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A Temple in Our Days: A Long-Overdue Conversation

Meir Kraus is a research fellow at the Shalom Hartman Institute.

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The Desire for the Temple

In recent decades, Israeli society has seen the emergence of a new phenomenon within its religious sector, a new movement which aspires to rebuild the Temple, if not immediately, then in the foreseeable future. This movement, which encourages people to ascend to the Temple Mount and engages in a wide variety of educational activities, constitutes a dramatic religious, theological, and historical shift in Jewish life. At the heart of this shift lies the attempt to breathe life into a messianic vision of the Temple—to spread the desire to rebuild the Temple and restore sacrificial worship. This movement seeks to instill in the hearts and minds of Jewish believers the sense that sacrificial worship in the Temple is in fact the ultimate form of religious worship (*avodat Hashem*).

Traditionally, Jews saw the Temple as an object of prayer and yearning but believed that its construction should be left in the hands of Heaven, to be carried out at the End of History. This new movement, however, is turning the vision of a restored Temple into a realistic goal to be attained via human endeavor. The Temple has

spent the last two thousand years inhabiting Jewish memory, ritual life, and mythological language, but, through the activism of these Temple visionaries, it has returned to real life.

For generations, common practice by all manner of observant Jews forbade ascending to the Temple Mount. Then, in 1996, the Rabbinic Council of Judea and Samaria put out a call for people to ascend to the Temple Mount, while of course observing all Jewish laws involved.[1] This kicked off a significant wave of Jewish ascents to the Temple Mount and, today, hundreds of rabbis permit ascending to the Temple Mount and even encourage their congregants to do so.

The Temple organizations are also engaged in a variety of activities aimed at centering the idea of the Temple in public consciousness. These activities aim at implanting the Temple vision in the hearts and minds of the community, but also at developing and transmitting the knowledge that would be necessary for building the Temple with all its vessels and implements. These organizations even train Priests (*kohanim*) and Levites in the details of their roles within the sanctum. Their educational endeavors take a variety of forms, including seminars, exhibits, conferences, rituals, lectures, parades around the Temple Mount, printing prayer books with images and visual aids depicting the Temple and its worship, children's books, and more.

These endeavors have been broadly successful and have drawn many people to the movement. The number of Jews ascending to the Temple Mount has increased year over year.[2] Public support—even in the secular and traditionalist (*mesorati*) sectors—has steadily grown both for ascending to the Temple Mount and for praying there.[3] Once marginal, Temple Mount activists are now an integral part of the religious-nationalist elite. Even the internal discourse around the Temple in Religious Zionist study halls (*batei midrash*) has expanded beyond all previous scales, including a vast collection of essays, books, and lectures.

Motti Inbari, Haviva Pedaya, and others, have analyzed the origins and causes of this new focus on the Temple and the Temple Mount, and why it has emerged in this specific historical moment.[4]

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[1] Decision of the Rabbinic Council of Judea and Samaria, Shevat 18, 5756. The lone voices which previously called for ascending to the Temple Mount—including rabbis who made use of painstaking investigations into the permitted and forbidden spaces upon the mount—were isolated, exceptional cases. See Shlomo Goren, "The Temple Mount," in *Meshiv Milhamah*, vol. 4 (Jerusalem: *Ha-Idra Rabbah*, 2005); Zalman Koren, *The Courtyards of God's House* (Jerusalem: *Tzur Ot*, 1977).

[2] According to police records, approximately 37,000 Jews ascended to the Temple Mount in 2019. According to records from the *Yeira'eh* organization, more than 30,000 of them went up for religious-nationalist reasons. The numbers shrank in 2020 due to the COVID-19 pandemic, but the number rose again in 2021 to almost 35,000.

[3] According to a 2015–2016 survey by the Israel Democracy Institute, 31–47% of Israelis who self-identify as secular support Jews praying on the Temple Mount. Among religious Israelis, that number goes up to approximately 80%.

[4] Motti Inbari, *Jewish Fundamentalism and the Temple Mount* (Jerusalem: Magnes Press, 2008); Haviva Pedaya, interview on the Ir-Amim website, http://www.ir-amim.org.il/he/node/1711/; Sarina Hen, *Rapidly in Our*

Inbari claims that the movement emerged in the wake of the Oslo Accords and reflects a common pattern taken by messianic movements as recognized in messianism research: moments of dissonance between historical reality and messianic vision lead to crisis, causing many believers to double-down on their devotion to the vision and to attempt to restore the progression of history to its messianic path. Pedaya describes similar processes, but she focuses on the Disengagement from Gaza and Northern Samaria as an event that intensified the call for restoring the Temple and the Temple Mount. She further claims that some Temple Mount activists maintain a redemptive vision wherein they attribute to the Temple Mount and to their activism a mystical capacity to reorganize reality itself in accord with their redemptive vision.

These mystical and redemptive motives do not suffice to explain the movement, however. Temple Mount activists are also clear-eyed political actors who believe that any concession of Israeli land will lead the Jewish people to lose hold of the Temple Mount, failing the test of this historical opportunity to set in motion the future of the Temple. For instance, R. Eliezer Melamed claims that, in principle, ascending to the Temple Mount ought to be forbidden. It is only in order to contest the dominant presence of Muslims on the Mount that it is, in fact, permitted for Jews to ascend to the Temple Mount.[5] A number of rabbis even ruled—quite radically—that not only may Jews ascend the Temple Mount, they may even walk across *every inch* of its surface, including those places where *halakhah* absolutely otherwise prohibits it. This is because the purpose of ascending to the Temple Mount is to create Jewish presence on the Mount as part of the struggle for control over it, and it therefore falls under the halakhic category of acts of "conquest" (*kibbush*).[6] The movement's attempt to realize its messianic vision therefore cannot be reduced to a purely religious project. It serves also as part of a political strategy in a struggle for sovereignty and dominance. That being said, when it comes to the Temple and the Temple Mount, attempting to distinguish between religious and political motivations is a project doomed to failure; for most of the Temple Mount activists, the two are inextricably intertwined.

We should note that, alongside the new focus on the Temple and the Temple Mount, there have been people who oppose the movement, citing traditional halakhic prohibitions and theological claims in tandem with geopolitical concerns. The primary ideological divide between the Temple movement and its opponents concerns how and when the Temple vision should be realized,

Days: Shifts in the Religious Nationalist Public's Relationship to the Temple Mount (Sde Boker: The Ben Gurion Institute for the Study of Israel and Zionism, 2017), 86-88.

[5] Eliezer Melamed, "The Place of Our Temple in Israeli Sovereignty," *Be-Sheva* 666 (17 Heshvan 5776).

[6] Shlomo Goren, "The Temple Mount," 28-29; Yisrael Ariel, "The Commandments of the Temple Mount in this Era" in *Rise and Ascend: A Collection of Essays and Readings Regarding the Temple Mount Today* (Alon Shevut: Zomet, 2002), 211.

whether it will be built by God (*bi-dei Shamayim*) or by human hands (*bi-dei adam*), etc.—not the content of that vision itself. Both groups yearn for a day when the Temple will be restored to its place, and the sacrificial worship will be observed in all its minutiae, just as before the Temple was destroyed. Neither group is willing to grapple directly with the problems this vision sets before contemporary religious Jews. Ironically, while Religious Zionist study halls echo with discussions of the Temple and the Temple worship to an unprecedented degree, there is very little in the way of deep discussion of the content of the Temple vision and the challenges it represents.

We Need to Talk About the Temple

Taking the religious vision of the Temple seriously means grappling with deep theological, moral, and even aesthetic issues. These are not questions we can push off until the end of history (*le-atid la-vo*); they are burning contemporary problems which we have to deal with now, before the vision of the future is realized. The Temple vision destabilizes and challenges prevailing Jewish practice, with potentially radical implications for the religious experience, theology, and faith of the modern believer.

Historically speaking, we must keep in mind that the Temple(s) and the sacrificial worship only physically existed for a fraction of the time Jews have been living their religious lives. Over the two thousand years since the destruction of the Second Temple, the Jewish tradition took shape in its absence—as did the religious lives of Jews. The Jewish sages developed worldviews, customs, and practices, creating a whole alternative way to be religious. The sages explicitly described many of these practices—such as prayer, Torah study, and acts of kindness (*gemilut hasadim*)—as substitutes for the Temple worship, or even as superior to it.[7]

For Jews who seek to draw close to their God, the Jewish tradition created a comprehensive, all-encompassing religiosity, providing a sense of divine closeness, a religious vision of the future, and rites and rituals meant to help realize that vision. Judaism's comprehensive religious praxis commands a person to observe certain rituals and to live a life of devotion. It awakens within them yearnings for the sacred, inspiring within them a desire for closeness to God, and directing them to live an ethical life as part of a religious community. Judaism today provides everything the contemporary believer needs in order to live a full, religious life.

That being said, the vision of the Temple is present in every corner of the Jewish tradition. The Temple was imagined as the *axis mundi*, the primary channel between heaven and earth—*the* place where one could attain closeness to God. The sacrificial worship in the Temple was not just one more form of Jewish ritual practice; it was uniquely capable of bringing a Jew into contact—

[7] See note 17 below.

and connection—with God.[8] After the destruction of the Temple, the sages embedded and enshrined the memory of the Temple and the sacrifices—as well as the mourning for its loss and the hope for its restoration—into Jews' everyday ritual life. They made texts about the Temple and sacrifices into a significant portion of the Jewish canon, and wove images of the Temple and sacrifices into their utopian visions of the messianic era.

In this manner, over the course of generations, Judaism developed a split between the actual experience of daily religious life and the vision of the Temple embedded in the rituals themselves. While this religious experience is itself full and rich, the specific content of this religious language expresses the desire for a totally different form of worship: the sacrificial worship in the Temple. The intensity of this split results from the way that the Temple worship is not only opposed to the prevailing tradition, but is also deeply foreign and threatening to it.

Religious Jews throughout history have found different means of coping with this tension: the power of prevailing custom and commitment to it, physical distance from the geographical space of the Temple, the unrealistic nature of trying to plan to realize the Temple vision, and mental distance from the space as a result of the halakhic prohibitions against going there and of the theological texts which grant the Temple tremendous symbolic and mythic dimensions. Now, however, we have much greater access to the Temple Mount. Partisans of the Temple vision refer to the idea of the Temple as "*samukh ve-nir'eh*," literally "nearby and visible," because of how attainable the dream now seems. There is a massive, multi-channel educational project aimed at spreading the Temple vision into popular consciousness and restoring the Temple from the realm of myth to real life. There are people claiming that we can and should be actively fulfilling the commandment of building the Temple. The delicate balance created and maintained over generations has thus been destroyed.

