

Roman permission granted to the Jews to participate in the Imperial cult offering a sacrifice not to the emperor, but 'on behalf' of the emperor, too, cannot be regarded as a privilege. Bickerman has shown that the imperial cult was not monolithic, but allowed for considerable differences in the different places.⁵

This however does not exclude that also privileges, namely, exceptions from common rules, were granted by the Romans to the Jews, as to most conquered peoples. Such certainly were the exemption from taxes in Judea in the sabbatical years, and the practice, in Rome, of having the distributions of corn kept for the next day, when they happened to be distributed on Saturdays. Another right which can be defined as a privilege was a special right enjoyed by the Jews at Antioch on the Orontes to receive a fixed sum of money from the gymnasiarchs when oil was freely distributed to the local population, since it was forbidden for them to use foreign oil. Also the exemption from military service, in Judaea and in Asia, can be regarded as a privilege, and the right of assembly, though only in those historical periods when it was generally forbidden, as in Caesar's and in Augustus' days. These privileges, though, were seemingly limited in time and place.

It appears that only those rights specifically pertaining to the social and religious sphere of life, namely, the right of living according to Jewish *patrioi nomoi*, had a general application, both geographically and chronologically, in the Roman world. This right, however, cannot be considered as a privilege, nor as proof of a special consideration for Jewish needs. It was only an application of a common principle of Roman policy.

⁵ E. Bickerman, "Consecratio", in W. den Boer ed., *Le Culte des Souverains dans l'Empire Romain - Entretiens sur l'Antiquité classique*, XIX (Geneve 1973), 3-25.

3

ASSISTING IN A VIOLATION OF NOACHIDE LAW

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Introduction

This article will explore the Jewish law issues involved in assisting and facilitating a violation of Noachide law by a Gentile.¹ Two distinctly different cases are presented. The first is a case where the Jew enables the violation of Noachide law—*i.e.*, but for the Jew's assistance or encouragement the violation would not occur. The second is where the Jew merely assists in a violation of Noachide law—*i.e.*, no matter what a Jew says or does, the Gentile will nonetheless perform an action which violates the Noachide code. So too, this article will discuss whether there is an obligation to separate a Gentile from sin.²

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¹ Elsewhere I discuss whether Noachide law is still binding on Gentiles; see Michael Broyde, "The Obligation of Jews to Seek Observance of Noachide Laws by Gentiles: A Theoretical Review" forthcoming in the yet untitled volume VI of *The Orthodox Forum Series*, (1995) edited by David Shatz and Chaim Waxman. That article concludes that Noachide law is still binding on Gentiles, and this article assumes the correctness of that conclusion. Portions of that article are incorporated into this work. In addition, I have explored the issues involved in assisting a Jew in a violation of Jewish or Noachide law; see Michael Broyde & David Hertzberg, "Enabling a Jew to Sin: The Parameters", *J. Halacha & Contemporary Society* 19:5-36 (1990).

² Certainly if there is an obligation to separate a Gentile from sin—as perhaps mandated by a broad reading of Malachim 8:10 and Milah 1:6, discussed *infra* at note 6—certainly one cannot assist him in sin.

Enabling or Assisting a Gentile to Sin

Pesachim 22b quotes the following statement of R. Natan:

R. Natan said from where do we know that one may not extend a cup of wine to a Nazir nor a limb of a live animal to a Gentile? The source is from the verse "before a blind person thou shall not put a stumbling block."³

This talmudic ruling is cited by many classical codes and thus it is clear that one may not enable a Gentile to sin.⁴ If absent the assistance of a Jew⁵ no violation could or would take place, it is a biblical violation of *lifnei iver* for a Jew to assist a Gentile in violating his law.

However, Avoda Zara 6b quotes R. Natan's statement and limits its application to an instance of "two sides of a river" (literally, "*trei ibra d'nahara*"). Thus only when the Gentile is on one side of a river and flesh of a living animal is on the other side so that he cannot obtain it on his own, is the one who extends it to him in violation of *lifnei iver*. On the other hand, if the Gentile and the flesh are on the same side of the river (*chad ibra d'nahara*), so that he could procure the meat on his own, then the person who gives it to him is not in violation of *lifnei iver*. The assumption is that the prohibition will be violated in any case and the assistance does not enable the sin.

