion Bill," *Jerusalem Post*, March 9, 2010.

52. See Dina Kraft, "Shmita Battle Creates Showdown Between Zionists, Haredim," Jewish Telegraphic Agency, October 25, 2007, www.jewishexponent.com/article/14388/.

53. See Amiram Cohen and Yair Ettinger, "High Court Orders Rabbinate to Use Shmita Status Quo," *Haaretz*, October 25, 2007.

54. From a halachic standpoint, resolving this problem is urgent, given the demographic forecasts that within a few years, a majority of the world's Jews will live in Israel. For although shmita is a Torah commandment, the traditional interpretation has been that it applies only when a majority of the world's Jews live in Israel; its continued observance during the millennia when this was not true was merely a rabbinic ordinance. It was precisely shmita's status as a rabbinic rather than a Torah commandment that enabled leniencies such as the heter mechira; thus, it is far from clear that any rabbi would accept the heter once shmita reverts to its status as a Torah commandment. Moreover, once Israel is home to most of the world's Jews, the laws of the Jubilee—which is currently not observed at all—come into effect. This means that every fifty years, there would essentially be two shmita years in a row, compounding the problem significantly.

55. Similarly, Muslim and Christian clerics control these issues for their co-religionists.

56. Though commonly translated as "bastard," a mamzer is not an illegitimate child, but rather the product of an adulterous union—specifically, of a married woman and a man other than her husband.

57. In English, the term agunot is often used for mesoravot get as well, but halachically speaking, they are not identical. It might seem odd that this issue is usually treated as a women's problem, given that halacha requires both parties to consent to the divorce: In principle, a woman could also refuse to divorce her husband, turning him into a *mesorav get*. And indeed, the rabbinate says there are several dozen such cases every year. However, men have a halachic "out" that is unavailable to women: They can obtain special rabbinic permission to take a second wife, thereby enabling them to remarry even without securing a divorce. To be

sure, the procedure is complex, and is used very infrequently, but it does enable the rabbinate to free men to remarry in exceptional cases, such as when the wife is mentally ill and therefore unable to grant her consent. For women, however, no such out exists.

58. Overseas, non-Orthodox Jews generally opt for either civil marriage (which, because halacha does not consider it real marriage, requires no halachic divorce) or non-Orthodox religious marriage. Though the latter *is* recognized by the Orthodox as halachic marriage, there is a firm halachic principle that no stone is left unturned in the effort to avoid declaring a child a mamzer. Thus, if a mesorevet get decides to make do with a civil divorce—or to skip the divorce entirely and simply cohabit with another man—rabbis will make every effort to find some halachic flaw in the marriage that enables them to annul it retroactively. In principle, they would do the same for an Orthodox mesorevet get, but Orthodox women are less likely to see civil divorce or cohabitation as viable alternatives; moreover, the kind of halachic flaws that enable annulment are generally easier to find in a non-Orthodox marriage.

59. According to the Rabbinical Courts Administration, the number of mesoravot get has remained steady at about 180 for years. See Yair Ettinger, “Rabbinical Courts Softened Stance on Husbands Refusing Their Wives Divorce in 2009,” *Haaretz*, January 27, 2010. Mavoi Satum, an advocacy organization for agunot and mesoravot get, puts the number at several thousand a year, though it has no exact figures. But Mavoi Satum’s estimate is almost certainly closer to the truth, since the rabbinate defines mesoravot get only as women whose husbands have already been ordered by the rabbinical courts to grant a divorce, but have not yet done so. Yet it can take years before a court issues such an order, during which time the woman is at best unable to secure the divorce she seeks, and at worst extorted, with the husband conditioning his consent to the divorce on financial or custody concessions. Some indication of the dimensions of the problem can be seen in the fact that of those couples who actually secured a divorce in 2006, about one-eighth, or 6,208 couples, had begun divorce proceedings four or more years earlier—an unconscionable length of time except in very unusual circumstances. See Ruth Halperin-Kaddari and Inbal Karo, *Women and Family in Israel: Statistical Bi-Annual Report* (Ramat Gan: Rackman Center for the Advancement of Women’s Status, Bar-Ilan University, 2009).