I want to have a conversation wherein we think deeply and seriously about the content of the Temple vision and the challenges it presents. The conversation is meant for anyone who cares deeply for the Jewish tradition and who sees value in maintaining or preserving it. I primarily have in mind those faithful upholders of the living tradition, those who feel the dissonance between the act of daily prayer and the words they say in that prayer—words which seek to restore sacrificial worship—between their deepest religious intuitions and their fundamental commitment to rabbinic Judaism, on the one hand, and the realization of the vision of the

[8] Daniel R. Schwartz, *Priesthood, Temple, Sacrifices: Opposition and Spiritualization in the Late Second Period* (Jerusalem: Hebrew University, 1979), 46-49, 172.

Temple, on the other.

The Challenge of Returning to "The Place" (*Ha-Makom*)

Daily religious life, as shaped by the Jewish tradition after the destruction of the Second Temple, contains no one specific, concrete space wherein an individual can encounter God. The Jewish encounter with God takes place primarily within a person's consciousness, in the moment when they perform a religious act, without depending on, or being mediated by, a holy space. The roots of this religious experience run deep within the tradition, finding their anchor in a theology which challenges the idea that a transcendent, infinite God could ever have self-limited into a specific place. Lacking a "place," religious worship focuses on the direct relationship between a person and their creator. In this model, a person's holiness derives from their actions and behavior, not from the place in which they stand, nor from any other external factor. This is the critical distinction between contemporary religious experience and how people in the era of the Temple understood religious experience—as something local to a specific, geographic place where individuals could go to encounter God. Although the Jewish tradition does maintain the idea of holy spaces, the religious experience of the modern believer can take place anywhere.

The Challenge of Sacrificial Worship

The form taken by worship in the Temple presents even more difficult challenges for the modern Jew. A gaping abyss separates how we think of religious experience today from the sort of religious experience expected by those who want to bring back sacrificial worship. Jewish sacrificial worship came to an end with the destruction of the Second Temple, and pagan sacrificial worship in the region was outlawed by the Roman Empire when the Empire became Christian in the fourth century CE. Over the centuries, sacrificial worship came to be rejected and seen as strange throughout the cultural, religious, and geographic spaces of all three monotheistic religions.

Sacrificial worship is deeply foreign to contemporary believers in a variety of ways. The desire to sacrifice or offer something to God—for the sake of atonement for sin, as a gesture of gratitude, in order to effect change in reality, or as a symbolic act of self-sacrifice—is indeed familiar to the modern religious person, both personally and as part of their religious tradition. But the idea of giving something *physical* to God is not—in fact, it comes across as deeply strange. Over the course of history, the individual's *self*-sacrifice in the act of fulfilling God's will replaced the act of sacrificing something physical to God. Giving to poor people, widows, orphans, and strangers—to whom God commanded we give charity and engage in acts of kindness—replaced giving gifts to God. In the absence of the Temple, imitating God (*halikhah bi-derakhav*) and performing acts which embody religious devotion took the place of sacrificial worship. These historical and ritual changes correspond to a theological change: modern believers do not worship the sort of God to whom one would give a physical gift. The God who wants offerings of grain and meat is worlds apart from

the God who seeks the actions and spirit of the individual. This shift naturally creates an entirely different kind of relationship between God and the believer.

Another deeply foreign element of the sacrificial worship which the Temple activists wish to restore is the mediation of worship via the priesthood—the people who actually perform the sacrifices. Shifting from an unmediated, individual worship of God to a mediated, hierarchical form of worship would create distance between the individual and God, and would harm their sense of having a personal connection to God.

Beyond how foreign sacrificing animals is to modern believers, it also strikes them as religiously and ethically problematic. The idea that the brutal, violent act of killing an animal, burning its flesh, and sprinkling its blood constitutes sacred worship designed to bring a person closer to God is hard to imagine. Even just on an aesthetic level, we recoil from the thought that the site of holiness and divine encounter would be a slaughterhouse. Look at how much effort modern society puts into hiding the meat processing industry from view! We can barely tolerate the ethics and aesthetics of the process as something which provides us with food. We certainly cannot imagine it as religiously valuable. An unbridgeable chasm separates the Sages' glowing depiction of priests up to their knees in the blood of sacrifices (*Pesahim* 65b) from the religious experience of the modern believer.

We see sacrificial worship as fundamentally similar to pagan worship, and it makes us uncomfortable. Even if we can make theoretical distinctions between the two forms of worship, they look too similar in practice, as the Jewish tradition itself notes.[9]

From a theological perspective, restoring the Temple and the sacrifices would threaten to breathe new life into anthropomorphic ideas about God. Any activity which emphasizes God's presence in some physical sense risks becoming the first step on the path to anthropomorphism—and the slippery slope to idolatry. This is no theoretical concern; it has real historical precedent, such as the recurring prophetic critiques of idolatry in the Temple.[10]

Traditional Worship vs. Worship in the Temple

The reappearance of the Temple vision raises questions about the relationship between the imagined and expected worship in the Temple and actually existing Jewish religious praxis. The Temple vision contains an implicit expectation that contemporary religious praxis, in whole or in part, will be replaced by sacrificial worship—"the worship of God in its ideal form."[11] Returning to a

[9] See *Leviticus Rabbah* 22:8; Maimonides, *The Guide for the Perplexed* III:32; Guy Stroumsa, *The End of Sacrifice: Religious Transformations in Late Antiquity* (University of Chicago Press, 2012), 66.

[10] See Jeremiah 7:9-10; *Yoma* 9b.

[11] Yisrael Ariel, *Temple Mahzor for Yom Kippur* (Koren Publishing, 2019), 9. As Ariel further clarifies, "The sacrificial rites of Yom Kippur are so precious to God that no prayer could ever equal them" (ibid., 130).

sacrifice-first model of worshiping God would be a revolution, one which would be expected to overturn traditional Jewish religious praxis.

To highlight the difference between these two forms of worship, imagine how Yom Kippur looked in the Temple in contrast to how it has looked in the generations since the destruction of the Second Temple. Today, Jews primarily experience Yom Kippur as a day when they stand before God as individuals seeking atonement for their sins, hoping for forgiveness from, and purification before, God. Their primary means in this quest are fasting, repentance, prayer, and charity (*teshuvah, tefillah, u-tzedakah*). These tools help them experience an inner process of spiritual transformation and purification from sin. This experience takes place in the penitent's heart, but also between the penitent and God. In contrast, Yom Kippur in the Temple is entirely about the actions of the *Kohen Gadol*, the High Priest, which aim at receiving atonement before God. The day's worship (*seider ha-avodah*) succeeds or fails based on whether or not he fulfills the sacrificial rituals with exactitude in all their meticulous detail, and on this rests the promise of atonement from sin. Neither the individual Jews nor the religious community as a whole are in any way involved in the process.

It is hard to imagine that these two forms of worship could coexist in any way. The possibility that Temple worship might become dominant—whether via intentional activism or as a result of natural processes—and marginalize contemporary Jewish religious worship is very real. The dramatic cultic experience, combined with nostalgic desires for the restoration of what it sees as a national golden age, is much more seductive than today's religious routines.

Traditional Jewish Theology vs. Temple Theology

Religious worship always exists within a theological context which provides its theoretical underpinnings. The two theological contexts of the Temple worship and contemporary religious Jewish praxis could not be more different. Here, I want to highlight this difference by way of three specific concepts: "The holy man," "the religious act," and "the indwelling of the Divine."

The idea of **the holy man**—an idea which has its roots in the Hebrew Bible and in rabbinic literature, in medieval Jewish theology, in Jewish mysticism, and in Hasidism—is one of the fundamental influences on the religious experience of Jews today. It has taken many forms throughout history, but its fundamental claim is that an individual—or any individual—can be holy in such a way that they are the highest purpose of religious life, and, as such, constitute an *axis mundi*—an alternative locus of holiness to the Temple. We can find a powerful expression of this claim in R. Moshe Alshikh's commentary on the biblical verse, "And I will dwell in their midst" (Exodus 25:8). Alshikh's interpretation makes the

individual into the primary locus of holiness in which the divine presence can rest.[12]

The very purpose of **religious practice** in a Temple reality would be fundamentally different from its purpose in the prevailing tradition. In the Temple model, religious practice is directed toward serving and influencing God, God's actions, or the world. In the rabbinic tradition, the purpose of religious practice is "to walk in God's ways"—the human being is the object of religious service, and the goal is the spiritual, psychological, and moral transformation that a person must bring about within themselves and their environment in order to become sanctified.[13] A Temple reality would shift the focus of sanctity from the individual back to the physical Temple and redirect the focus of religious practice from the individual to God.

The concept of **the indwelling of the Divine Presence** (*Shekhinah*) expresses believers' expectations of what the process of restoring the Temple and its service will bring, but it also illustrates the theological gap between the two different forms of worship. The appearance of the Temple is associated with an anticipation of the appearance of divine spiritual and material abundance; a transformation on the national, universal, and even cosmic levels; an intensified experience of closeness to God in personal religious experience; and the return of divine revelation in the relationship between God and humanity. Indeed, some argue that there is an inseparable link between the Temple and revelation.[14] According to this model—in the theological space where the Temple and its service existed—the source of religious authority is tied to revelation, and is fundamentally different from that of the rabbinic tradition. If the desire to return to the Temple is indeed bound up with the expectation of revelation and its restoration as a source of authority, then the upheaval anticipated with the realization of the Temple vision will perhaps be even greater than imagined, undercutting the very foundations of prevailing practice and tradition.

Beyond this, the accumulated historical experience of the two Temple eras simply does not live up to the dramatic expectations of the Temple

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[12] Commentary of Rabbi Moshe Alshikh to Exodus 25:8, s.v. "ve-asu li mikdash": "'And I will dwell in *their* midst,' as opposed to having written 'In *its* midst.' I heard that we learn from this that the primary indwelling of the divine presence is in the individual, not in a structure, as the verse says, 'in *their* midst' … God desires to dwell, not on earth, but in each member of the Jewish people, whom he makes primary…"

[13] Yair Lorberbaum, "From the Temple to the Individual: Shifts in the Locus of Holiness in Rabbinic Literature," *Daat* 86 (2018), 395.

