

Yom Tov Sheni Shel Goluyot

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History

The original method of determining the exact date of *Rosh Hodesh* was a simple one. The Bet Din evaluated the testimony of witnesses who claimed to have seen the new moon. When convinced of its validity, the Bet Din proclaimed the new month. This information was disseminated by a relay of torch-lighting upon the mountain tops, until the whole of the Diaspora was informed.

ומבית בילטין לא זו משם אלא מוליך ומביא ומעלה ומוריד עד שהיה רואה כל הגולה לפניו כמדורת אש (ראש השנה ב:ד).

The words *kol hagolah* must refer only to Babylonia. Such signals could not be relayed to Egypt, Asia Minor or Greece, whose Jews, being left in doubt, had to observe two days as *Rosh Hodesh* (*Jewish Encyclopedia* 3:499).

The Mishnah records two attempts to interfere with this orderly and efficient procedure:

משקלקלו המינין התקינו שלא יהיו מקבלין אלא מין המכירין (ראש השנה ב:א).

The Sadducees, who interpreted the phrase *ממחרת השבת* literally, wanted to observe *Shavuot* on Sundays. Therefore, they hired false witnesses so to testify as to have the festival coincide with their wishes. This problem was solved easily by recognizing as witnesses only those whose objectivity was considered to be trustworthy.

The second attempt at interference was more successful.

משקלקלו הכותים התקינו שיהיו שלוחין יוצאין (ראש השנה ב:א).

There was no way to cope with the Samaritan spitefulness other than changing the procedure of informing the Diaspora. The Yerushalmi attributes the institution of sending messengers to Rabbi Judah the Prince. However, messengers could not reach the entire Diaspora in time. This difficulty resulted in a basic change in the observance of all the festivals. *Yom Tov Sheni*

makes its appearance. At first the observance of one or two days inside or outside Palestine was determined by the places reached by the messengers (*Beitzah* 4b): היבא דמטו שלוחין עבדינן: חד יומא. In the course of time, it became customary to observe only one day of the festivals in Palestine and two days in the Diaspora.

It must be noted, however, that the problem of determining the exact dates of the holidays has implications far beyond the relevant halachic considerations. The basic question is the maintenance of a central authority in the expanding world Jewish community. As Jews spread to Babylonia, to Egypt, Greece and elsewhere in Asia Minor, the primacy of Palestine was assured, among other ways, through its exclusive exercise of the privilege to determine the calendar. During the Hadrianic persecutions, when difficulties were interposed in the proper exercise of this function in Palestine, Rabbi Akiba went to Nahardea in Babylonia to intercalate the year (*Yebamot* 122a). This proclamation, outside of Palestine, was a dangerous precedent and it soon was invoked by Rabbi Hananiah (approximately 140 CE), the nephew of Rabbi Joshua, who attempted to fix the calendar for Babylonia. Only vigorous action by Rabbi Jose ben Kippar and the grandson of Rabbi Zechariah ben Kebutal, sent to Babylonia for that express purpose by the Palestinian leadership, restored the central authority of Palestine. (*Yer. Niddah* 40a; *Berakhot* 63a)

The Palestinian authorities zealously guarded their prerogatives, which consisted of three distinct elements: *Kiddush HaHodesh*, *Ibbur Hashanah* and determining whether the months of Heshvan and Kislev should be *malei* or *haser*. Though originally *Kiddush HaHodesh* was determined by eye witnesses, there can be no doubt that in the course of time scientific computations became available to the Talmudic authorities to verify and correct the results of empirical observations (Baron: *Social and Religious History of the Jews*, 8:369). The account of the famous controversy between Rabban Gamliel and Rabbi Joshua with reference to the date of Yom Kippur, when read in conjunction with the adjacent pages in the Talmud, suggests very forcibly that the whole controversy hinged upon the use which Rabban Gamliel made of such supplementary sources, the introduction of which Rabbi Joshua probably considered to be dangerous. Such mathematical calculations in the hands of self-assertive scholars in Babylonia constituted a real threat to the authority of the Pal-