60. One might argue that this situation should generate contempt only for Orthodox Judaism—and overseas, that would probably be the case. But since many secular Israelis encounter Judaism primarily through the official rabbinate, Israelis tend not to make this distinction.

61. In Jewish law, a Torah commandment always takes precedence over a rabbinic one. And while the need for the husband’s consent is also mandated by the Torah (in contrast to the wife’s consent, which is a rabbinic mandate), the view that

this consent cannot be coerced in any way—and must therefore be won instead by financial or custody concessions—is strictly rabbinic. Maimonides, for instance, famously said that a man should be beaten until he consents to grant the divorce. Maimonides, *Mishneh Torah*, Laws of Divorce 2:20, based on Arachin 21a.

62. Ettinger, “Rabbinical Courts Softened Stance.”

63. Schiffman, “Making of the Mishnah and the Talmud,” pp. 13-15. Indeed, the first commentary covering the entire Jerusalem Talmud was written only in the eighteenth century.

64. Abraham Isaac Kook, *Igrot Haraayah*, vol. 1 (Jerusalem: Harav Kook, 5745), no. 96, pp. 111-115 [Hebrew]. Kook (1865-1935) served as the first Ashkenazi chief rabbi of Palestine under the British Mandate. He founded Mercaz Harav, the flagship yeshiva of the religious Zionist movement.

65. This decision by the Gerrer Rebbe (1898-1992), also known as the “Lev Simcha” after his most famous work, came almost six decades after *daf yomi* on the Babylonian Talmud began in 1923. Academic Jewish studies, in contrast, have included study of the Jerusalem Talmud since the discipline first emerged a century ago. See www.yba.org.il/show.asp?id=17208#_ftn2.

66. Perhaps ironically, one of the biggest contributions to this trend has been made by an American publisher, ArtScroll, which has begun translating the Jerusalem Talmud into both Hebrew and English. For more on *daf yomi* websites, see www.yerushalmionline.org. Various websites also advocate following the halachic rulings of the sages of the Land of Israel; see <http://machonshilo.org/en/index.php>.

67. Whether the Jerusalem Talmud can actually serve this function is an open question. Nevertheless, the fact remains that the revival of interest in this work stems from a realization that the halacha developed in exile is insufficient now that the Jewish people has returned to its land.

68. Weinberg is best known for his book *Seridei Esh* (Jerusalem: Harav Kook, 1961-1966) [Hebrew].

69. Berkovits, *Not in Heaven*, pp. 137, 140-141. Brief excerpts from his discussion of halacha’s existing mechanisms for change were quoted in the section of this article that addressed this issue.

70. Donniel Hartman and Moshe Halbertal, eds., *Judaism and the Challenges of Modern Life* (London: Continuum, 2007).

71. Avi Sagi and Zvi Zohar, *Transforming Identity: The Ritual Transformation from Gentile to Jew—Structure and Meaning* (London: Continuum, 2007).

72. See, for instance, the highly critical review of *Transforming Identity in Tradition: A Journal of Orthodox Jewish Thought*, an eminently mainstream publication of the Rabbinical Council of America. The reviewers concluded that “the authors are mistaken in their central premise that conversion without a binding acceptance of mitzvot is possible as a matter of Jewish law, and that their conclusion is inconsistent with talmudic, medieval, and modern Jewish law discourse.” Michael J. Broyde and Shmuel Kadosh, “Review Essay: ‘Transforming Identity’ by Avi Sagi and Zvi Zohar,” *Tradition* 42:1 (Spring 2009), pp. 84-103.

73. www.mtzedek.org.il/english/TavChevrati.asp.

74. www.mtzedek.org.il/english/AboutUs.asp.

75. Both Al-Aksa and the Dome of the Rock were built in the seventh century C.E. However, Al-Aksa was twice destroyed by earthquakes and rebuilt; thus, the current Al-Aksa dates from 1036 C.E.