[14] Rachel Elior, *Temple and Chariot, Palace and Palaces in Ancient Jewish Mysticism* (Jerusalem: Magnes Press 2002), 216-218; Michael Schneider, *The Appearance of the High Priest – Theophany, Apotheosis and Binitarian Theology: From Priestly Tradition of the Second Temple Period through Ancient Jewish Mysticism* (Los Angeles: Cherub Press, 2012), 117; Haviva Pedayah, *The Name and the Temple in the Teachings of Isaac Sagi Nahor: A Comparative Study of Early Kabbalistic Texts* (Jerusalem: Magnes Press, 2011), 12.

Mount activists. The historical reality of those eras was far from religious and ethical perfection. The prophets constantly criticized the institutions of the Temple, the priests, and the sacrifices, for their part in the terrible socio-ethical state of the nation. Some of the prophets even claimed that the sacrifices directly contributed to the degraded state of society outside the temple.[15] Rabbinic literature is rife with depictions of the widespread corruption in and around the Temple toward the end of the Second Temple era. The promise that the Third Temple might somehow be dramatically different from existing social and spiritual reality, and that the whole world will as a result undergo some sort of spiritual elevation, falls apart in light of the historical realities of the first two Temple eras.

An Alternative Vision for the Temple Today

In light of the challenges presented by the Temple vision, I believe that we must find an alternative religious vision of the Temple.[16] Instead of the vision of a physical temple—built of wood and stone; its worship, of flesh and blood—I propose a new focus for our religious dreams and a new vision for what ideal religious worship should look like. This vision is based on the biblical vocations of "You shall be holy" (Leviticus 19:2) and "You shall be, for me, a kingdom of priests and a holy nation" (Exodus 19:6). Rooted deep in the very beginnings of the tradition, this vision sees holiness as the bridge between human beings and God, and therefore as possessing the potential to fill the role of the Temple as the a*xis mundi*. Having come down to us throughout the generations, this vision fits well with the religious mindset of the modern believer, as well as with the character of their religious worship, values, and beliefs.

Paraphrasing the rabbis' comments about the Temple worship and its replacements, I would say that there is an alternative form of worship—a better, more important form of worship—available today as well.[17] After the destruction of the Temple, the rabbis laid the practical and conceptual foundations for Jewish life in the absence of the Temple, and they provided a different answer to the everyday concerns evoked by the loss of the Temple and the sacrifices. From a historical perspective, they were wildly successful. Generations of Jews stayed loyal to the tradition, passing on their heritage from one generation to the next, transmitting down to us a rich, elevated religious world. Just as they did then, we, today, must provide an alternative to the Temple, one that will enable generations of Jews

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[15] Cf. I Samuel 16:22; Jeremiah 6:20; Ezekiel 8; Amos 5:22; Micah 6:7; and many more besides.

[16] This, in contrast to both the Temple Mount activists and their opponents, mentioned above, who would leave the building of the Temple in the hands of Heaven.

[17] Cf. *Avot de-Rabbi Natan, version B*, ch. 2 (Schechter Edition), 22; *The Fathers According to Rabbi Nathan*, trans. Judah Glodin (Yale University Press, 1955), 34: "Once, as Rabban Johanan ben Zakkai was coming forth from Jerusalem, Rabbi Joshua followed after him and beheld the Temple in ruins. 'Woe unto us!' Rabbi Joshua cried, 'that this, the place where the iniquities of Israel were atoned for, is laid waste!' 'My son,' Rabban Johanan said to him, 'be not grieved; we have another atonement as effective as this. And what is it? It is acts of loving-kindness, as it is said, *For I desire mercy and not sacrifice* (Hos. 6:6)'."

to continue to be loyal to their heritage in the future.

Pushing the vision of a physical temple from the space of realistic events to the messianic End of History, or into purely symbolic space, is nothing new to the tradition. The concept of "The Heavenly Temple" (*mikdash min ha-shamayim*) embodies exactly such a move. It denies any human agency in the construction of the Temple, subtly cutting "building the Temple" out of the list of commandments. Over the centuries, the vision of a physical temple took on mythic and symbolic dimensions which, to a significant degree, changed the idea of the Temple from something real to something spiritual and symbolic.[18] To suggest that we should frame our vision of the Temple as a fundamentally spiritual vision of the connection between the individual and God is to merely continue this trend.

This is not about the real tensions that often exist between Judaism and the broader world or Western values, etc. The Temple and personal holiness are two important concepts which both emerge from within the Jewish tradition and, in their depths, they contradict one another. Different theological systems have attempted to bridge between them in different ways, but they all ultimately fail—the religious depths of the desire for the Temple, on the one hand, and holiness embodied in human life, on the other, are just too different. On the holiness model, worship embodies a person's individual responsibility for themselves, their society, and God within the world (*tikkun olam*). Temple worship—with its own conceptions of holiness, to be sure—transfers that responsibility to a mythic realm focused on procedures that regulate and rectify the divine metaphysics of the cosmos—a *tikkun* of a very different sort. The rising trend of Temple Mount activism seeks to make us choose between them—and, specifically, to choose the latter—a choice with dramatic ramifications for the personality, spirituality, and ethical responsibility of the modern believer, as well as for society as a whole and for the future of the Jewish tradition.

While the idea of individual and societal holiness has deep roots in the Jewish tradition, it will naturally require some "translation" for our generation—necessitating a serious, far-ranging conversation about what holiness means and what it demands of us. The "*mitzvah*" of the moment is to try to envision holiness in the context of Jewish sovereignty and sovereign responsibility—issues we have not confronted in 2000 years. We can expect to disagree with one another in how we answer these difficult and critical questions, but it is these questions that constitute the proper Temple vision for our day—not any others—and we must study the relevant *halakhah* carefully. We cannot let the vision of a physical temple distract us from our

[18] Regarding the spiritualization of the worship of God at the end of the Second Temple Era, see Dov Schwartz, "Priesthood and Monarchy in the Hasmonean Period," in *The Congregation of Israel: Jewish Self-Rule Throughout the Generations* (Hebrew), ed. Yeshayahu Gafni (Jerusalem: Zalman Shazar Center, 2001), 73-74; regarding the spiritualization and democratization of worship after the destruction, see Stroumsa, *The End of Sacrifice*, 72-73.

responsibilities in this historical moment: building the Temple of Holiness and perfecting its worship.

Extra-Communal Philanthropy – Forbidden, Permitted, or Mandated?

Mikey Lebrett is a Postdoctoral Fellow at the Weizmann Institute of Science, having received his PhD in Cancer Sciences from the University of Manchester.

The Orthodox community, lauded for the tremendous volume and scope of its charitable giving, is sometimes criticized for its parochialism.[1] Some will have little trouble shrugging off such criticism; indeed, there is ample philosophical and ethical justification for prioritizing the needs of one's family and community.[2] Others, however, embedded in wider society and exposed to world events as they occur, are challenged. What is our philanthropic responsibility to non-Jewish people and causes, at home and further afield? What does *halakhah* have to say about directing charitable funds outside of the community? In this article, we will consider whether extra-communal philanthropy is halakhically permitted at all, and if so, whether it possesses the status of *heter* - a permitted activity, or *hiyyuv* - a mandated activity.

The *Issur* of *Lo Tehonneim*

A significant inhibitor to carefree universalism among Torah observant Jews is the prohibition of *lo tehonneim*, derived from Devarim 7:2: "Hashem will deliver them before you and you will defeat them…you shall not seal a covenant with them nor show them favor (*lo tehonneim*)." The Gemara in *Avodah Zarah* 20a teaches that the final phrase in this *pasuk* bans Jews from providing free gifts (*matnat hinam*) to non-Jews, among other prohibitions such as not giving them space to dwell in the Land of Israel or wantonly praising them.

Many authorities, including Tosafot and Beit Yosef, view the prohibition of *lo tehonneim* as applicable to all non-Jews in every era. Indeed, *Shulhan Arukh* in *Yoreh Dei'ah* 151:11 rules: "It is forbidden to give free gifts to an idol worshipper whom you are not acquainted with." Taz identifies the source of this ruling as *lo tehonneim*, and explains that if you were acquainted with the non-Jew, the prohibition would not apply, as you expect to receive goodwill in return. It would seem from here that providing charitable funds to non-Jews,

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[1] For example: "… 83 per cent of those who identify as religiously Jewish (as opposed to "somewhat religious") prioritise Jewish or Israel charities, that falls to just 22 per cent for the secular," Reported in The Jewish Chronicle, (Institute for Jewish Policy Research (JPR) (Nov 2016) and: "Jews by religion are far more likely than Jews of no religion to say they made a donation to a Jewish charity in the past year (61% vs. 11%)," "Jewish Americans in 2020," Pew Research Center (May 11, 2021).

[2] See Carol Giligan's ethics of care and Nel Noddings' relational ethics. Conversely, Peter Singer and others argue that charitable funds should always seek to achieve the most measurable good, even at the expense of the needs of one's family and community (known as 'effective altruism'). It is difficult to square the philosophy behind effective altruism and the priorities and values relating to *tzedakah* laid out in *halakhah*, although attempts have been made. See https://eaforjews.org/

particularly those who do not have a personal relationship with the giver, would be a blatant violation of the prohibition of *lo tehonneim*.

The *Heter* of *Darkhei Shalom*

The Gemara in *Gittin* 61a states:

> Our Rabbis taught: We provide for the non-Jewish poor with Israel's poor (*mefarnesim aniyei nokhrim im aniyei Yisrael)*, we visit the non-Jewish sick with Israel's sick, and we bury the non-Jewish dead with Israel's dead, due to the ways of peace (*darkhei shalom)*.

How are we to understand this teaching in light of its clear contradiction to the prohibition of *lo tehonneim?*

One school of thought seeks to limit the implications of *Gittin 61a*. Rashi specifies that while one might think that it is instructing us to bury non-Jewish corpses in the same graves as Jewish corpses, it is in fact only instructing us to bury a non-Jewish corpse if it is found amongst Jewish corpses. The word 'with' refers to finding the corpses in the same physical location; it does not refer to the need to bury the non-Jewish corpse in the same graves as Jewish corpses.

