

Correspondence

Halachic Reform

TO THE EDITORS:

In their refreshingly readable and cogent article, Evelyn Gordon and Hadassah Levy argue for today's rabbinic leaders to adapt *halacha* (Jewish law) to the needs of a "revived Jewish sovereignty" in the State of Israel ("Halacha's Moment of Truth," *AZURE* 43, Winter 2011). Showing how halacha accommodated itself to changing circumstances brought about by the destruction of the Temple, the authors call for similar pliancy today in order to answer the modern-day demands of the state, in particular with respect to *shmita* (leaving the land fallow during the sabbatical year), conversion, and *mesoravot get* (women denied a divorce). The demands in question are readily apparent: Israeli agriculturalists, they claim, cannot stop exporting their crops for a year, since "importers will find an alternative" source. The influx of 300,000 non-Jews to Israel after the fall of the Berlin Wall calls for a means of conversion that does not require the adoption of "a full Orthodox lifestyle"; otherwise, say the authors, intermarriage will "soon become a pervasive problem" in the

Jewish state. And with regard to the plight of women denied a divorce under Jewish law, Gordon and Levy do not understand why there hasn't yet been a widespread acceptance of solutions such as prenuptial agreements, provisional *gets* (writs of divorce), or even conditional marriages.

While I must admit that I had some trouble with Gordon and Levy's sweeping summaries of historical trends, their failure to define certain of their terms (such as, for instance, "halacha"), and their lumping together of the issues of *shmita*, *mesoravot get*, and conversion issues, I do agree with their basic bottom line. The state, to the extent that it grants religious authorities power over these matters, must stop deferring to the Haredi leadership and instead prefer more lenient interpretations. Indeed, I often make demands identical to those of Gordon and Levy with respect to halachic flexibility. For example, at the Center for Women's Justice, the NGO that I founded and direct, we promote a prenuptial agreement that allows for the insertion of a clause into the *ketuba* (marriage contract) that would render a halachic marriage void if the husband did not give his wife a get after they had lived

separately for a certain period of time. We also represent women whose conversions were repealed in their appeal to the Supreme Court, and condemn the way in which rabbinic courts interrogate their lifestyles. Moreover, we advocate for more lenient standards for conversion. And with respect to shmita, I personally and on principal always buy only produce grown on Israeli soil during the sabbatical years, and that has the imprimatur of the *heter mechira*, the legal fiction that allows for the continued working of Jewish agricultural lands.

That said, I have some significant truck with some of the authors' assumptions and conclusions. Foremost among them, I do not assume that halacha must be successfully adapted to the needs of a revived Jewish sovereignty in the Land of Israel. Even if one were to convince me that such adaptation was a worthy goal, I do not think that such is necessary to preserve the Jewish people. Concomitantly, I do not agree with the authors' conclusion that, by severing the state from halacha, the former will "cease to be 'Jewish' in any meaningful sense," which in turn "could prove as devastating for the Jewish people as the loss of the state was in 70 C.E." Quite the contrary: To ensure the continued existence of the Jewish people *as* a people, as well

as the the continued vibrancy of the State of Israel as a Jewish and democratic state, it is necessary and even essential to sever all connections between the state and halacha—that is, the hegemony of any denominational interpretation, from the most lenient to the most strict—and the sooner the better. The appropriate place in the State of Israel for halachic dialogue and Jewish Law should be in what is often referred to as "civil society."

Civil society, according to Václav Havel, is a place that grants "power to the powerless," where the social contract can be renegotiated, and where value-based activity can occur. It is a place of collective action that stands distinct from state institutions, and which includes NGOs, registered charities, women's organizations, self-help groups, and social movements, among others. It is a place where such institutions as Alma, Bina, the Hartman Institute, the Center for Women's Justice, Kolech, the Israel Religious Action Center, the Israel Democracy Institute, the Avi Chai Foundation, and the Shalem Center sit today, to name just a few of the organizations that aim to make Hebrew culture and Jewish tradition a "meaningful, living element" of Israeli Jews' identity, as Gordon and Levy put it. It is therefore precisely into the arena

of civil society that I would place rabbinic courts that currently operate under the auspices of the state and at the expense of the Israeli taxpayer.