76. Sometimes, these constraints can last for years. After the Second Intifada erupted in September 2000, for instance, Jews were barred entirely from the Mount for almost three years, until August 2003. See Jonathan Lis and Arnon Regular, “Temple Mount Is Reopened to Non-Muslims for Two Hours a Day,” *Haaretz*, August 21, 2003.

77. Yair Ettinger, “Religious Zionist Rabbis: Ascend the Temple Mount,” *Haaretz.com*, October 26, 2009, www.haaretz.com/news/religious-zionist-rabbis-ascend-the-temple-mountain-1.5391.

78. One of the most prominent dissenters was Rabbi Shlomo Aviner, rabbi of the settlement of Beit El and head of the Ateret Kohanim Yeshiva in Jerusalem. On the day of the rabbis’ conference, he published an article in *Makor Rishon* in which he explained his reasons for opposing the call to ascend the Mount. See Ettinger, “Religious Zionist Rabbis.”

79. Ettinger, “Religious Zionist Rabbis.”

80. Chaim Amsellem, *Seed of Israel* (Jerusalem: Machon Mekabetz Nidchei Yisrael, 2010), p. 222 [Hebrew]. Having been a member of Shas at the time, Amsellem presumably would not have published this work without the consent of the party’s spiritual leader, Rabbi Ovadia Yosef, the unchallenged halachic arbiter of Israel’s Sephardi community. The fact that Yosef repudiated Amsellem’s position only after it came under attack from the Ashkenazi Haredim supports the conclusion that he did not initially deem it unacceptable. However, given the defiant independence Amsellem has displayed since, it is also possible that he did not consult Yosef first.

81. Maimonides, *Mishneh Torah*, Laws of Forbidden Sexual Relations 13:14.

82. "It is the view of the greatest halachic arbiters, both Sephardi and Ashkenazi, that we should be lenient in performing conversions for the sake of marriage these days in cases where they [the couple] were living together before the conversion, or where they had already undergone a civil marriage, or if it is certain that they will live together even without the conversion, because then it is clear that it [the conversion] is for the sake of heaven and not for the sake of marriage." Amsellem, *Seed of Israel*, p. 222.

83. See Gil Ronen, "Shas MK: Ease Conversions for IDF Soldiers of Jewish Descent," [Israelnationalnews.com](http://israelnationalnews.com), September 23, 2009, www.israelnationalnews.com/News/News.aspx/133563.

84. See Ronen, "Shas MK: Ease Conversions."

85. See Ronen, "Shas MK: Ease Conversions."

86. Amsellem, *Seed of Israel*, pp. 319-320. Writing in 1983, long before the Soviet influx created the intermarriage problem, Eliezer Berkovits offered a different rationale for leniency in conversion: the need to strive for unity among Orthodox and non-Orthodox Jews. "Within halacha," he wrote, "there are possibilities for an approach between the various ideological groupings within the Jewish people. Whatever our theological differences, the responsibility to strive for unity in the spirit of loving every Jew is equally binding on all of us. If, from the halachic point of view, the supervening importance of that obligation renders the task one of 'urgency and great need,' in which the fulfillment of specific laws may be allowed even in their *post factum* form, the same approach to the task of unity may well be demanded of all denominations in our midst." He added, however, that this should not necessarily be a unilateral concession on the part of the Orthodox: Reform and Conservative leaders should also be asked, "How far are you willing to go in giving up your ideal form of practice in specific cases for the sake of the comprehensive *mitzva* of Jewish unity?" Berkovits, *Not in Heaven*, pp. 168-169.

87. www.kikarhashabat.co.il/5854.html.

88. See Yair Ettinger, "They Spilled Our Blood, You Keep Quiet," *Haaretz Magazine*, June 25, 2010. Even before then, the situation did not seem encouraging: When one of the authors of the present essay queried an Amsellem aide about the initiative's progress last June, he said merely that it was still in the feedback stage, and that some responses had been very positive, while others had been "less so."