estine leadership. It may have been impossible not to yield to mathematical calculations concerning the new moon, but the *sod ha-ibbur* was not permitted to yield to mere calculations. When Mar Shmuel (165–250) said in Babylonia יכלנה לתיקוני (ראש השנה כ:) there can be no doubt that he was competent to do so. But when he sent, to Rabbi Johanan in Palestine, a calendar indicating the correct *ibbur hashanah* for the next sixty years, Rabbi Johanan had no choice but to dismiss it as a mere playing with numbers (*Hullin* 95b). They could not admit the validity of such calculations in determining the calendar because it would have undermined the whole basis for the continuation of the central authority of the Palestinian scholars.

The subsequent history of the calendar and the establishment of *Yom Tov Sheni Shel Goluyot* cannot be understood except in the light of these two conflicting tendencies, the impatience on the part of the ever increasing Babylonian academies for their independence, and the desperate zeal with which the Palestinian authorities refused to divulge or even to discuss publicly the *sod ha-ibbur*. Only the combination of an intolerant Christianity and a suspicious Roman Empire finally forced the hand of the Patriarch Hillel II. The church viewed with disfavor the public announcement of *Rosh Hodesh* because this made it easier for Christian sectarians to set Easter in accordance with the Jewish Passover. At the same time the Romans suspected the Palestinian messengers of espionage on behalf of the Sasanians when they departed for Persia to announce *Rosh Hodesh* there. Baron insists that "the specific circumstances which led to the proclamation of the calendar by Hillel II are shrouded in darkness, its very date (359 or 344/5) being far from certain" (*ibid.* 8:369). In any case Rabbi Jose, wanting to retain some semblance of authority in Palestine, wrote to the Jewish communities in Babylonia and in Alexandria that famous letter which is the basis of the continued observance of the second day and whose purpose it was *not* to grant equality to those communities in these matters.

ר' יוסי מישלח כתיב להון אע"פ שכתבו [שכתבנו לפי ליברמן] לכם סדרי מועדות אל תשנו מנהג אבותיכם נוחי נפש. (ירושלמי ערובין ג:ט).

This is the version in the Yerushalmi. The appeal is to *min-hag avoteinu*, and nothing more. In the eyes of the Palestinian chronicler, the message from authoritative Palestine was an im-

perative injunction to which the Babylonians yielded obediently. In the Babylonian Talmud the text reads

דשלחו משם הזהרו במנהג אבותיכם, זמנין דגורי המלכות גזרה ואחי לאקלקולי (ביצה ד:).

The first three words of the message here are merely an exhortation. Since this was not sufficient in the estimate of the Babylonian narrator, a supplementary reason was added. (These last six words probably were not in the original message sent by Rabbi Jose. They are not in Hebrew, while the first three are. The Aramaic is Babylonian, not Palestinian. The Munich MS seems to read וזמנין as if to say "and (another reason)."

See *Dikdukei Sofrim ad loc.*) The meaning of these few words is subject to various interpretations. Zeitlin (JQR 1953–54, "The Second Day of the Holidays") suggests that the text is corrupt and that "It seems that the reason the religious leaders of Palestine wanted the Jews of the Diaspora to celebrate two days was that they hoped the decrees of the Roman government would be relaxed. Then the Sanhedrin would be re-established and would regulate the calendar as previously, thereby making the Jews of the Diaspora dependent again upon the religious leaders of Palestine." Baron also maintains (*ibid.* 8:186) that this sharing of the secrets of intercalation was only a temporary expedient, that they looked forward in the not too distant future to the coming of the Messiah, when they confidently expected that the regulation of the calendar again would be based upon actual observation. Either way, the purpose of Rabbi Jose's letter was to continue the old policy of retaining the primacy of the Palestinian academies. Despite its striving for independence, the Babylonian community was not averse to according this privilege to the homeland. "Palestine retained the ritual of announcing the new month . . . and some special significance with respect to *Heshvan* and *Kislev* which still could be made to count either 29 or 30 days" (Baron, *ibid.* 1:192).