Rashba clarifies Rashi's position and affirms that according to Rashi, one would not bury a non-Jewish corpse if one found it without the accompaniment of Jewish corpses. Bah (*Yoreh Dei'ah* 151:20) extends Rashi's reading to apply to the other examples in the *gemara*; one would only support non-Jewish poor and visit non-Jewish sick if they are amongst a Jewish population.

The basis for Rashi's position is explained by Rashba. Rashi understands the concept of *darkhei shalom* to be intrinsically linked with the concept of *mi-shum eivah* (because of hate). The most notable usage of *mi-shum eivah*, which appears in a variety of halakhic contexts, is that, in certain cases, an action which would ordinarily only be performed for a fellow Jew is either permitted or mandated towards non-Jews in order to prevent the festering of antisemitic sentiments. For example, it is ordinarily forbidden to provide medical or midwifery services to non-Jews. However, if there is a concern that this will cause hatred towards Jews, it is permitted (see Rambam, *Mishneh Torah*, *Avodah Zarah* 10:2 and 9:16, as well as *Kitzur Shulhan Arukh* 189:4). Rashi's position of only aiding non-Jews if they are found amongst Jews is congruent with his equating *darkhei shalom* and *mi-shum eivah.* The only reason to aid non-Jews is to prevent a rise in antisemitism. Therefore, one only needs to bury a non-Jewish corpse or give charity to the non-Jewish poor if there is a risk of one's discriminatory behavior being pointed out and noticed by the non-Jewish population. Similarly, Ramban (*Bava Metzi'a* 78b) explicitly equates *mi-shum eivah* and *darkhei shalom* in the context of justifying the widespread custom to provide non-Jewish poor with charity on Purim.

The language of '*mutar'* used by *Shulhan Arukh* in his formulation of this *halakhah*, which

immediately follows the *halakhah* of *lo tehonneim* referenced above, lends itself to a reading consistent with Rashi's view:

> It is **permitted** to provide for non-Jewish poor… due to the ways of peace. (*Yoreh Dei'ah* 151:12)

Within this approach, the conflict between the prohibition of *lo tehonneim* and the clear statement in *Gittin* instructing extra-communal philanthropy is resolved by severely limiting the scope of the *mitzvah*. *Darkhei shalom* is exactly equivalent to *mi-shum eivah;* thus, providing support to non-Jews is permitted, not mandated, and only in situations where withholding such support would result in antisemitism.

The *Hiyyuv* of *Darkhei Shalom*

There is an alternative, more universalist, approach to defining the nature of *darkhei shalom.*[3] Rambam in *Mishneh Torah* presents the following *halakhah*:

> Even for non-Jews – our sages commanded us to visit their sick, to bury their dead with the dead of the Jews, and to give sustenance to their needy among the needy of the Jews – due to the ways of peace. As it is said (Tehilim 145:9): "Hashem is good with all and he is merciful upon all of his works," and it says (Mishlei 3:17): "Its ways are ways of pleasantness and all its paths are peace." (*Melakhim u-Milhamot* 10:12)

By appending the concept of *darkhei shalom* to *pesukim* (verses) from Tanakh, Rambam may be indicating that *darkhei shalom* is an independent value, rather than equivalent to *mi-shum eivah*. If *darkhei shalom* is simply a tool to prevent antisemitism, what relevance do the *pesukim* have? The implication is that just as Hashem is good and merciful with all His creations, so too we, empowered by the principle of *darkhei shalom*, should mirror this.

This distinction between *darkhei shalom* and *mi-shum eivah* is strengthened by the fact that Rambam does apply the concept of *mi-shum eivah* in various scenarios,[4] and yet does not do so here. Therefore, it is logical to conclude that Rambam views the two concepts as categorically distinct.

The *pasuk* from Tehilim quoted above is mentioned by Rambam elsewhere in *Mishneh*

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[3] I have been unable to identify the original formulator of this approach, which is outlined extensively in Rabbi Jacob J. Schacter's "Tikkun Olam: Defining the Jewish Obligation." I have seen it quoted in the name of Rabbi Ahron Soloveichik (referencing his *sefer Od Yisrael Yosef Beni Hai* and alluded to in a letter he authored on behalf of the Jewish Fund for Justice) and in the name of Rabbi Walter Wurzburger (referencing *Ethics of Responsibility: Pluralistic Approaches to Covenantal Ethics*). It has also been quoted in the name of Rabbi Dovid Zvi Hoffman (here and here), although I have been unsuccessful in finding a specific primary reference.

[4] See Rambam, *Hilkhot Avodah Zarah* 10:2 and 9:16.

Torah:

> Cruelty and arrogance are only found among idol worshippers, but the descendants of Avraham Avinu (i.e., *Bnei Yisrael*), to whom Hashem has granted the goodness of Torah and commanded with righteous laws and statutes, are merciful to all. Similarly, regarding the attributes of Hashem which we are commanded to emulate, it is written (Tehilim 145:9) "**His mercy is upon all of His works**." And whoever shows mercy unto others will have mercy shown to him. As it says (Devarim 13:18): "He will show you mercy, and be merciful upon you and multiply you." (*Avadim* 9:8)

Rambam links the *pasuk* he used in his explanation of *darkhei shalom* to one of the fundamental values within Judaism, emulating God. Moreover, Rambam applies the concept of emulating God specifically to actions associated with being compassionate and merciful to all his creations.[5] We see that the concept of *darkhei shalom* can be understood in an expansive fashion, serving as a mandate, rather than a post-facto allowance.

Only a couple of pages earlier, the Gemara in *Gittin* 59b had emphasised the centrality of the concept of *darkhei shalom*. The Mishnah (59a) states that the basis for the requirement to call a *kohein* to the Torah before a *levi* is *darkhei shalom.* Different Amoraim give Torah sources for the rule that the *kohein* is called first. Abaye challenges these suggestions, pointing out to Rav Yosef that if this requirement is *de-oraita* (Torah mandated), there is no reason to attribute it to the rabbinic concept of *darkhei shalom*. Rav Yosef responds that the requirement is both *de-oraita* and due to *darkhei shalom.* The Gemara then states: "... The whole Torah is due to the ways of peace, as it says: 'Its ways are ways of pleasantness and all its paths are peace.'"

While it is important to note that this *gemara* is not discussing *darkhei shalom* in the context of providing charity to non-Jews, the fact that it concludes in a similar fashion to Rambam, asserting the intrinsic and central value of *darkhei shalom* in the context of the whole Torah, remains instructive. The *pasuk* quoted in the Gemara in support of its assertion is the same as the second

[5] This understanding that Rambam's use of these *pesukim* is an indicator of a Jew's fundamental ethical responsibility is supported by Rabbi Aharon Lichtenstein: "For committed Orthodox Jews...our polestar is, rather, Rambam's invocation of the divine order as an implicit norm, in the spirit of "*ve-halakhta bi-drakhav*," imitatio Dei [imitating the ways of God], informing our actions and perceptions: For it is stated, 'God is good to all, and His mercy extends to all His works' (Psalms 145:9) and it is stated, 'Its ways are ways of pleasantness, and all its paths are peace' (Proverbs 3:17)... The underlying premise is that *matan Torah* and concomitant election of [K]nesset Israel were intended to superimpose a higher level of obligation, rooted in newly acquired identity, but not to supersede prior commitment, grounded in pre-existing, universal identity." "Jewish Philanthropy – Whither?" *Tradition* 42, no.4 (Winter 2009): 7-32.

pasuk which Rambam quoted in relation to *darkhei shalom* in the context of compassion to all of God's creations.

Rashba asserts, unlike Rashi, that by using the word '*im'* (with), the Gemara is **not** limiting the requirement of assisting non-Jews to a situation in which the non-Jewish population is interspersed amongst the Jewish population. Rather, he reads *'with'* in an inclusive sense, as equivalent to the word *"ke-sheim"* (just as). Rashba does not mention *mi-shum eivah* in his own interpretation at all. He points out that Yerushalmi in *Gittin*, unlike Bavli, does not employ the word *'im*,' simply stating: "Support the poor of the Jews **and** the poor of the non-Jews…" Furthermore, the Tosefta wholly dispenses with any mention of Jews, simply stating: "Eulogize the dead of the non-Jews and comfort their mourners due to the ways of peace."[6]

In his comments on the *halakhah* in *Shulhan Arukh* (*Yoreh Dei'ah* 151:15) regarding the permissibility of providing for non-Jews, *Ba'eir Heitev* states that this obligation applies even without the presence of a Jewish population. *Ba'eir Heitev* elicits the support of both Taz and Bah. Bah (*Yoreh Dei'ah* 151:20:1) writes that one is obligated to support non-Jewish poor, whether they are amongst a Jewish population or not. He brings support from the Tosefta, Yerushalmi, Tur, Rosh and Ran (who goes so far as claiming that Rashi is not being intentionally limiting and would agree that one should bury non-Jewish corpses if found alone). Bah concludes: "Tosafot implies that, even without Jewish poor, it is befitting to support non-Jewish poor, as this is the way of peace...and this is our practice." This would seem to be congruent with the approach of Rambam and Rashba. *Arukh Ha-Shulhan* (*Yoreh Dei'ah* 151) also states that there is an obligation to provide charitable support to non-Jewish people, whether they are amongst Jews or not.

While it is possible to interpret these sources as a technical discussion expanding the application of *mefarnesim aniyei nokhrim* more broadly without changing the fundamental principle equating it to *mi-shum eivah,* it could also be argued that they support the view that *darkhei shalom* is an intrinsic principle, in line with the *hiyyuv* approach presented here. Rabbi Isser Yehuda Unterman, previous Ashkenazi chief rabbi of Israel, wrote:

> Lately, to our great detriment, it has become customary amongst our teachers to state that there is no real obligation towards bettering the life of non-Jews… and there is no need to encourage the community to support non-Jews with *tzedakah* and kindness, for any such acts are only done for the sake of *darkhei shalom* [ways of peace] and thus have no real source in the Torah law. Therefore,

[6] It is interesting to note that the Tosefta does not include providing charitable support. See *Hatam Sofer* on *Gittin* 61a, quoted later in this article.

