YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

**"My Children have Defeated Me"**

**Fundamental questions in the study of the Oral Law**

**Rav Amnon Bazak**

**Shiur #62: Chapter Eight (7)**

**Dealing with Changes in Reality after the Sealing of the Talmud**

**IV. Relations with Gentiles**

Another area in which there have been significant changes involves how we relate to gentiles. *Chazal* maintained a policy in various contexts that differentiates between the status of Jews and the status of gentiles, but over the course of time, these distinctions became difficult to apply – not only due to external problems, such as the fear of gentiles and the precarious status of Jews in the Diaspora, but also due to intrinsic and ethical considerations. As times changed, relating to all gentiles in the same way *Chazal* had once related to idol worshippers began to feel uncomfortable. Changes in the character of the gentiles around us brought about changes in the ways *halakha* relates to them, in various contexts and to different degrees.

A comprehensive review of these questions would take us beyond the scope of this framework, but we will trace one halakhic approach, which was presented most clearly by one of the most important *Rishonim*, Rabbi Menachem ha-Meiri, in many contexts.[[1]](#footnote-1) His main argument was that various laws that present a negative attitude toward gentiles are not relevant to many of the gentiles living in our time, who believe in God and maintain a judicial system based on a desire for truth and justice. The *poskim* did not always accept the Meiri's approach, and sometimes they followed it in practice but without accepting his reasoning. In any case, we will briefly discuss his approach and consider its ramifications for various contemporary questions.

1. The Gemara establishes that stealing from a gentile is forbidden, but there is no obligation to return his lost property; similarly, in a case where a non-Jew erred in his calculations to the benefit of a Jew, there is no obligation to point out his error:

His lost article is permitted, for Rav Chama bar Guriya said in the name of Rav: From where do we derive that the lost article of a gentile is permitted? For it is stated: "And with every lost thing of your brother’s" (*Devarim* 22:3) – it is to your brother that you must restore it, but you need not restore it to a gentile… It was taught: Rabbi Pinchas ben Yair said: Where there is a danger of causing a desecration of God's name, even retaining his lost article is prohibited. Shmuel said: His mistake is permitted. (*Bava Kama* 113b)

In a case where the gentile is unaware and there is no concern of causing a desecration of God's name, there is no obligation to return to him an article that he had lost, or to point out to him a miscalculation that he had made; one is permitted to enjoy the benefit of his error.[[2]](#footnote-2) Elsewhere, it is stated that it is actually problematic to restore a lost article to its non-Jewish owner:

Rav Yehuda said in the name of Rav: … or one who returns a lost article to a gentile – concerning him, Scripture states: "[and he will bless himself in his heart, saying, ‘I shall have peace, though I follow the willfulness of my heart] to add the quenched to the thirsty’; the Lord will not wish to pardon him" (*Devarim* 29:18-19). (*Sanhedrin* 76b)

On the other hand, the Jerusalem Talmud (*Bava Metzia* 2:5, 8c) indicates that restoring a lost article to a non-Jew brings about a sanctification of God's name. The Rambam codifies both positions and reconciles them:

It is permitted to keep the lost article of a gentile, for it is stated: "the lost thing of your brother." Indeed, if one returns such an article, one transgresses a prohibition, for one strengthens the power of the wicked peoples of the world.[[3]](#footnote-3) If, however, one returns it to sanctify God's name, so that others will praise the Jewish people and know that they are trustworthy, this is praiseworthy. When there is a possibility of the desecration of God's name, it is forbidden to keep an article lost by a gentile, and it must be returned. (*Hilkhot Gezeila* 11:3)

In any case, the Meiri in *Bava Kama* (ad loc., s.v. *nimtza*) has a unique approach to the entire issue:

It turns out that even in the case of gentiles and those who are not bound by religious behavior, it is prohibited to steal from them… However, one is not obligated to go after his lost article in order to return it to him. Not only that, but even one who finds his lost article is not obligated to return it, for finding is considered a partial acquisition, and returning the article is an act of piety, and we are not bound to act piously toward someone who has no religion. The same applies to his mistake; if he erred on his own, not because of one’s plot or effort, it is not necessary to return it to him… But anyone of the nations who are bound by religious behavior and worship God in some form, although their faith is far from ours, are not included in this category [of gentiles], but rather are considered like complete Jews regarding these issues, including [the laws of returning a] lost article, and even a mistake, and for all other things, without any distinction.

