

## YOM TOV SHENI

## Introductory Comments

Benjamin Z. Kreitman

THE BELIEF that *Yom Tov Sheni Shel Galuyot* needs to be re-examined and re-evaluated was first reflected in a report of the Law Committee to the Convention of the Rabbinical Assembly in 1933. In the report, the late sainted Rabbi Julius Greenstone stated, "No formal study was presented on the question of the Second Day Holiday, but the matter was brought up at one of the meetings and one of our members promised to prepare a report on the subject." During the latter part of the 1950's and the early 1960's, position papers on *Yom Tov Sheni* were written by members of the Law Committee but the Committee did not vote on any of the papers nor present them as official responsa to the Rabbinical Assembly. In the 1963 report of the Law Committee the Chairman, Rabbi Max Routtenberg, stated, "We have neglected many calendar problems which plague our colleagues, including the recurrent question of *Yom Tov Sheni*. We simply have had nothing to say beyond the traditional prohibitions and regulations governing the observance of these days."

In March 1963 Rabbi Aaron Blumenthal presented a responsum on *Yom Tov Sheni* to the Law Committee, calling for its continuation and urging the membership of the Rabbinical Assembly to find ways and means to revitalize its observance. This responsum was unanimously accepted by the members of the Law Committee and became a "binding" decision for the Rabbinical Assembly. In April of that year, at the request of the Law Committee, Rabbi Blumenthal formulated and circulated a questionnaire on *Yom Tov Sheni*. After reviewing the replies, he observed, "I think that it is safe to predict that we are headed for a de-emphasis of the Late Friday Evening Service. It seems to me that the same thing is true of *Yom Tov Sheni*. Either from our renewed strength or from the debilitating effect of continued weakness, *Yom Tov Sheni* will depart from our midst."

A few years later the columns of *Hadoar* carried an urgent appeal to the rabbinic leadership of Israel and America by an outstanding Orthodox scholar of Canada, to re-evaluate *Yom Tov Sheni*, thereby displaying the *halakhah's* concern for reality. In 1967 the Rabbinical Assembly passed this resolution at its annual convention: "The Rabbinical Assembly should explore with all rabbinic bodies the possibility of establishing a common

Rabbi Kreitman, Rabbi of Congregation Shaare Torah in Brooklyn, N.Y., is Chairman of the Committee on Jewish Law and Standards of the Rabbinical Assembly.

luach for American Judaism and Israel. The Rabbinical Assembly, in convention assembled, instructs its Committee on Jewish Law and Standards to reconsider the matter of the second day of Festivals and to rethink its observance."

The question of *Yom Tov Sheni Shel Galuyot* was again placed before the Law Committee, and by decision of a two-thirds majority it was reopened (that being the minimum vote required for reopening a question within a given period of time, according to the revised procedures of the Committee). Rabbis Abraham Ehrlich and Philip Sigal at first wrote separate papers but later combined their efforts in writing a responsum which in essence made the observance of *Yom Tov Sheni* an option of the *mara d'atra*. Rabbi Aaron Blumenthal wrote a concurrent opinion. Rabbi Wilfred Shuchat wrote a responsum upholding the tradition of *Yom Tov Sheni*. The three responsa were officially voted upon and accepted by the Law Committee, and are therefore, according to the procedures of the Rabbinical Assembly, acceptable positions of the organization.

The members of the Law Committee are pleased that the editors of CONSERVATIVE JUDAISM have agreed to include these responsa in this issue; thereby giving them wider circulation.

## A Responsum on Yom Tov Sheni Shel Galuyot

Philip Sigal and Abraham J. Ehrlich

**Question:** Is it permissible to cease observing the second days of *Shavuot*, *Sukkot*, *Shemini Atzeret*, and the second and eighth days of *Pesach*, treating all of them as regular weekdays or as *Chol Hamoed*, as the case may be?

**Reply:** *Yom Tov Sheni Shel Galuyot* (the Second Festival Day of the Diaspora, has been observed by Jewish communities outside of Israel for well over two millenia. At certain junctures of our history our sages have considered the abolition of these "Second Festival Days," but their sanctity has been retained, making them a tradition and a fact of Jewish life in the Diaspora.

We reaffirm the value inherent for many in the observance of *Yom Tov Sheni Shel Galuyot* for historical, religious and sentimental reasons. We therefore commend the efforts of those who are seeking ways to add new meaning and significance to it.

This responsum was first presented to the Committee on Jewish Law and Standards of the Rabbinical Assembly in February 1969. Philip Sigal is Rabbi of Temple Bnai Zion in Bloomfield, N. J. Abraham J. Ehrlich is Rabbi of Temple Beth Israel in Port Washington, N. Y. The following members of the Committee on Jewish Law and Standards associated themselves with this teshuvah: Rabbis Leon Fink, Max Gelb, Wolfe Kelman, Benjamin Kreitman, Stanley Platek and Max Routtenberg. Two members abstained, and two members later registered opposition.



Yom Tov Shenit / Phillip Sigal and Abraham J. Ehrlich

On the American scene and in other Western communities, the "Second Festival Day" presents special problems unknown to past generations. Students of all ages, from the grade school to the university, find a forced absence from classes for five days an extreme hardship, particularly in the fall when the four days of Sukkot, Shemini Atzeret and Simchat Torah follow the three days of Rosh Hashanah and Yom Kippur. The sad result is that the overwhelming majority of them go to school on these holy days. Only a small minority persist in their observance, wondering at the same time why they should observe a holy day while their brothers and sisters in Israel go to school.

Our professional and business people also find the observance of these "Second Festival Days" untenable in our modern society of feverish life and extreme competition. Regrettable as we might consider it, the fact is that the overwhelming majority of our people do not observe the two days of *Yom Tov*.

By a quirk of history, the second day of Shavuot and the last day of Pesach are now observed more fully than the Torahitically ordained first and seventh days of these festivals, because of the *Yizkor* service. The same is true of Simchat Torah, which is observed by more people than Shemini Atzeret because of the *hakafot*. We undertook a study of the subject with this in mind, and with an earnest desire to alleviate the burden of the observant Jew.

THE LAWS CONCERNING the observance of the *Shalosh Regalim* (the three Pilgrim Festivals) are set forth in Exodus 23:14-19, 34:15-23, Leviticus 23:4-44, Numbers 28-29; and Deuteronomy 16:1-17. In these passages, Pesach is proclaimed as a seven day festival beginning on the fifteenth day of the first month (*Nisan*), with the first and seventh days designated holy. Shavuot is a single holy day designated to fall on the fiftieth day after the first day of Pesach. The third of the Pilgrim Festivals is Sukkot, which is to be observed as a seven day festival beginning on the fifteenth day of the seventh month (*Tishrei*); only the first day of the festival is holy. This festival is concluded with a single holy day, called Shemini Atzeret (Eighth Day of Assembly). All of these passages have variants, inclusions and omissions, but essentially they point to the biblical schedule of the *Shalosh Regalim*, as stated.

The Jewish calendar consists of twelve lunar months (in a Leap Year, thirteen). A lunar month is the number of days it takes the moon to rotate around the earth. The appearance of a new moon marks the beginning of a new month (*Rosh Chodesh*). Since the circuit of the moon is about 29½ days, the Jewish month is either *malei*, a full month of thirty days, or *chasser*, a short month of twenty-nine days.

The exact dating of a festival depended upon the day set for *Rosh Chodesh*, which in turn depended upon the testimony given before the *Sanhedrin* in Jerusalem. The authorities in Jerusalem vigorously guarded their right to be the sole authority for proclaiming the start of the new month. Witnesses who claimed to have seen the new moon were compelled to appear before the Jerusalem authorities to testify as to the precise time of their sighting of the moon. After careful examination, if the court was satisfied that these witnesses were authentic, *Rosh Chodesh* was proclaimed. Bonfires were kindled as a signal so that all the communities of Judea and those in the neighboring countries of Egypt and Babylonia could become aware that a new month had begun.

