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SURVEY OF RECENT HALAKHIC PERIODICAL LITERATURE

Observance of Shabbat by a Prospective Prosylyte and by a Ger she-Mal ve-Lo Toval.

In recent years the concern of the Jewish community has been focused upon problems associated with conversion of non-Jews to Judaism. The problems that have gripped the attention of world Jewry almost exclusively involve persons who seek conversion for purposes of marriage and whose commitment to observance of commandments is quite frequently minimal or non-existent. Regardless of the auspices under which such conversions are performed, their validity even past factum is a matter of serious doubt and disagreement among rabbinic authorities. The policies of some rabbinic practitioners, Orthodox as well as non-Orthodox, notwithstanding, Halakah certainly does not endorse conversions undertaken for ulterior motives such as facilitating marriage to a Jewish spouse.

In most historical epochs, geri zedek, observant proselytes who convert to Judaism because of deep and sincere theological conviction, have been few and far between. For unknown reasons, or better, for reasons that are shrouded in divine mystery, in recent years, the number of converts who are completely and utterly sincere has grown appreciably. Converts whose sincerity has been demonstrated beyond cavil are of course welcomed without reservation. Frequently, this genre of candidates for conversion does, however, present significant technical problems for rabbinic consideration, but, happily, they present problems that spring from religious zeal rather than the opposite. Judaism places certain restrictions upon the mitzvot that a non-Jew is permitted to perform. Understandably, would-be converts whose sincerity is beyond question wish to be fully observant even prior to conversion and are extremely troubled by any limitation placed upon their religious observance.

Such would-be converts experience the most keenly felt disability in the area of Sabbath observance. The Gemara, Sanhedrin 58b, declares that a non-Jew is forbidden to observe Shabbat. Over the course of the last two centuries there have been a significant number of endeavors on the part of rabbinic scholars to devise ways and means to enable such would-be converts to accomplish that which is apparent impossible, viz., both to observe and not observe Shabbat at one and the same time. The impetus for a number of these investigations is associated with an even more unusual situation, namely, the prohibition concerning Sabbath observance as it impacts upon a person who has begun, but who has not completed, the conversion process—a person who has already been circumcised but who has as yet not undergone immersion in a mikveh.

HISTORICAL BACKGROUND

There have been occasions in the history of rabbinic scholarship upon which questions have been posed that, seemingly, are unlikely to arise on future occasions with any degree of frequency but that nevertheless have sparked controversies that reverberate in the annals of Halakah. On rare occasions some facet of a seemingly circumscirbed problem generates wide-ranging discussion and receives the type of detailed attention that results in illumination of heretofore scantily plumbed areas of Jewish law.

One such event occurred in Jerusalem in 5608 (1848) on a Tuesday, the 23rd of Adar II. A certain gentile, a Moroccan émigré, underwent circumcision for purposes of conversion in the presence of the Ashkenazi Bet Din of Jerusalem. The incision did not heal as quickly as might have been anticipated and, as a result, the prospective convert was unable to complete the conversion process by immersing himself in a mikveh prior to the ensuing Shabbat. The gentile in question was meticulously observant of all aspects of Jewish law and, indeed, had been observant for some time prior to commencement of the conversion proceedings. It is reported that despite the absence of any doubt that, on Shabbat, a non-Jew may attend to the needs of a Jew who is ill, the would-be convert refused to permit a gentile to kindle a fire in his home on that Shabbat.

The Chief Rabbi of the Ashkenazi community at the time of this incident was the renowned R. Shmuel Salant. Rabbi Salant had, however, journeyed to Europe on a fund-raising mission on behalf of the nascent yishuv; Substituting for him as the principal rabbinic authority of the community was one of the members of his Bet Din, R. Asher Lemel. Late on the Shabbat afternoon in question, it was reported to R. Asher Lemel that the sick convert was languishing in cold and damp quarters but refused to allow a gentile to kindle a fire on his behalf. R. Asher Lemel immediately responded that, in his opinion, not only was the would-be convert himself permitted to engage in labor on Shabbat but, moreover, in light of the prohibition posited by the Gemara, Sanhedrin 58b, forbidding a non-Jew to observe the Sabbath, he was obliged to do so since he had not yet completed the conversion process by immersing himself in a mikveh. After minhah prayers, the individuals to whom R. Asher Lemel had announced his opinion sought out the convert and informed him of R. Asher Lemel's ruling. The convert, who apparently had been scrupulous in observing Shabbat restrictions for a number of years prior to his conversion, complied with that directive, but tears filled his eyes at being compelled to violate the Sabbath. In compliance with R. Asher Lemel's directive he wrote several letters on a piece of paper or, according to another version, he signed his name in the vernacular.

On the morrow, a furor erupted in the city. The Sephardim as well as the Ashkenazim of the city contended that requiring a candidate for conversion who had already been circumcised and who had accepted the yoke of the commandments to desecrate the Sabbath was entirely without precedent. Upon his return to Jerusalem, R. Shmuel Salant sided with those scholars. R. Asher Lemel felt compelled to author a lengthy exposition in defense of his controversial ruling. That material was later published in Shomer Zion ha-Ne'eman, a prestigious rabbinic journal edited by R. Jacob Ettlinger.