It should be added that the controversy between Saadya Gaon and Ben Meir about the calendar for the year 921–2 now emerges in a new light. Ben Meir was not attempting to renew a long antiquated prerogative. Jacob Mann (*The Jews in Egypt*) has demonstrated that, as late as 835, the Exilarch of Babylonia took it for granted that the Palestinian Academy had the right to fix the calendar.

All of this is necessary for the purpose of placing the be-

ginnings of *Yom Tov Sheni* in a proper historical setting. It was not a simple halakhic question decided upon its pristine merits. The Palestinian authorities, for their own reasons, imposed the continued observance of the second day upon the communities outside of Palestine. The Yerushalmi (*Erubin* 3:9) drives the point deeper. The second day, it insists, is a punishment of the Babylonians, and there is no divine reward to be derived from its observance.

מי גרם לי להיות משמרת שני ימים בסוריא על שלא שמרתי יום אחד בארץ. סבורה הייתי שאני מקבלת שכר על שניהם ואיני מקבל שכר אלא על אחת.

Small wonder that Rabbi Yohanan was not enamored of the observance of the Second day.

רבי יוחנן קרי עליהן גם אני נתתי להם חוקים לא טובים (יחזקאל כ"ה).

The Problem of the Second Day

In Babylonia the observance of *Yom Tov Sheni* raised an interesting question. What is the character of the second day? Does it partake of the holiness of the first day and, being joined to it, become part of *יומא אריכתא*? Or are they two separate days (שתי קדושות הן) with two distinct qualities of holiness, one inferior to the other? This is the basis of the controversy about ביצה שנולדה ביום טוב.

אתמר שני ימים טובים של גלויות. רב אומר נולדה בזה מותרת בזה, ורב אסי אומר נולדה בזה אסורה בזה. לימא קא סבר רב אסי קדושה אחת היא. והא רב אסי מבדיל מיומא טבא לחבריה. רב אסי ספוקי מספקא ליה ועביד הכא לחומרא והכא לחומרא (ביצה ד:).

According to Rav, the second day's holiness is inferior. Rav Asi, on the other hand, is in doubt about the whole matter and therefore he is *maḥmir* in both directions. He recites *Havdalah* after the first day, lest the second day is not really holy, and he rules *לשבת בזה* lest the second day does partake of the holiness of the first day. This distinction between the qualities of the two days applies only to the festivals and not to the two days of Rosh Hashanah.

שני ימים טובים של ראש השנה אתמר רב ושמואל דאמרי תרווייהו נולדה בזה אסורה בזה.

The final conclusion of the Talmud follows the opinion of Rav (*Beitzah* 5b). The full and obvious import of this decision is that though a festival is observed on two successive days, the sanctity of the second day is inferior to that of the first day.

Yom Tov Sheni in the Halakhah

This distinction between the two days of a festival finds expression in a variety of laws, some of which are found in Talmudic times.

- (1) רב אשי אמר... יום טוב שני לגבי מת כחול שוויה רבנן, אפילו למיזוג ליה גלימא ולמיזוג ליה אסא (ביצה ו:).
- (2) אמימר שריא למכחל עינא ביום טוב שני של ר"ה (ביצה כב).

This of course would have included the second day of the other festivals.

- (3) An animal caught on the first day may be slaughtered and eaten on the second day (*Erubin* 39b).

These three laws are summarized in Maimonides as follows:

שני ימים טובים אלו של גלויות שתי קדושות הן ואינן כיום אחד. לפיכך דבר שהיה מוקצה ביום טוב ראשון או שנולד בראשון אם הכין אותו לשני הרי זה מותר. כיצד ביצה שנולדה בראשון תאכל בשני. חיה ועוף שניצודו בראשון יאכלו בשני. וכן מותר לכוול את העין ביום טוב שני אע"פ שאין שם חולי (הלכות יום טוב א:כד).