Some time later, during the Second Commonwealth, hostile Samaritans began lighting bonfires on odd days to confuse the Jews. Thereupon the Rabbis dispensed with bonfires and dispatched messengers to inform communities that a new month had begun. The arrival of these messengers in distant communities of the Diaspora could not be guaranteed in time to announce the correct date before the beginning of a holyday. The people of these distant communities did not know whether the outgoing month was made *malei* or *chasser*, full or short. Thus people were uncertain when the month actually began, and when the *Yom Tov* would occur. People greatly feared they might not celebrate a holy day at its proper time. Consequently, to satisfy the requirements of piety and to guarantee that a biblical ordinance not be transgressed, a *second* holy day was instituted for each festival in the distant communities. This additional day was called *Yom Tov Shenit Shel Galuyot*, the second *Yom Tov* day of the Diaspora.

Maimonides (*Hilkhot Kidush Hachodesh* 5:4) states that the second day was observed by the distant communities, while those whom the *Sanhedrin* messengers could reach quickly observed one day. Rashi (*Betzah* 4) comments that this custom was not in practice as long as effective means existed to communicate the proclamation of *Rosh Chodesh* to the Diaspora.

*Yom Tov Shenit Shel Galuyot*, then, was the result of a breakdown in interstate communications. When the bonfires were deliberately interfered with and the messengers could not reach Babylon, Egypt and other Jewish settlements of the Diaspora, the people of these communities were forced to observe *Yom Tov Shenit*. For a somewhat similar reason a second day was added to Rosh Hashanah even in Israel, because the eye witnesses to the appearance of the new moon often arrived in Jerusalem late in the day, causing complications with the holy day sacrifices.<sup>1</sup>

Had our forefathers enjoyed the world-wide system of communications which we have today, such as telephone, telegraph and jet airplanes,

<sup>1</sup> *Mishnah Rosh Hashanah* 2:2, 2:4.



Yom Tov Sheni / Philip Sigal and Abraham J. Ehrlich

each one more effective than bonfires, *Yom Tov Shel Galuyot* and even the “continuous day” (*yoma arikhta*, encompassing two days) of Rosh Hashanah certainly would never have come into being.

THE OBSERVANCE OF TWO DAYS of *Yom Tov* in the Diaspora led to a question discussed in the Talmud. Do these two days constitute *kedushah achat*, a single unit, both parts sharing an equal holiness, or *shtei kedushot*, two units, in which case the added day is not as holy as the first day?

Rashi (Solomon ben Isaac of Troyes, eleventh century) explains the distinction in the following manner: Viewing the two days as a single unit (*kedushah achat*) implies that the sages enacted the extra day for the Diaspora as a permanent practice because of the uncertainty involved in knowing the correct day. The two days thus become “one long day.” On the other hand, viewing the two days as two separate entities (*shtei kedushot*) implies that the practice was not intended to be permanent, but was an added restriction which the Diaspora assumed for the duration of the calendar confusion.<sup>2</sup>

The law, presented by Maimonides in his code and by the *Shulchan Arukh*, views the two days as separate entities (*shtei kedushot hein*).<sup>3</sup> Accordingly, in the third century, when the calendar was fixed through knowledge of the lunar orbit rather than through testimony of eye witnesses, all Jews should have followed the practice of Rav Assi who recited *havdalah* at the conclusion of the first day, separating it from the added day (*mavdil miyoma tova lechavreih*). Commenting on Rav Assi’s practice as recorded in the Talmud, Rashi explains that since we can establish *Rosh Chodesh* according to the calendar, the second day of *Yom Tov* is actually an ordinary day, without special sanctity. Thus Rav Assi recited *havdalah* at the conclusion of the first day of *Yom Tov*.

The elimination of *Yom Tov Sheni* was indeed contemplated by the Babylonian Amoraim as soon as they considered themselves expert in establishing the beginning of the month. Nevertheless they decided to retain it, for two reasons:

1. Should secular authorities prohibit the study of Torah, the knowledge of fixing the calendar would be forgotten, we would again determine *Rosh Chodesh* by eye witnesses, and the old confusion would return.
2. Should the Jerusalem Temple be restored we would restore the authority for determining *Rosh Chodesh* to the Sanhedrin, with the same result.

<sup>2</sup> *Betzah* 4b.

<sup>3</sup> Maimonides, *Mishneh Torah*, *Hilkhos Yom Tov* 1:24; *Shulchan Arukh Orach Chayim* 512:5, 512:5.

One of the Babylonian teachers, Abayeh, injected a rather impressive note into the discussion. He supported the thesis that the second day was not as sacred as the first. He argued that “if the Samaritans stopped confusing the people by lighting bonfires on odd days, we would all observe one day of *Yom Tov*.” For historic good measure, Abayeh added that even in the days of the Samaritan mischief, “wherever the messengers came on time, only one day was observed.”

What emerges from this discussion? The second day of *Yom Tov* was not regarded as a permanent, irreversible enactment. In a very real sense, *Yom Tov Sheni* was only *hora’at sha’ah*, an emergency ruling. When the Samaritans were no longer troubling Jews, after the calendar was fixed, the cogent question was naturally asked: Why should the second day remain in force? The reply given at that time was: The Palestinian authorities wrote to Babylon that they must be careful of the custom (*minhag*) of their fathers, because of the two reasons already mentioned.<sup>4</sup>

The Palestinian Rabbis were more liberal with changing the law for their own purposes, and soon after *keviat hachodesh* (the fixing of the calendar) they eliminated the second day of Rosh Hashanah, as recorded by the *Rosh* (Asher ben Yehiel, thirteenth century), even though it was considered part of a single unit (*kedushah achat*).

The *Rosh* states that, after the *keviat hachodesh*, Rosh Hashanah was observed in the holy land for one day until the sages of Provence asked the people to restore the second day on the instructions of Rabbi Isaac Alfasi (eleventh century), using the same reasons stated by the Palestinian Rabbis when they asked the Diaspora communities to maintain the second day of all festivals.<sup>5</sup>

In a talmudic passage we would here read *ma ka mashma lan*, what do we derive from these various sources? We would note two points. First, the talmudic sages referred to *Yom Tov Sheni* as *minhag*, a “custom of the fathers,” not a law. Second, the Palestinian authorities regarded Babylonia as a second-level community, which thus was being encouraged to preserve one of the marks of its reverse distinction. *Yom Tov Sheni* always served to remind the Babylonian teachers that they did not have the authority to abolish a custom which resulted from the hegemony of Jerusalem in declaring *Rosh Chodesh*.

None of these arguments for the retention of *Yom Tov Sheni* can apply to us. For one thing, the “temporary emergency” which motivated the custom of a second day ended centuries ago. Even if the fixing of *Rosh Chodesh*

<sup>4</sup> For the basic background on *Yom Tov Sheni* and the major sources for this *teshuvah*, see the Babylonian Talmud, *Betzah* 3a-5b. A number of talmudic references noted in this *teshuvah* that do not carry individual footnotes will be found there.

<sup>5</sup> *Rosh* on *Betzah* 5:4.



Yom Tov Sheni / Philip Sigal and Abraham J. Ehrlich

were restored to the domain of the Sanhedrin, we have at our disposal all necessary means to notify Jews the world over of the new month and the exact holy days. Second, we do not admit powerlessness in changing customs, *minhagim*. Third, we do not look to Jerusalem for halakhic authority.

We now return to the substance of our question: Would it be permissible to cease observing *Yom Tov Sheni*? Many inferences can be made from scattered talmudic sources that cast doubt upon the holiness attributed to the Second Day by those very sources which are regarded as “official *halakhah*” in Orthodox circles. Rabbi Safra asked his colleagues whether he could work on the second day of *Yom Tov* in an uninhabited area where nobody would observe him and he would be offending nobody’s doctrines or sensitivities. Rabbi Ammi replied that this would be permissible, and this reply is cited as *halakhah*.<sup>6</sup> The obvious inference is that the second day, unlike the first, has no *inherent* holiness, and our approach to it may take into consideration local needs, local custom and local sensitivity. This might almost lead to the inference that each congregation is talmudically entitled to deal with the second day of *Yom Tov* independently, even if no action concerning it is taken by a recognized rabbinic organization.

In this same talmudic passage we read an anecdote concerning a trip from Sura to Pumbedita taken by Rabbi Nathan ben Asia of Biram. Rabbi Nathan was a “one-day” *Yom Tov* observer, although Biram was *not* in Palestine. (Biram is identified with Beth Balbin on the west bank of the Euphrates, whence fire signals could be seen in Pumbedita.)<sup>7</sup> Here we have an example of a Diaspora city in which only one day *Yom Tov* was observed. Obviously it fortifies our underlying premise that no inherent sanctity was accorded to the second day and that compliance with its observance even in ancient times depended upon a variety of factors, none of which obtain today.