Put bluntly, halacha as currently defined has no place in the state, since it stands *above* the state and its values. If applied as law, it can lead to anarchy and disorder; it is often coercive and discriminatory; is not necessarily just; and it is answerable only to a higher authority, whose representatives on earth have not in fact, and will not in theory, yield to human rights principles and values. In this I would refer the reader to the work of José Casanova, who argues that religion, if it seeks to nod expressly and unequivocally to the primacy of human rights, can only stand in a “public space” such as civil society. In a modern, democratic state, the ability to marry and divorce should not be conditioned on religious rules that discriminate against women. Agricultural land should never lie fallow. No woman should be denied a divorce simply because her husband does not agree to one. No state judiciary should deny a woman the ability to sit as a judge. And most importantly, human rights must be respected. It is just as simple as all that.

Regarding any fears the authors may have about the Jewish nature of the state and the possible “fragmenta-

tion” of the Jewish people, I would say that such fears are unfounded. Israeli state institutions will always serve kosher food; the Jewish Sabbath will always be the official day of rest in Israel; Jewish holidays and historical events will continue to be commemorated; and the Israeli flag will continue to display the Jewish Star of David. If given support and respect in its role in civil society (and especially if financed to some extent by the state), Jewish culture, tradition, and even halacha will flourish in all their various, sometimes contradictory, and ever-changing permutations. A non-coercive halacha, positioned comfortably in the embrace of civil society, can indeed contribute to the Jewish nature of the state and to the resolution of such dilemmas as mesoravot get, shmita, and conversion, just as many key (and not necessarily religious) actors within civil society are doing right now, and even as we do with the publication of this article. As for the fragmentation of the Jewish people, we are already a diverse and varied group—and the more power to us. We certainly cannot all be expected to fall in line with an ultra-Orthodox (and in fact very recent) interpretation of what it means to be a Jew.

So here’s to the severing of halacha from the state, for its own sake, for

the sake of the Jewish people, and for the sake of the Jewishness of the State of Israel.

Susan Weiss

Founder and Director, Center for Women's Justice
Jerusalem

TO THE EDITORS:

“More than the Jewish people have kept the Sabbath, the Sabbath has kept the Jewish people,” wrote Ahad Ha’am in reaction to calls in his time to make Sunday the Jewish day of rest. Many people insisted then—as they continue to do now—that the tension between the demands of both Christian society and the modern economy simply cannot be reconciled with traditional Judaism’s unbending laws of Sabbath observance. Now as then, observant Jews around the world (except for those in Israel, of course) continue to contend with this tension, which we see most notably in the case of Jewish holidays that fall on a weekday. In this instance, halacha has not been adapted, and rightfully demands that the observant Jew place his religious obligations first. In other areas, however, halacha has definitely accommodated changing circumstances, even adopting significant modifications in practice.

In their article “Halacha’s Moment of Truth,” Evelyn Gordon and Ha-

dassah Levy point out new tensions between halacha and the current reality, specifically those which derive from the changes brought about by the creation of a sovereign Jewish nation-state. If the authors’ only goal was to locate the most salient points of friction in the public sphere, and subsequently to call attention to some of the options available to halachic authorities in their efforts to ameliorate them, they did a commendable job. Yet from the article it emerges that this is not their only goal; on the contrary, the writers feel halacha must respond to these tensions, and resolve the difficult problems that have appeared in headlines in recent years, through proactive halachic rulings. Regarding this point, I find that the authors’ description falls short of exploring the full complexity of the issues at hand.