> we must define the true concept of *darkhei shalom*. It is not just a means to keep Judaism safe from non-Jewish hatred, but flows from the core ethical teachings of the Torah." (*Shevet Mi-Yehuda* 3:70)

It is clear that R. Unterman explicitly supports the universalist understanding of *darkhei shalom.*

Darkhei Shalom in Conflict with _Lo Tehonneim_

Within this reading of Rambam, how can the integrity of the *issur* of *lo tehonneim* be maintained while also interpreting *darkhei shalom* as a moral calling*?* How can the Rishonim mandate charitable giving even in a situation where there is no Jewish population? This seems to be a gold standard violation of *lo tehonneim!*

One approach is to severely limit the application of *lo tehonneim*. Rashba and *Sefer Ha-Hinukh* write that this prohibition only applies to bone fide idol worshippers. Taz states, drawing support from the Tosefta*,* that it is permitted to give free gifts to a non-Jewish neighbor or friend. It is not considered to be for free, because the donor expects recompense in the future. *Tur* and Rambam write that the prohibition does not apply to a *geir toshav* (a non-Jew who has accepted the seven Noahide laws).[7] Perhaps most famously, in a discussion regarding whether one is obligated to return a lost item to a non-Jew, Meiri writes:[8]

> … We are not obligated to act in a pious fashion [over and above the letter of the law] for a Godless people. However, any person belonging to a nation disciplined by religion, who worships God in any fashion – even if their religion is very different from ours – is not in the above category. Indeed, they are considered entirely like a Jew in all of these matters – in respect to lost items, financial errors, or to anything else – no distinction should be made.[9] (Meiri, *Bava Kama* 113b, s.v. "nimtza")

According to Meiri, there is no prohibition of *lo tehonneim* with regard to the majority of non-Jewish nations in existence today. Therefore, the conflict between *lo tehonneim* and *darkhei shalom* falls away.

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[7] Bah claims that there was censorship applied to this *Tur*.

[8] There have been claims (led by *Hatam Sofer*) that this *Meiri* is a forgery or was written under duress. However, there are a considerable number of authorities who either cite this *Meiri* as authoritative or state a similar principle. See Alan Brill's *Judaism and Other Religions – Models of Understanding* (Palgrave Macmillan; 2010) for an examination of the sociological shift in recent years towards a less forgiving approach to Meiri.

[9] See Professor David Berger's "Jews, Gentiles and the Modern Egalitarian Ethos: Some Tentative Thoughts," in M. D. Stern, (ed.), *Formulating Responses in an Egalitarian Age* (Rowman and Littlefield, 2005), 83-108 for an extensive study of this *Meiri* and its halakhic and hashkafic ramifications.

Is it possible to reconcile these two principles according to the authorities who apply *lo tehonneim* more extensively?

Tosafot in *Avodah Zarah* (20a, s.v. "Rabi Yehuda") asks*:* "Why is there no prohibition of *lo tehonneim* in the activity of *mefarnesim aniyei nokhrim*?" Tosafot answers that when something is being done due to *darkhei shalom,* it is not considered a *matnat hinam* (free gift). Within the particularist approach to *darkhei shalom*, this Tosafot is easily understandable. Money given for *darkhei shalom* purposes is not considered a free gift; the giver expects a reduction in antisemitism in return. Therefore, even according to the opinions that *lo tehonneim* applies extensively, provisions of this kind do not fall under the prohibition.

Is there a way to understand this Tosafot according to the universalist approach?

Penei Yosef (Rabbi Yosef Rien, Bnei Brak, 1986) explains that Tosafot is stating that *mefarnesim aniyei nokhrim* is not considered a free gift, not because one expects a reduction of anti-Semitism in return, but rather because there is no risk of the gift resulting in the issues that *lo tehonneim* is intended to prevent. The reasoning behind the prohibition of *lo tehonneim* is to inhibit too much kinship and social cohesion between Jews and their non-Jewish neighbors, which could result in a lowering of standards of behavior and absorbing non-desirable traits and activities (see Rambam, *Avodah Zarah* 10:4 and *Sefer Ha-Hinukh* 426). Providing charity to someone, *Penei Yosef* argues, does not increase kinship. In fact, it can create a social hierarchy and a feeling of embarrassment or disgrace on the part of the recipient. Therefore, *lo tehonneim* does not apply in this situation and does not come into conflict with *darkhei shalom*, even according to the Rishonim (including Tosafot) who hold that *lo tehonneim* is not limited to bone fide idol worshippers. The fact that Tosafot states that *darkhei shalom* results in no prohibition of *matnat hinam*, rather than stating that the prohibition exists but that *darkhei shalom* results in a *heter,* supports this understanding.

Three Challenges to the Universalist Reading of Rambam

Bah's Characterization of Rambam

Bah points out an inconsistency in Rambam's language in relation to these *halakhot.* Rambam states the laws of comforting non-Jewish mourners and burying non-Jewish dead without any qualification. However, in reference to the laws of providing non-Jewish poor with financial support, Rambam states that we must support them "*bi-khlal"*(included with) the poor of Israel. Bah asserts that this additional word implies that Rambam would only mandate the provision of financial support to non-Jews when they are amongst the Jewish population.

If this inference is correct, it seriously challenges the thesis that Rambam holds that *darkhei shalom* is an intrinsic principle. If it were, there should be no difference between the *halakhot* of providing support in a financial or non-financial sense. Additionally, it should not make a difference whether the population is mixed or not!

However, it is possible to suggest that Rambam is indeed able to maintain a belief in *darkhei shalom* as an intrinsic principle while also mandating a difference in *halakhah* between financial and non-financial support. After summarizing the dispute between Rashi and Rashba presented above, *Hatam Sofer* (*Gittin* 61a) writes: "This all applies to charity, for when one gives to a non-Jew, [that money] will be withheld from a Jew. Therefore, [the sages] were not concerned with *darkhei shalom* if they are not in a Jewish population. However, with regard to visiting their sick and burying their dead, where there is no resultant loss to a Jew, we do concern ourselves with *darkhei shalom*, even when the non-Jew is alone…" The principle introduced here, which may also be applied to Rambam, is that while there is an important value of *darkhei shalom* to uphold, we must be pragmatic. If there is only a limited pot of money available, fellow community members should be prioritized. Non-financial care, which does not drain finite resources, can be provided to all people, at all times, without discrimination.

Rabbi Aharon Lichtenstein, who proudly supported the universalist approach to *darkhei shalom* (see footnote 5), also expresses concerns about communal priorities, in line with *Hatam Sofer*:

> "Nevertheless, given our present situation, I see no alternative to turning inward. The combination of rising assimilation and declining power mandates increased concern for specifically Jewish needs – spiritual, physical, and emotional. Despite the best humanitarian intention, we cannot escape the pressure of priority. 'Many are thy people's needs, and their wit is limited,' intones the *piyyut*, and this aptly describes our current situation… At the same time, we should make an educational effort to contain the insidious effects of creeping insularity. The notion, altogether too prevalent in some circles (albeit, perhaps not those likely to read this paper), that the concerns or even the suffering of mere *goyim* are irrelevant to us cannot be countenanced." (Leaves of Faith 2, chapter 10).[10]

We see that concerns about the limited nature of communal funds does not ipso facto imply an intrinsically particularist approach to *darkhei shalom*.

Rabbi Asher Weiss' Alternative Reading of Rambam

Rabbi Asher Weiss, in a recorded *shiur,* also

[10] Also see Rabbi Lichtenstein's "The Duties of the Heart and Response to Suffering" in *Leaves of Faith: The World of Jewish Living* (Jersey City, NJ: KTAV Publishing House, 1999), 59.

challenges the universalist interpretation of Rambam.[11] After initially presenting the approach that differentiates *mi-shum eivah* from *darkhei shalom* in Rambam, he rejects this, asserting that even Rambam views these concepts as roughly synonymous.

R. Weiss advances two main arguments. First, he points out that the concept of *darkhei shalom* is applied in many cases, not only regarding Jewish relations with non-Jews, but also in navigating intra-communal issues, such as the order of who is called up to the Torah, priorities in burial, and who gets to keep the *eiruv* in their house. The reasoning for the principle is to promote harmony and prevent strife, largely parallel to the concept of *mi-shum eivah*. He argues that there is no reason to differentiate between *darkhei shalom* when it is applied in *halakhah* to Jewish populations vs. non-Jewish populations; both are pragmatic, with the aim of 'keeping the peace.' While R. Weiss makes technical distinctions between *mi-shum eivah* and *darkhei shalom,* either regarding the severity of the strife each are seeking to prevent, or the specific type of rabbinic legal instrument being employed (*heter vs. takanah)*, he argues that neither should be perceived as as anything more than an instrument to promote a cohesive society.

The strength of this challenge is unclear to me. After all, even if one defines the purpose of *darkhei shalom* as a method to prevent strife, this doesn't automatically relegate it to the level of pragmatism. The *pesukim* Rambam quotes talk of mercy and peace as being identifying features of God's actions and His Torah; perhaps reducing strife and increasing fraternity, whether among Jews or non-Jews, is indeed an intrinsic value desired by God.[12]

In his second argument, R. Weiss points out that Rambam mentions the concept of *darkhei shalom* in several places in *Mishneh Torah (e.g.,. Avodah Zarah, Matnat Aniyim, Tefilah)*, but only provides the key textual reinforcement in the quoted passage from *Melakhim u-Milhamot.* Furthermore, in *Melakhim u-Milhamot,* the topic of *mefarnesim aniyei nokhrim mi-penei darkhei shalom* and the accompanying *pesukim* are presented in a highly tangential fashion, following a seemingly unrelated series of laws regarding court cases involving Jewish and non-Jewish plaintiffs. If Rambam really held that this is a fundamental Torah principle, R. Weiss argues, we would expect him to present it prominently and consistently across the corpus. While he does not examine in detail any particular instance where one would expect Rambam to present *darkhei shalom* as a fundamental principle, we will examine one potential example in the following section.

[11] See Rabbi Asher Weiss, "Darchei Shalom," *Minchas Asher*.

[12] Rabbi Aharon Lichtenstein alludes to this point (and may even extend it to include *mi-shum eivah)* in his article "The Human and Social Factor in Halakha" *Tradition* 36 (2002) 89-114.

A Contradiction in Rambam?