Rashi noted on the above-quoted text that the second day of *Yom Tov* was observed only by the Diaspora which was distant from the seat of the *Bet Din*, so distant that messengers were unable to reach them and inform them whether the new month began on the thirtieth or the thirty-first day after the previous *Rosh Chodesh*. He added that when they did see bonfires “in olden times” they actually observed only one day *even in the Diaspora*, and that later, after the messenger-relay system was introduced, they continued to observe only one day where the messengers arrived, and two days where the messengers did not arrive.

In this commentary, Rashi teaches us two lessons which bear directly upon the question under consideration. First, the second day of *Yom Tov*

<sup>6</sup> Cf. *Pesachim* 51b and 52a.

<sup>7</sup> *Rosh Hashanah* 23b.

was a *practical* measure enacted by quick-thinking, rational and pious people to deal with an emergency situation. Second, *in the Diaspora*, where we live, some Jews observed one day and others observed two days during the same period of history. This has tremendous implications for the modern age when some people are vitally concerned lest diversity in Jewish ritual upset the equilibrium of the Jewish community. As a matter of fact, conformity is too much with us and stifles experimentation and progress. The direction for modern times is clearly indicated in the forthright words of this eleventh-century commentator.

The sixteenth century commentator *Maharam*, Rabbi Meir of Lublin, also noted in his writings on the same text in *Betzah* that there was no fixed custom in ancient times concerning the establishment of the second day of *Yom Tov*. He stated that in years when messengers arrived on time, a community observed one day; and in years when messengers failed to arrive by the day that the calculations made in the community led them to believe it was *Yom Tov*, they observed two days. His concluding remarks, like those of Rashi, are straightforward: “The matter was not a fixed one, and this is easy to understand.” The *Shulchan Arukh* also hits the very gist of our argument when it notes that in the Diaspora two days *Yom Tov* were observed “out of doubt.”<sup>8</sup>

For us, there is no longer any doubt. The calendar is fixed in a manner which, astronomically and mathematically speaking, was a work of genius on the part of the ancient sages. And in the fourth century it was a political act of courage on the part of Hillel the Second who published it.

Following the same reasoning we use for other Festivals, Rosh Hashanah too could legitimately be restored to a one day observance. However, if we adopt the principle stated in *Berakhot* 45a, “to go ahead and see what the people are doing,” we would find that while *Yom Tov Sheni* has fallen by the wayside, vast numbers of Jews are still perfectly content to observe the second day of Rosh Hashanah.

IN LIGHT OF THESE CONSIDERATIONS, it is our view that it is consistent with *halakhah* to observe the *Shalosh Regalim* and Rosh Hashanah in conformity with the liturgical calendar now observed in Israel.

This declaration may lead to several positive achievements: It will eliminate the need to teach skeptical youngsters reasons for observance of the second day which they recognize as stemming from the communication and transportation problems of Jews who lived over two thousand years ago, and as indefensible in our own time. This declaration will make our expectations for children to remain out of public school more reasonable

<sup>8</sup> *Shulchan Arukh Orach Chayim* 496:1.



Yom Tov Sheni / Philip Sigal and Abraham J. Ehrlich

by reducing the number of festival days in any given year; it would concomitantly make it more practical for synagogues to offer substitute one-day programs to keep them out of school.

In reality, through our insistence on keeping this second day as a *Yom Tov*, we become *makhshilei harabim*, misleading thousands of our congregants. Suburban congregations enjoy considerable attendance at services on the last day of Passover and on the second day of Shavuot because of the *Yizkor* service, but have barely a *minyán* of the seventh day of Passover and on the first day of Shavuot. Our synagogues are crowded on the eve of Simchat Torah for the *hakafot*, but empty on the eve of Shemini Atzeret. Thus, by trying to maintain a custom (*minhag*) we cause our people to disregard the law (*din*).

There are some who will argue that we might lack the halakhic authority to undertake so radical a change in the ritual code. They will cite the statement that "what one *Bet Din* enacts, another cannot nullify unless it is greater in numbers and wisdom."<sup>9</sup> However, this ruling applies only to a statute (*chok*) which has been enacted by a vote (*al yedei minyan*). Since *Yom Tov Sheni* was considered two separate entities (*shtei kedushot*), which by Rashi's definition means a voluntarily accepted custom rather than a legislated law, its elimination does not require that it be rescinded by a new vote.<sup>10</sup>

Actually the medieval Polish scholar, Moses Isserles, (sixteenth century), went further. He pointed out that where the reason for an enactment (*gezeirah*) is no longer operative, the enactment itself is nullified.<sup>11</sup> If this is true with a *gezeirah* it is even more so with a *minhag*, and *Yom Tov Sheni* is only a *minhag*, as Maimonides has made clear.<sup>12</sup>

Professor Solomon Schechter long ago approved the theory that the dictum concerning one *Bet Din* acting on an enactment made by another, was merely an administrative measure referring only to another contemporary group of sages. He denied that the Mishnah meant to stifle halakhic change forever.<sup>13</sup> In view of the fact that *Yom Tov Sheni* was merely a *minhag* and not an enactment by a *Bet Din* the dictum, in any event, would not apply. Additionally, we may note in *Ikar Tosafot Yom Tov* on the Mishnah that where the decision rested upon *midrash*, a process of reasoning, a successor *Bet Din* to whom "another explanation appeared to dispute the first, may dispute the rule in accordance with its own reasoning"

9 *Mishnah Eduyot* 1:5.

10 Cf. *Tosafot, Betzah* 6a, beginning *ceha'idna*; Cf. also *Ketuvot* 3a.

11 *Shulchan Arukh Orach Chayim* 339:3.

12 *Mishneh Torah, Hilkhot Yom Tov* 1:21.

13 Solomon Schechter, *Studies in Judaism*, JPS paperback, page 34.

(Cf. Deuteronomy 17:9f).<sup>14</sup> Surely this is a case where all the logic for the retention of the second day has evaporated, and many compelling reasons now urge us to use this halakhic procedure in reference to *Yom Tov Sheni*.

There are, nevertheless, rabbis among us who feel that the second day ought to be strengthened rather than abandoned. Our colleague Rabbi Aaron Blumenthal prepared a questionnaire on *Yom Tov Sheni*, and the results were circulated among us in August 1963. Out of 180 replies from congregations throughout the country, he concluded that on the average, attendance at worship on the second day drops approximately fifty per cent from that of the first day. But he noted that on such days as the eighth day of Passover and the second day of Shavuot, attendance statistics are distorted by the *Yizkor* (Memorial) Services. He also reported a number of other practices which indicate an attitude of reducing sanctity on *Yom Tov Sheni*, such as dispensing with choirs or moving the services into a secondary chapel. Most significant was the fact that thirty-five colleagues, in Rabbi Blumenthal's words, "not all from small congregations, urged the abolition of *Yom Tov Sheni*, some of them rather forcefully." At the same time, the study also revealed that many rabbis have revitalized the second day through a variety of techniques. But many of us would prefer to utilize our energy and ingenuity to enrich the Sabbath and the first day of Festivals, and there is much to be done here, as we all know.

Rabbi Blumenthal also presented a statement on *Yom Tov Sheni*, signed by a number of colleagues, to the Committee on Jewish Law and Standards on October 15, 1963. This statement said that *Yom Tov Sheni* should be eliminated for the sake of congregations which encounter hardships in arranging religious services. It went on to say, "To deny to the rest of the movement the benefits of further search and experimentation with *Yom Tov Sheni* would be a needless surrender of precious values." We do not advocate the surrender of precious values, nor do we suggest the abolition of a custom which has been practiced for two thousand years. All that is necessary is to allow those who desire to drop it to do so in good conscience and to feel that they live within the accepted standards of the Conservative movement. Those who would like to observe both days should observe them, and those who would like to observe only one day would be allowed to do so. We might paraphrase an old talmudic saying by indicating that in such an event, "both would be the words of the living tradition." And it is precisely this, the need to establish a *living tradition*, which is one of the greatest challenges of modern *halakhah*. To be per-

14 *Ikar Tosafot Yom Tov*, note 9 on *Eduyot* 1:15.



