

CHANGING NEIGHBORHOODS: MAY THE JEWS LEAVE?

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Halacha recognizes three major forms of communal relationships:
a) *shutfut* - These are partnerships, or social contracts, which are generally initiated by the involved parties and have no scriptural basis;
b) *V'Asita HaYashar V'HaTov* (*Devarim* 6:18) - This is a relationship loosely based on scripture, which mandates such *halachot* as *Bar Meitzra*: If one Jew puts his property on the market, he must extend the option to buy this property to his neighbor before opening it up to other prospective buyers (*Bava Metzia* 108b); this is "proper and good" behavior, fulfilling the dictum of the verse in *Devarim*; c) *Deracheha Darchei Noam* (*Mishlei* 3:17) - This is yet another scripture based relationship, in this case requiring one to be pleasant towards one's neighbors, teaching us the *halachot* of *Nizkei Schechenim* (see *Tur Choshen Mishpat* 155 who adduces this source to the laws of *Nizkei Schechenim*) - not impinging upon one's neighbor's privacy and use of his property.

The exact character of communal relationship in late twentieth century America is a major question. This question is addressed by Rabbi Menachem Mendel Schneerson (the Lubavitcher Rebbe) and Rabbi Moshe Feinstein in related *teshuvot* (Reb Moshe's *teshuva* was written as a letter to the Lubavitcher Rebbe supporting the latter's position.) in consecutive issues of *HaPardes* in 1969 (Vol. 43 nos. 7-8) (see also Contemporary Halachic Problems, Vol. 1 p. 182). These *teshuvot* were prompted by the massive "white flight" which was decimating older urban Jewish neighborhoods at that time. This phenomenon concerned these two *poskim* directly. Crown Heights (especially the adjacent Brownsville and East New York sections) and the Lower East Side - their respective neighborhoods - were particularly hard hit. To what extent could each community demand of its residents to stay and "hold the fort"?

We shall examine each of the three forms of communal relationships, in turn, beginning with the form of *shutfut*.

A cogent (although perhaps somewhat bold) explanation of this first form of communal relationship, social contract, may be found in Rabbi Shimon Shkop's *Shaarei Yosher* (5:2). Reb Shimon analyzes the concept of *shibud*, i.e., a lender's lien on the borrower's self and property. *Shibud*, states Reb Shimon, is not derived from any verse in

the Torah. Rather, it is a logical construct. If I take money from you, I must return money to you. As to the possible objection that may be raised - where in Judaism do we find *halachot* not grounded in Torah, or at least in Rabbinic decrees - Reb Shimon responds that in fact, an analogous case is the belief in God. One must first believe in God before accepting the Torah - not vice versa. This, according to Reb Shimon, is the reason that some *Rishonim* do not enumerate belief in God as a *mitzvah*. Belief must logically precede *mitzvot*. *Shibud* is also a concept which precedes the *mitzvot* of the Torah. (Reb Shimon continues in this vein. The *issur* of theft is not the basis of contractual obligations; rather, the Torah regards a violator of contractual obligations as being not only a civil offender, but a religious one as well.)

Shutfut is also a contractual obligation. Logic, not scripture, serves as the basis and determines the nature of the partners' relationships. The *Shulchan Aruch* (*Choshen Mishpat* 176:25) discusses financial claims of and against these partnerships. The *RM"A* adds a note to that discussion: "...And the inhabitants of a city in regards to municipal matters are considered partners." Therefore, if one inhabitant of a city files suit on behalf of the city, no other inhabitant can subsequently re-initiate this suit.

The Maharam Schick (*Responsa, Choshen Mishpat* 19; see also *Techumin* III, p. 300) elucidates this point: "Each and every community of the Congregation of the House of Israel is regarded as a partnership and, therefore, each and every inhabitant has rights and authority in all communal matters as in any partnership. However, in order that this situation not be similar to a pot of food which belongs to a partnership [a saying mentioned in *Eruvin* 3a, roughly analogous to "Too many cooks spoil the broth"], this one pulling this way, and this one pulling this way...Therefore, the custom is to choose *tovei ha'ir* [aldermen] and to grant them the authority to execute all the communal matters." If the communal relationship is thus viewed - as a partnership - the logical conclusion would be that just as a partnership may be dissolved at will, so too any inhabitant may pull out of the communal partnership by moving out of the city. We shall, however, see that communal relationships cannot be regarded only as *shutfut*.¹

