View PDF



Rabbi Marc D. Angel is Director of the Institute for Jewish Ideas and Ideals.

When addressing a halakhic question, each posek (halakhic decisor) attempts to arrive at a decision that is objectively true. The posek will study and analyze the available halakhic literature, with the goal of understanding the halakha as clearly and accurately as possible.

At the same time, halakhic literature is characterized by a variety of decisions regarding the same questions. Different posekim arrive at different conclusions—even though they generally rely on the same source literature. Sometimes these differences are based on alternate readings or interpretations of the source texts. Or, one posek may attribute greater authority to certain halakhists, while another may prefer to depend on others. Differences in local conditions, halakhic traditions, educational backgrounds, hashkafa (religious worldview)—these and many other factors may also result in different decisions from different posekim.

The interrelationship of hashkafa and halakha may be illustrated in how two recent posekim—Rabbi Avraham Yitzhak Kook and Rabbi Bentzion Meir Hai Uziel—dealt with issues involving the understanding of the nature of Jewishness.

Rabbi Kook (1865–1935) was born in Latvia and studied at the yeshiva of Volozhin. In 1904, he emigrated to Israel, where he became the Chief Rabbi of Jaffa. In 1919 he was appointed as the Ashkenazic Chief Rabbi of Jerusalem, and in 1921 he became the first Ashkenazic Chief Rabbi of Erets Yisrael. Rabbi Uziel (1880–1953) was born in Jerusalem and studied under the Torah scholars of the city, including his own father, Rabbi Yosef Raphael Uziel, who was the Av Bet Din (chief justice) of the Sephardic community. In 1911, Rabbi Uziel became Chief Rabbi of Jaffa, where he worked closely with Rabbi Kook. In 1921 he became Chief Rabbi of Salonika; in 1923 he returned to Israel to serve as Chief Rabbi of Tel Aviv; and in 1939 he became Rishon leTzion, the Sephardic Chief Rabbi of Erets Yisrael.

Both Rabbi Kook and Rabbi Uziel were strong advocates of religious Zionism. They were outstanding communal leaders, teachers, and scholars. Both were prolific writers who made major contributions in the fields of halakha and hashkafa.

But despite these external similarities, their attitudes toward several vital issues are radically different. Their disparate understandings of the nature of Jewish peoplehood are manifested in a number of their halakhic decisions.

Conversion

Let us begin with a discussion of how they dealt with the question of conversion to Judaism. How does a non-Jew enter the Jewish fold? What is the nature of the Jewishness which the convert accepts?

Rabbi Kook and Rabbi Uziel studied the same talmudic and rabbinic sources. That their rulings were diametrically opposed to each other reflects their different hashkafot, their different understanding of the nature of Jewish peoplehood.

Both dealt with the serious problem of what to do with individuals who requested conversion to Judaism, even when it was believed that the converts were not likely to observe all of the mitzvoth. For the most part, such converts were interested in gerut (conversion) for the sake of marrying a Jewish person, and were not motivated by theological concerns. Obviously, neither Rabbi Kook nor Rabbi Uziel thought that such converts represented the ideal. On the contrary, everyone would agree that it was preferable for converts to choose to join the Jewish people from a belief in the truth of Judaism and a total commitment to observe the mitzvoth. However, a great many converts do not come with these ideal credentials.

Rabbi Kook was adamant in his opposition to accepting converts who did not accept to observe all the mitzvoth. Even if a convert followed the technical procedure for conversion, but lacked the absolute intention to observe the mitzvoth, his conversion is not valid. When the Talmud states (Yebamoth 24b) that kulam gerim hem (“they are all converts”; this passage refers to individuals who converted for the sake of marriage or because of other external factors), this refers only to those who did have the intention to accept the mitzvoth in full. Rabbis who accept for conversion those candidates who come for worldly reasons, but who will not fulfill the mitzvoth, are making an error. Much evil will befall such rabbis. They are guilty of bringing thorns into the house of Israel.

Rabbi Kook argues that rabbis who accept such converts are transgressing the prohibition of lifnei ivver (placing a stumbling block in the path of a blind person;

by extension, this prohibition includes acts of misleading others). If the conversions are not halakhically valid, then the rabbis are misleading the Jewish public by calling such individuals Jews when in fact they are not Jewish. Such negligence will lead to many problems, including possible intermarriage. On the other hand, if these individuals are to be considered valid converts, then the rabbis are misleading them by not stressing how they will be subject to punishment for violating the mitzvoth.1

In another Responsum, Rabbi Kook again emphasizes that converts who do not commit themselves to keep the mitzvoth should not be accepted. If unqualified individuals (hedyotot) accepted them, no rabbi should perform weddings for them even after they have been converted in this way. “And happy is the one who stands in the breach to guard the purity of Israel, may a good blessing come to him.”2

For Rabbi Kook, then, the acceptance of mitzvoth is the essential ingredient in Jewishness. One who does not accept to observe the mitzvoth simply cannot become part of the Jewish people, even if he or she were to go through the technical rituals of conversion. And even if one were to find halakhic justification to validate these conversions, we still should not allow such converts to marry Jews.