Now, close to one hundred and fifty years later, the Koffel Institute of Greater Detroit has performed a valuable service in collecting and reprinting the article and responses spawned by this intriguing controversy. The collected material, which appears in a memorial volume titled Yad Shimonah (New York, 5747), includes the responsa of R. Asher Lemel, reprinted from Shomer Zion ha-Ne'eman, nos. 154-158 (Altona, 5613); the rebuttal of R. Jacob Ettlinger, published in the same journal, no. 158, as well as in his Teshuvot Binyon Zion, no. 91; the opinion of R. Shmuel Salant, as recorded by R. Yechiel Michel Tucatzinsky and published in R. Aryeh Leib Frumkin, Toledot HaRashim Yisrael (Detroit, 5719), add. nos. 110, 67; the responsa of R. Jehoshaph Schwartz, Teshuvot Divrei Yosef, no. 24; and the responsa of the Sephardic and rabbinic authority of Tibet, Jacob Chai Zerichan, Ha-Me'auzef, no. 13.
In ancient times, certain cities prohibited Sabbath observance. R. Asher Lemel composed an extensive treatise to bolster a position that, prima facie, is unassailable. The ruling of the Gemara, Sanhedrin 58a, forbidding a non-Jew from observing the Sabbath is unequivocal. Equally incontestable is the fact that the Gemara, Yeravmut 46b, posits circumcision and immersion as the sine qua non of conversion. Nevertheless, Rabbeno Nissim, ad locum, disagrees. Pointing out that even the convert’s “acceptance of the yoke of the commandments” is intended as acceptance of such obligations only as of the time of completion of the conversion process, Rabbeno Nissim contends that the Gemara’s ruling does not have ample reason to include a person of such status in their edict. Therefore, Rabbeno Nissim accepts and followed by Shulchan Arukh, Yoreh De’ah 124:2, while Rema, as understood by Shalki, Yoreh De’ah 124:4, rules in accordance with the permissive view of Tosafot and Rosh.6

The PERMISSIVE VIEW

There is, however, one early source that appears to contradict this conclusion, at least insofar as observance of Shabbat is concerned. Midrash Rabbah, Deuteroonomy 1:8 states:

Said R. Jose, the son of Hunia: A gentile who observes the Sabbath prior to accepting circumcision upon himself is liable to the death penalty. Why? Because he was not commanded concerning it. And what caused you to say that a gentile who observes the Sabbath is liable to the death penalty? Said R. Hyya the son of Aba in the name of R. Yohanan: In the practice of the world [if] a king and a courtisan sit and converse with one another, one who comes and interposes himself between them, is he not liable to the death penalty? So is the Sabbath between Israel and the Holy One, blessed be He, as it is said “between Me and between the children of Israel” (Exodus 31:13).” Therefore, a gentile who comes and interposes himself between them prior to accepting circumcision upon himself is liable to the death penalty. The

Sages said: Moses said before the Holy One, blessed be He, “Sovereign of the universe! Since gentiles have not been commanded with regard to the Sabbath, if they observe it, will you be gracious unto them?” Said the Holy One, blessed be He, “Of this you are afraid! By your life even if they observe all of the commandments of the Torah I will cast them before you.”

The clear inference of the phrase “prior to accepting circumcision upon himself” would indicate that the prohibition against observance of Shabbat is suspended not only subsequent to circumcision, even though immersion has not occurred, but even upon mere “acceptance” of circumcision, i.e., upon resolute determination to convert to Judaism.

R. Jehoseph Schwartz bases his opposition to the ruling of R. Asher Lemel upon these midrashic comments. Moreover, contends Rabbi Schwartz, were the convert to have been forbidden to refrain from “labor” on the Sabbath day, he should not have been directed to write on Shabbat but should have been instructed to perform some other act of labor. Rabbi Schwartz advances the novel view that a gentile who performs no forms of “labor” on the Sabbath other than writing is in violation of his obligation to desist from observing the Sabbath as a day of rest. The Gemara, Sanhedrin 58b, derives this prohibition from the verse “day and night shall not cease” (Genesis 8:22) which in talmudic exegesis is rendered “day and night they shall not rest.” Noting the context in which the verse appears, Rabbi Schwartz understands the talmudic statement as requiring gentiles to engage in acts contributing to “settlement of the world” every day of the week, i.e., acts relating to agriculture or manufacture that are productive in nature. In his opinion, acts such as writing, erasing, or even dyeing, do not satisfy that requirement. Thus, according to Rabbi Schwartz, forcing the convert to write on the Sabbath was both unnecessary and, if necessary, of no actual value.

In response to the argument based upon the midrashic statement, R. Asher Lemel notes that, apart from the general principle that normative halakhic rulings are not to be derived from aggadic statements, the words of the Midrash are explicitly contradicted by talmudic statements. The prohibition formulated by the Midrash is predicated entirely upon the unique relationship that exists between God, Israel and the Sabbath. However, the Gemara, Sanhedrin 58b, clearly prohibits a non-Jew from observing any day of the week as a day of rest. Moreover, he argues, mere “acceptance” of circumcision does not turn a gentile into a Jew. Hence, logically, such an individual should continue to be categorized as an interloper “between Me and the children of Israel.” Accordingly, argues R. Asher Lemel, the term “acceptance,” as employed by the Midrash in this context, must be understood as not merely acceptance of circumcision, but as the carrying out of that acceptance, i.e., actual circumcision followed also by immersion in a mikveh.