Yom Tov Sheni / Philip Sigal and Abraham J. Ehrlich

missive toward the second day is to contribute toward the respect of the American Jewish community for the halakhic process.

The letter of October 28, 1964 in which Rabbi Hailperin explained his congregation's abolition of the second day, which is now in the Law Committee archives, impressed us. It seems to us that this is a sensitive response to Rabbi Blumenthal's statement. Rabbi Hailperin wrote of his youth in an Orthodox home and how his father, "a Rav of the old school," encouraged his sons to attend college classes on the second day of *Yom Tov*. As amazed as Rabbi Hailperin expressed himself to be in 1964, we are more amazed and touched by his father's view. We wonder whether we would have the courage in our high-pressured, organized religious life to suggest this to our children. Rabbi Hailperin pointed out that while the Law Committee suggested a decade of experimentation with *Yom Tov Sheni*, he has grappled with it for forty years in the same congregation and has arrived at the conclusion that it should be abolished.

We have inherited a *Weltanschauung* which is Eastern European in origin and we are hampered by all the obstacles that it places in our path. In the case of modern Jews, the new generation is mentally so divorced from the previous generation that it is as if centuries had intervened. And in point of fact the university training and socio-political environment of the present generation do make for the intrusion of many centuries between them and the talmudic thought-world of Eastern Europe which remains the conceptual framework of our present-day *halakhah*.

The nineteenth century German scholar Rabbi Zakharias Frankel once wrote, "At such times as an earlier religious ordinance was not accepted by the entire community of Israel it was given up . . . when the people allow certain practices to fall into disuse, then the practices cease to exist. There is in such cases no danger for faith."<sup>15</sup> This point of view fits the problem under review quite accurately. The community no longer observes *Yom Tov Sheni*. The fact is that the people have allowed the practice to fall into disuse. Our proposed declaration will eliminate the guilt feelings of many and take the burden of observance off the shoulders of a few loyalists who are putting up a last ditch stand. The obvious minimum implication in Frankel's statement is that although we do not declare the second day of *Yom Tov* to be abolished, we certainly are at liberty to permit the observance of the Torah days alone.

In an address to the Rabbinical Assembly in 1927, cited in *Tradition and Change*, Rabbi Louis Finkelstein said,

*It was revolutionary for the Babylonian Amoraim to set themselves up as*

<sup>15</sup> Rabbi Mordecai Waxman (Ed.), *Tradition and Change*, The Burning Bush Press, N. Y. 1958, page 49.

*judges and rabbis without the traditional Palestinian semikha; it was revolutionary for Rabbenu Gershon to gather a Synod for the purpose of making new enactments; it was revolutionary to write down the prayers and codify the law. All of these changes of which the least is far more radical than any proposed among us, were justified by the fact that they helped to save Judaism in crucial periods.*

Our proposed declaration on *Yom Tov Sheni* will also help restore some semblance of confidence in the machinery of *halakhah*, in the operations of our Law Committee, and in the realism of our approach to Judaism. *Yom Tov Sheni*, more than anything we can pinpoint, is a severe case of *gezeirah she'ain hatzibur yakhol la'amod bo* (an enactment which the community cannot live with), which the Rabbis of old always had the good grace to remove.

There are those who argue that being permissive toward the second day will *not* improve the sanctity of the first day. They may be right. But value judgments can only be made with a historian's perspective many generations later. Above all, a decision should not be made on the basis of precarious predictions regarding the future success of the first day. A declaration on *Yom Tov Sheni* should be offered because the second day is *halakhically indefensible*. It is not crucial if the declaration utterly fails to increase piety or Jewish observance among those of little devotion. We should act for the sake of those who enjoy and observe *one* day, but regard the second day as repetitious and burdensome, although they observe it because of their loyalty to *halakhah*.

THERE IS YET ANOTHER SIGNIFICANT CONSIDERATION which we should mention. One of the most remarkable events in Jewish history, having profound theological implications, has taken place in our time. This is the restoration of the State of Israel. This event serves as a formidable source of inspiration and unity for all Jewish communities. It is an anomaly when a Diaspora Jew spends *Yom Tov* in Israel and is confronted by a weekday on what to him is a *Yom Tov*. It is a strange thing for an Israeli in the Diaspora to discover he might be offending his hosts by being unable to join in their celebration of a second day of *Yom Tov*. It is a matter of some spiritual significance to move toward the co-ordination of all Diaspora religious days with those in Israel. It would be a move toward strengthening the unity of the Jewish people on their sacred days.

Many questions concerning liturgy and congregational procedures will have to be solved. It is not the purpose of our *teshuvah* to outline a program for congregations. Generally, for perhaps a generation, each congregation will seek to solve these problems as best meets the local tone. In time we



Yom Tov Sheni / Wilfred Shuchat

will evolve a consensus. Our intention here is to examine the halakhic and socio-historic factors. Taking these into careful consideration we reach the following conclusions:

While we reaffirm the inherent value of *Yom Tov Sheni*, in order to provide relief to those who no longer find in it spiritual satisfaction and enrichment, and to those who for socio-economic reasons find it is not feasible to observe the second day of *Yom Tov*, we declare that *Yom Tov Sheni* is not a *chok*, a permanent enactment, but a *minhag*, a custom. Congregations need not feel compelled to observe *Yom Tov Sheni*, other than the second day of Rosh Hashanah. On the other hand, those who still desire to maintain it as an expression of personal piety, as a *chumrah*, might do so, *vetavo aleihem berakhah*, may God bless them.

### Response to a Responsum

Wilfred Shuchat

IT IS IMPORTANT to establish the halakhic framework within which the Second Festival Day of the Diaspora arose.

There are three categories of Rabbinic enactments. The first is *gezeirah*, a decree made to prevent a community from transgressing a Torah prohibition.

The second category is *takanah*, intended for the general strengthening of the Torah.

The third category is *minhag*, custom. It must be clearly understood that *minhag*, like legend, ballad and other forms of folk-expression had its origin in the people, and not in Rabbinic enactments. Whenever the expression *hinhigu minhag* is found in the Talmud, the following process must be comprehended. First the people, under the leadership of a Rabbi, Sage or other charismatic personality, followed a particular custom or way of behavior. When it became widespread and its authority was questioned or guidance was sought as to its authenticity, the question was brought to a court. When the court was a *Sanhedrin* or an authoritative *Bet Din* and it responded to the *minhag* with approval, the Talmud then states:

Wilfred Shuchat is Rabbi of Shaar Hashomayim Synagogue in Westmount, Canada. This teshuvah was submitted to the Committee on Jewish Law and Standards of the Rabbinical Assembly in November 1969. The following members of the Committee associated themselves with it: Rabbis Max Arzt, David Feldman and Isaac Klein. Three members abstained, and five members registered opposition.

*hinhigu minhag*. This meant, however, that the *minhag* was no longer a *minhag*. It was elevated to the category of *takanah* and therefore became a matter of *din*, an important principle in Jewish law.

Something of this sort happened to the question of *Yom Tov Sheni Shel Galuyot*.

During the time of the Men of the Great Assembly and the first one hundred years of the Second Temple, people were knowledgeable in calendar lore even though they practiced the tradition of establishing the calendar through eyewitness reports of the new moon. During the second hundred years of the Second Temple (the time of the Mishnah), a period of great turbulence, only a few outstanding scholars had this knowledge. As a safeguard, two days of *Yom Tov* were followed even in Israel (according to Maimonides, in all communities more than ten days travelling time from Jerusalem). During the time of Rav Assi and the entire talmudic discussion in *Betzah*, knowledge of the calendar had become universal again. It is for this reason that the question was raised: why two days *Yom Tov*? The answer is stated in the Talmud Bavli: respect the custom of your ancestors, *hizaharu beminhag avoteikhem biyedeichem*. What this means is, *hinhigu minhag*. Having reviewed the experience of *Yom Tov Sheni*, the *Bet Din* in Jerusalem now reacted in legislative fashion, elevating a *minhag* to a *takanah*.