Gordon and Levy assert that halacha can develop unimpeded only with regard to those issues for which there were few precedents during the Jewish exile in the diaspora. As an example, they cite the integration of Orthodox soldiers within the IDF, an area that halacha has been able to address with relative ease because “there was no exilic tradition with which to contend.” Yet in fact, this very example provides strong evidence to the contrary: The writers choose to focus on the fact that all relevant parties

agreed that, in the IDF, “operations essential for *pikuah nefesh* (saving human life)... would continue as usual on the Sabbath,” without noting that the laws of *pikuah nefesh* (and particularly those laws by which *pikuah nefesh* takes precedence over almost all other commandments in the Torah) in fact have many precedents, from the Babylonian Talmud to the present day. Moreover, the extensive literature on this topic, which laid down clear halachic guidelines, was precisely what enabled the halachic authorities to facilitate the adjustment of the observant soldier to the demands of military service in the first place.

And so, as we see, the situation is not so clear-cut. Sometimes a long-standing tradition may hinder efforts to adapt to change, while at other times it can serve as a guide. Indeed, in many cases it is the very *lack* of a tradition that limits the ability of halachic authorities to issue a clear, firm pronouncement on a topic, since “all of the sages’ enactments are modeled on Torah law” (Pesachim 116b): Without substantial precedents, many rabbis would be wary of setting forth new, albeit much-needed, halachic rulings. One of many such examples is the recently highlighted issue of the artificial insemination of an unmarried woman. This, of course, has almost no precedent in

rabbinic literature, and therefore rabbis were not overly eager to permit it. The reason is simple: Halacha is not a *creatio ex nihilo* process based on a given rabbi’s own judgment and inclinations, but a *creatio ex materia* process, in which rabbis apply judgment to *existing* halachic concepts. The richer the discussion on these concepts, the more room there is for the halachic decisor to formulate a broad stance that can accommodate changed circumstances.

Despite the importance of this point, it is not the main focus of this article. Instead, the authors choose to focus on a number of issues that they claim are illustrative of the challenge posed to contemporary halacha by renewed Jewish sovereignty: the question of mass conversion of immigrants from FSU states, the problem of women refused a get, and the Chief Rabbinate’s approach to the heter mechira during the shmita year. If we look at the first two issues and attempt to characterize their common denominator, we quickly recognize that these are complex challenges that extend far beyond the need for halacha to contend with a new set of circumstances. Rather, these are problems resulting from pressure exerted “from below” by certain segments of the population that seek to alter halacha—namely, segments that *do not consider themselves obligated by*

it. By contrast, all of the examples presented in the article regarding halacha's ability to adapt itself—in rulings or in practice—to changing circumstances, such as Rabbenu Gershom's ban on polygamy and the acceptance of Torah study for women, occurred within communities that considered themselves subject to the Torah's authority, and merely engaged in internal debates on the right way to interpret or adapt Torah rulings. Obviously, in these examples as well, dealing with change is not a matter to be taken lightly, for it is not an easy thing to make changes in rulings while preserving the authenticity and originality of the halacha itself. Yet the article's suggestion that halachic decisors should alter halacha in response to the demands of people who are not part of the observant community (and some of whom, as in the case of conversion, are not even halachically Jewish) should give us pause. For the record, I am not arguing that today, halacha should address only the needs of those who adhere to it; on the contrary, I believe the needs and concerns of all Jews should be taken into account. However, since these communities often do not turn to halacha in a respectful manner, or with a recognition of its authority, it comes as no surprise that halacha's answers to their demands do not sat-

isfy them. Unfortunately, the writers did not address the theological and religious complications that this challenge presents to halachic decisors.

This assessment should not put an end to the discussion, of course, but rather serve as a starting point; it compels us to pursue a deeper inquiry. In that spirit, we would do well to ponder the fact that the demographic sources behind the contemporary pressure for halachic change reveal that the tension between halacha and life in Israel derives—in all three issues raised in the article—only from the link that *state law* has created between the Chief Rabbinate and the general public. If Israel had legally regulated civil marriage, the general non-Orthodox public would not be so concerned by the problem of mesoravot get—a problem, it should be noted, that has existed since time immemorial—and would probably not be concerned in the least over the conversion issue. Quite simply, anyone who does not observe halacha would not have to abide by it. Thus, even if we accepted the claim that the present situation is no longer viable, a new question arises: Does halacha have to change, or do the state laws? This question becomes especially fraught when considering the somewhat outrageous way in which laws are legislated in Israel. Should

halacha, which developed slowly and carefully over the course of thousands of years, change fundamentally following every vote in the Knesset? As I stated in my opening remarks, even if we agree that halacha must address the legal state of affairs in every country that has a Jewish presence, this does not mean it must change its colors like a chameleon to suit that country's laws.