This discussion relates only to the biblical prohibition called *lifnei iver*; however, is there a rabbinic prohibition to assist a Gentile in violating his seven commandments even when he can violate them independent of the helper? This issue is a crucial one, for it addresses whether there is a general obligation to separate a Gentile from sin (להפריש בן נח מאיסור). It is impossible to accept Maimonides' well

³ Leviticus 19:14.

⁴ See e.g. Rabbi Aaron Halevi, *Sefer HaChinuch*, Negative Commandment 232 and Maimonides, *Sefer HaMitzvot*, Negative Commandment 299.

⁵ Rabbi Yehuda Rosnes (*Mishnah LaMelech*, Malveh ve'loveh 4:2) states (perhaps reflecting his understanding of Maimonides) that in order for the action to become permissible according to Torah law, it has to be doable by a non-Jew, or a person otherwise not obligated in this commandment of *lifnei iver* generally, rather than be able to be done by any person. This approach is based upon his understanding of Tosafot (Chagiga 13a, *ein mosrim*) that *chad ibra d'nahara* ("one side of the river") means when the principal can do it on his own or through the assistance of a non-Jew. This makes sense only within the conceptual framework of Tosafot and the RaN (which will be explained below), as it seems irrelevant that others can aid in the prohibited act if they too are obligated not to do so.

known opinion⁶ that Jews must compel observance of the Noachide laws and simultaneously rule that one need not separate a Gentile from sin.⁷

Two schools of thought seem to exist. The first position is taken by Tosafot, Mordechai, Rabbi Moshe Isserless (*Rama*) and Rabbi Shabtai ben Meir (*Shach*) each of whom accepts that when one is not in a "two sides of the river" situation, there is no prohibition associated with assisting a Gentile in sin.⁸ For example, Rabbi Moshe Isserless (*Rama*) states that there are those who rule that it is only prohibited to sell Gentiles supplies used for their idol worship when others will not supply them; however, when others can supply them, there is no prohibition. He concludes by adding "The tradition is in accordance with this opinion; pious people [literally: spiritual people] should conduct themselves in accordance with the stricter opinion".⁹

Shach states this even more clearly:

⁶ Maimonides states:

Moses, our teacher, only willed Torah and *mitzvot* to the Jewish people, since it states "An inheritance to the community of Jacob." . . . One [who is not Jewish] who does not wish to, we do not compel to accept Jewish law. So too, Moses our teacher was commanded by God to compel the commandments to the Noachides. All who do not accept are killed. One who accepts them [voluntarily] is called a *ger toshav* [literally: resident alien]. (Malachim 8:10)

So, too, Maimonides recounts that:

A Jewish court [*beit din*] is obligated to appoint judges for *ger toshaves* [literally: resident alien] to judge them in order that the world not be destroyed. If the Jewish court wishes to appoint judges from within their midst, it may; if it wishes to appoint judges from the Jews, it may (Malachim 10:11).

Finally, Maimonides rules that:

One who takes an adult slave from an idol worshiper, and the slave does not wish to be circumcised one may delay up to twelve months . . . If one agreed concerning this slave with his previous owner not to circumcise him, it is permitted to keep the slave uncircumcised; however, the slave must keep the seven commandments obligatory on Noachides and if not, he is killed immediately (Milah 1:6).

How to understand these rulings of Maimonides is discussed at great length in my article, *supra* note 1.

⁷ The reverse (which is not the contra-positive) is not true. See the discussion relating to the opinion of RaN, *infra*.

⁸ Tosafot, Avoda Zara 6b, s.v. *minayin*; Mordechai ben Hillel, Avoda Zara 6b; Rabbi Moses Isserless (*Rama*), Shulchan Aruch Yoreh Deah 151:4; Rabbi Shabtai ben Meir Hacoen (*Shach*), Yoreh Deah 151:6.

⁹ Rabbi Isserless on *id*.