The *Ritba* and the *Ran* (fourteenth century), in their commentaries to the tractate *Sukkah*, summarize this entire development most succinctly. "At first the people followed a custom by themselves and later the Sages decreed this custom, sending out a fixed *takanah*. This happened even after they become expert in establishing the calendar."<sup>1</sup>

At this point a fascinating divergence of opinion appears in the *halakhah*. It was the opinion of Rav Hai Gaon and Rav Saadya Gaon, that the distinction in observance of the festivals was between *Eretz Yisrael* and the Diaspora. In the picturesque language of Rav Saadya Gaon, "For from the outset The Holy One commanded His servant Moses: Tell the people Israel that in *Eretz Yisrael* they shall observe only one day *Yom Tov* and outside of the Land two days. And he too [Rav Hai] has already responded that such was the practice of the early prophets as well, from the beginning of the exile (*galut*), always observing two days of *Yom Tov* outside of the land."<sup>2</sup>

Maimonides, however, maintains that the distinction is not between *Eretz Yisrael* and outside the Land, but that even in *Eretz Yisrael* two

<sup>1</sup> This is a short summary of a long *teshuvah* to be found in *Nachal Eshkol*, Laws of Chanukah and Purim, pp. 24-27.

<sup>2</sup> *Ham'asef*, vol. 2, no. 4, responsum 3.



Yom Tov Sheni / Wilfred Shuchat

days *Yom Tov* had to be observed by all communities situated at a distance of more than ten days travelling time from Jerusalem, or by all communities situated less than ten days travelling time from Jerusalem, but where the eye-witnesses of the new moon could not or would not visit. (Only principal Jewish communities were so visited, not places where only one or two Jewish families resided.) In his Laws of Establishing the New Month (which should be carefully studied by all who are interested in this problem), Maimonides makes the further statement that mathematical calculations are not sufficient to establish the holiness of a festival. He asserts that when, in the future, a State of Israel will be established and will enjoy peace, the practice of eye-witness reports will be restored, for it is not the mathematical calculation that declares a *Yom Tov* but the proclamation of a *Bet Din*.

The significance of this discussion for our purposes is that it further establishes the tremendous seriousness with which the second day of the Festival was viewed and the conviction that this was a permanent quality of Jewish life, not dependent upon calendar knowledge.

In every halakhic discussion of *Yom Tov Sheni*, reference is always made to the controversy as to whether the two days constitute *kedushah achat*, one unit, or *shtei kedushot*, two separate holy days. All agree that Rosh Hashanah is *kedushah achat*, and that the second day is as holy as the first. However, since the Talmud records the *halakhah* as being in accordance with Rav who advocated *shtei kedushot*, the impression is created that the second day Diaspora festival is less important than the first. The casual reader of the Talmud fails to discern that in describing the two days of *Yom Tov* as *shtei kedushot*, reference is made only to those communities in the Land of Israel which sometimes have to observe two days because of delays in the arrival of the eye-witnesses. In this case the motivation is entirely *mishum safek*, due to doubt, because the intention was not to observe two days. However, in the Diaspora the intention from the first was to observe two days and therefore they constitute *kedushah achat*.<sup>3</sup>

The gravity with which *Yom Tov Sheni* was considered can be seen from the kind of penalties decreed for its transgression. The *Mishnah Berurah* offers this comment as to why "excommunication" or "the ban" was the punishment for flagrant violation of the second day Diaspora festival: "The whole basis of *Yom Tov Sheni* is a Rabbinic enactment. Whoever violates any matter in connection with it is considered as having uprooted it entirely. Therefore were they severe in treating it, more so than in relation to the first day."

<sup>3</sup> See *Tosafot*, *Betzah* 5a.

The *Mishnah Berurah* presents an extreme view, but it indicates that the second festival day of the Diaspora was essential to the entire talmudic tradition. To overthrow it meant to topple the authority of the talmudic tradition.

GRANTED THAT WE ARE DEALING with a full-fledged Rabbinic enactment, it is still important to seek a reason for the tremendous motivation and dedication that have attached themselves so strongly to *Yom Tov Sheni*. What principle explains the fact that *Yom Tov Sheni* has spread to every corner of the Jewish world, and has been observed with sacrificial dedication for two thousand years?

Most of the reasons assigned in the talmudic tradition are too limited in scope. The reason that the *takanah* was a preventive measure taking cognizance of the obstacles that would be put in the way of those conveying notification of the new moon (*mishum kilkulei*), was certainly valid when formulated, but is hardly relevant today. The same may be said of the argument that a governmental or other authority might arise who would try to obstruct the observance of Jewish holydays by decree (*mishum she-mada*). The twentieth century has seen its share of such behavior, but it is not the kind of phenomenon that a second day *Yom Tov* could either prevent or in any way safeguard.

I am becoming increasingly fascinated by an argument, which I submit as a speculative hypothesis, that the key to the *takanah* resides in the belief that when a Sanhedrin is reconstituted in Israel, the calendar will again be determined by eye-witnesses and not by mathematical calculation. In establishing the *takanah* that *Yom Tov* must be observed in all those areas that the emissaries of the *Bet Din* did not reach, the Sages had in mind the difference in time between the mathematical calculation of the new month, and the day when the witnesses saw the new moon. According to the *Nachal Eshkol* (Rabbi Hayim Yosef David Azulay, nineteenth century), this could run anywhere from six to eighteen hours. But even if we eliminate this calculation, it could easily occur that the eye-witnesses would only see the moon in its prescribed position from the time of *minchah* on. Therefore the *Bet Din* would have to declare the next day to be *Rosh Chodesh*, and the day following to be *Yom Tov* (not the one established by mathematical calculation). The *takanah* of two days *Yom Tov* was established so that the true festival would be observed both from the point of view of calculation and from the point of view of eye-witnesses. Thus the establishment of the hoped-for Sanhedrin would neither disturb the calendar, nor affect the behavior of the community whose spiritual safeguards



Yom Tov Sheni / Wilfred Shuchat

would already provide for hallowing the day that the eye-witnesses to the new moon might determine.<sup>4</sup>

For all the element of caution that is involved in this development, if my hypothesis is correct we should be conscious of something else as well—a tremendous well-spring of optimism, faith and hope that a Jewish State in Israel would some day be restored, climaxed by the re-establishment of a Sanhedrin. The two day *Yom Tov* was meant as a dramatic reminder of that hope.

In light of this analysis it now becomes a problem to explain why there is only one day *Yom Tov* in Israel. After all, if we calculate by means of eye-witnesses, the one day observed may not always coincide with the first day of *Yom Tov* according to mathematical calculations. In some years it may coincide with the second day in the Diaspora. Furthermore, even in Israel the second day was always observed in those areas that the emissaries did not reach. So it should not be too surprising that some halakhic authorities question the present practice in Israel.

For example, Rabbi Jacob Emden (eighteenth century) wrote:

*As a result of continued and coercive emigration and wandering there was only a small Jewish community in the land of Israel in those days, of whom only a tiny minority were erudite in the Torah. I therefore maintain that in the case of Yom Tov Sheni a great error of judgment was made, which I attribute to spiritual confusion. From the very outset the minhag of one day Yom Tov in Israel was not established by competent scholars.*

The writer then adds a beautiful note of resignation.

*I know very well that my present efforts will not change this situation. Heaven forbid that one should question this minhag of the Land of Israel, in light of the fact that it has been established for such a long time and many generations that included great Sages of Israel have allowed this minhag to be accepted without protest. Even Yeshivot, staffed by great teachers and students, leaders of the Diaspora, have chosen to ignore this entire matter. . . . One can only conclude that such a major error of Rabbinic judgment must be the will of God.<sup>5</sup>*

In the land of Israel it was decided not to follow the majority of Jews in the world, but to follow the majority in Israel. Since only a minority of places in Israel were not reached by the emissaries (and therefore only a minority observed two days *Yom Tov*) it was decided that this minority should also observe only one day.

But please note that the one day observed in Israel is only the first

<sup>4</sup> Maimonides, *Hilkhot Sanhedrin*; Nachmanides, *Mitzvah* 253; Yehuda Halevi, *Kuzari* II.  
<sup>5</sup> *Teshuvot Yabetz* 168.

day by mathematical calculation, not necessarily the first day according to eye-witnesses in certain years. Thus the observance of one day in Israel as presently practiced is also only a *minhag*, a *takanah*. The authority of the *minhag* for two days in the Diaspora is not less powerful than the *minhag* that decrees one day in Israel. This leads Rabbi Jacob Emden (eighteenth century) to a number of remarkable conclusions.