Rambam in *Avodah Zarah* (10:5) teaches several laws relating to *mefarnesim aniyei nokhrim*, such as not disturbing non-Jewish poor if they gather the agricultural gleanings set aside for charity and extending greetings to non-Jews when encountering them in the street. He prefaces this set of laws by identifying the operative concept as *darkhei shalom*, but (as highlighted by R. Weiss) does not quote the *pesukim* as he does in *Melakhim u-Milhamot*. In the following *halakhah*, Rambam states:

> All these things are said specifically in a time when Israel is exiled amongst the idolaters or when the idolaters have overpowered Israel. But in a time when Israel is sovereign, it is forbidden to permit idolaters to settle therein. For even if one of them merely desires to sojourn or pass from place to place with merchandise, he must not pass through the Land of Israel before he obligates himself to live up to the seven Noahide commandments, even as it is said: "They shall not dwell in thy land lest they make thee sin against Me" (Shemot 23:33)—not even dwell therein temporarily. If an idolator obligated himself to observe the seven Noahide laws, he is considered a sojourning alien (*geir toshav*). A *geir toshav* can only be accepted in an era when the Jubilee year (*yoveil)* is observed…[13] (*Avodah Zarah* 10:6)

While, Rambam strongly implies, in *Melakhim u-Milhamot*, that philanthropic activities to the general non-Jewish population would appear to be an intrinsic ethical principle, in *Avodah Zarah* he severely limits the application of *mefarnesim aniyei nokhrim*. Moreover, Rambam's stipulation that this only applies when Jews are subjugated to non-Jewish rule is reminiscent of *mi-shum eivah*-style pragmatic considerations, aiming to reduce antisemitism and project a positive image of the Jewish community to its neighbors. If Rambam believes that *darkhei shalom* is an intrinsic ethical principle, why should it not apply when Jews are sovereign in the Land of Israel? Surely it should be as, if not more, applicable when we are the masters of our own destiny and can express our principles to their fullest?

Perhaps we can suggest that, while Rambam does consider *darkhei shalom* to be an ethical principle, he must also contend with competing principles. We have already presented approaches to allow the values of *darkhei shalom* and *lo tehonneim* to

[13] A *geir toshav* would not fall under the category of *mefarnesim aniyei nokhrim* and would be treated identically to Jewish citizens of Israel (see *Melakhim u-Milhamot* 10:12). Ra'avad and *Kesef Mishneh* strongly disagree with Rambam that *yoveil* is a requirement for accepting *geirei toshav.* Chief Rabbi Isaac Herzog employed these positions to argue that Muslims and Christians living in the State of Israel today do have the status of *geirei toshav*. An in depth examination of this issue is beyond the scope of this article. Readers are directed here for further discussion.

coexist. We are now introduced to a new principle: "They shall not dwell in thy land (*lo yeishevu be-artzekha*) lest they make thee sin against Me" (Shemot 23:33). We are commanded to exercise extreme selectivity over who can cohabit with us in the Land of Israel, in order to prevent negative influences leading to spiritual downfall. It is possible to conceive of a framework in which the ethical underpinnings of *darkhei shalom* continue to operate, while the parallel but unrelated concern of *lo yeishevu* prevents the technical application of *mefarnesim aniyei nochri*. Put another way, there is certainly an obligation to provide charitable support to non-Jews, but there simply isn't an opportunity to do so in a Jewish sovereign state in which it is forbidden for idol worshipers to dwell. Had Rambam lived today, in an era in which the Jewish people are sovereign in the Land and are able to extend their philanthropy outwards (both as individuals and on the state level) without compromising on citizenship criteria (*lo yeishevu*), would he encourage this form of philanthropy as an expression of *darkhei shalom*?

The Influence of Historical Context on Halakhic Interpretation

After our examination of the *sugya*, it seems that sufficient halakhic justification can be found to read the key sources in either a particularist or universalist fashion. Nonetheless, it would be dishonest to present both approaches as equally favored by the majority of historical and contemporary *poskim*. Certainly the universalist thesis appears to be the *hiddush* in the sweep of Jewish history. This has the potential to cause a level of discomfort; is this approach simply a child born of the liberal-universalist milieu that characterised the latter part of the 20th century and the start of the 21st?

Rabbi Jacob J. Schacter, in his extensive article "Tikkun Olam: Defining the Jewish Obligation," addresses the notable absence of universalist principles in the majority of the *halakhic* canon:

> It seems clear that the silence in the Talmud and subsequent Rabbinic literature does not reflect a principled objection to the values here being discussed but is rather the product of historically grounded mitigating circumstances… The fact is that the big world out there has not been good to the Jews… Can there be any wonder then, that the genuine sense of obligation to the welfare of society was not high on the list of the national, communal, or personal priorities of previous Jewish generations?

R. Schacter continues by quoting the Israeli poet Uri Zvi Greenberg, in an excerpt that has taken on additional weight since the events of October 7th, 2023, and subsequent resurgence of worldwide antisemitism: "Between us and the nations of the world lie the slaughtered of our family…" R. Schacter's overall argument is that it is of no surprise that universalist principles did not receive much airtime in the tragic sweep of Jewish history.

However, this does not reflect a true absence of such values in the sources. When societal pressures ease, Jews are able to look beyond immediate concerns of survival, allowing them to reconnect with the universalist principles that always lay dormant, waiting to be activated.

Professor David Berger, in his article "Jews, Gentiles, and the Modern Egalitarian Ethos: Some Tentative Thoughts," also addresses this absence in our classical sources. He asks: "If we choose to follow a minority position, or even carve out a new variant of that position, because we feel a powerful moral imperative to do so, are we not running the risk of suggesting that the majority of great Jewish authorities through the ages suffered from a severe moral failing?"

After initially presenting a theme similar to R. Schacter's, emphasising the significant oppression and discrimination faced by our ancestors at non-Jewish hands, he crystallizes the implications for the modern Jew:

> There is a fundamental point that *halakhah* is ultimately rooted in the word of God. With varying degrees of success, we all set aside moral qualms with respect to absolutely unambiguous divine directives that appear problematic to us. In the context of authentic Judaism, submission to the divine will is paramount, and the suppression of some humane instincts in the face of clear-cut *halakhah* may be necessary. To ascribe moral failings to the Rabbinic authorities of an oppressed people for failure to reinterpret the straightforward meaning of sacred texts discriminating against their persecutors is inappropriate, unfair, insensitive, and incorrect. But this does not mean that we must suppress our own moral instincts when we honestly see them as consistent with, even generated by, the values and teachings of the Torah writ large. We have *'al mi lismoch'* [on whom to rely], and our religiously informed ethical instincts have a role to play as we examine text and tradition to reach a conception of our relationship to non-Jews that will honor the universal mission assigned to the children of Abraham.[14]

[14] Rabbi Joseph B. Soloveitchik expresses similar sentiments in *Abraham's Journey*, (Ktav, 2008), 203: "The universal problems faced by humanity are also faced by the Jew. Famine, disease, war, oppression, materialism, atheism, permissiveness, pollution of the environment – all of these are problems which history has imposed not only on the general community but also on the covenantal community. We have no right to tell mankind that these problems are exclusively theirs. God has charged man with the task of fighting evil, of subduing the destructive forces of nature and transforming them into constructive forces**.** The Jew is a member of humanity**.** God's command to 'be fruitful and multiply; fill the land and conquer it, dominate the fish of the sea, the birds of the sky, and every beast that walks the

Not all will be comfortable with the historical contextualisation of the *halakhic* statements of Rishonim and Aharonim. Nevertheless, this approach of Rabbis Schacter and Berger provides an elegant compromise for today's Jew who feels reverence for the *halakhic* system as well as an internal sense that God calls on us to spread goodness and compassion well beyond our local environment. Permission is given to integrate our moral sensibilities into our *halakhic* practice without unfavorably judging our predecessors (or even co-religionists) in doing so.[15]

A Question of Application

Now that we have presented two approaches to *darkhei shalom*, we are left with the challenge of how to apply these principles in our philanthropic activities. Those who follow Rashi and *Shulhan Arukh*, and interpret *darkhei shalom* pragmatically, should presumably donate to non-Jewish individuals and causes if they are personally approached, especially if the petitioner is someone they know personally and/or they live in a community consisting of both Jews and non-Jews. I believe that this remains the mainstream approach in much of the Orthodox world. In a *Halacha Headlines* podcast episode on the topic of Jewish relations with non-Jews, the terms *darkhei shalom* and *mi-shum eivah* were used wholly interchangeably throughout. Similarly, Rabbi Avrohom Chaim Feuer, writing in the *The Tzedakah Treasury* (p. 406ff; ArtScroll Mesorah Publications), quotes Rabbi Pesach Feinhandler as saying that while the obligation of charity money to non-Jews can be deducted from *ma'aseir kesafim* (monetary tithing), it is only if the non-Jew proactively asks for aid.[16] Rabbi Eliezer Melamed similarly rules that giving charity to non-Jews is only done with the intention of achieving peace or *kiddush Hashem* (sanctification of God's name),

land' (Gen. 1:28) is addressed equally to non-Jew and Jew. As human beings, Jews are duty bound to contribute to the general welfare regardless of the treatment accorded them by society."

[15] Perhaps this outlook can also help individuals who find themselves internally oscillating between universalist and particularist sympathies. For example, a generally 'universalist' leaning person may have experienced a contraction of focus after encountering the pain of October 7th and resurgence in societal antisemitism since then; they may have consciously or unconsciously begun prioritizing Jewish and Israeli causes at the expense of extra-communal causes. Conversely, someone brought up in a 'particularist' educational environment may find themselves without an adequate religious framework to accommodate very real feelings of empathy and compassion when they encounter tragedy, poverty, and crisis amongst non-Jewish people. Recognizing that both approaches exist within our tradition, individuals can draw on either framework based on the particular circumstances they find themselves in, offering a way to navigate shifting priorities without sacrificing integrity.

[16] I have not seen discussion of the exact amount of money to give in such cases. Presumably within the particularist approach, the advice would be to give the minimum amount considered respectable (and therefore achieve a reduction in *eivah*), but no more than this. I am also intrigued as to how Jewish communal charities respond to calls for assistance from non-Jews; famously, *Hatzalah* will respond to calls for medical assistance from non-Jews (even on Shabbat), ostensibly for reasons of *mi-shum eivah*. In correspondence, one very large poverty alleviation charity in Israel confirmed that they do support non-Jewish communities alongside Jewish ones (although this is not widely publicized). I do not know if this is accepted protocol among other Jewish social welfare and poverty alleviation charities in Israel and abroad.

and should not be done in absence of these outcomes. He adds the caveat that if the non-Jew is a righteous gentile he should be provided for, but that Jewish poor are prioritized.