Rabbi Uziel also wrote a number of Responsa dealing with would-be converts whose commitment to observance of mitzvoth was deficient. While acknowledging that it was most desirable that converts accept all the mitzvoth, Rabbi Uziel noted that in our times many individuals seek conversion for the sake of marriage. Instead of disqualifying such conversions, however, Rabbi Uziel actually encouraged them. He felt that it was necessary for us to be stringent in matters of intermarriage, i.e., we should do everything possible to prevent a situation where a marriage involves a Jew and a non-Jew. If we can convert the non-Jewish partner to Judaism, then we have preserved the wholeness of that family for the Jewish people, and we can hope that their children will be raised as Jews. Given the choice of having an intermarried couple or performing such a conversion, Rabbi Uziel ruled that it is better to perform the conversion. He, of course, believed that rabbis should do everything in their power to break off the projected intermarriage. They should resort to conversion only when it is clear that the couple would not be dissuaded from marriage to each other.3

In another Responsum, Rabbi Uziel explains that the obligation of rabbis is to inform candidates for conversion of some, not all, of the mitzvoth (Yoreh De’ah 268:2). It is impossible for a bet din to know with certainty that any convert will

keep all the mitzvoth. Conversion, even initially, does not require that the convert accept to observe all the mitzvoth. Indeed, the procedure of informing a non-Jew about the basic beliefs and mitzvoth is required initially. But if this procedure were not followed, and the non-Jew was converted ritually (circumcision and ritual immersion) without such information, the conversion is valid notwithstanding (Yoreh De’ah 268:2, 12).

Rabbi Uziel concludes that it is permissible—and a mitzvah—to accept such converts, even when it is expected that they would not observe all the mitzvoth. Our hope is that they will come to observe the mitzvoth in the future. We are obligated to give them this opportunity. If they fail to observe the mitzvoth, the iniquity is on their own shoulders, not ours. Rabbi Uziel rejects the argument that since a vast majority of converts do not observe the mitzvoth, we should not accept converts at all. On the contrary, he argues that it is a mitzvah to accept these converts. We are obligated not only to do these conversions to prevent intermarriage, but we have a special responsibility to the children who will be born of these marriages. Since they are of Jewish stock, even if only one parent is Jewish, they should be reclaimed for our people. Rabbi Uziel writes:

"And I fear that if we push them [children] away completely by not accepting their parents for conversion, we shall be brought to judgment and they shall say to us: 'You did not bring back those who were driven away, and those who were lost you did not seek'" (Yehezkel 34:4).4

Whereas Rabbi Kook saw the acceptance of mitzvoth as the sine qua non of entering the Jewish fold, Rabbi Uziel thought it was not an absolute requirement at all. Whereas Rabbi Kook believed that the mitzvoth are the defining feature of the Jewish people, Rabbi Uziel stressed the importance of maintaining the wholeness of the Jewish people, even when the observance of mitzvoth was deficient. The halakhic difference between them can be apprehended on a deeper level if we consider their difference in hashkafa.

The act of conversion, according to Rabbi Kook, requires the convert to join the soul of Kenesset Yisrael (a metaphysical representation of the “congregation of Israel”). This can be accomplished only via total acceptance of the mitzvoth, which are the essence of the Jewish soul. Rabbi Kook sees Kenesset Yisrael as the highest spiritual manifestation of human existence. He propounds a notion found in kabbalah that there is an essential difference between Jews and non-Jews. Rabbi Kook writes:

"The difference between the Jewish soul, its self, its inner desires, aspirations, character and status, and that of all nations, at all their levels, is greater and deeper than the difference between the human soul and the animal soul; between the latter there is merely a quantitative distinction, but between the former an essential qualitative distinction pertains."5

Each Jew is connected spiritually to Kenesset Yisrael through the fulfillment of mitzvoth and the ethical demands of Torah. The nourishment of the Jewish soul “is the study of Torah in all its aspects, which also includes historical study in its fullness, and the observance of the commandments with deep faith illuminated by the light of knowledge and clear awareness.” 6

In stressing the distinctiveness of the Jewish people and its essential difference from all other nations, Rabbi Kook appears to downplay the ethical universalism implicit in the classic Jewish teaching that human beings were created in the image of God. Instead of focusing on the universal spiritual dignity of all people, Rabbi Kook asserts a radical distinction between Israel and the nations.