He rules that if an entire community emigrates from the Diaspora to Israel and re-establishes itself there as a community, it must observe two days *Yom Tov* in Israel, *forever*. An individual who emigrates from the Diaspora to Israel is, so to speak, swallowed up in the majority and may observe only one day in Israel. If, however, an individual pioneers in a new area of Israel where there is no community, he must observe two days *Yom Tov* there.

Emden also rules that if a resident of Israel travels outside the Land he must observe everything about the second day both in public and in private, and this holds true even if an entire community of Israel moves to the Diaspora. He quotes a famous case in Florence in which two Jews, one from Israel and one from the Diaspora, had only one cup of wine between them. It was the end of the seventh day of Passover, and it was also the end of Shabbat. The question was: Should the wine be used by the Diaspora Jew to make the *Yom Tov kiddush*, or by the Israel Jew to make *havdalah*? He severely takes to task the local rabbi who rules in favor of the Jew from Israel.<sup>6</sup>

THE MINHAG OF ONE DAY in Israel, as explained above, introduced an entirely new concept into the question of the second day *Yom Tov*. It made it in reality a second festival day for the Diaspora. In theory, as indicated, there need not have been a differentiation. But the moment it was introduced it created a new status for the Land of Israel and a new relationship for the Diaspora. From the psychological point of view it introduced a tension between the Land of Israel and everywhere else, and with it an entire constellation of new values and new areas of significance.

The *Nachal Eshkol* lists about twelve such areas, but they could very conveniently be reduced to three.

1. The establishment of the authority of *Eretz Yisrael*.
2. Laying the spiritual groundwork for the Diaspora community.
3. Protecting the Diaspora community and, in the long run, the totality of the Jewish people.

This view is very effectively stated in the Midrash:

*Rav Abba said, in the name of Rav Jochanan, "The community of Israel said*

<sup>6</sup> *Ibid.*



Yom Tov Shenit / Wilfred Shuchat

to The Holy One: Because I did not observe one day of Yom Tov in the land of Israel as fully prescribed by our laws, I am now obliged to observe two days of Yom Tov in exile outside of the land of Israel. I had thought that I would receive a specific reward for the observance of each day (two rewards in all). I now learn that I am only entitled to one reward (for the two days)."

Rav Jochanan reacted to this interpretation by quoting the verse, "I have also given you statutes that are not good."<sup>7</sup>

Several emphases are made here. The first asserts the necessity for intensifying Diaspora life to make up for the deficiencies of spiritual exile. The second asserts that even our best efforts in the Diaspora cannot match the possibilities of Israel.

The view of Rav Jochanan is usually misunderstood, as implying that the second day of Yom Tov is not a good law. This, however, is not the case. His views are interpreted by the Tifereth Tzion (Rabbi Yitzchak Z'ev Yodler, nineteenth century Palestinian scholar):

Scripture speaks of a time when Israel is in Exile, and there the prophet [Ezekiel] discusses the laws in order to awaken within the community yearnings for repentance and a desire to return to their homeland. It is in this connection that he says, "I have also given you statutes that are not good and laws by which we cannot really survive." By the very fact that we are given laws that apply to the Golan, not applicable to life in the Land of Israel, we are taught the superior status of life in Israel and that the only place where the Torah and the commandments can be fully observed is the Land of Israel. The proof is that the commandment whose entire source and foundation is the Diaspora [to observe two days of Yom Tov] does not offer its observer the usual reward that is associated with a commandment. This is another method whereby God Himself tries to motivate us to that inner soul-searching that will lead us back to our homeland as soon as possible, to fulfill the Torah and the commandments in their entirety, as possible only there."

The Second Festival Day of the Diaspora is a permanent reminder of the spiritual superiority of Eretz Yisrael in Jewish life. Its sacrificial nature, its very difficulty of observance, is intended on the one hand to urge us to *aliyah* and, on the other hand, to create a form of redemptive activity that might in some fashion justify our remaining in the Diaspora. The reward for the *mitzvah* is not to be compared with the reward for observing only one day in Israel. But it is rewarded nonetheless, which is to say that it offers a spiritual foundation for Jewish life in Diaspora even though it is of a secondary quality and is spiritually dependent upon Eretz Yisrael.

<sup>7</sup> Shit Hashirim Rabbah, 1:43.

If anything, the rise of the State of Israel in our day has dramatized the necessity for accentuating that relationship. It is not accurate to maintain that the establishment of Israel has eliminated the concept of *Galut* from Jewish life. It is not true to maintain that merely because an individual Jew can emigrate to Israel if he so desires, his remaining in the Diaspora being a matter of choice, the term "exile" has lost its meaning. On the contrary, under these conditions one may assert anew that *galut* means not only physical but spiritual exile.

Everything about the Diaspora bespeaks spiritual exile: The minority status of the Jewish people in every country other than Israel; the minority status of Judaism in the world outside Israel; the challenge of the economic system to the Sabbath and Holy Days; the difficulties of *kashrut*. The pressures to conform to the cultural milieu and the majority civilization are not only real but growing, as the statistics on intermarriage and the inroads of assimilation can testify.

There can be no meaning to *ge'ulah* (redemption) without *galut* (exile). It is the very existence of *galut* as a spiritual reality which dramatizes the true meaning and purpose of *ge'ulah* in the Land. The cultivation of the concept of *galut* is a necessity for teaching about aspiring to *ge'ulah* in the Land; it is also an absolute necessity for the cultivation of *shekhinta begaluta* and for making possible the existence of a Torah life in Diaspora. The concept of *galut* urges us to greater effort and greater sacrifice. The moment we believe we are at home in America or elsewhere in the Diaspora, we are threatened as a religious community. The more we can cultivate a feeling of spiritual strangeness, the more we can emerge as critical human beings detached from and not immersed in the society and culture in which we live.

The Second Festival Day of the Diaspora is the dramatic symbol of *galut*. But it is more than a symbol. It is a vehicle and an inspiration for maintaining the *galut* will to live in the spiritual sense.

WE HAVE NOW ESTABLISHED two lines of argument. The first is the halakhic foundation of the Second Festival Day of the Diaspora, a *takanah* that was universal in every area of Jewish life, without protest, until the twentieth century. According to Maimonides it would require a Higher Court to annul it. According to Yehudah Halevi it would require the consent of every Jew affected by the *minhag*.

The hypothesis being offered in this paper is that the *takanah* tried to legislate for the possibility of a reconstituted Sanhedrin in Israel and the calendar calculation by means of eye-witnesses of the new moon. The two day festival would make it possible to maintain a permanent calendar and to be sure of observing the correct Jewish festival up to and including the time



Yom Tov Sheni / Wilfred Shuchat

when the highest goals in Jewish law and life would be reached, namely a Sanhedrin in a self-governing State of Israel. The authority of the *takanah*, however, is not dependent upon this or any other single reason.

The second argument of this presentation is closely related to the first. The goal of a Sanhedrin involved the concept of a Zion-centered Jewish world. The confinement of the Second Festival Day to the Diaspora accentuated the relationship between Israel and the Diaspora as that of Redemption and Exile. The Second Festival Day has an important role to play in justifying and redeeming Jewish residence in the Diaspora. It also dramatizes Israel as a Jewish society of superior spiritual status.

Let us now move to a third line of argument, which is derived from experience. *Yom Tov Sheni* has been in existence for two thousand years, observed without protest everywhere in the Jewish world outside of Israel. We have learned many things from this experience. Let us examine some of the pragmatic values of *Yom Tov Sheni*.

Experience has shown that the second day is difficult to observe. This is probably more true today than at any other time because we live in an open society, and Jews are integrated into the economy of every country in which they live. On the other hand, is the Sabbath easy to observe, or the First Festival Day, or the dietary laws? It seems more reasonable to suggest that those who complain about *Yom Tov Sheni* do so because, in addition to its difficulty, they have lost faith in its validity. Thus we come back again to the *halakhah* and the power of a Rabbinic enactment.