Curiously, R. Asher Lemel does not cite the position of Tosafot Yeshanim, Yeravmut 46b, which is identical to that of Midrash Rabbah. Tosafot Yeshanim declares that a gentile who has firmly resolved to convert to Judaism may observe Shabbat with impunity. Although this view is rejected by virtually all later authorities, it is apparently accepted by Teshuvot Erez Torah, no. 2, sec.3.

An immediate response was published by R. Jacob Eliyahu in Shomer Zion ha-Ne’eman, no. 158, Rabbi Eliyahu, who was also the editor of that journal, candidly concedes that R. Asher Lemel’s ruling was “apparently” based upon “foundations of law and truth.” Nevertheless, upon further investigation, he discovered that it was never the wont of rabbinic authorities involved in the conversion of proselytes to insist that the candidates for conversion not observe Shabbat prior to immersion. Accordingly, he seeks to uncover a source for that practice. He also points out that the Gemara, Shabbat 132a, describes observance of the Sabbath as a “covenant” and comments that, logically, it would be inappropriate for one who has entered the “covenant” of circumcision to be required to abrogate another “covenant,” i.e., the Sabbath.
R. Jacob Ettlinger finds support for the accepted practice in the words of Tosafot, Keritut 9a. Tosafot describe the nature of circumcision as practiced by our ancestors prior to the Exodus from Egypt and remarks that they circumcised themselves for the purpose of "entering into the covenant and in order to become separated from other peoples." Through this act of "separation" from other peoples, argues R. Ettlinger, the convert acquires an intermediate status between that of gentile and Jew. The accepted practice is thus apparently based upon a presumption that the prohibition against observance of a day of rest is limited only to gentiles, but not to a candidate for conversion who has undergone circumcision and who has thereby placed himself in this intermediate state between gentile and Jew.

AUTHORITIES WHO MAINTAIN THAT SABBATH OBSERVANCE IS OBLIGATORY

R. Shmuel Salant similarly postulates an intermediate status between that of Jew and gentile and bases that position upon a comment of Rashba, Yevamot 71a. The Gemara notes that, according to R. Akiva, a convert who is circumcised but who has not completed the conversion process by undergoing immersion may not partake of the paschal sacrifice, but only because of an exclusionary pleonasm in the verse restricting participation in the consumption of the paschal sacrifice. Rashba tentatively objects that no specific exclusion should be required since such an individual remains a non-Jew, but immediately counters with the remark that a pleonasm is required since "although he has not completed his conversion, nevertheless, he has already begun and entered somewhat into the Jewish religion."

R. Salant further writes, albeit without any specific evidence, that, upon completion of the conversion process by means of immersion in a mikveh, the convert is regarded as having acquired the status of a Jew retroactively from the time of circumcision. He may, of course, abjure the conversion at any time until its completion. The availability of the option of renouncing conversion prior to immersion led R. Salant to a remarkable conclusion: Violation of one of the Sabbath restrictions during this period is tantamount to renunciation of the conversion procedure and serves to negate the act of circumcision with the result that a would-be convert who has undergone the Sabbath subsequent to conversion cannot be regarded as a Jew even if he subsequently undergoes immersion. Presumably, such an individual retains the option of beginning the process anew by "letting blood of the covenant." Rashba's comment did not go unnoticed by R. Asher Lenel. He cites Rashba's statement but regards it as merely an analysis of the provisions of Jewish law that would have been replicable in the absence of a verse designed to exclude the unimmersed convert from partaking of the paschal offering. The effect of that exclusion, argues R. Asher Lenel, is to establish that the status of such a convert is identical to that of a non-Jew in every respect. This is presumably the position of Tosafot, Yevamot 46b, who raise the same question as posed by Rashba and declare that the biblical phrase in question serves to establish the principle that there cannot be conversion other than through both circumcision and immersion. R. Asher Lenel accordingly argues that Rashba's comment can readily be understood in a similar vein and, accordingly, there is no reason to posit a controversy between these early authorities.

R. Jacob Ettlinger notes that members of the generation of the Exodus acquired status as Jews by means of circumcision and immersion, i.e., circumcision before their departure from Egypt and immersion immediately prior to the giving of the Torah at Sinai. Hence, at the time of the offering of the first paschal sacrifice on the eve of the Exodus from Egypt, their status was that of circumcised converts who had as yet not undergone immersion. Yet the Gemara, Shabbat 87b, declares that the commandment concerning Sabbath observance was given at Marah, before revelation at Sinai. Indeed, a literal reading of the sequence of events described in Exodus 16:22-30 indicates that our ancestors were commanded to observe the Sabbath prior to experiencing revelation at Mount Sinai. Accordingly, argues R. Ettlinger, it may be deduced that the commandment concerning Sabbath observance is binding upon all who enjoy a similar status, i.e., upon converts who have undergone circumcision but who have as yet not undergone immersion. Thus, according to R. Jacob Ettlinger, such individuals are not only permitted to observe the Sabbath but are required to do so. Indeed, he argues, if not for a specific exclusion of the circumcised but unimmersed convert, such an individual would be required to participate in the paschal offering as well, since his status is identical to that of those who offered the first paschal sacrifice.

Some authorities have opposed the validity of Sabbath observance for such converts. However, the following discussion of the nature of the commandments in question may provide some insight into the controversy.