We now turn to the form of communal relationship based on the *pasuk* of "*V'Asita HaYashar V'Hatov*." The *Shulchan Aruch, Choshen Mishpat* 175:40 states: "If one sells or rents to a non-Jew, he is excommunicated until he accepts upon himself any damage caused by the non-Jew or until the non-Jew agrees to abide by Jewish law in dealing with his neighbors. If the non-Jew subsequently violates the agreement, the seller must pay for the damage. If the violation occurred during the lifetime of the seller, then even if the seller dies, his son must pay out of the estate. If the damage only occurred after the seller's death, there is an opinion that the son is not required to pay."²

The next *halacha* in *Choshen Mishpat* (175:41) states that all this is

true when one can find a Jewish buyer who will pay as much as a non-Jew, not when a Jew is only prepared to pay less than the non-Jew. The only exception to this rule is when the non-Jew's intent may be to destroy the Jewish community, in which case a *dayan* must rule on the specific situation. The *SM"A* (no. 73) points out another exception. Even if the non-Jew is willing to pay an inflated price for the property, the seller must sell to the Jew for fair market value. The *SM"A* (no. 74) also defines the destruction of the community as a case where the non-Jew could have just as easily acquired a home in a non-Jewish neighborhood. The *Kesef Kodashim*, in his commentary on the *Shulchan Aruch*, writes that even when the non-Jew states that his intention is to abide by the *halacha*, if, despite his assertion, the neighborhood will be negatively affected, it remains forbidden to sell to him a house in the community.

It is true, of course, that *V'Asita HaYashar V'Hatov* is only an *issur d'rabanan* - an *asmachta* - an ordinance promulgated by *Chazal* and subsequently linked to a *pasuk*. Nonetheless, it goes without saying that *issurei d'rabanan* cannot be taken lightly.

We must now explore the third form of communal relationship, that of "*Deracheha Darchei Noam*." The *Shulchan Aruch, Choshen Mishpat* 156:7 states that if one of the residents of an alley (a *mavoi*) wants to become a doctor, a bloodletter, a weaver, a scribe or a teacher of secular subjects, the other residents of the alley can prevent him from doing so because the number of outsiders visiting in the alley will increase. Even if all the residents but one agree to the individual taking up this profession, that one resident may prevent him from opening a practice in the alley.³

The *Shulchan Aruch* concludes that one who owns a house in a common courtyard may not rent it to an individual involved in the above-mentioned professions. The *RM"A* states that to sell the house to such an individual is permissible. It is the responsibility of the remaining residents, not the seller, to deal with the problem. The *RM"A* adds, however, that this is only true if the seller sells to a Jew, not to a non-Jew who will not abide by Jewish law.

Rabbi Schneerson makes a *kal v'chomer*. If renting to a member of an objectionable profession is prohibited because it detracts from the neighborhood's standards, how much more so to sell to a non-Jew who will detract from the standards of the neighborhood.⁴

Rabbi Schneerson cites another *halacha* as relevant to this issue. The *RM"A* in *Choshen Mishpat* 155:22 writes about a case where a ruler in a certain country decreed that the Jews under his jurisdiction must convince the Jews who live under the hegemony of other minor lords to move into his sole jurisdiction (it seems for taxation purposes). If the decree were not fulfilled, then all the Jews would be expelled from the country. The *RM"A* rules that the consideration of possible *sakanot nefashot* in the case of an expulsion requires Jews from the other

communities to move into the ruler's country first, and deal with any monetary losses later. Rabbi Schneerson states that the ramification of this *halacha* is that Jews in an "old" neighborhood who are in peril may require the Jews who moved out to return in order to stabilize the neighborhood! Although it might be more practical in a case where the old neighborhood has been severely decimated to subsidize the emigration of the remaining Jews, the fundamental point manifested by this *halacha* is the mandate of communal responsibility even in the face of potential financial loss.⁹

The Lubavitcher Rebbe demonstrates from *Orach Chaim* 329:6-7 the importance of preserving the community. In frontier cities - a category which includes, in all likelihood, dangerous inner city neighborhoods - one may desecrate *Shabbat* when non-Jews besiege a city - even if they claim that they only have come to demand money or some other commodity. The preservation of the community - even in *chutz la'aretz* - is a value which involves *pikuach nefesh*, allowing for *chillul Shabbat*. It should be noted that the application of this case to our issue may be questioned. The *halacha* in *Orach Chaim* is based on *pikuach nefesh* considerations - danger to property is regarded as an extension of danger to life (in certain situations). On the other hand, our issue centers on the distinct question of communal responsibilities.