89. See Or Kashti, "Number of Students at State Secular Schools Getting Extra Tuition in Jewish Studies Climbs by 92 Percent," *Haaretz*, April 30, 2008.

90. See Daphna Berman, "Between Religious and Secular Education, TAL's Middle Way," Haaretz.com, June 15, 2007, www.haaretz.com/magazine/anglo-file/

between-religious-and-secular-education-tali-s-middle-way-1.223200. The number has since risen to 184. See www.schechter.edu/Page.aspx?ID=109925997.

91. See Yedidia Meir, "Because Judaism Isn't a Dirty Word," *Haaretz Magazine*, January 4, 2007.

92. See www.alma.org.il/content.asp?pageid=31&lang=en.

93. Ruth Calderon, "We Entered the Talmud Barefoot," in Rachel Livneh-Freudenthal and Elchanan Reiner, *Streams into the Sea: Studies in Jewish Culture and Its Context* (Tel Aviv: Alma, 2001), pp. 62-71.

94. See www.nahalharedi.org/nahal_haredi_news.php?id=93.

95. See Yaakov Katz, "60% of Haredim in IAF Request to Become Officers," *JPost.com*, June 25, 2009, www.jpost.com/Home/Article.aspx?id=146761.

96. Anshel Pfeffer, "From Mishnah to MI: Haredi Yeshiva Graduates Enlist in IDF," *Haaretz*, December 2, 2009.

97. See "Number of Ultra-Orthodox University Students Swings Up," *Haaretz*, October 18, 2009.

98. Two factors have the potential to accelerate this trend. One is a June 2010 High Court of Justice ruling that deprived yeshiva students of government welfare payments on the grounds that since university students are not entitled to such payments, this constitutes unjust discrimination. The cabinet has since voted to reinstate these payments with some differences, but the court may deem the changes insufficient to solve the discrimination problem. If the allowances are ultimately canceled, the ensuing financial hardship might well drive more yeshiva students to seek work. The other factor is that several government and army officials have recently begun to give serious thought to how they can encourage Haredi army service and employment. In May 2010, for instance, the Ministry of Industry, Trade, and Labor unveiled a plan to encourage Haredi employment by granting financial incentives to employers who hire Haredim; the following month, the army presented a plan for encouraging more Haredim to enlist, and in January 2011, the cabinet approved a Finance Ministry plan that effectively exempted Haredim from the draft, on the theory that removing a major barrier to employment (namely, that people who have not either served in the army or been exempted cannot legally work in Israel) would encourage them to enter the working world. Whether any of these plans will actually be implemented is unclear: Even the plan actually adopted by the cabinet may face legislative hurdles, and will certainly face a court challenge. But the very fact that the army and government have started thinking seriously about the issue, after decades of largely ignoring it, is itself a positive development. On the court ruling, see Jonathan Lis, Yair Ettinger, and Tomer Zarchin, "High Court Abolishes Stipend for Married Yeshiva Students," *Haaretz*, June 15, 2010. On government and army plans, see Haim Bior and Lior Dattel, "Plan: Incentives

for Hiring Haredim,” *Haaretz*, May 17, 2010; Meirav Arlosoroff, “Treasury Proposes Exempting Haredim from IDF,” *Haaretz*, May 31, 2010; Amos Harel, “IDF Proposes New Model for Enlisting Ultra-Orthodox Students,” *Haaretz*, June 16, 2010; and Yair Ettinger and Barak Ravid, “Government Exempts Married Haredim from IDF,” *Haaretz*, January 10, 2011.

99. Kobi Nahshoni, “Poll: Most Israeli Jews Don’t Want to Work on Shabbat,” *Ynetnews.com*, September 6, 2007, www.ynetnews.com/articles/0,7340,L-3410405.html.

100. Anshel Pfeffer, “Secular Israelis Wary of Impact of Non-Jewish Olim,” *Haaretz*, June 5, 2008.