J. David Bleich

SABBATH OBSERVANCE BY THE PATRIARCHS

Prior to the controversy surrounding the Jerusalem convert, the ambit of the prohibition against Sabbath observance on the part of a non-Jew was the subject of considerable discussion in an entirely different context. The Gemara, Yoma 28b, declares that Abraham observed all the commandments, including rabbinic decrees, despite the fact that the commandments had as yet not been revealed. Thus, Abraham observed the Sabbath. Since our ancestors are depicted by the Gemara, Keritut 9a, as having been "converted" to Judaism at the time of revelation at Sinai, Abraham and his progeny enjoyed the status of Noahides. As such, they were ostensibly bound by the injunction forbidding gentiles to observe Shabbat. How, then, was it possible for Abraham to observe the Torah in its entirety?

Some latter-day authorities, including Parashat Derakhim, Derash 1, and Joseph Engel, Bet ha-Ozar, Ma'arekhet Alef, marshal a variety of sources in support of the position that the Patriarchs enjoyed the status of full-fledged Jews for all purposes. If so, the problem is immediately resolved. However, even these authorities cite midrashic sources that serve to render the issue a matter of doubt or controversy.

Resolution of the problem of Sabbath observance on the part of the Patriarchs has engaged the attention of numerous scholars over the centuries. Renewed discussion of that topic followed in the wake of the Jerusalem controversy. The resolutions of the problem that emerge from those discussions, a number of which will be noted presently, tend to escape between the horns of the dilemma by positing modus operandi that constitute "laborious" instead of conduct that constitute "separateness."
restrict for Jews. R. Jacob Ettlinger, Teshurot: Ormym Zion, no. 126, points to a statement of the Tosefta in a different context in order to show that such a possibility must indeed exist. The Tosefta, Mabkhathin 1:7, states that an abandoned child found in a city in which the Jewish and non-Jewish populations are exactly equal must conduct himself in accordance with the stringencies applicable both to Jews and to gentiles. The implication, contends Binyan Zion, is that it is possible simultaneously to follow the stringencies of both a Jew and a gentile with regard to Sabbath observance.15 If such a thesis is accepted, the entire controversy could be skirted by giving the circumcised but unimmersed convert the option of engaging in an act of that nature. The same option might also be offered to a prospective convert who feels uncomfortable engaging in conduct that profanes the Sabbath.

1. Me'iri

The comments of Me'iri, Sanhedrin 58b, are valuable not only for the intriguing insight presented therein but also for the manner in which they illuminate this issue and suggest a resolution of an entirely different problem. Me'iri addresses the underlying rationale of the talmudic ban prohibiting gentiles from engaging in the performance of two specific mizvot, viz., observance of Shabbat and study of Torah. The prohibition against establishing a day of rest, asserts Me'iri, is predicated upon a concern that, in doing so, the non-Jew would appear as if he is one of our nation and others will learn from him.16 Similarly, comments Me'iri, if a gentile engages in the study of Torah “he deserves to be punished because people will think he is one of ours for they will see that he is knowledgeable and, following him, they will come to err.”

Proficiency in Torah and observance of Shabbat are the unique hallmarks of a Jew. According to Me'iri, the fundamental concern underlying this prohibition is that Jews will mistakenly assume that a non-Jew who becomes proficient in Torah or who observes Shabbat is a convert. Therefore, they may seek to emulate his conduct in other areas as well. Since such a person does not conduct himself as a Jew with regard to other matters, those who would pattern their own conduct upon his might easily become enmeshed in activities prohibited to Jews. According to Me'iri, these prohibitions reflect a concern that is germane only in an epoch in which there exist Jews who might be misled. Prior to Sinai, there simply were no Jews to be misled. Moreover, no one could conceivably be misled by a person such as Abraham who observed the Torah in its entirety. Hence, Abraham would have had no cogent reason to refrain from either Torah study or Sabbath observance.

It is certainly arguable, although less convincingly so, that this concern does not pertain in the case of a circumcised but unimmersed convert. Although Me'iri is silent with regard to Sabbath observance, he adapts an even more radical position with regard to Torah study in declaring that a non-Jew, even if he does not contemplate conversion, may engage in Torah study for the purpose of fulfilling the “fundamental commandments” of Judaism. Quite apparently, Me'iri feels that no one will be led astray by such an individual and that such anomalous situations are not encompassed within the formal prohibition. The same would appear to be the case with regard to circumcised but unimmersed converts. Regrettably, since the commentary of Me'iri was published only in recent years, Me'iri is not cited by the many scholars who have discussed this issue. It is nevertheless clear that many early authorities understand these prohibitions in a manner that is at variance with Me'iri's interpretation.17