In my humble opinion, all authorities agree with the opinion of Tosafot and Mordechai that it is permissible to aid a Gentile ...¹⁰ [All those] who argue are discussing the case of a Jew whom one is obligated to separate from sin . . . Such is not the case for a Gentile ... whom we are not obligated to separate from sin.¹¹

This ruling has a significant impact on the issue of the Jew's obligation to prevent a Gentile from violating his seven commandments. Essentially, this school of thought accepts that once one cannot *actually prevent* the violation from occurring, there is no obligation to dissuade or convince a Gentile from violating the law. *Indeed, one may actively assist him by providing him with things that he can otherwise acquire on his own.*

This approach—which rules that there is no obligation to prevent sinning by a Gentile or convince a Gentile to cease sinning—is accepted by nearly all authorities, including Rabbi Abraham Ashveilli (*Magen Avraham*),¹² Rabbi Elija from Villna (*Gra*),¹³ Rabbi Mordechai Yaffe (*Levush*),¹⁴ Rabbi Samuel Pardue (*Beit Shmuel*),¹⁵ Rabbi Samuel Maklin (*Machatsit HaShekel*),¹⁶ Rabbi Ezekiel Landau (*Dagul Merevavah*),¹⁷ and Rabbi Chaim David Azulai (*Berchai Yosef*).¹⁸ Indeed, it is important to realize that a number of authorities reach the conclusion that it is permitted to assist a Gentile while prohibited to assist a Jew in the identical violation. This is based on their observation that there is no obligation to separate a Gentile from sinning.¹⁹

¹⁰ The ellipses in this paragraph all refer to the case of a *mumar*/apostate, and assisting him in sin. That topic is beyond the scope of this paper; for more on that topic, see Broyde and Hertzberg, *Enabling a Jew to Sin: The Parameters*, 19 *Journal of Halacha and Contemporary Society* 5 (1990).

¹¹ Rabbi Shabtai ben Meir HaCohen on *id.*

¹² Orach Chaim 347:4. Rabbi Ashveilli, *Magen Avraham*, rules that it is prohibited to assist an unobservant Jew to sin even when he can do it without assistance; however, he clearly permits one to assist a Gentile in sinning.

¹³ Yoreh Deah 151:8. *Gra* rules that it is prohibited to assist an unobservant Jew to sin even when he can do it without assistance; however, he clearly permits one to assist a Gentile in sinning.

¹⁴ Yoreh Deah 151:3.

¹⁵ Even Haezer 5:18.

¹⁶ Orach Chaim 163:2.

¹⁷ Yoreh Deah 151.

¹⁸ Yoreh Deah 151. Rabbi Feinstein, *Iggrot Moshe Yoreh Deah* 3:90 states that this is obvious, "proper and true."

¹⁹ And the harmonization of apparently inconsistent talmudic texts using this Noachide/*mumar* distinction to separate the various cases; see comments of *Gra* and *Magen Avraham* cited in notes 12 and 13. The precise rationale to distinguish be-

While this author has seen no authority explicitly attempt to harmonize these rulings with Maimonides' ruling that one must prevent a Gentile from violating Noachide law,²⁰ one could easily do so by limiting Maimonides' ruling to a situation where one literally can compel observance of the law, which would then make the situation a "two sides of the river case." That would argue that the word "to compel" ("לכופף") used by Maimonides should be limited to just that situation.²¹ Equally interesting, many of those *rishonim* who clearly argue with Maimonides concerning the obligation to enforce Noachide law,²² also clearly aver that there is no obligation to separate a Gentile from sin.²³ Their position too is consistent. Indeed, this author would note that any authority who rules that a Jew may assist a Gentile in a violation of the Noachide rules (when the Gentile can do the violation without the Jew's assistance) *must* rule that there is no obligation upon any particular Jew to convince a Gentile to obey the commandments.²⁴

The second position is taken by Rabenu Nissim ("RaN"). RaN states that there is a separate rabbinic prohibition, called *mesaya yedai overai averah* (literally: "aiding the hand of those who sin") to assist a person—Jew or Gentile—in sin even in situations where the person can do the sin without the help of another.²⁵ While many authorities accept the opinion

tween an unobservant Jew and a Gentile is beyond the scope of this paper and for a discussion of that issue, see "Enabling a Jew ...", supra note 10.