On the other hand, Rabbi Kook did recognize the existence of select individuals among the nations who can reach great spiritual heights. Whereas the supreme holiness specific to Israel is not shared by the nations, it is possible for individual non-Jews to imbue themselves with the holiness of Torah and to join the people of Israel.7

Rabbi Kook’s hashkafa, thus, plays itself out in the halakhic issue of conversion. For him, a non-Jew needs to undergo a transformation of his soul in order to become part of Kenesset Yisrael. Conversion is not just a matter of following a set of prescribed rules and guidelines; rather, it is an all-encompassing spiritual transformation, possible only for a select few spiritually gifted individuals.

Rabbi Kook’s hashkafa is imbued with mystical elements. Given his understanding of the nature of the Jewish soul, it follows that he takes an elitist position vis-à-vis accepting converts. Only those who are truly qualified spiritually may enter the fold of Israel. To accept converts who are not absolutely committed to mitzvah observance is, for Rabbi Kook, a travesty.

Rabbi Uziel, too, stressed the distinctiveness of the people of Israel. Indeed, his hashkafa is close to Rabbi Kook’s in that he also saw the people of Israel as the ideal model of humanity, embodying the highest form of harmony and spiritual unity.8

Although Rabbi Uziel recognized the distinctiveness of the people of Israel, he did not make the same sharp distinction between Jews and non-Jews as did Rabbi Kook. Rather, Rabbi Uziel stressed the connection between Jews and non-Jews, and the responsibility of Jews to set a good example from which the non-Jewish world can learn.

Rabbi Uziel was critical of those Jews who taught that one's Jewishness should be a private matter observed in the home, and who said that one should be a "human being" when in public. He rejected such a notion as being absurd, "since Judaism and humanity are connected and attached to each other like a flame and its coal." The goal of Judaism is to have Jews be the finest possible human beings so that they could influence humanity for the better. Judaism was not a private matter, but was for application in the world at large.9

Rabbi Uziel also rejects the position of those who claimed that Judaism was merely a faith. Clearly, the people of Israel constitute a nation with a distinctive national character. Neither the Torah nor our sages ever divorced Jewish faith from Jewish peoplehood.10

Rabbi Uziel rejects the notion that Judaism could survive only if Jews isolated themselves from the rest of society. Those who limited Jewish life to synagogues and study halls thereby were constricting the real message of Judaism. Rabbi Uziel argues that the Torah was quite capable of confronting all cultures and all peoples, without needing to surrender or hide. A living culture has no fear of borrowing and integrating concepts from other cultures, and it can do so without losing its own identity. Jews can learn from the non-Jewish world and still remain faithful to their own distinctive mission of holiness and righteousness. Moreover, as a living culture, Judaism has a message to teach others as well. To constrict Judaism into a spiritual and intellectual ghetto is not true to the mission of Israel. The Torah contains within it a full worldview on the individual and the nation; therefore it is our obligation to recognize and teach our spiritual ideal, and to try to increase our spiritual influence on humanity as a whole.11

For Rabbi Uziel, then, the distinctiveness of the Jewish people is not seen as a mystical concept which separates Jews ontologically from non-Jews. Rather, the Jewish people have a positive responsibility of reaching out to the non-Jewish world, to bring them closer to the religious ideals of Judaism.

This hashkafa manifests itself in a greater tolerance and openness when it comes to the halakhic question of conversion. Certainly, it would be best if all Jews and all converts to Judaism observed the mitzvoth in full. But since we do not live in

an ideal world, we need to strive to attain the best results possible. Our first concern has to be to maintain the integrity of the Jewish people, Jewish families. Non-Jews who wish to become part of the Jewish people are thereby testifying that they wish to come closer to our teachings and traditions. Since Jews and non-Jews are all created in the image of God, the conversion process does not entail an absolute spiritual transformation of the convert's soul, but rather a pragmatic decision to join the Jewish people and to come closer to the ideals and teachings of the Torah. This hashkafa gives greater leeway to the rabbis who must make specific decisions regarding conversion, based on the particular situation of each case. Universalism and pragmatism on behalf of the Jewish people, rather than mystical and metaphysical considerations, should guide the conversion process.

Autopsies

The hashkafic difference between Rabbi Kook and Rabbi Uziel concerning the nature of Jewishness also may be demonstrated in another halakhic area: autopsies. In 1931, Rabbi Kook was asked whether it was permissible to perform autopsies as part of the training of doctors in medical schools. With the expanding Jewish settlement in the land of Israel, there certainly was a need to train Jewish doctors.
Medical training entailed autopsies.