2. R. Meir Dan Plochki

R. Meir Dan Plochki, Hemdat Yisre’el (Pietrkow, 5647) Kintres Ner Mitzvah, p. 227, addressing himself to the question of Abraham’s observance of the commandments, posits a limitation upon the ambit of the prohibition against Sabbath observance on the part of a non-Jew that would also render the prohibition inoperative insofar as a circumcised convert is concerned. Shabbat constitutes not only a commemoration of God’s creation of the universe but also of his ongoing providential guardianship. The people of Israel enjoy a unique relationship with God in that He exercises a direct and individual form of provision over them. In contradistinction, divine guardianship of non-Jews is less direct and is channeled through the stellar constellations or forces of nature. This distinction is paraphrased in the talmudic dictum, Shabbat 15b and Nedairim 32a, “Israel is not governed by the constellations (Ein mazol le-Yisra’el).” Jews, who are under the guardianship of God himself, are commanded to emulate Him by resting on the seventh day. Non-Jews, whose destiny is regulated by the constellations, must pattern their conduct upon that of the stars, i.e., they dare not rest on any day of the week just as the celestial bodies have not ceased from their divinely ordained tasks since the moment of their creation. Thus the comment of the Midrash describing a non-Jew who observes Shabbat as an interloper interjecting himself into the unique relationship between God and Israel is equally applicable to a situation in which a non-Jew observes any day of the week as a day of rest. In observing any day as a day of rest, the non-Jew, in effect, announces that he does not emulate the celestial bodies because he is not dependent upon them as the conduits of providence but enjoys the unmediated guardianship of God as do the people of Israel.

Sabbath observance posed no problem for Abraham, asserts Hemdat Yisre’el, because he was commanded by God, “Exit from your stargazers! Israel is not governed by the constellations” (Shabbat 15b and Nedairim 32a). Upon renouncing idolatry, Abraham became the recipient of God’s direct providential guardianship and, as such, became entitled to emulate Him in observing Shabbat as well. Hemdat Yisre’el applies the same thesis in elucidating the problematic position of Rashi. Yevamot 48b, who maintains that a resident alien (ger toshav) is obliged to observe Shabbat.18 The ger toshav, in accepting the Seven Commandments of the Sons of Noah, has renounced idolatry and, asserts Hemdat Yisre’el, thereby acquires a status similar to that of Abraham. It may certainly be argued that a circumcised convert who has accepted the “yoke of the commandments” is similarly no longer bound by the constraint against Sabbath observance on the part of gentiles.19

3. Hatam Sofer

An ingenious solution to the problem of how the Patriarchs licitly observed the Sabbath is recorded in the name of Hatam Sofer by his disciple, R. Moshe Schick, Teshuvot Maharam Shik, Orar Hayyim, no. 145. As evidenced by the ruling of Shulhan Arukh, Orar Hayyim 131, a garment to which zizit have been improperly attached may not be worn in a public thoroughfare (reshit ha-rabbim) on Shabbat, not only because of the abrogation of the commandment concerning zizit, but also because wearing a garment of that nature constitutes “carrying” on Shabbat. Zizit are attached to a garment solely for purposes of fulfilling a religious obligation; when that obligation is fulfilled they become an integral part of the garment. However, when the zizit fail to satisfy the stipulated requirements, the mivzah is not fulfilled and, since they serve no purpose, the zizit do not become an integral part of the garment but instead constitute a “burden.”

Hatam Sofer argues that the Patriarchs needed only to don a garment to which zizit had been attached and, as attired, walk from a private domain into a public thoroughfare. From a perspective that regards the Patriarchs as Jews intent upon fulfilling the commandment of zizit, no infraction was incurred. For Jews, zizit become an integral part of the garment to which they are attached and garments are not deemed a “burden.” However, if the Patriarchs are regarded as Noahides who are under no obligation to affix zizit to their garments, those appendages do not become an integral part of the garment and, accordingly, constitute a “burden.” Hence, argues Hatam Sofer, as Noahides, the act of
transporting zizit affixed to a garment from a private domain into a public thoroughfare served to nullify their observance of Shabbat.

Hatam Sofer’s solution appears to this writer to be problematic. His reasoning is based upon the assumption that zizit do not constitute a burden only because their presence is an absolute requirement. It may well be argued that zizit become an integral part of a garment not only when necessary to discharge an absolute obligation (hiyun) with regard to a commandment but even when they serve as voluntary fulfillment (kinyon) of a nonobligatory commandment. As reflected in the plain meaning of Rambam’s ruling, Hilktot Melakhim 10:10, and even more explicitly in one of his responsa, non-Jews may fulfill mizvot on a voluntary basis for purposes of receiving reward.21 Zizit affixed to a garment and worn by a non-Jew for the purpose of fulfilling a mizvah should logically be regarded as an integral part of the garment since they serve a purpose and their permanent attachment is clearly desired by the wearer. Their status should not be inferior to that of decorations permanently affixed to a garment for aesthetic purposes. Such embellishments are deemed to be an integral part of the garment and not a “burden.”

R. Jacob Chai Zerichan develops a novel thesis on the basis of which he dismisses the solution offered by Hatam Sofer. Of the thirty-nine forbidden categories of “labor” on Shabbat, thirty-eight are derived from the verse “you shall do no work” (Exodus 20:10). The thirty-ninth, transfer of an object from a private domain to a public thoroughfare or transport of an object over a distance of four cubits in a public thoroughfare, is not derived from that verse but is the subject of a tradition received by Moses at Mount Sinai (balaot ha-levi ha-Moshel me-Sinai). Based upon Rambam’s ruling, Hilktot Melakhim 9:10, it has become a well-established principle that such traditions are directed solely to Jews, but are inapplicable and of no effect insofar as Noahides are concerned.22 Accordingly, argues R. Chai Zerichan, since “labor” is only what is defined as such by Scripture, carrying a “burden” in a prohibited area does not constitute a form of “labor” insofar as non-Jews are concerned. Hence performing an act of this nature would not negate the “rest” which is forbidden to non-Jews over a twenty-four hour period.23