²⁰ See sources cited in note 6. It is worth noting that Shach (Yoreh Deah 151:6), in his list of authorities who he feels agree with his assertion that there is no obligation to separate a Gentile from sin, leaves out Maimonides.

²¹ Rabbi Menachem Mendel Schneerson unambiguously rejects this reading of Maimonides and accepts that Maimonides means that one should do anything in one's power, to encourage or compel observance. For more on his position, see *infra*, Section 3.

²² See part II of "The Obligation of Jews to seek Observance of Noachide Law" cited supra in note 1.

²³ Thus for example, Tosafot Shabbat 3a clearly indicates that to be his rule, as does Nachmanides, cited by RaN in Avoda Zara 7a.

²⁴ This is analogous to the tension between the obligation of *tochacha* (rebuke) to an unobservant Jew and the permissibility to assist him in sin (according to Shach and *Dagul Merevavah*). As noted by many, once one is permitted to assist a Jew in sin it is logical to assume that there is no obligation also to rebuke him.

²⁵ See RaN, Avoda Zara 6b (1a in Rif pages). This author finds very difficult the assertion of Shach that even RaN would agree that even for a Gentile there is no obligation to separate him from sin, as RaN explicitly asserts this rabbinic obligation in the case of a Gentile. Most likely Shach is referring to the opinion of Nachmanides cited in RaN, Rif pages 7a. This opinion of Nachmanides is consistent with the opinion of Nachmanides cited in Section III:1:B. Tosafot too is consistent on this issue.

of the RaN concerning a Jew who is generally not observant,²⁶ as noted above this opinion essentially is rejected in Jewish law²⁷ concerning a Gentile—the classical exception being a lone Rabbi Shimon ben Tzedek Duran (*Tashbetz*) who rules that it is halachically prohibited to assist a Gentile in sin, since Jews are obligated to separate Gentiles from sin.²⁸

According to RaN's approach, Maimonides' ruling, cited above, could be understood in two different ways. In situations where a Jew can literally compel observance of the law, that would be a biblical obligation. In situations where compulsion would not work, there would be a rabbinic obligation at least not to assist. This position is neutral on the proper understanding of Maimonides, Malachim 8:10 which appears to compel observance, as even if there is no obligation to compel observance, one could readily imagine the Sages prohibiting actually assisting in a violation, even if there is no obligation to deter the sin. If one accepts Maimonides in Malachim 8:10, one must at the minimum accept RaN's rule.

Maimonides, himself, however appears to be completely consistent. Maimonides appears to rule that one may never aid a person who is attempting to violate the law—Jew or Gentile—even if, when one declines to aid him, another will do so. This is true whether or not the next person who aids him is also obligated to observe the law. Thus, his position rejects the approach taken in Avoda Zara 6b and makes no distinction between one or two sides of the river.²⁹ Maimonides' position is thus

²⁶ Among the commentaries, see Magen Avraham, Orach Chaim 347:4 and Gra, Yoreh Deah 151:8. Among the responsa, see R. Yakov Ettlinger, Binyan Zion 1:15; R. Naphtali Tzvi Yehuda Berlin, Meshiv Davar 2:32, R. Aharon Kotler, Mishnat Rav Aharon 1:6.

²⁷ See sources cited in notes 12 to 18. Perhaps one could claim that the opinion is accepted by Rabbi Karo himself writing in Yoreh Deah 151:1, although as noted by Rabbi Ovadia Yosef (Yabia Omer Orach Chaim 2:15(8-9)) this is difficult to prove.

²⁸ Rabbi Shimon ben Tzedek Duran, *Tashbetz* 3:133. It is worth noting that even Rabbi Ovadia Yosef cites no later authorities in agreement with *Tashbetz* on this issue. He too perceives him as standing alone; Yabia Omer, Orach Chaim 2:15(2-10). Perhaps a claim could be made that Tosafot Yom Tov, *Perkat Avot* 3:14 agrees with *Tashbetz*. This author is more inclined to read his remarks as indicating that such conduct is morally laudatory, and not legally obligatory.