Note this comment by Rabbi David Luria (nineteenth century):

*An established custom that has been received from the past is not yet set aside with the argument that it is difficult to observe. How much more so in this matter of Yom Tov Sheni, enacted by the Sages of the Talmud and universally accepted throughout the Diaspora. In the case of an enactment of such great importance, the argument that a monetary loss may be sustained [by observing a second day] cannot be accepted as a valid argument.*

The halakhist whom I am quoting is far more concerned about another kind of loss, "the loss of commandments." After all, *Yom Tov Sheni* involves the loss of many other commandments, such as "the elimination of *tefillin* [which is a biblical commandment] and the possibility of reciting blessings in error, thus becoming guilty of taking the name of the Lord in vain."<sup>8</sup>

Why then did the Rabbis do it? They felt that the calculated risks were eminently worth the high stakes that were involved.

For the Rabbis, two days of *Yom Tov* built a fence around the whole

<sup>8</sup> Teshuvot Radal.

idea of *Yom Tov*. In their day and in ours it is a fence built around the first day in particular. Maimonides wrote:

*There is no greater fence [protection] around the Torah than Yom Tov Sheni. For example, by adding an eighth day to Passover [in observing Yom Tov Sheni] the community is completely protected from the possibility of eating chametz on the seventh day [by ending the day too early, or by being tempted to prepare on Yom Tov the chametz to be eaten after Passover]. And there are many other such examples too numerous to mention.*

This view is of special importance to the Diaspora. The State of Israel can afford to observe only one day of *Yom Tov*, since the entire apparatus of the State backs the national character of the holyday. If, however, the second day of *Yom Tov* were eliminated, it would not be long before the first day would fall into desuetude. We have living proof of this contention. A large and influential religious movement in Judaism has eliminated the second day of *Yom Tov* for the past two generations. *De facto*, if not *de jure*, the first day no longer exists as a significant factor in that movement, with the possible exception of the first night of Passover and the first day of Shavuot, and even these have become mere synagogal and liturgical expressions.

The formidable challenge we face is not to the second day of *Yom Tov*, but to the idea of holy days in general. In the struggle to maintain the second day we are fighting the battle of *Yom Tov* in the Diaspora.

I FIND UTTERLY ASTONISHING the new slogan calling for a unified calendar in Israel and the Diaspora. Since when have we not had a unified calendar?

Of course, in the Diaspora there are five additional holy days, two of which are observed in Israel as *Chol Hamoed*. But that too blends with the calendar and turns the Diaspora in the direction of Israel. Can there be anything more unifying than that?

Everything about *Yom Tov Sheni Shel Galuyot*, its halakhic expression and its psychological impact, is meant to turn our eyes towards Zion.

*They were able to perceive in their wisdom that Yom Tov Sheni involved a very important principle, indeed, the foundation of the national character of the Jewish people. Calculation of the calendar by means of eye-witnesses to the new moon had been abolished and Hillel had instituted the policy of mathematical calculation as a uniform procedure for both Israel and the Diaspora. Nevertheless, the decisions of Hillel were conditional upon the acceptance of a specific understanding (as the Ritba has written), namely that the Diaspora continue its practice as heretofore (observing the second day of Yom Tov). Thus the Diaspora would continue to comprehend that the authority and responsibility and purpose of the calendar is the centrality*



Yom Tov Sheni / Wilfred Shuchat

of Zion, and thus their eyes and their hearts might forever be turned to God in prayer that He bring us up to our land and replant us in our original boundaries. . . . It thus appears that the entire matter of the Second Festival Day of the Diaspora is the vehicle through which we maintain and strengthen our faith in the future redemption and our hope in Zion as the center of our national and spiritual life.<sup>9</sup>

Surely the rise of the State of Israel is meant to deepen the centrality of Zion in Jewish Life. Why, then, should we use it to introduce that which will lessen the centrality of Zion?

I distinctly recall visiting a *shiva* home during the week when the announcement advocating abolition of the second day of *Yom Tov* was first made in the papers. The mourners greeted me by saying, "We hear that we're no longer in *Golus*." *Yom Tov Sheni* has come to be identified by all Jews with a relationship to Zion. That is what they mean by "being in *Golus*." Eliminate it and you water down the meaning of Zion in Jewish life. Eliminate *Yom Tov Sheni* and you build a new force of Jewish assimilation in Diaspora.

Those Jews who do want to observe *Yom Tov* and who find the extra day a burden, already have an option, the only option that should be created: *aliyah* to Israel.

So much is written and said about the burden of the second day of *Yom Tov* that it might be in place to note that not all Jews find it a burden. Some find it a blessing. Some look upon it as replete with so much joy that they would like to find a reason for a *third* day of *Yom Tov*. Someone ought to calculate the great contribution that the second *seder* has made to Jewish family life over the centuries. It has been of inestimable value. It was the Diaspora, the second day of *Yom Tov*, that created Simchat Torah. What a tremendous climax Simchat Torah has become to the High Holy Days. With all the miracle of Israel, doubling up Simchat Torah with Shemini Atzeret cannot in any way compare to the Diaspora pattern of Shemini Atzeret followed by Simchat Torah.

One Jewish editorial writer has commented that if *Yom Tov Sheni* really possessed the kind of spiritual advantages its protagonists claim, it would have been adopted in Israel long ago. To tell the truth, we should not be too surprised if such a thing really happened. Another night of religious festivity has already been added to Simchat Torah. Discussion has already started to create a second Sabbath day for recreational purposes. Why, then, should we be surprised if, as Israel becomes a leisure society, voices will someday be heard advocating the addition of a second day of

<sup>9</sup> *Ibid.*, no. 7.

*Yom Tov*? Let us not forget *simchat Yom Tov*. *Yom Tov Sheni* has made it possible to double the joy of *Yom Tov*.

Of course there is much to do to deepen the content of the festival, to variegate it. *Yom Tov Sheni* has already produced *Yizkor* and Simchat Torah. We should seek to continue this creative process for Diaspora Judaism in our generation.

The religious calendar has been one of the great and unique institutions of Judaism. Its equivalent does not exist elsewhere. It has united the Jewish people in such a remarkable way that even unobservant Jews are influenced and guided by it. What a tragedy it would be if the calendar became a denominational battleground. The differentiation of the calendar between one movement of Jews and another has no meaning.

Even if one could list positive factors for the abolition of *Yom Tov Sheni* they would not be worth the added divisiveness and controversy that would be injected into an already chaotic and fragmented community. One could ask what would be gained, and suggest that even with the most positive of intentions more would be lost than gained.

What could we say to others in the community who in their way are struggling to maintain Sabbath and Holydays, including *Yom Tov Sheni*? There are families and communities, teachers and pupils, workers and professionals who have been struggling for years to get *Yom Tov*, including *Yom Tov Sheni*, recognized by civic and educational authorities. Are we strengthening Judaism when we weaken their hands and undermine the spiritual foundation of their struggle?

The calendar is the touchstone by which we regulate not only our holy moments but our relationship to our fellow Jews. If we cannot even share *Yom Tov* with each other, how much more difficult will it be to preserve a feeling of fellowship in the broader areas of Jewish life!

DESPITE EVERYTHING that has been said above, one has to acknowledge that the time may come when a calendar adjustment may be considered in the best interest of the Jewish people. That change may be not only in the direction of the abolition of *Yom Tov Sheni Shel Galuyot*; it may also be in the direction of changing the calendar in Israel. There are many possibilities for such changes that could be suggested.

But it is of paramount importance that there be an agreed upon procedure for these changes.

Insofar as the laws of establishing the calendar and the abolition of *Yom Tov Sheni* are concerned, I would promote one principle as a basic guideline: the initiative, the authority, and the promotion should come from Israel. Every halakhic authority insists that only Israel has the authority to sanctify the month. Maimonides makes only one exception, and that is where



Yom Tov Sheni / Aaron H. Blumenthal

there exists a Rabbinical personality outside of Israel universally recognized by both the great of Israel and of the Diaspora. I am not aware of any such personality today who advocates this line of departure.

We can recommend and argue and press resolutions. But when it comes to *halakhah lema'aseh*, practical legislation, and insofar as *Yom Tov Sheni* is concerned, the hegemony of Israel is paramount. This lesson was taught to us by Hillel the Prince, the master of the calendar and, in a sense, the creator of *Yom Tov Sheni*. It is the basic lesson of all. Would that we honor it!