Rabbi Schneerson does not accept the argument that *pikuach nefesh* may compel one to leave a neighborhood. Essentially, he writes, misfortune can strike anytime, anywhere. On the contrary, he continues, one who leaves a neighborhood, thus transgressing all of the above mentioned *halachot*, is more vulnerable. Recent events in beleaguered neighborhoods such as Crown Heights may, however, lead to a reassessment of this approach. It seems certain in any event, that if the entire Jewish community can be relocated in an orderly fashion, then that community is permitted to abandon a dangerous neighborhood. Rabbi Schneerson's arguments in this specific regard take on a theological nature, and others may, of course, subscribe to a different *hashkafa*.

As mentioned previously, in the next issue of *HaPardes*, Reb Moshe, in a letter dated 25 Iyar, 1969, expressed his complete agreement with Rabbi Schneerson. He writes that had the *teshuva* not already been written, he would have written it himself.

In another *teshuva* (*Igrot Moshe, Choshen Mishpat* 2:22), Reb Moshe discusses a proposed low income housing project in Forest Hills, New York. Reb Moshe forbids all Jews to assist the authorities in building this project. He continues that in any event, no Jew may leave the neighborhood, as this causes great damage to those who remain.

In summation, an interesting concept is formulated by the *poskim* in ruling on this issue. Although a Jewish neighborhood in *chutz la'aretz* possesses no inherent *kedusha*, nonetheless, the concept of *kehilla* - a Jewish community - does exist, and all the relevant *halachot*

of communal responsibility are therefore applicable to the neighborhood's residents.

Neither the Lubavitcher Rebbe nor Reb Moshe define what constitutes a *kehilla* in *halacha*. The sources which deal with this subject seem to indicate that a *kehilla* is considered to exist anytime ten Jews form a united entity. The earliest source which makes this point is the *Mordechai, Bava Batra* no. 478, where the *Maharam MiRutenberg* is quoted as ruling that Jews who live in a community may require one of their number to remain in town in order to make up a *minyan*. (That individual may, however, hire someone to take his place.) The *Maharam* notes that other communal responsibilities, such as *tzedaka* and *hachnasat orchim*, are mandatory obligations upon each member of the community - even when the community consists of such a small number of people. The *Maharam* indicates that even a group of less than ten may obligate one another to participate in a fund to hire the requisite number of people for a *minyan*. The *Terumat HaDeshen (P'sakim U'Ktavim* no. 243), however, clarifies that this ruling only applies to the High Holidays; throughout the rest of the year, communal responsibility only begins to apply once the community consists of ten members (see *Hagahot Maimoniot Hilchot Tefilla* 11:1).

The ten Jews who comprise the *kehilla* must be permanent residents, not transient dwellers. The definition of a resident is not precisely clarified in *halacha*. The *Shulchan Aruch* and *RM"A (Choshen Mishpat* 163:2) note several possible approaches. All agree that one who has bought a home in the city or has dwelled therein for twelve months with the intention of remaining is considered a resident. The *RM"A* adds, however, that in localities where a *minhag* has been established, the *minhag* supersedes any other *halachic* norm (see *Biur HaGra* 163:23). The implication of this *halacha* is that the prevalent norm determines the character of communal relationships regardless of pre-existing *halachic* norms - including those elucidated by Rabbi Schneerson. It is therefore incumbent upon us to determine what is the modern norm, i.e., the *minhag hamakom*. It seems clear to this author that the implicit *minhag* in North America is one of personal freedom. In other words, a community and the residents thereof are not considered as one and the same unless some explicit social contract has been formed between some central organization (i.e. a shul, a community board, a social organization, affiliation with a certain yeshiva and/or chassidic group, etc.) and the individual resident - either tenant or owner.