Outside of Israel, one could suggest that even within the particularist approach, there may be value in more widespread, proactive philanthropy, if it creates a general awareness in society that Jews are productive and constructive members of society. Within Israel, more homogenous communities may reduce organic opportunities for individuals to action with regard to *mefarnesim aniyei nokhrim*[17]; subscribers to the particularist approach will not lament this reality, although we could perhaps wonder if there would again be a pragmatic advantage for Jews, or indeed the Jewish state as a whole, to be known for philanthropic activities in worldwide public and political opinion.

Explicit *halakhic* guidance regarding how to conduct philanthropic activity for those who subscribe to the more universalist approach is extremely limited. Presumably, followers of this approach would respond to appeals from non-Jewish individuals and causes generously, with a more positive *kavanah* (intentionality) to those in the particularist camp. Perhaps non-Jewish causes would be proactively integrated into charitable portfolios and legacies (without waiting for an appeal), and there would be little reason to limit donations only to causes in the local area or charities operating in a community of mixed populations. Questions regarding exact allocation of resources remain: What proportion of individual and communal funds should be directed outwards? Do the concerns of *Hatam Sofer* and Rabbi Aharon Lichtenstein relating to the limited supply of Jewish charitable funds apply today, in a period of unprecedented communal prosperity? How do we balance supporting the 'growth' needs of our own community (e.g., supporting private educational institutions, donating new *Sifrei Torah*, facilitating high-end medical care for community members etc.) with the 'deficiency' needs of other communities (e.g., providing food, water, shelter, and basic medical care), particularly considering the differing impacts a single dollar can have when applied in each case? Apart from financial support, are there opportunities and initiatives available for people to action the other extra-communal *darkhei shalom* activities listed in the sources, e.g., visiting the sick, burying the dead, and comforting mourners? On a national level, perhaps the State of Israel's proclivity to dispatch international humanitarian missions after natural disasters fulfills these requirements, but how many individuals will find opportunities to perform these *mitzvot* in their personal lives?

[17] Rabbi Nachum Rabinovich ruled that at least part of one's *bitu'ah le'umi (*national insurance) payments, which are used by the State to maintain the social welfare system and support the poor and sick, can be defined as *tzedakah* and factored into *ma'aseir kesafim* calculations. Seeing as *bitua'h le'umi* benefits all citizens of Israel irrespective of religion, perhaps this could be viewed as a fulfilment of *mefarnesim aniyei nokhrim..* Or, would this be considered providing for *geirei toshav* (which is obligatory anyway, see footnote 13), or, conversely, forbidden due to *lo yeishevu*?

These and many other practical questions remain unanswered, leaving Jews who feel an affinity for the universalist approach with little practical *halakhic* guidance on the appropriate way to act in their philanthropic activities. I believe there to be a significant 'gap in the market' for *rabbanim* and *poskim* who identify (or lead communities that identify) with the approach of Rabbis Soloveitchik, Unterman, and Lichtenstein, to begin a process of fleshing out these issues beyond the philosophical underpinnings, providing their congregants and followers with practical advice on how to most optimally manage their funds and time to actualize their ideal of *darkhei shalom*.

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The Quest for an Objective Halakhic Standard by which to Judge Artistic Expression: A Case Study from the Eighteenth-Century Synagogue Menorah

Yosie Levine is the rabbi of The Jewish Center in New York City

In the second quarter of the eighteenth century, well-meaning members of a Jerusalem synagogue – standing in the shadow of the Old City walls – decided to embark on a building project. To adorn and illuminate their house of worship, they fashioned a seven-branched candelabra in the mold of the Menorah that stood on the south wall of the ancient Temple. The rabbinic establishment, however, was none-too-pleased about what it considered a violation of a halakhic injunction.

R. Hayyim Yosef David Azulai (1724–1806), better known as Hida, recalled the story from his boyhood: "I remember in the days of my youth that in the synagogue in Jerusalem they fashioned a seven-branched metal Menorah and our rabbi, R. Eliezer [ben Jacob] Nahum (1662-1745),[1] along with the other rabbis, forbid them to keep it and ordered them to adjust it immediately; they added a branch [to the Menorah] and it is proper to rule this way."[2]

Aesthetic considerations aside, the rabbis were sensitive to a ruling of R. Joseph Colon (1420-1480), also known as Maharik, that had been duly codified in the *Shulhan Arukh*. While the artists may have been operating ignorant of their creation's halakhic implications, they were quick to respond to rabbinic censure. They refashioned their seven-branched candelabra into an eight-branched model. For the rabbis of Jerusalem, doing violence to the aesthetic quality of the Menorah was a small price to pay for doing right by their tradition.

A ruling in the Babylonian Talmud formed the backdrop to Maharik's ruling. "A person may not construct a house in the image of the [Temple] sanctuary; a pavilion in the form of the [Temple] entrance hall; a courtyard in the image of the [Temple] courtyard; a table in the form of the

[1] Sephardic Chief Rabbi of Israel c. 1730–1745. His *Shut Mishnat Rabbi Eliezer* has apparently not survived.

[2] Hayyim Yosef David Azulai, *Birkei Yosef* (Livorno, 1777) YD 141:8.

[Temple] table; or a candelabra in the form of the [Temple] Menorah. But one may fashion [a Menorah of] five, six or eight branches. But not of seven branches, even out of metals other [than gold]."[3]

At stake was a prohibition that stems from the Biblical injunction: *With me therefore you shall not make any gods of silver, nor shall you make for yourselves any gods of gold*.[4] One who deigned to create a seven-branched Menorah would run afoul of a weighty Biblical proscription.

To the extent that there were any doubts about the scope of this prohibition in the late medieval period, Maharik had put them to rest. Basing his decision on the rationale of Tosafot, he ruled that one was enjoined from fashioning any candelabra that could plausibly be confused with a Menorah fit for Temple use.

"As Tosafot explain… 'Even though the Temple courtyard had only four walls and a[n ordinary] courtyard has three, since the Temple's courtyard had a wide and expansive opening, it had the appearance of having only three walls.'[5] It is clear that even though the courtyard had four walls, since it appeared to have only three, one is prohibited to make a courtyard of three walls [in the form of the Temple courtyard]. What emerges is that the matter depends on [the] visual perspective [of the viewer], even if he does not fashion it precisely in the manner of the Temple."

Preempting those who would cite Rashi's caveat that any slight change obviates the prohibition, Maharik drew an important distinction.[6] "A house is different, for if one does not make it precisely in the form of the Temple, it will not be recognizable as such [i.e., it will not be mistaken for the Temple sanctuary], but one cannot say the same about the Menorah."[7]

For R. Colon, making a slight alteration to the design of the Menorah was insufficient. Provided the Menorah would not be disqualified from Temple use, a viewer might mistake it for the actual Menorah, rendering its construction prohibited. Effectively, any metal candelabra with seven branches would fall within the ambit of the Biblical injunction against Menorah replication.

When R. Joseph Karo published his authoritative code of law, Maharik's conservative position found pride of place. "One may not fashion a Menorah in the form of the Temple Menorah. But one may

[3] *Avodah Zarah* 43a. Cf. *Rosh Hashana* 24a and *Menahot* 28b. The Temple Menorah was made of gold (Exodus 25:31). Nonetheless, post facto, a Menorah made from another metal would not be disqualified from use in the Temple. See *Menahot* 28a.

[4] Exodus 20:20. See *Shulhan Arukh* YD 141:8 who locates this prohibition within the category of idolatrous practices. Rambam maintains a different view and situates the injunction under the banner of *And fear my sanctuaries* (Lev. 19:30), the general obligation to treat the Temple respectfully. See MT *Beit ha-Behira* 7:1-10. See also *Sefer ha-Hinukh* 254.

[5] *Menahot* 28b s.v. *Akhsadra*.

[6] *Avodah Zarah* 43a s.v. *bayit tavnit*. "But if one makes a slight alteration [to the house], it is permissible."

[7] Joseph Colon, *Shut Maharik* (Venice, 1619), no. 75.

fashion [a Menorah of] five, six or eight branches. But not [a menorah] of seven branches, even out of other metals, even without the cups, the knobs and the flowers, even if it is not 18 *tefahim* high."[8] R. Karo could not have been more explicit. One may not produce a three-dimensional replica of any Menorah that might plausibly be used in the Temple. A seven-branched model – even if it were smaller than the original, fashioned from a metal other than gold, and featured no decorative cups, knobs or flowers – would not be permitted.[9]

The degree to which these restrictions were followed during the medieval period is difficult to know. What is known is that the matter was adjudicated by Maharik in the fifteenth century and codified by R. Karo in the sixteenth century. Commentators in the following generations opined on the conceptual ruling of the *Shulhan Arukh*, but it was not until the eighteenth century that a body of case law began to emerge.[10]

The story R. Azulai remembered from his Jerusalem youth was no outlier. From the Levant to Ashkenaz, a rabbinic conversation had opened on the permissibility of fashioning a Menorah in the mold of the seven-branched Temple candelabra. What precipitated the uptick in the prevalence of seven-branched candelabras in the eighteenth century remains something of a mystery; what is clear, however, is that a number of prominent halakhic authorities took up the matter in their published works.[11]

A generation before Hida, R. Ḥayyim Moses Amarillo (1695-1748) reported a strikingly similar incident from his youth. As R. Amarillo recorded the case, an issue arose about a seven-branched Menorah in the town of Serrai in present-day Greece. Rabbi Hayyim Nissim Motziri (d.1802), citing the relevant Talmudic sources,[12] objected on the grounds that replicating the Temple Menorah constituted a grave violation. The rabbinic authorities follow the position of Maimonides: A seven-branched Menorah is prohibited under all circumstances.[13] R. Amarillo had his reservations. In light of the fact that there are so many differences between the details of the Temple

[8] See *Shulhan Arukh* YD 141:8. Cf. R. Mordechai Jaffe, *Levush Malkhut* (Lublin, 1590) YD:141 who concurs with the basic principle. A seven-branched Menorah would be permissible were it fashioned from wood as opposed to metal.