- (4) Maimonides elaborates upon the laws concerning the disqualification of witnesses. One who violates the Sabbath or the first day of a holiday thereby disqualifies himself as a witness, but the violation of the second day is not a disqualification *min ha-Torah* (*Hilkhot Edut* 10:3).

- (5) The question of מילה ספק בזמנה וספק שלא בזמנה on the second day finds the giants of the Halakhah arrayed on opposite sides. The Rosh (ש"ת כלל כ"ה ס"ה) is opposed. Maimonides permits it as follows:

כל מי שאינו דוחה את השבת אינו דוחה את יו"ט ראשון ודוחה את יו"ט שני (הלכות מילה א:טו).

- (6) The following question is addressed to the Rashbah:

שני ימים טובים של גלויות שחלו לפני השבת אם מותר להכין לשבת ביום חמישי ע"י עירוב שהניח מערב יו"ט (ש"ת חלק א' סי' תרפ"ה).

He answers in part as follows:

בזה נסתפקתי זה ימים. אבל ג"ל שהוא אסור. לפי שיום שני שהוא חל בע"ש חול הוא. ואיך יתקן מ"ט לשבת כשיום חול מפסיק. אבל מתוך גירסת הירושלמי נסתפקתי בזה ימים וצריך להתישב בדבר.

Later the Rashbah is more specific:

מסתברא דאסור. וכ"ש השתא דידיעין בקביעא דירתא ויום ראשון קודש ויום שני חול. וא"כ איך יאפה מיו"ט לשבת ויש חול באמצע. ומדרב חסדא דמפרש טעמא משום דצרכי שבת נעשין ביו"ט (ביצה מ"ו ע"ב)

נשמע לרבא דרב חסדא וודאי לא קאמר שיהיו צרכי שבת נעשין ביו"ט שחל להיות בחמישי אלא צרכי שבת הסמוך ליו"ט קאמר.

(7) The Rosh replies to a similar question as follows:

(כלל כ"ג סי' ח') שני ימים טובים שחלו להיות חמישי וששי אין לשחוט ביום ראשון לצורך השבת אע"פ שעירב. דודי יום ראשון עיקר וי"ט שני אינו אלא משום גזרת שמדא וכיון שאפשר לו לשחוט ביום שהוא כחול למה ישחט בראשון שהוא ודאי קודש.

Mordecai Jaffe in the Levush also agrees:

ולמה יבשל ויעשה מלאכה יתירה ביום ראשון שהוא ודאי קודש. טוב יותר שימותין עד למחרתו שהוא חול שאינו אלא מדרבנן (הלכות יו"ט סי' תקכ"ז).

The Baal Ha-itur agrees:

דשבות קרובה התירו ע"י עירוב שבות רחוקה לא התירו (הלכות יו"ט מחלקת י"ד).

(8) Joseph Karo in the *Shulhan Arukh* agrees:

אע"פ שהנהיג עירוב איני יכול לבשל מיו"ט ראשון לשבת. אמר רב פפא הלכתא נכרי שהביא דורון לישראל ביום טוב. אם יש מאותו המין במחזור, אסור. ולערב נמי אסורין בכדי שיעשו (ביצה כד).

The *Shulhan Arukh* (O.H. 115:1), following the opinion of Rashi (*Beitzah* 24b), applies this law as follows:

ובשני ימים טובים של גלויות אם הובא ביום ראשון מותר מיד בליל יו"ט שני בכדי שיעשו.

The Ramah is *mahmir*:

יש מחמירין לאסרו עד מוצאי יו"ט שני.

But the *B'er Hetev* writes:

וט"ז בשם רש"ל פסק להתיר לאחר ביו"ט שני בכל ענין, ולעצמו לצורך גדול. וכשזימן אורחים מעיר אחרת אף הוא בעצמו מותר לאכל עמהם דאין זה כבודם שלא יאכל עמהם.