4. R. Pinchas ha-Levi Horowitz

The earliest reference to the desire of a would-be convert to observe all the tenets of Judaism, including Shabbat, and its attendant problem is probably that recorded by R. Akiva Egger in the index (apparently composed by R. Akiva Egger himself) to his responsa collection. The indexed responsa, no. 121, deals with an entirely different problem related to a particular case of conversion. However, in a concluding note inserted in the index to that responsa, R. Akiva Egger states his desire to point out by way of obiter dictum his dissatisfaction with regard to a practice that was apparently not uncommon in his day. He refers disparagingly to householders who maintained in their employ non-Jewish maids who contemplated conversion and conducted themselves as Jews in every regard. R. Akiva Egger censures such householders on the grounds that in countenancing Sabbath observance by their servants they encourage transgression. Accordingly, he counsels that the women in question be restrained from conducting themselves in such a manner and that they be counseled either to undergo immersion for the purpose of conversion or to perform some act of “labor” on Shabbat.

Subsequently, R. Akiva Egger had occasion to qualify and defend his exhortation. In a short item included in a series of addenda appended to later editions of his responsa collection, R. Akiva Egger, addendum to responsa no. 121, reports that “a long time” after his original note was published there appeared in print the work of R. Pinchas ha-Levi Horowitz on the Pentateuch, Panim Yafot. In a comment on Parshat Noah, that scholar remarks that the “day” which a non-Jew is forbidden to observe as a day of rest is not a “day” of the Jewish calendar which begins in the evening and ends the following evening but consists of a twenty-four hour period beginning and ending at daybreak as indicated by the order of the words of the verse “day and night shall not cease” (Genesis 8:22). Panim Yafot elaborates upon this thesis in explaining that the “day” of the pre-Sinaitic era referred to in early sections of the Bible is consistently a day beginning with daybreak and concluding with the ensuing night. The identical thesis is reiterated by R. Pinchas ha-Levi Horowitz in his work, H-Makkei, Kiddushin 37b. Accordingly, the talmudic rendition of the verse, “day and night they shall not rest” should similarly be understood as positing a prohibition against observance of a twenty-four hour period of rest beginning with daybreak. Since Sabbath restrictions commence on Sabbath eve and continue until the next evening, a non-Jew who performs an act of “labor” during daylight hours on Friday and also on Saturday after nightfall has refrained from desecration of the Sabbath without violating the admonition not to rest for the span of an entire “day.” If this thesis is accepted, observes R. Akiva Egger, it follows that his earlier admonition regarding Sabbath observance by non-Jewish maids was misplaced.

R. Akiva Egger, however, rejects Panim Yafot’s definition of a “day” for purposes of this prohibition on the basis of a comment of Tosafot, Sanhedrin 59a. Tosafot remark that subsequent to receiving the Torah at Mount Sinai, Jews are not bound by the prohibition against refraining from labor for the period of a full day only because they were subsequently explicitly commanded to the contrary. Panim Yafot himself cites Tosafot’s comment in his own discussion and points out that, if his position is correct, there is no inherent contradiction between a commandment to observe the Sabbath from Friday evening until Saturday night and a prohibition against refraining from work during a twenty-four hour period beginning and ending at daybreak. Tosafot, who posit a contradiction, must then have regarded the “day” on which rest is forbidden as coextensive with the “day” on which the Sabbath is to be observed. Panim Yafot dismisses that objection with the observation that since, technically, Yom Kippur may fall on a Friday or a Sunday, situations may well arise in which a Jew is commanded to abstain from all labor for a consecutive forty-eight hour period. Therefore, argues Panim Yafot, Tosafot regard the commandments concerning Shabbat and Yom Kippur as abrogating the prohibition against resting from labor for an entire day.

R. Akiva Egger refutes that argument in a rather ingenious way. In a talmudic controversy between himself and R. Yohanan, Resh Lakish maintains that any act that goes unpunished because the infractor involves a measure or quantity below the limit for which punishment is stipulated (hazai sh'tur) is biblically permissible and forbidden only by virtue of rabbinic edict. Indeed, Mishneh le-Melekh, Hilktot Shabbat 18:1, asserts that insofar as Sabbath restrictions are concerned Resh Lakish’s position is undisputed.24 If so, notes R. Akiva Egger, it is entirely possible to observe both Shabbat and Yom Kippur and yet not rest for an entire twenty-four hour period. If Yom Kippur occurs on Sunday it is possible, for example, to harvest half of the proscribed quantity of produce on the Sabbath and again to harvest half of the prescribed quantity on Saturday night after the conclusion of Shabbat, i.e., on Yom Kippur eve. Since the “labor” is not completed on either Shabbat or Yom Kippur there is no biblical violation of the sanctity of either day whereas, insofar as the prohibition “day and night they shall not work” is concerned, an act of labor has been performed in its entirety on a single “day,” i.e., within the span of a twenty-four hour period measured from daybreak to daybreak. The result, argues R. Akiva Egger, is that observance of both Shabbat and Yom Kippur on consecutive days is possible without “resting” on a single “day” as the latter term is defined for purposes of the prohibition of enjoyment of a complete “day” of rest. Since Tosafot as posit a contradiction, argues R. Akiva Egger, Tosafot must reject Panim Yafot’s thesis.
of by with regard to acts performed by a gentile on behalf of a Jew or, vice versa, nevertheless agency does exist as a halakhic construct with regard to acts performed by a gentile at the behest of another gentile. \textbf{Maharah Shik} contends that, since (at least according to Rashi) the prohibition “day and night they shall not rest” requires the performance of some constructive act designed to promote the development of a settled and developed universe, such an act need not be performed personally but may be performed by an agent. The concern, contends \textbf{Maharah Shik}, is not the physical act per se but its teleological effect. Accordingly, argues \textbf{Maharah Shik}, the obligation can be discharged by employ-
“doubtful” fulfillment of a positive commandment takes precedence over “doubtful” violation of a negative commandment. He also reiterates the thesis advanced in an earlier responsa, Orach Hayyim, no. 142, to the effect that matters of “doubt” are permitted to Noahides.