[9] Though related, this question is separate and distinct from the production of two dimensional images. For a detailed bibliography of this issue, see Ephraim Shoham-Steiner, "*Arayot U-Nehashim: Itturei Beit ha-Kenneset shel Kolon b'yemei ha-Beinayim v'hitnagdut la-hem*," *Zion* 90:2 (2015), 175-205. Cf. Daniel Sperber, *Minhagei Yisrael* (Jerusalem, 1995) 6:173-191. Gentiles in the early modern period frequently confused the Temple Menorah and the Hannukah Menorah in their two-dimensional representations.

[10] There may yet be obscure references in the responsa literature in the intervening centuries, but – to the extent there are – they did not find their way into the discussions of later *poskim*.

[11] From the mid-eighteenth century on, halakhic literature on this topic proliferated. See Tsevi Hirsch Shapiro, *Darkhei Teshuva* (Munkacs, 1903) YD 141:56ff for a bibliographical survey.

[12] Namely, *Avodah Zarah* 43a and *Rosh Hashanah* 24a.

[13] Rambam MT *Beit ha-Behira* 7:10.

Menorah recorded in the Torah and "these [contemporary Menorahs]… it appears that there is no prohibition against retaining [the Menorah]. But since it is possible to remove or add a branch and render it a six- or eight-branched Menorah, it would be advisable to do so."[14]

His own position on the matter was less severe than R. Azulai's. But in deference to his contemporaries who found the Menorah objectionable – and recognizing that a remedy was readily available – R. Amarillo advised against preserving the replica in its intended form.

Rabbi Alexander Sender Schorr (d. 1737), though not writing about his youth, became aware of yet another Menorah controversy. Probably while living in Zolkiew, he wrote, "News from nearby arrived that they are making replicas of the Temple Menorah [attempting to remain within the bounds of halakha] by altering the stance of the branches. That is to say, they make seven branches, six of which are curved or slanted or squared [ie, at right angles], opposite one another with one [branch] in the center.[15] And in my humble opinion, one should prevent them [from doing so]."[16] R. Schorr went on to write that, post facto, there is no indication that the position of the branches would disqualify the Menorah. As *Shulhan Arukh* writes, constructing any seven-branched Menorah fit for Temple use would constitute a violation of a Torah prohibition. As such, R. Schorr concluded that there was no room for leniency. Among those of his contemporaries, R. Schorr's opinion would become the most conservative and the most extreme: Any seven-branched Menorah, irrespective of its shape or form, would be prohibited.

While eighteenth-century rabbis who went on record about the issue either frowned upon the iconography or forbid it outright, one nineteenth century posek went so far as to speculate that the prohibition against Menorah replication was responsible for Hannukah's duration. For generations, scholars have been proffering answers to a question popularized by R. Joseph Karo in his *Beit Yosef*: If a one-day supply of oil burned for eight days, was not the duration of the miracle seven days? Why, then, would the rabbis establish a holiday that was eight days long?[17] R. Joseph Saul Nathanson's answer to this question was rooted in the prohibition against Menorah replication. "In my humble opinion," he wrote, "that is why [the rabbis] decreed eight candles for Hannukah and not seven, for the first night was not a miracle. For if [it would have been seven candles], they would have [had to] make a

[14] Ḥayyim Moses Amarillo, *Shut Dvar Moshe* II (Salonika, 1742), no. 122.

[15] It is not clear from R. Schorr's description just how the individuals in question conceived of the Temple Menorah they were working so hard not to duplicate. Perhaps he is describing a model with tiered branches such as the one depicted in *Sefer ha-Minhagim* (1708). See Sperber VI, 417.

[16] Alexander Sender Schorr, *Behor Schor*, (Zolkiew, 1733) *Rosh Hashana* 24a.

[17] See *Beit Yosef* OH 670.

Menorah of seven candles and that is prohibited. Perforce, they decreed eight candles."[18] Were Hanukkah, in fact, seven days, R. Nathanson argued, the holiday may have spurred the production of seven-branched candelabras – and, at the same time – unleashed the prospect that celebrants of the rabbinically-ordained holiday would be in violation of a Torah prohibition.

Rabbinic opposition notwithstanding, it seems many seven-branched Menorahs found their way into public spaces. Synagogues in Nuremberg,[19] Worms, [20] Fürth [21] and Prague, [22] for instance, prominently featured such Menorahs during the eighteenth century. Another appeared in the responsa of a Polish jurist.[23] And one can infer from R. Amarillo's mention of "these Menorahs" that the incidence of a seven-branched candelabra was not singular; several, if not many, of these Menorahs were known to him. Was there a conceptual leniency by which to justify a practice which the preponderance of contemporary authorities had found objectionable?

R. Tsevi Hirsch Ashkenazi (1658-1718), better known as Hakham Tsevi, took a decidedly more nuanced view of the matter. The independent-minded chief rabbi of Amsterdam had a penchant for bucking convention. [24] His responsum, published in 1712, is undated. But the bulk of his responsa can be traced to the period from 1690-1710, again placing the issue squarely in the time frame here under consideration.

"On the matter of the seven-branched Menorah with eight lamps upon it, which I have ruled is permissible, I do not know why the questioner has reservations. For the only prohibition [is to create] a precise replica of the Temple Menorah which had seven branches and seven lamps. The matter

[18] Joseph Saul Nathanson, *Shoel U-Meishiv* III (Lemberg, 1880), no. 71.

[19] See Paul Christian Kirchner, *Jüdisches Ceremoniel* (Nuremberg, 1724), plate 9.

[20] See, for instance, Richard Krautheimer, *Mittelalterliche Synagogen* (Frankfurt, 1927), 156.

[21] Krautheimer, *Mittelalterliche Synagogen*, 245.

[22] Krautheimer, *Mittelalterliche Synagogen*, 92 and 119. See also Arno Parik, *The Prague Synagogues* (1986). Interestingly, while the High Synagogue and Klausen Synagogue were adorned with seven-branched Menorahs, the Menorahs in the Meisel, Old-New and Zigeuner Synagogues were formed of nine branches.

[23] See *Shut R. Hayyim Cohen* (Lemberg, 1866), YD no. 25. R. Hayyim Kohen Rappaport (1699-1771), who served for a time as *av beit din* in Lemberg, likewise took up the case of the seven-branched menorah. "I heard about a ruling of a particular rabbi [who ruled] that it is prohibited to use a hanging, seven-branched candelabra." R. Rappaport considered the case a non-starter inasmuch as the absence of a base rendered a menorah disqualified from Temple use.

[24] For biographical information, see Yosie Levine, *Hakham Tsevi Ashkenazi and the Battlegrounds of the Early Modern Rabbinate* (London: Littman Library, 2024.)

is clear as day that anything other than this is permissible."[25]

In the context of fashioning a courtyard in the mold of the Temple courtyard, Rashi had written, "Provided he alters it slightly, it is permissible."[26] Hakam Tsevi was adamant that this same logic applies to all of the cases mentioned in the Talmud.

But Hakham Tsevi did more than simply quibble with Maharik's conclusion; he rejected the premise of R. Colon's argument. For Maharik, the halakhic discussion hinged on the question of perception. A seven-branched lampstand is no commonplace appurtenance. No one would mistake an ordinary four-walled structure for the courtyard of the Temple. But the image of the Menorah is sui generis; even were its form or material slightly altered, one could mistake it for an actual Temple candelabra. It is in response to this argument that Hakham Tsevi offered an alternative view.

He argued that the halakhic system cannot abide principles that are given to such a high degree of subjectivity. By Maharik's logic, "What would be a[n adequate] measure of permissibility? Who can say to what extent a person's visual perception will be mistaken?"[27] Who is to say what "resembles" the Temple Menorah?

Returning to Rashi's formulation, Hakham Tsevi much preferred an objective yardstick by which to measure the propriety of a model Menorah. Provided any minimal alteration has been made to the structure of the lamp, it is no longer subject to the prohibition at issue.

By Hakham Tsevi's logic, virtually any alteration to the design of the lampstand would render it permissible. Whether or not they were aware of Hakham Tsevi's ruling, a host of eighteenth-century synagogues could justify their Menorahs on its strength.

But Hakham Tsevi's argument did something more; it shifted the onus of judgment from the viewer to the creator. Other *poskim* considered it axiomatic that the halakhic concern animating these discussions was one of mistaken identity. Ever sensitive to the perspective of the onlooker, the rabbis endeavored to steer clear of any possible confusion. They wanted to be sure that no one would mistake a contemporary candelabra for a Temple-ready Menorah. To create or own a

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[25] R. Tsevi Ashkenazi, *Shut Hakham Tsevi* (Amsterdam, 1712), no. 60. Cf. R. Menahem Meiri, *Beit ha-Behira*, Rosh Hashana 24b who was of the same mind. As long as one makes a slight alteration to the Menorah, it is permissible. Meiri similarly permits a wooden Menorah even if it contains seven branches for it is considered a "different type." As *Beit ha-Behira* was printed for the first time in 1795, his position would likely have been unknown to Hakham Tsevi. See Menachem Elon, *Jewish Law: History, Sources, Principles*, trans. Bernard Auerbach and Melvin J. Sykes (Jerusalem, 1994), IV:1126, n94. I am not aware of any instance in which Hakham Tsevi cites Meiri in his responsa.

[26] *Avodah Zarah* 43a s.v. *bayit tavnit*.

[27] *Shut Hakham Tsevi*, no. 60.

structure or icon that, to the untrained eye, so closely approximated the Temple prototype that it could be confused with the original would constitute a violation of *With me therefore you shall not make any gods of silver* (Ex. 20:20).[28] On this interpretation, the artist's prohibition is a function of his audience.

But Hakham Tsevi rejected this line of reasoning. The halakhah, he insisted, cannot be given to such subjective measures. Whether or not a craftsman is in violation of the halakhah is not determined by the audience, but by the craftsman. It is the creation of an exact Menorah replica that represents an affront to the Almighty and his Temple. Anything short of duplication is thus permissible. Beauty may be in the eye of the beholder. But fealty to the halakhic system is in the hands of the artist.

[28] According to Ran, even maintaining an already-constructed seven-branch Menorah would be prohibited. See *Beit Yosef* YD 141 s.v. *ve-hashta.*