(9) The same permissibility on the second day applies not only to vegetation but also to fish or fowl when there is a suspicion that they may have been caught on the first day, or to a garment known to have been begun on a week day and completed on Yom Tov.

(ארחות חיים לרב אהרן הכהן הלכות יו"ט 34).

Of course one cannot take the word *hol* as applied to the second day literally. However, it is legitimate to see in it a comparison between the relative sanctities of the two days and beyond question the second day is not considered to be as holy as the first. The Halakhah takes cognizance of this difference, and

as we have seen, incorporates it "into law. On the other hand, one may not read into these halakhic distinctions any tendency to abandon or abolish the second day. The problem of abolishing the second day seems to be purely a modern one.

But is it really a modern problem?

The Geonim And The Second Day

We know that the question was raised by the Karaites. How could the Rabbinites violate the law of *לא תוסיפו* by the introduction of a second day? If Karaite criticism was deemed superficial to the Geonim, it was very relevant to the people who addressed questions to the Geonim on the subject. And the Geonim replied. This very question is addressed to Rav Hai Gaon in great detail (*Otzar Hageonim* to *Beza* 4b). The question itself is very interesting because it quotes Rav Saadya Gaon on *Yom Tov Sheni*, and it refers to the observance of Rosh Hashanah in Palestine as limited to one day.

ואמר אדונינו כי בני א"י תופסין ר"ה שני ימים. ואנו רואין עד עתה אין תופסין אלא יום אחד.

Indicating the source of the perplexity the author writes:

כי כל אותם הטפקות שאמר בכל מקום שני ימים טובים הרבה מחזיקים בהם המינים דבריהם.

Almost pathetically he pleads:

יפרש לנו אדונינו ברוב חכמתו כל אלו הספקות. ואין יהיה תוספת על הכתוב. יבאר היטב.

This is not the only time that Rav Hai Gaon is confronted by this problem. In *Ginzei Kedem* (4:33ff., by B. M. Levin, who also is the editor of *Otzar Hageonim*), there is reproduced a MS which contains two discussions on the problem of the second day. The first is by Rav Hai Gaon and it is earlier than his reply to our question in *Otzar Hageonim*. The second is by Rav Joseph Rosh Haseder.

The arguments in favor of retaining the second day are as follows:

(A) *Rav Saadya Gaon*:

אין טפק מעיקרא אלא הקב"ה צוה את משה עבדו והוא אמר לישראל כי בארץ יהיו להם יום אחד ובחוצה לארץ שני ימים וכן הוא מעולם.

(B) *Rav Joseph Rosh Ha-seder*:

אנו אומרים שתנאי היה כרוך עליהם מימות יהושע בן נון כשנכנסו לארץ. וטעמא מאי משום דלא אפשר בשיקול הדעת דלהווי בני ירושלים

ובני הגליל ובני עבר הירדן וכל דזור (חוץ) מנהון דליחזו סיהרא בחדא שעתא. ובני ישראל חזו ליה מקמיה כל העולם וכדאמרי' (ר"ה דף כ' ע' ב') כ"ד שאעי מיכסא סיהרא ולא איפשר נמי לשדורי להון שלוחי לאלתר משום דתחומין של ישראל עד נהר פרס וכיון דהכין לא סהגי מלמור דהון סמיכין אחשבון ועבור ועבדין תרי יומי ברחוק המקום... ותו מי איכא מידי דמרדכי קבע שני ימים טובים וקיבלום ישראל ויום טוב דאסיפו רבנן לא ליקבל.

(C) Rav Hai Gaon:

(1) ואע"פ שעכשיו אנו יודעין קבעו של חדש באמת ואין אנו חוששין לשינוי, יש עלינו שני ימים כמנהג האבות כי הנביאים הנהיגו שני ימים טובים של גלויות.

(2) ואף אילו אנו אומרים כי מפני חשש שינוי התקינו ואין עכשיו שנוי הרי הדבר צריך מנין אחר להתירו (ביצה דף ה' ע' א') ומי זה יבטל דברי ב"ד שהיו בו נביאים כחזקאל בן בוזי ודניאל איש חמודות שהן נמנו והנהיגו את ישראל בגולה בשני ימים טובים. ומי כמוהם בחכמה ובמנין.