1b. According to Rambam, the prohibition is not limited to Sabbath observance but serves as a paradigm prohibiting a gentile from devising his own rituals. Thus, Rambam writes, “[We] do not allow him to create a ritual (le-haddish hag) of his own accord.”

Yad Ramah, Sanhedrin 58b, comments that, according to Rambam, a non-Jew is forbidden to observe Shabbat on a day when he observes it as a day of rest as a peculiarity of his own religious obligation, either because the non-Jew believes that he is commanded by God to observe Shabbat or because he observes the day of rest as a despot of a pagan cult. It would appear that, according to Yad Ramah, a non-Jew who recognizes that he has no obligation regarding Shabbat but who wishes nevertheless to observe the Sabbath out of a sense of non-Semitic religious fervor incurs no transgression.

R. Meir Dem Placki, in his discussion of Noahide law, Hemdut Yisra’el (Pietrokov, 5687), Kuntrus Ner Mizvah, p. 227, comments that observance of a ritual is forbidden only (i) if the gentile asserts that he is divinely commanded to do so, or (ii) if he does so in service of a pagan deity, Hemdut Yisra’el attributes this position to Yad Ramah. It neverthelesss appears to this writer that a novel ritual observance devised by the non-Jew is also forbidden to him even though he acknowledges that it is not of divine origin and that a close reading indicates that Yad Ramah does not intend to state that such is permitted to him.

Nevertheless, as evidenced by Rambam’s ruling, Hilkhah Melakhim 11:20, a non-Jew who recognizes that he is under no obligation to observe the commandments of the Torah may nevertheless do so in order to receive reward. If observance of Shabbat and of other commandments are entirely parallel in nature, as Rambam implies, it should follow that voluntary observance of Shabbat by a non-Jew with full recognition that it is not a religious obligation imposed upon him should be permitted. Cf., Hemdut Yisra’el, loc. cit., s.v. u-lefi zeb. It must, however, be noted that this conclusion does not emerge in any of the latter-day discussions of this prohibition.

Hemdut Yisra’el does however note that, according to Yad Ramah’s understanding of Rambam, observance of a day of rest for entirely secular and mundane purposes, even on a regular basis, is entirely permissible. Moreover, Radbuz, Hilkhah Melakhim 11:9, appears to be of the opinion that, according to Rambam, intentional observance of a day of rest is forbidden to a non-Jew under any circumstances. According to Radbuz, establishment of an observed day of rest is forbidden even if the observance is undertaken for health, economic or pragmatic reasons. If so, Sabbath observance is not entirely parallel to observance of other commandments for purposes of this prohibition since Rambam certainly permits observance of other commandments on a voluntary basis for purposes of accumulating merit and earning reward. Cf., Hemdut Yisra’el, loc. cit.

Rashi maintains that the nature of this prohibition is not at all theological. Rather, just as celestial bodies proceed continuously in their orbits and just as day and night unceasingly succeed one another, so also must non-Jews fulfill their destined role in the created universe on a continual basis. Accordingly, they are forbidden to desist from productive labor over a full twenty-four hour period. Nevertheless Radbuz, loc. cit., opines that even according to Rashi, a non-Jew is culpable only if he intentionally ordains a given day as a day of rest, but that mere inadvertent or unwitting failure, Rashi maintains, is excusable, that conclusion is not applicable to the particular question of the delineation of the twenty-four hour period during which “rest” is forbidden to a Noahide. That issue does not necessarily involve the general question of when a day was regarded as having begun prior to Sinai; it involves only the explanation of the meaning of the phrase “shall not cease.” In that context, although perhaps in no other, “day precedes “night” in the Scriptural phrase and thereby indicates that the twenty-four hour period commences with daybreak. Binyan Zim, however, dismisses the argument that the phrase “day and night shall not cease” establishes a different definition of the day for purposes of the prohibition concerning observance of a day of rest by a Noahide. See also the rebuttal of that argument by R. Joseph Pasterwski, Pesudes Israel, Parashah Noah, sec. 22.