An alternate form of affiliation which may require compliance with communal regulations is the authority of a *Rav*. The *RM"A (Choshen Mishpat* 156:6) notes the authority of a *Rav* to formulate regulations for his students. In addition, the *Shulchan Aruch* and *RM"A (Choshen Mishpat* 231:28) discuss the authority of a communal *Rav*. Concerning the latter *halacha*, however, there is some question as to whether the authority of a communal *Rav* stems from his position or

from his erudition (see Responsa *Dvar Abraham* 1:1:2, *Tzitz Eliezer* 2:23, and 3:29 and this author's *Bigdei Shesh* p. 295).

The question arises as to the density of Jewish population required to constitute a specific community. At the times when most of the sources which deal with *halachot* of communal responsibility were written, such a question was moot, as the small Jewish community was usually compressed into a ghetto or other such confined area. In our day and age, of course, the Jewish population may be spread out over vast areas of urban and suburban sprawl. What boundaries delineate communities under such circumstances? It seems to this author that we should follow our aforementioned line of reasoning, and study the prevailing North American *minhag*. In this and all other free countries, the voluntary affiliation of an individual with a communal grouping defines that individual's communal identity, regardless of geographical proximity or distance. The community, freely chosen by its members, possesses the right to require all of its members to abide by its regulations. If a commitment to remain in the neighborhood is either explicit (i.e. by contract or covenant) or implicit (i.e. by virtue of the *psak halacha* of a local *Rav* or a *posek* to whom the issue was referred) in the regulations of the community - no matter how small or spread out that community might be - then members of the community would be bound to abide by that commitment. The individual member of the communal grouping may not subsequently leave the community without the consent of his fellow members and/or the governing body or *Rav* of the community. In conclusion, although personal freedom prevails in the affiliation with a community, halachic standards (when and where applicable) prevail in the separation from this community.

NOTES

1. Reb Moshe was once asked as to the status of a person who has lived for some time in Israel. Is he still considered a member of his community in the United States? The issue concerned a certain individual who returned from Israel to protest a decision taken in his community in his absence. The community claimed that in light of the fact that this individual had lived in Israel for some time - and, especially in light of the fact that this particular individual only kept one day of Yom Tov when in Israel - he therefore is considered to have lost his right to express an opinion in communal matters. Reb Moshe responded that the factor which determines one's status in this regard is the maintenance of one's primary residence in the community, regardless of the actual time spent living therein. As an aside, Reb Moshe notes that he does not understand why such a person would only be required to keep one day of Yom Tov when in Israel - *Igrot Moshe, Choshen Mishpat* II no. 20.

2. The Lubavitcher Rebbe decried the maneuver employed by certain Jews in order to circumvent this problem. They - the sellers - would sell their homes to a Jewish real estate broker for a token sum, and it would be the broker who would turn around and sell the home to a non-Jewish buyer. The Lubavitcher Rebbe wrote that this stratagem does not avoid the *halachic* problem involved.

3. It is noteworthy that this *halacha* serves as the basis of a battle royal among contemporary *paskim* concerning the right (or lack thereof) of a dentist to open a clinic in his apartment building. The original *psak* in such a scenario was given by Rabbi E. Y. Waldenberg (*Tzitz Eliezer* 10:25, chap. 30), and subsequently taken up in a different case discussed by the *Beit Din* of Ashdod in which the dentist in question wanted to open a "strictly orthodox" clinic - with separate sections for men and women (*Techumin* III, pps. 255-274). The major issue discussed by all of these responsa is the applicability of this *halacha* to the case in question.

4. It is worth noting that we have explored the three forms of communal relationships in ascending order of severity: *Shutfus*, social contract, which has no basis in Torah or Rabbinic Decree; *V'Asisa HaYashar V'HaToov*, which is *d'rabanam*, and *Deracheha Darchei Noam*, which is of *d'orayta* nature - see *Sukkah* 32b.

5. Another problem which arises in the exodus from an old neighborhood concerns the shuls left behind. The issue of the sale of an abandoned shul is a well known one. But besides the apparent problems, another less apparent problem presents itself. Reb Moshe (*Igrot Moshe, Orach Chaim* 2:46) discusses a case in the city of Scranton where four shuls wanted to merge into one.

Reb Moshe responded negatively, citing a *Magen Avraham* (*Orach Chaim* 154:23) who states that it is forbidden to impede a new shul from opening in a city, even if a shul already exists in that community, because the more shuls there are, the more likely it is that people will fulfill *tefilla b'tzibbur*. Leaving a neighborhood, and causing shuls to close when there are people left behind, may constitute an *issur*.