In his second discussion of the problem, Rav Hai Gaon writes more succinctly:

יש לדבר זה שתי תשובות. אחת מהן כי גם עכשיו פעמים שיהיה שמד שם ויצטרכו לשנות ויתקלקל הדבר... ותשובה אחרת כי הנביאים צוו את ישראל שבח"ל ואין אנו יודעין אמתה עלת הדבר בוודאי. ואף אין אנו יודעים כי בוודאי טרה העילה שזה הדבר תלוי בו כדי שנסיר אותה בסורה.

The essence of all these replies follows: (a) The antiquity and the authority of the ancients to whom the institution of the second day is attributed. Various there are invoked God Himself through Moses, as well as Joshua, Ezekiel, Daniel, Mordecai and the prophets in general as the authors of the second day. (b) The sanctity of a *minhag avoteinu* which has persisted for over 1600 years. (c) The fear of persecution and of the resultant corruption of the calendar. (d) The problem of finding a Bet Din greater in number and wisdom than the one which instituted the second day. (e) We don't really know what caused the institution of the second day and therefore we can't tell whether the reason for it has disappeared.

In More Recent Times

Within comparatively recent times, there is at least one occasion prior to the innovation by Reform Judaism when the question is raised. Rabbi Isaac Lampronti (1679–1756) of Ferrara, author of the encyclopedic *Paḥad Yitzhak*, reports that upon

a visit to Hamburg he met a Sephardic Rabbi of whom he writes: שגלה דעתו אלי בכתב ובעל פה להורות סתירת המנהג הזה (י"ט שני) שהנהיגו רבותינו הראשונים על פי אותם שקדמו להם... ואחור לא נסור גותי מלהשיב אמרים לו בטעם קיום המנהג והוכחתי כי אין כח ביד שום רב מ"צ שבזמננו לבטלו ואין לדין בדבר הזה אלא מה שענינו ראות שכן נהגו לקיימו מאחר דמדינא הרי הוי. ואפילו אנשי ח"ל בזמן הזה דידעו בקבועא דירחא הוה להו למעבד יומא חדא די לנו שמשום דשלחו משם הוהרי במנהג אבותיכם בידיכם שיברכו ברכות שאינן צריכות מאחר דאסור זה.

It is fair to conclude that the question is not a new one, that in greater or lesser degree it has been of concern to our ancestors in various ages, and that the problem has projected itself upon the agenda of our day not only because of the new economic and social circumstances of our times but also because of the inherent difficulties connected with the observance of two days of *Yom Tov*. Though I have not read much on this subject in the modern reaction to the abolition of the second day by the Reform movement, I think it also fair to suggest that it has nothing to add to the arguments in the Geonic literature.

Of all of these arguments, the only ones that seem to have any validity or that need serious discussion are (a) the need for a decision by a *bet din she-gadol heimenu b'hokhmah u-v'minyan* and (b) *minhag avoteinu*. Let us consider them in turn.

(A) Bet Din Shegadol Heimenu B'hokhmah U-v'minyan

There is a deep difference of opinion in the Talmud (*Avodah Zarah* 36a) concerning the necessity for this. There is the general opinion:

תנן אין ב"ד יכול לבטל דברי בית דין חבירו אלא אם כן גדול הימנו בחכמה ובמנין.

And then there is the contrary opinion:

אמר רבה בר בר חנה אמר ר' יוחנן בכל יכול לבטל בית דין דברי בית דין חבירו חוץ משמונה עשר דברים שאפילו יבוא אליהו ובית דינו אין שומעין לו.