This last point, of course, touches upon the sensitive issue of the relationship between religion and state in a *Jewish* state, and I would not presume to propose a resolution for it in the present forum. However, I do not agree that halacha must follow the state's lead in each and every matter. At times, the power of halacha lies precisely in its assertiveness and unwillingness to bend to changes. In this respect, then, this is not "halacha's moment of truth," but rather the moment of truth for the state and its elected leaders: Will our representatives have the wisdom to frame laws that create a healthy balance between the state's Jewish identity and its increasingly diversified needs?

Despite all of the above, introspection within the halachic community is certainly warranted, and I have no doubt the writers of the article are correct in their basic assertions that the rebirth of the Jewish state and the

revival of the Jewish nation in its land call for significant changes in the way halacha is determined. Still, I would like to propose another path, one that differs from that offered by the authors. In my humble opinion, the most "diasporic" element in the contemporary halachic decision-making process is the lack of communication among the leaders of the various streams of Judaism. In the article, the writers mention several high-profile clashes among rabbis from different streams within the Orthodox world. During the exilic period, when the Jewish people were dispersed around the globe, it would have been unreasonable to expect the rabbi of a congregation to consult with all of the leaders of the generation on every question and wait until a consensus was reached. Yet today, when a clear majority of the Jewish world's spiritual leadership is in Israel, or at most a conference call away, there is no justification for the rabbis to continue to ignore their colleagues from other Orthodox communities, with each leader issuing rulings intended for a narrow segment of the public, essentially looking out for his own sub-group. This isolationism prevents the formation of comprehensive halachic rulings that could apply to and be accepted by the entire public in Israel, since it reduces every halachic

ruling to a political battle and turns every political battle into a halachic dispute. This keeps halacha from being what it is supposed to be: a living Torah that delineates our way of life. Here, too, harbingers of change for the better have appeared, and we can only hope they yield the desired results, speedily in our day.

Elisha Rosensweig
Ra'anana

EVELYN GORDON AND HADASSAH
LEVY RESPOND:

Many thanks to Susan Weiss and Elisha Rosensweig for their helpful comments. We certainly agree with Rosensweig that for halachic change to occur, dialogue among different Jewish sects and communities is essential. As he noted, such dialogue has been in regrettably short supply to date. We also agree with him that centuries of halachic development in exile can, if used correctly, help rather than hinder halachic change, and have indeed said so explicitly in our article (“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”).

Finally, we most certainly concur with Rosensweig that halacha should not be expected to “follow the state’s

lead in each and every matter”; indeed, no observant Jew could disagree. If you accept the premise that halacha is a legal code grounded in God’s commandments, then there are clearly limits beyond which it can never go. But within these limits, halacha offers enormous flexibility of interpretation; one need only open the Talmud to any page to discover the numerous interpretations that are possible while still remaining within the halachic tradition. It is precisely this flexibility that enables halacha to address new and unforeseen situations, something any legal code must do; it also allows halacha to resolve many existing conflicts with the state without breaching its own inviolable borders. Moreover, while we agree with Rosensweig that certain conflicts are due mainly to “the link that *state law* has created between the Chief Rabbinate and the general public,” and that the proper solution in those cases would simply be to change the law, the major conflicts we cited stem primarily from reality, not from Israeli law. The conflict between the halachic rules of *shmita* and the export market’s demand for reliable supply, for instance, stems not from any Israeli law, but from the nature of the modern global economy. Similarly, while specific provisions of the Law of Return may have contributed to the problem of non-Jewish immigrants, this problem

derives mainly from the reality that for decades, the former Soviet Union brutally repressed religion, with the result that intermarriage became the norm. Thus, unless you want to write hundreds of thousands of Jews out of the Jewish people, a way must be found to deal with their non-Jewish spouses and children.