17. Subsequent commentators found Rashi’s position puzzling and were at a loss to find a talmudic source substantiating that view. It may be the case that, according to Rashi, the obligation is derived from “acceptance” of the status of ger toshav. If so, it may well be argued that a circumcised convert who has accepted the “yoke of the commandments” is similarly bound to observe Shabbat by virtue of his “acceptance” of the “yoke of the commandments,” which certainly includes acceptance of the obligations imposed by a ger toshav. [In a similar vein Sefer Hasidim, no. 690, declares that a candidate for conversion “who has accepted the yoke of the commandments” may not be given non-kosher food to eat.] Thus, according to Rashi, a circumcised convert would not only be permitted to observe Shabbat but would be obliged to do so. Rashi’s reasoning is elusive, that conclusion is not applicable to the particular question of the delineation of the twenty-four hour period during which “rest” is forbidden to a Noahide. That issue does not necessarily involve the general question of when a day was regarded as having begun prior to Sinai; it involves only the explanation of the meaning of the phrase “shall not cease.” In that context, although perhaps in no other, “day precedes “night” in the Scriptural phrase and thereby indicates that the twenty-four hour period commences with daybreak. Binyan Zim, however, dismisses the argument that the phrase “day and night shall not cease” establishes a different definition of the day for purposes of the prohibition concerning observance of a day of rest by a Noahide. See also the rebuttal of that argument by R. Joseph Pasterwski, Pesudes Israel, Parashah Noah, sec. 22.


19. A similar solution is presented by Teshtov Teshke Shalom, (Warsaw, 5646), addenda, p. 151.


21. Cf., however, R. Moses Feinstein, Igeret Moshe, Yoreh De’ah, loc. cit., no. 14, and similar discussion of this point see Contemporary Halakhic Problems, I, 317-323.

22. Cf., however, below, note 23 and accompanying text.

23. See also Pirkei Nissim included by R. Yitzchak Reitband in his Kehillat Yizhak ha-Torah (Vilna, 5698), Parshat Toda’, Pirkei Nissim, discussing the problem of Sabbath observance by the Patriarchs, advances a somewhat modified form of this solution. He assumes that the status of the Patriarchs was “doubtful,” i.e., that it was not clear whether their status was that of Jews or of Noahides. Accordingly, he indicates that they had the option of wearing a garment with zizit and making the express stipulation that if their status be that of Jews they do the garment with the intention of fulfilling the Sabbath commandment, but that if their status be that of Noahides they have no intention to fulfill the commandment.

That discussion suggests an expedient that may readily be utilized by a prospective convert who wishes to observe the Sabbath in the manner of a Noahide. It is equally applicable to a non-Jew wishing to observe Sabbath but who is unable to participate in a Shabbat service. Thus, he and his household observe the Sabbath in a manner similar to a non-Jew who desires to observe Shabbat might avail himself of the expedient of stipulating categorically that he and his household observe the Sabbath in a manner similar to Noahides and are not to fulfill the mitzvah. Thus, for him, the zizit would constitute a burden.

24. See also Teshtov Haskham Zevi, no. 815; Teshtov Torah Hessed, Orach Hayyim, no. 44; and Pri Meguen, introduction to Hilkhah Shabbat.

25. A thesis identical to that of Panim Yafot is also cited in the name of an anonymous rabbi by Heker HaHalakhah, no. 15 and rebutted by the latter authority. R. Joseph Saul Nathanson, Yad Shul’ah, Yoreh De’ah 219:4 (pp. 723-724), similarly cites this thesis but refutes it on the basis of the fact that a verse describing an event prior to the Exodus is cited by the Gemara, Rosh Hashanah 22b, in establishing that festivals commence in the evenings. R. Jacob Chai Zitrin argues that this is not a valid objection to establish post-Sinaitic regulations. Teshtov Torah Hessed, no. 25, advances a similar objection based upon a statement of the Palestinian Talmud, Hahal 2:1, that implicitly regards the commencement of the day prior to revelation at Sinai as occurring in the same manner as in the post-Sinaitic era. Similarly, Teshtov Binyan Zim, no. 126, cites HaShulhan 2:13 in pointing out that the day is regarded as commencing with nightfall on the basis of verses describing creation. Although those arguments may be cogent with regard to the determinations of other issues, it seems to this writer that they are not applicable to the particular question of the delineation of the twenty-four hour period during which “rest” is forbidden to a Noahide. That issue does not necessarily involve the general question of when a day was regarded as having begun prior to Sinai; it involves only the explanation of the meaning of the phrase “shall not cease.” In that context, although perhaps in no other, “day precedes “night” in the Scriptural phrase and thereby indicates that the twenty-four hour period commences with daybreak. Binyan Zim, however, dismisses the argument that the phrase “day and night shall not cease” establishes a different definition of the day for purposes of the prohibition concerning observance of a day of rest by a Noahide. See also the rebuttal of that argument by R. Joseph Pasterwski, Pesudes Israel, Parashah Noah, sec. 22.

26. Rambam’s position is however disputed by Tzadok, HaShulhan 3:2a. See also Sefer HaShalit, Kehilat, Erekh Gimel, sec. 40.

27. Teshtov Maharam Shuk, Orach Hayyim, no. 245, employs a similar line of reason the notion that the Patriarchs observed Shabbat as Jews while descereating Noahides by
eating food forbidden to Noahides (viz., me'arkheset), but not to Jews, from other food in a manner forbidden on Shabbat (torar). Maharam Shik cogently argues that since such food was objectively forbidden to the Patriarchs they could not have sorted such food in this manner while observing Shabbat as Jews.

28. Cf., the opinion of Radbaz cited above, note 16.
29. See also additional solutions advanced by Teshuvot Maharam Shik, Orah Hayyim, no. 145 and R. Joseph Engel, Bet ha-Ozar, Ma'arikhet Alef; see 14. Numerous other attempts to resolve this problem can best be described as homiletical endeavors falling short of the standards of halakhic dialectic.