However, we are concerned here with a law instituted for two specific purposes: (1) *Mishum safek* and (2) to perpetuate the central authority of Palestine in matters of the calendar. The mathematical calendar currently in use has eliminated every conceivable *safek* and has deprived the Palestinian scholars of the last vestige of their authority, i.e., the determination of the number of days in *Heshvan* and *Kislev*. The reason for the observance

It does not matter that he was wrong in his estimate of the full intent and extent of the *herem*. The halakhah recognizes the supreme importance of intelligence and common sense.

Our final illustration deals with the apostasy of a married woman.

על הנהוגים להצריך למי שהמירה אשתו ורוצה לקחת אחרת. לזכות לה גט למומרת על ידי אחר כדי שתתגרש בו. אם תחזור בה. ושאלת אם צריך ומי מהני (שו"ת מהרי"ק 141).

Again we find ourselves in the early period after the promulgation of the *herem* of Rabbenu Gershon. Has the *herem* acquired sufficient force to require the formality of a divorce for the apostate wife, on the far-fetched assumption that she may return to the fold and wish for the document? The *minhag* to do so has taken hold. But is it compulsory? Once more we know the answer for our day: A *get zikui* is required before the husband can remarry. The *Mahariko*, however, refuses to recognize it for his time and place. Such consideration for an apostate woman and the imposition of the ensuing hardship upon the husband is palpably absurd.

הנה לא באתי לחלוק על המנהג במקום שהנהגו כן דנהרא נהרא ופשטיא אמנם דע לך שאין מנהגו בכך דלמה נצריך לעשות כן שאי משום תקנת הגאונים שלא לישא שתי נשים פשיטא שלא הייתה כוונתם אלא בנהוגות מנהג ישראל ודת משה ויהדות, ולא לזו שהמירה בתורת משה... ומ"מ לא בעינן למשכונני נפשיא אמנהג מקומות.

The *minhag* must make sense! It must have some relevance to the original intent of the *takanah*. It is unimportant that future generations disagree with the *Mahariko's* limitations upon the applicability of the *herem* of Rabbenu Gershon. His principle is important.

One does not pretend that this is even the beginning of an introduction to the problem of *minhag* in the halakhah. Some Conservative scholars will rejoice in the Talmudic precedent (*Yeb.* 102a; *Men.* 32a):

אמר רבה אמר רב כהנה אמר רב: אם יבא אליהו ויאמר חולצין במנעל שומעין לו. אין חולצין בסנדל אין שומעין לו שכבר נהגו העם בסנדל.

The *Mahariko* (#54), if I may quote him one last time, applied this rejection of change even if ordained by Elijah himself to EVERY *minhag* that has acquired sanction in Jewish communities. I hope, however, that this paper has demonstrated that in the classic treatment of *minhag* there are a vari-

ety of important elements which, though they may be extraneous to the halakhah in the purity of its isolation, were the true determining factors in fixing the law. The social, moral, ethical and esthetic values on which the scholar takes his stand, his sense of justice and propriety, his common sense, his understanding of the intent of *takanot* and of the altered circumstances which prevail in his day . . . all these and more are the tools with which the scholar pummels and pounds the mass of halakhic material to create a decision.

So it is with us.

What shall we do about *Yom Tov Sheni*? Granted that there is ample halakhic precedent for its abolition, the pivotal consideration is whether it is in the best interests of American Judaism to abolish it. There are other institutions for which halakhic precedent can be found, polygamy and primogeniture among them, yet we refuse to invoke these sanctions to change the law.

What are the contemporary considerations about *Yom Tov Sheni*?

The establishment of the State of Israel has caused us to revise our definition of Jewish life outside of Israel. For Jews living in the free world, there is no longer a compulsory *Galut*. To us, Israel, among other things, is a spiritual homeland. Recognizing its limitations and the probable perpetuation of the differences that divide the religious segments of Judaism, we still pray as our ancestors did, "For out of Zion shall the Law go forth." We have taken concrete steps to elevate Israel to its rightful place of influence in our lives. We have adopted the Israeli pronunciation of Hebrew in our speech, in our schools and even in many of our synagogues. We endorse the Israeli decision to observe the memorial to the 6,000,000 martyrs on the twenty-seventh of *Nisan*. We are alert to new forms and ritual emanating from Israel such as *Perek Yomi*, *Hakhel*, etc. It seems all the more important to extend this process by having our religious calendar conform to that which prevails in Israel. This would provide a religious dimension to our unity with Israel, a unity which is already buttressed by our philanthropy and our abiding interest in every aspect of Israeli life.