Rabbi Kook ruled that disgracing a dead body (nivul haMet) is a prohibition unique to the Jewish people, since the Almighty commanded us to maintain the holiness of the body. He then went on to say that there is a sharp difference between Jews and non-Jews with regard to their bodies. Non-Jews consider their bodies only as biological structures. They eat whatever they wish, without restriction. They have no reason to be concerned with the issue of disgracing the dead body, so long as the autopsy was done for a reasonable purpose such as medical study. Rabbi Kook, therefore, recommended that the medical programs purchase non-Jewish bodies for the purpose of scientific research. He then stated that the whole category of disgrace of the dead body stems from the fact that humans were created in the image of God. But this image of God is manifested particularly in Jews due to the holiness of the Torah.12 The Jewish attachment to Torah and mitzvoth, thus, not only characterizes the Jewish soul, but also imparts holiness to the Jewish body.

Rabbi Uziel wrote a lengthy Responsum on the subject of autopsies, although he specified that his Responsum was theoretical rather than a formal legal ruling (leHalakha veLo leMa'aseh). In reviewing the halakhic literature on nivul haMet, Rabbi Uziel concluded that this category applies only when a dead body is treated

disrespectfully. Autopsies performed in a respectful manner for the sake of medical knowledge do not constitute, according to Rabbi Uziel, nivul haMet. He points out that there have been many rabbinical sages throughout Jewish history who were also medical doctors. They could not have learned their profession without having performed autopsies. Rabbi Uziel states that “in a situation of great benefit to everyone, where there is an issue of saving lives, we have not found any reason to prohibit [and on the contrary, there are proofs to permit].

Rabbi Uziel considers the question of whether it would be preferable to obtain non-Jewish bodies for the purpose of autopsies. His response is sharp and unequivocal:

"Certainly this should not even be said and more certainly should not be written, since the prohibition of nivul stems from the humiliation caused to all humans. That is to say, it is a humiliation to cause the body of a human—created in the image of God and graced with knowledge and understanding to master and rule over all creation—to be left disgraced and rotting in public. There is no difference between Jews and non-Jews, in the sense that all are created in the image of God. The Jew has no claim to higher status in this regard. If one were to prohibit autopsies, then no autopsies could be performed on any body—Jewish or non-Jewish. The result would be that no doctors could be trained, with a consequent result of an increase in illness, suffering, and death."13

It is clear, then, that Rabbi Kook understood the nature of Jewishness in kabbalistic, metaphysical terms. For him, there is a definite and almost unbridgeable gap between the people of Israel and the non-Jewish nations. This hashkafa influenced his halakhic decisions in the areas of conversion and autopsy. On the other hand, Rabbi Uziel stressed the human quality of the Jewish people, the essential Godliness of all people. His generally universalistic outlook recognized the distinctiveness of the Jewish people. But the distinctiveness of Israel is manifested not by separating Jews absolutely from everyone else; rather, it is shown when Jews serve as models to draw others closer to the ideals of the Torah. This hashkafa pervades his discussions of conversion and autopsy.

Women in Civic Life

Rabbi Kook and Rabbi Uziel also differed in matters pertaining to the role of women in civic life. Their halakhic decisions reflected their different attitudes toward the role of women in a traditional society.

Women’s rights to vote and to be elected to public office were the subject of heated controversy among the Jewish community in the land of Israel in the early part of the twentieth century. In the struggle over women’s suffrage (1918–1921), the rabbinical leadership of the old Yishuv generally opposed extending to women the right to vote and hold public office. In contrast, the Sephardic rabbinic leadership generally favored granting women those rights.

Rabbi Kook, the leading Ashkenazic rabbinic personality in this debate, argued that the Torah tradition relegated civic authority only to men, and that women were to remain in the private, domestic domain. He rejected the “modern innovation” calling for an expansion of women’s role, believing this was a threat to traditional morality and family life.14

Rabbi Uziel, the leading Sephardic voice in this debate, argued that innovation was not necessarily bad. On the contrary, it was fine to innovate where there was no clear Torah prohibition involved. On the question of whether women should be permitted to vote, Rabbi Uziel stated that

"We have not found any clear foundation to forbid. It is unreasonable to deprive women of this human right, since in these elections we choose our leaders and give our elected representatives the power to speak in our names, to arrange the affairs of our settlement and to tax our property. Women, directly or indirectly, accept the authority of those elected, and obey their rulings and communal and national laws.”15

Rabbi Uziel thought it was unjust to expect women to be bound to decisions over which they had no say.
Some opponents of women’s suffrage suggested that women’s understanding was limited, and they were not competent to vote. To this, Rabbi Uziel noted that many men had limited understanding: Should they, too, be deprived of the right to vote? Moreover, Rabbi Uziel wrote that women were endowed with intelligence and sound judgment, no less than men. Experience demonstrates this to be true.