Where we cannot agree with our correspondents is in the claim that the solution to the problem is full separation of religion and state—a solution Weiss called for explicitly, and that Rosensweig seemed to support implicitly when he argued that most of the conflicts we described would disappear absent the connection between state law and the rabbinate.

First, even as a matter of political theory (as opposed to our beliefs as observant Jews), we do not accept Weiss's premise that whenever modern Western notions of human rights conflict with halacha, the latter must always give way. While this issue is far too complex to discuss properly here, we will merely note that the West has developed a rights-based model of politics, whereas the halachic model is obligations-based. The jury is still out on which will ultimately prove more successful, or whether the best model requires some combination of the two. The preeminence given to "rights" in most Western countries today is strictly a development of the

last century, which means it is far too early to assess its long-term impact on politics and society. Halacha, in contrast, has clearly proven its ability to preserve the Jewish people through 2,000 years of exile, but has yet to prove its ability to function in a modern state. Moreover, even if one were to accept the rights-based model in principle, it is far from clear that everything now considered a "right" will stand the test of time. Most modern-day "rights" are at most a few decades old, and many may yet prove to be no more than passing fads.

But political theory aside, the Jewish state would indeed cease to be Jewish in any meaningful sense if it severed all connection to halacha, because all Jewish tradition ultimately comes from halacha. For instance, Weiss insists that "the Jewish Sabbath will always be the official day of rest" and "Jewish holidays... will continue to be commemorated." But why should this be true? The only reason Rosh Hashana or Passover became Jewish holidays is that God so commanded us in the Torah; if you accept Weiss's dictum that halacha must always give way to modern notions of convenience like "Agricultural land should never lie fallow," why should these holidays be preserved? After all, a modern businessman would surely find it more convenient to work on Passover and be off for Christmas, as

most of his overseas customers are. One can argue about how much of a role halacha ought to play, but there is no way to excise it entirely without also excising every element that currently makes the state distinctly Jewish.

Moreover, unless you strip the state entirely of Jewish content, there is no way for it to avoid addressing certain traditional halachic questions. For instance, Weiss asserts that “Israeli state institutions will always serve kosher food,” yet this requires someone to decide what constitutes “kosher.” This is a quintessential halachic question, one on which there is no rabbinic consensus (Sephardim and Ashkenazim, for instance, have different rules), and *someone* has to decide. Today, that someone is the Chief Rabbinate; abolish the rabbinate, and you must either appoint someone else to make that decision, or abolish the idea of kosher food in state institutions altogether. Similarly, under the Law of Return, all Jews are entitled to Israeli citizenship, but that requires *some* state body to decide “who is a Jew,” another quintessentially halachic question. Were this decision left solely to each individual’s self-definition, the state would effectively forfeit a fundamental attribute of sovereignty: control over immigration and citizenship.

It’s also important to recall that most Israeli Jews—58 percent, according to the 2009 Central Bureau of Statistics survey—define themselves as somewhere along the spectrum from traditional to ultra-Orthodox, and thus *want* Jewish tradition, or halacha, to play some role in the state. Moreover, even those who define themselves as “secular” often keep some Jewish traditions; a 2008 survey, for instance, found that 38 percent of secular Jews keep kosher (as do 94 percent of those who define themselves as traditional). For all these people, one of the perks of living in a Jewish state is precisely the fact that the state makes it easy to keep such traditions—for instance, the fact that you can walk into a supermarket and know everything on the shelves is kosher. But that is possible only because the state grants a role to halacha, in this case by assigning the rabbinate to decide what constitutes “kosher” and to certify those supermarkets. Should a democratic state simply ignore the wishes of this majority?