Hallowing two days of *Yom Tov*, for many observant and would-be observant Jews, constitutes a serious hardship. Both

for adults and university and high school students, the necessity to absent themselves from their regular employment or studies exacts a penalty which is very burdensome. A survey indicates that 80% of our congregations experience a drop in attendance on the second day of anywhere from 5% to 90%. An attempt to strike an average, necessarily inaccurate, suggests that approximately 50% of our worshipers stay away on the second day, despite the fact that the recital of *Yizkor* brings large numbers of people, many of them not regular worshipers, to the synagogue for a fraction of the service on the second day.

These are cogent considerations, but they are not the last word.

The suggestion to eliminate *Yom Tov Sheni* comes from two sources: 1. From observant Jews for whom the new status of the *T'futzah* and a yearning to invest Israel with greater spiritual influence are sufficient warrant for the change. Their religious life would not suffer. The elimination of unnecessary hardships and superfluous duplication would enhance the observance of the festivals in their homes. Yielding to their suggestion would stem from factors of strength in Judaism. 2. From non-observant Jews or at best from would-be observant Jews for whom the lesser demands of Judaism might contribute to a wider observance of the holidays, and from those congregations which find it difficult to assemble a *minyan* on *Yom Tov Sheni*. One hesitates to predict the measure of success that would follow from yielding to their suggestions, but it would derive from factors of weakness in contemporary Jewish life.

The simple truth of the matter is that Jewish observance in America is not strong enough in depth to justify the assumption that elimination of the second day will enhance our religious life. On the other hand, its elimination will deny us the utilization of the second day for religious inspiration, instruction and exhortation. Large segments of our movement do conduct meaningful services on the second day. The celebration of the holiday in the home and the synagogue on two successive days reinforces the message and the motivation of our festivals. Frequently, worshipers who are prevented from observing the first day find it possible to do so on the second day. Furthermore, the existence of the problem of *Yom Tov Sheni*, and the attempts to solve it, generate considerable constructive experimentation within our movement. Our survey testifies to a measure of success in these ex-

periments and we recommend a study of the survey to our colleagues and lay leaders.

Many of our colleagues have pointed to the need to discover new values in *Yom Tov Sheni*, and perhaps new symbols and ceremonials even for observant Jews. Such searching for new meanings might focus upon the new relationships between ourselves and the State of Israel.

It is not necessary to eliminate *Yom Tov Sheni* for the sake of those congregations in which hardships prevent the conduct of religious services. To deny to the rest of the movement the benefits of further search and experimentation with *Yom Tov Sheni* would be needless surrender of precious values.

We therefore recommend further study and experimentation with *Yom Tov Sheni* in an effort to render its observance more meaningful. We acknowledge the cogency of the call to conform to the practice in the State of Israel, especially when it comes from observant sources in our midst. But the very change of circumstances which projects the problem to the forefront of our concern suggests that we pause to search for new insights and values which might adhere to *Yom Tov Sheni* in the American Jewish community. Failure to discover or evolve such new values within the next decade must lead to a reconsideration of our opinion.

The above statement, drafted by Rabbi Aaron Blumenthal, was adopted unanimously by the Committee on Jewish Law and Standards of The Rabbinical Assembly at its meeting of October 15, 1963. Members present and voting were:

Rabbis Selig Auerbach, Aaron Blumenthal, Eli Bohnen, Max Davidson, Leon Fink, Morris Fishman, Max Gelb, Solomon Goldfarb, Isaac Klein, Benjamin Kreitman, Max J. Routtenberg, Henry Segal, David Silverman, Israel Silverman, Ben Zion Bokser, Chairman.