²⁹ Maimonides would maintain that the statements by R. Natan in Avoda Zara 6b represent only R. Natan's opinion, and are not accepted by most of the Amoraim; to support this he would cite the fact that this limitation on R. Natan is not quoted in the Talmud in any other place. Although Maimonides does not state so explicitly, this position can be inferred from a number of his comments. First, in Sefer HaMitzvot, negative commandment 299, Maimonides does not limit the scope of the prohi-

completely consistent. He prohibits assisting another in sin in all situations, and compels both Jews and Gentiles actively to prevent others from violating Noachide law.³⁰

3. *The Responsa of Rabbi Menachem Mendel Schneerson*

When a Jew contemplates violating Jewish law, there is an obligation upon Jews not only to prevent him (physically if necessary and possible) from violating the law, but also there are obligations to teach him or her about the law and to induce or persuade compliance.³¹ Indeed, in a post-emancipation society, limiting Jewish sinning rarely is done with coercion and force, and is typically done through persuasion and teaching. As noted above, in this author's opinion, the halacha as generally understood by most authorities rules that there is no obligation to persuade and teach Gentiles about the Noachide law. None of the classical commandments designed to deter sinning by Jews (except the biblical prohibition of lifnei iver, which was discussed in part 2 of this section)³² is generally thought to be applicable to Gentiles. Thus, there is no obligation of *tochacha* (to rebuke) a Gentile who sins,³³ there is no notion of *ar-*

bition of lifnei iver to situations where others cannot help. Secondly, he never quotes this limitation in any of the instances he deals with *lifnei iver* in his primary work, the *Mishnah Torah*. In addition, this understanding of Maimonides is found in Rabbi Yosef Babad, *Minchat Chinuch*, Negative Commandment 232;3, and Rabbi David Tzvi Hoffman, *Melamed LeHoil* 1:34.

³⁰ See also Rabbi Yair Bachrach, *Chavat Yair* 137 who appears to adopt the opinion of Maimonides.

³¹ For a general discussion of the parameters of this obligation, see Yehuda Moreal, *Bederech Tovim* 124-129 and Moshe Weinberger, *Jewish Outreach: Halakhic Perspectives*.

³² In general, *lifnei iver* is a different type of obligation, since it discusses assisting or enabling sin, which logic would indicate is more restricted than merely not preventing sin. Thus, merely because one is under no obligation to teach a person that murder is wrong, does not mean that one can sell the person a gun to commit a murder or provide directions to the victim's house.

³³ See generally Sanhedren 75a and Rashi on *id.* (excluding even a resident alien). It has been claimed that Rashi, according to an alternative version not found in our text, maintains that there is an obligation of rebuke applicable to a Jew when a Gentile sins; see *Minchat Yitzchak* 4:79(4), who relates this to Rabbi Yehuda Ha'Chassid, *Sefer Chassidim* 1124. This author would be more inclined to understand these rulings as imposing an extra-halachic moral duty; but see notes of Rabbi Meir Arik to *Sefer Hachasidim*, which cross-references this to Maimonides, Malachim 8:10 and thus implies a legal duty.

vout (cooperative activity) that compels collective responsibility,³⁴ and no obligation to separate a Gentile from sin.

One modern responsa stands out as advocating an approach completely different from that generally accepted by Jewish law. The strongest case that a Jew is obligated to teach and persuade a Gentile to keep the seven commandments is found in the writings of Rabbi Menachem Mendel Schneerson of Lubavitch, in one of his classical responsa.³⁵ After quoting Maimonides, Malachim 8:10, Rabbi Schneerson states:

It is obvious that this obligation [found in Maimonides, Malachim 8:10] is not limited only to a Jewish court, since this commandment is unrelated to the presence of a *ger toshav* (resident alien), and thus what is the need of a *beit din*. . . . Thus, this obligation is in place in all eras, even the present, when no *gerai toshav* can be accepted and it is obligatory on all individuals who can work towards this goal.