This brings us to a broader point. A Jewish state ought to be a place where the vast majority of Jews, from secular to ultra-Orthodox, can feel comfortable. That requires accommodations on both sides to create a common denominator with which the majority can live. Clearly, this precludes a fully halachic state;

that would be intolerable for most secular (and even many traditional) Jews. But it also precludes eliminating halacha from the Jewish state entirely; that would be intolerable for most religious and, again, many traditional Jews, as they would deem a “Jewish state” that is essentially indistinguishable from America a travesty. And make no mistake, an Israel with full separation of religion and state *would* be indistinguishable from America. A religious Jew can live a wonderful life in New York: Kosher food is readily available; most schools and workplaces are accommodating vis-à-vis Shabbat and Jewish holidays; antisemitism is virtually nonexistent; and Jewish organizations flourish. What makes Israel unique is that here, Jewish life is *not* confined to the level of civil society. Instead, Jews are part of a national collective, in which not only does the state actively support the ability to maintain a Jewish lifestyle—from legislation guaranteeing the right not to work on the Sabbath to state funding for religious schools—but Jewish concerns are accorded a legitimate role in national policy-making. Relegate Judaism to the level of “civil society,” and what you have is a replica of America.

Finally, we would like to reiterate the point we tried to make throughout our article: Halacha was created to

be the legal code of a sovereign state. Thus, while we fully agree that it has often failed to play a constructive role in Israeli law to date (a failing we discussed at length in the article), we in no way accept the idea that it is inherently *incapable* of playing such a role. Indeed, many of the problems Weiss cites as proof of halacha’s unsuitability for a modern state are precisely issues for which we believe it has the ability to provide solutions, provided there is sufficient rabbinic willingness to treat it as the living organism it was meant to be, rather than as a fossil petrified several centuries ago. Halachic solutions to such problems would convince most Israelis that halacha is *not* inherently incompatible with modern statehood; solving the mesoravot get problem, for instance, would obviate one of the most common objections to the rabbinate’s control of marriage and divorce (though some people would certainly still object on other grounds). It is only if halacha fails to adapt that more and more Israelis are liable to conclude the only solution is full separation of religion and state—with, as we noted, disastrous consequences for the state’s Jewish character.

This also bears on Rosensweig’s very important point about the difficulties of effecting halachic change at a time when many of those demanding such change do not see themselves as bound

by halacha. He is certainly correct that the theological tension inherent in trying to adapt halacha to the nation's needs while still maintaining its authenticity is much harder to resolve under these circumstances: Those committed to halacha will be more reluctant to consider change, fearing the influence of non-halachic considerations on the process, while those not committed to it will be reluctant to accept the limits beyond which halachic change cannot go. Nevertheless, if one accepts the idea that halacha was intended to be the law code of a sovereign state, it cannot (as Rosensweig himself acknowledged) simply ignore that majority of Israel's citizens who are not fully observant Jews. Within the bounds of

what is halachically possible, it must try to provide solutions to their needs as well.

Thus we can only conclude by reiterating what we said in our article: It is precisely those who care most about halacha who ought to be most committed to helping it adapt—for halacha's own sake, as well as for that of the state. For a divorce between halacha and the Jewish state would be disastrous for both. Halacha, banished back to its civil-society ghetto, would be deprived of the national stage on which it was meant to perform. And the state, severed from the halachic roots of its Jewish traditions, would ultimately see its Jewish character wither away.

CORRECTION: Evelyn Gordon and Hadassah Levy's "Halacha's Moment of Truth" (AZURE 43, Winter 2011) mistakenly claimed that the Tzohar organization chose to await the outcome of a petition to the High Court of Justice before issuing its own kashrut certifications, sanctioning the use of the heter mechira. In fact, they did issue certifications, and stopped only when the Chief Rabbinate agreed to sanction the use of heter mechira, as well. We apologize for the error.

AZURE welcomes letters from its readers. Letters should be sent to: AZURE, 13 Yehoshua Bin-Nun Street, Jerusalem, Israel. Fax: 972-2-560-5560; E-mail: letters@azure.org.il. Letters may be edited for length and clarity.