### The Challenge of Yom Tov Sheni

Aaron H. Blumenthal

AS WE APPROACH a recommendation by our Committee on *Yom Tov Sheni Shel Galuyot*, it is appropriate for us to pay tribute to those of our colleagues who have contributed papers which have paved the way for our action. They are: Rabbis Jacob Agus, Ben Zion Bokser, Zelig Auerbach, Stanley Kessler, and two companions whom all of us miss, the late Rabbis William P. Greenfeld and Andrew Klein.

My own study, adopted unanimously by this Committee on October 15, 1963, and published in the Rabbinical Assembly *Proceedings* of 1964, was undertaken in large measure as a personal tribute to the memory of a beloved friend, Bill Greenfeld.

Reviewing the history of *Yom Tov Sheni* in our decision of 1963, it soon became obvious that *halakhah* did not offer one-way directional signs pointing unequivocally to a specific conclusion. Rather, as so often happens with a flexible and viable guide, it brought us to a fork in the road, leaving us to choose between two directions, either one of which would be consistent with the traditional evolution of *halakhah*. The momentum of *halakhah* requires that the over-riding consideration be, in this as in the many other problems, whether our decision is good for the future of Judaism.

In 1964 we chose to say,

*It is not necessary to eliminate Yom Tov Sheni for those congregations in which hardships prevent the conduct of religious services. To deny to the rest of the movement the benefit of further search and experimentation with Yom Tov Sheni would be needless surrender of previous values. We therefore recommend further study of 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 practice in the State of Israel,*

Aaron H. Blumenthal is Rabbi of Temple Emanuel in Mount Vernon, N. Y.

*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.*

To help in such experimentations, this Committee authorized a survey among our congregations, the results of which were distributed to our colleagues. We concluded in our opinion of 1964,

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

Unfortunately, the leadership of the Conservative movement in the last five and one-half years has not even attempted to search for new values in *Yom Tov Sheni*. This failure has produced a predictable result in our Committee: a desire to return to the fork in the road, and to proceed along the alternate highway in a search for a solution to the problems of *Yom Tov Sheni*.

Our colleagues Rabbis Philip Sigal and Abraham J. Ehrlich, in their commendable paper of January 1969, have re-opened the issue. They have concluded that it is no longer a violation of Conservative practice to observe the Festivals on those days originally appointed in the Torah, as they are now observed in Israel. One can only agree with this judgment. We join with our colleagues in permitting those congregations who experience extreme difficulty in conducting religious services on the second day, to dispense with it without placing themselves outside of the mainstream of our movement. Such limited application of our ruling can have beneficial results. However, we do not believe that extending the ruling to all our congregations will serve any useful purpose.

The basic question is whether it is better for American Judaism to observe two days or only one. The Sigal-Ehrlich position would result in discussions within all except a few of our congregations. Most will find themselves deeply divided. An inevitable compromise will require the conduct of second-day services for those who wish to attend. Rabbis, cantors and sextons will find themselves with *talit* and *tephillin* at an early morning *minyan* on the same day when they are expected to conduct *Yom Tov Sheni* services. On some Sabbaths there will be serious questions about the choice of *kiddush* and Torah readings. Grandchildren will be able to enliven the Seder table at the house of only one set of grandparents each year. These are but a few of the problems which our movement will have



Yom Tov Sheni / Aaron H. Blumenthal

to endure in most of our congregations. The net result, however, will be that after one or two generations all of American Jewry will be left with the observance of only one day. Rabbis Sigal and Ehrlich make it very obvious that they approve of this consequence; it will establish uniformity with Israeli practice, it will be easier for students and businessman. We disagree.

The observance of *mitzvot* in Judaism has never been geared to the activities of children. Ours is an adult religion, and the child is trained to take his eventual place in it. A human being spends most of his life as an adult. The feverish competitive pace of contemporary life is but a modern manifestation of Hillel's profound insight, *marbeh nekhasim marbeh dagah*. The revolt of young people against the whole cluster of values cherished by their affluent elders can be summed up in another of Hillel's wise aphorisms, *lo kol hamarbeh sechorah machkim*. They are right. Adults, Jewish and non-Jewish, need to learn to direct their energies away from the incessant pursuit of power and position. Towards that end, we need *more* festivals not fewer, *more* time spent with family not factory, *more* opportunities for creative leisure away from both the tensions and tedium of work.

History has demonstrated the folly of attempting to shift the Jewish *Shabbat* to Sunday for some of the reasons which motivate the suggestion to abandon *Yom Tov Sheni*. It is ironic that precisely when America is moving towards an ever wider recognition of the value of leisure for mental and physical health, we should be forsaking the cumulative value of two successive days of *Yom Tov*.

We conclude that it would be tragic for us to initiate a program which must lead inevitably to the abandonment of the second day of the festivals. Let those who have no alternative, because the condition of their communal lives is poor, not feel that they are in violation of *halakhah* if they observe only one day. But we can not condone the initiation of discussions about the second day in those congregations which do have regular and meaningful services on it.

The late Rabbi Morris Adler, of fond and blessed memory in this committee, was as anxious as any of us are to establish a uniformity with Israeli practice. But he argued that there also should be some differences between us and them. He thought, and we agree, that *Yom Tov Sheni* ought to emphasize the fact of our living in the *tefutzah*, that it ought not to be a dull repetition of the first day. We need imaginative experimentation with the second day. Once again we call upon the officers and the Executive Council of the Rabbinical Assembly to initiate a serious study and, together with the officers and the Executive Board of the United Synagogue, to involve our congregations in bold experimentations. *Yom Tov Sheni* is too precious for us to permit it to slip from the calendar by default.

## *Tisha B'Av and the Three Weeks*

*This paper, prepared by Rabbi Aaron Blumenthal, represents the minority opinion of the Committee on Jewish Law and Standards.*

The earliest reference to the seventeenth of *Tammuz* and the ninth of *Av* is a historical note in *Mishnah Taanit* (4:6).

חמשה דברים ארעו את אבותינו בשבעה עשר בתמוז וחמשה בתשעה באב. בשבעה עשר בתמוז נשתברו הלוחות, ובטל התמיד, והבקעה העיר, ושרף אפסטמוס את התורה, והעמיד צלם בהיכל. בתשעה באב נגזר על אבותינו שלא יכנסו לארץ, וחרב הבית בראשונה ובשניה, ונלכדה בתר, ונחרשה העיר. משוכנס אב ממעטין בשמחה.

Aside from the ambiguous משוכנס אב ממעטין בשמחה this mishnah tells us nothing about the manner of observance of either of these days. The mishnah in *Pesahim* (4:5) is a little more informative.

מקום שנהגו לעשות מלאכה בתשעה באב עושין. מקום שנהגו שלא לעשות מלאכה, אין עושין. ובכל מקום תלמידי חכמים בטלים. רבן שמעון בן גמליאל אומר, לעולם יעשה אדם עצמו תלמיד חכם.

It is obvious from the *Mishnah* that different practices concerning work on *Tisha B'av* prevailed throughout ancient Palestine, shortly after the destruction of the Temple, and that this variety was sanctioned by the Rabbis. The suggestion that לעולם יעשה אדם עצמו תלמיד חכם is purely hortatory. It is rejected by the *Yerushalmi* (Pes. 4:5) on the basis of an opinion quoting Rabbi Judah Nesiyyah, the grandson of Rebbe.

כמתמיה יעשו כל אדם עצמן תלמידי חכמים. כל עצמן לא גזרו חכמים בטילה בת"ב.

The final *Halakhah* is not according to Rabban Shimon ben Gamliel.

The character of the observance of *Tisha B'av* emerges from details furnished in a *b'rait*a in *Taanit* 30a.

ת"ר כל מצות הנוהגות באבל נוהגות בת"ב. אסור ברחיצה ובסיכה ובנעילת הסנדל ובתשמיש המטה. ואסור לקרות בתורה ובנביאים ובכתובים, ולשנות במשנה בתלמוד ובמדרש ובהלכות ואגדות אבל קורא הוא במקום שאינו רגיל לקרות ושונה במקום שאינו רגיל לשנות וקורא בקינות באיוב בדברים הרעים שבירמיה. ותינוקות של בית רבן בטלין... ר' יהודה אומר אף אינו קורא