So too, this commandment is not limited to using force—where, in a situation we cannot use force, we could be excused from our obligation—since the essence of the obligation is to do all that is in our power to ensure that the seven Noachide commandments are kept; if such can be done through force, or through other means of pleasantness and peace, which means to explain [to Gentiles] that they should accept the wishes of God who commanded them in these rules. This is obviously what is intended by Maimonides.

In Responsa Tashbetz (3:133) it states that even in a case where there is no prohibition of *lifnei iver*, such as two sides of the river, still it is prohibited to assist Gentiles who wish to sin, since “we are obligated to separate them from sin.” In reality, we have no source for the obligation to separate a Gentile from sin, if it is not derived from the remarks of Maimonides discussed above [Malachim 8:10] that we are obligated to coerce them into accepting commandments, and thus, of course, we may not assist them in violating them.

³⁴ For a long discussion of this issue, see R. Aaron Kirshenbaum, “‘Covenant’ with Noachides Compared with Covenant at Sinai,” *Dinai Israel* 6:31-48 n.37 (Hebrew).

³⁵ Rabbi Menachem Mendel Schneerson *Sheva Mitzvot Shel Benai Noach*, Hapardes 59:9 7-11 (5745). This responsa has been reprinted in a number of places; see e.g. Rabbi Tuvia Stern, *Shavit* 7:1. For Rabbi Stern’s reply, see Responsa *Shavit* 8:3 (asserting that Maimonides’ ruling is limited to enforcing acceptance, rather than observance). In this author’s opinion, Rabbi Stern’s distinction is difficult to accept as Maimonides, in the three sources cited above, appears to be speaking about observance as well as acceptance. Any other reading leaves Maimonides internally inconsistent and not based logically on the talmudic source found in Sanhedren 57a, as Rabbi Jacob Karo, writing in *Kesef Mishna*, states he is.

Rabbi Schneerson concludes by stating:

From all of the above, it is clear that anyone who has in his ability to influence, in any way, a Gentile to keep the seven commandments, the obligation rests on him to do so, since that was commanded to Moses our teacher. Certainly, one who has connections with Gentiles in areas of commerce and the like, it is proper for him to sustain the connection in order to convince and explain to that person, in a way that will reach that person’s heart that God commanded Gentiles to keep the seven commandments...³⁶

In this author’s review of the literature, the weight of halachic authority is contrary to this analysis, although it certainly is morally laudatory (all other things being equal) to convince Gentiles to keep and observe the Noachide laws. Three proofs can be adduced which indicate that the ruling of Rabbi Schneerson is not accepted by most authorities.³⁷ First of all, as he himself notes, his position assumes that there is an obligation to separate a Gentile from sin. As noted in detail in part 2 of this section, nearly all authorities reject that assertion. Second of all, it assumes the halachic correctness of the opinion of Maimonides concerning the general obligation to compel observance by Gentiles; this author suspects that the normative halacha is codified in favor of those who disagree with Maimonides and thus rejects the rulings found in Maimonides 8:10.³⁸ Finally, it assumes that even within the position of Maimonides the obligation to compel observance includes within it the obligation to persuade. No support is advanced to that proposition, and by analogy, one could easily assert that merely because compulsion is mandatory (when possible) to prevent a violation, persuasion need not also be mandatory.³⁹ In addition, proof that there is no obligation upon any individual Jew to teach Gentiles their laws can be found in the many responsa

³⁶ However, even Rabbi Schneerson concedes that the obligation to induce compliance is limited to situations where “no financial loss is caused, even the loss of future profits.” This limitation is itself a little difficult, as halacha does not recognize “loss of profit” generally as a claim.

³⁷ Of course, Rabbi Schneerson—himself a preeminent authority of Jewish law—is quite within his purview to argue with the overwhelming weight of authorities.

³⁸ See Section IV:1:B of “The Obligation of Jews to Seek Observance of Noachide Laws by Gentiles: A Theoretical Review,” supra note 1.