Rabbi Uziel rejected the argument that letting women vote would be a threat to morality and family life. This is a baseless claim and should carry no weight in this debate. One opponent thought that women should be excluded from voting or holding office, based on women’s status in biblical times. Rabbi Uziel brushed this objection aside, noting that it had no bearing on the question at hand. Women, as well as men, were created in God’s image. They had a basic right to be able to vote for those who would have authority to pass laws which would affect them. Not only was there no prohibition to women’s suffrage, but depriving women of

this right would be unjust and would cause them humiliation and pain.

Having concluded that women had the right to vote, Rabbi Uziel then turned to the question of whether women had the right to be elected to public office. Halakhic literature includes the notion that women should not hold positions of authority over men. After analyzing these sources carefully,
Rabbi Uziel found that there was no objection to women being in positions of authority—if the community willingly accepted them in these offices. Therefore, women who were elected to office exert authority on the basis of communal approval. Rabbi Uziel stated that although men and women would be sitting together during the public deliberations, this was no breach of modesty or morality. These were not social events, but serious discussions and debates in which participants would participate with all due propriety.

In another Responsum, Rabbi Uziel offered halakhic grounds to allow women to serve as civil judges, as long as the community accepted their authority to judge. He did not personally think it was a good idea for women to serve as judges because of their innately compassionate natures, but he presented the halakhic justification for them to be judges.16

In presenting the opinions and decisions of Rabbi Kook and Rabbi Uziel, it has not been our purpose to determine who is right or who is wrong, or if both are right—ellu veEllu divrei Elokim hayyim (“both positions are acceptable in the eyes of God”). Rather, it has been our purpose to illustrate the interrelationship between hashkafa and halakha. The philosophy and worldview of a posek are not only reflected in halakhic decisions—they help shape those halakhic decisions.

Notes

1. Da’at Kohen, Jerusalem, 5745, no. 154. The discussion on conversion and autopsies is drawn from my article, “A Discussion of the Nature of Jewishness in the Teachings of Rabbi Kook and Rabbi Uziel,” in Seeking Good, Speaking Peace: Collected Essays of Rabbi Marc D. Angel, edited by Rabbi Hayyim Angel, Ktav, Hoboken, 1994, pp. 112–123.
2. Ibid., no. 155.
3. Mishpetei Uziel, Jerusalem, 5724, no. 18.
4. Ibid., no. 20. For a discussion of Rabbi Uziel’s rulings on conversion, see my article, “Another Halakhic Approach to Conversions,” Tradition, 12 (Winter–Spring 1972), 107–113.
5. Orot, Jerusalem, 5745, p. 156. See the article by Rabbi Yoel Ben-Nun, “Nationalism, Humanity and Kenesset Yisrael,” in The World of Ray Kook’s Thought, published by the Avi Chai Foundation, New York, 1991, pp. 210 f.

6. Orot, p. 145; Rabbi Yoel Ben-Nun's article, p. 224.
7. Rabbi Yoel Ben-Nun's article, p. 227.
8. A series of articles by Nissim Yosha, under the title "Yahid ve Umah," appeared in the journal ba-Ma 'arakhah, nos. 300–306, dealing with Rabbi Uziel's understanding of Jewish peoplehood. See also my book, Voices in Exile, Ktav, Hoboken, 1991, pp. 202 f.
9. Hegyonei Uziel, vol. 2, Jerusalem, 5714, p. 122.
10. Ibid.
11. Ibid., p. 125
12. Da'at Kohen, no. 199.
13. Piskei Uziel, Jerusalem 5737, no. 32, especially pp. 178-179.
14. Ma'amarei ha-RaAy'aH, Jerusalem, 1984, pp. 189-194. See Zvi Zohar's article, "Two Halakhic Positions on Women's Suffrage," pp. 119-133, in Sephardi and Middle Eastern Jewries, ed. Harvey E. Goldberg, Indiana University Press, Bloomington, 1996. See also the discussion in my book, Loving Truth and Peace: The Grand Religious Worldview of Rabbi Benzion Uziel, Jason Aronson, Northvale, 1999, pp. 204f.
15. Piskei Uziel, Mossad haRav Kook, Jerusalem, 5737, no. 44.
16. Ibid., no 43.