³⁹ For example, in the area of *lifnei iver*, if one’s actions are needed to allow another to sin, there is a biblical prohibition in doing the activity; that is analogous to compulsion. On the other hand, if the sinner can sin without assistance, it is at best a rabbinic violation to assist the sinner; it might even be permissible. That would be analogous to persuasion.

that *permit* the teaching of Gentiles about their laws: these many responsa all *permit* this activity—but none rule it *obligatory* or *compulsory*.⁴⁰

In addition, this author believes that systemic jurisprudential concerns within halacha for reciprocity (which are constantly present and which are beyond the scope of this paper) mandate symmetry of obligation between Gentile and Jew. Jewish law certainly does not compel Gentiles to enforce their legal system on Jews and certainly does not authorize Gentiles to punish Jews for violations of Jewish law.⁴¹ To impose an un-reciprocal obligation upon Jews would violate jurisprudential norms found in Jewish law, where systemic obligations to act for the benefit of others is typically only imposed when those others are obligated to do the same were the situation reversed. Gentiles are not obligated to enforce Jewish law; Jews thus are not obligated to enforce Gentile law.⁴²

Conclusion

It is clear that Jewish law prohibits enabling a violation of Noachide law by a Gentile. Maimonides, followed by a number of other authorities, appears to rule that one may not even assist in a violation of law by a Gentile. Most authorities appear to disagree and, while they prohibit enabling a violation by a Gentile, do permit one to assist a Gentile in a violation of Noachide law if the violation will occur even without the assistance.

⁴⁰ See for example, Rabbi David Tzvi Hoffman, *Melamed LeHoil Yoreh Deah* 77; Rabbi Obadia Yosef, *Yabia Omer Yoreh Deah* 17; Rabbi Yecheil Yakov Weinberg, *Seredai Ash* 2:92; Rabbi Jacob Weil, *Teshuvot Maharil* 199 and Rabbi Aharon Walkin, *Zekan Aharon* 2:71. For a survey of this issue, see Rabbi Bleich, *Contemporary Halakhic Problems*, ("Teaching Torah to non-Jews") 2:315-316.

Indeed, even Maimonides, who permits the teaching of scripture to Christians based on the rationale that they accept the divinity of the Bible, merely rules that one *may* teach them the proper commandments, and not that one *must*; Maimonides, *Teshuvot HaRambam* 1:149 (Blau).

⁴¹ See generally Rabbi Shimon ben Tzedek Duran, *Rashbatz*, 1:158-162, 59-61. See also Shmuel Shiloh, *Dina Demalchuta Dina* 422-32 (1974).

⁴² This idea is a paper in and of itself; see Michael Broyde and Michael Hecht "The Gentile and Returning Lost Property According to Jewish Law: A Theory of Reciprocity" forthcoming in the *Jewish Law Annual*.

4

THE UNITED STATES CONSTITUTION AND THE JEWISH COMMUNITY: THE RECALCITRANT HUSBAND AND THE CHAINED WOMAN (*Agunah*)

SEYMOUR J. COHEN*

To Mayer Freed

There is hardly a year that does not present special problems to the American Jewish community regarding the First Amendment and the separation of church and state. Our text is taken from the Bill of Rights, First Amendment.¹ It reads: Congress shall not make any law respecting the establishment of religion, or prohibiting the free exercise thereof..." This extremely pregnant clause has been debated over and over again in the halls of the state courts and the United States Supreme Court.

A British prime minister, William Gladstone, wrote, "I have always regarded the Constitution as the most remarkable work known to me in modern times...to have been produced by human intellect, in its application to political affairs...at a single stroke..."²

The American constitution is a unique and revolutionary document. As a member of a minority people, as an adherent of a minority faith, so to speak, I am grateful for its protection for all minorities. Early in the history of the American nation, the concept of the separation of church and state was most attractive to the early Jewish settlers who came at that time principally from Germany. Prof. Naomi W. Cohen stressed this factor in her book, *Jews in Christian America*.³ The Jewish immigrants had

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¹ Bernard Bailyn, ed., *The Debate on the Constitution*, Part I and Part II. (New York: The Library of America, Viking Press, 1993), p. 954.

² J. Kaplan, ed., *Bartlett's Familiar Quotations*, 16th ed. (Boston: Little, Brown & Co., 1992), p. 446.

³ New York: Oxford University Press, 1992.