The Meiri argues that the words of the Gemara apply only to gentiles "who are not bound by religious behavior"; it is prohibited to steal from them, but there is no obligation to restore their lost property or point out a mistake in their accounts. However, non-Jews “who are bound by religious behavior and worship God in some form," even if "their faith is far from ours," are considered like "complete Jews," and may not be treated in a discriminatory way.[[4]](#footnote-4)

This approach was apparently not codified as the normative *halakha* in the usual halakhic codes. The *Shulchan Arukh* (*Choshen Mishpat* 266:1) cites the words of the Rambam brought above. However, one of the commentators to the *Shulchan Arukh*, Rabbi Moshe Rivkes,[[5]](#footnote-5) tries to infer from a careful reading of their words that in fact, even the Rambam and the *Shulchan Arukh* accepted the principle put forward by the Meiri:

From the explanation written by the Rambam, "for one strengthens [the power of the wicked peoples of the world]," it seems in my humble opinion that he maintains that Rav in *Sanhedrin* spoke only of non-Jews who worship idols, and not of the non-Jews of our time, who recognize the Creator, and it is their practice to restore lost property.(*Be'er ha-Gola*, ad loc., no. 2)

The *Be'er ha-Gola* does not mention the Meiri, and apparently arrived at his conclusion only from a precise reading of the wording of the Rambam. In any case, we have here additional support for the ruling that there is indeed an obligation to restore lost property to the non-Jews of our time, who believe in the Creator and behave lawfully. It should be noted that Rav Avraham Yitzchak Kook was also of the opinion that the *halakha* is in accordance with the Meiri:

For the essence [i.e., the correct *halakha*] is in accordance with the opinion of the Meiri, that all the nations who are bound by fair laws governing relations between man and his fellow are considered resident aliens (*gerim toshavim*) regarding all human obligations. (*Iggerot ha-Ra'aya*, I, 89)

2. The Torah establishes that if an ox with no history of causing damage (*shor tam*) kills another ox – specifically, *shor re’ehu*, “the ox of his fellow” – its owner is only obligated to pay half-damages, whereas in the case of an ox with a history of causing damage (*shor mu'ad*), the owner pays full damages (*Shemot* 21:35-36). The Mishna states that all this applies only if the owners of both of the oxen are Jews; if one of them is a non-Jew, the law is different:

[Based on the specific phrasing “the ox of his fellow”:] If an ox belonging to a Jew has gored an ox belonging to a gentile, there is no liability; if an ox belonging to a gentile gores an ox belong to a Jew, whether *tam* or *mu'ad*, he pays full damages. (*Bava Kama* 4:3)

This law creates a significant distinction between a Jew and a gentile: if the ox of a Jew gored the ox of a gentile, the Jew is always exempt, whereas if the ox of a gentile gored the ox of a Jew, he always pays full damages. The Gemara addresses the inequality of this situation:

Whichever way you look at it [it is difficult]: If "of his fellow" is precise [and thus the law in the Torah only applies to Jews], then even when the ox of a gentile gores the ox of a Jew, he should be exempt. And if "of his fellow" is not precise [and thus the verses apply to non-Jews as well], then even when the ox of a Jew gores the ox of a gentile, he should be liable!

Rabbi Abahu said: "He stood and measured the earth; He beheld and drove asunder the nations" (*Chavakuk* 3:6) – God saw the seven commandments which were accepted by the descendants of Noach, but since they did not observe them, He rose up and permitted their money to the Jewish people.

Rabbi Yochanan said: ‘It is learned] from here: "He shined forth from Mount Paran" (*Devarim* 33:2) – from Paran He exposed their money to the Jewish people. (*Bava Kama* 38a)

From the words of the *Amoraim*, it appears that the reason for the distinction in these laws stems from the gentiles’ failure to comply with the seven commandments that the descendants of Noach had accepted upon themselves. The Rambam formulates this *halakha* in a manner that more clearly explains the nature of this gap:

When an ox – whether a *tam* or a *mu'ad* – belonging to a Jew gores an ox belonging to a gentile, [the Jew] is exempt. [The rationale is] that the gentiles do not hold a person responsible for damage caused by his livestock. Therefore, we judge this case according to their laws. When, by contrast, an ox – whether a *tam* or a *mu'ad* – belonging to a gentile gores an ox belonging to a Jew, [the gentile] must pay the entire amount of the damages. This is a penalty imposed upon the gentiles because they are not careful about [the observance of] *mitzvot*, and they do not remove factors that can cause damage. If we will not hold them liable for the damage caused by their animals, they will not guard them, and [the animals] will destroy other people's property. (Rambam, *Hilkhot Nizkei Mamon* 8:5)

The Rambam explained both sides of the issue in a reasonable matter: When the ox of a Jew gores the ox of a gentile, the Jewish owner is exempt because the gentiles themselves do not impose liability for damage caused by their animals; it is only natural to judge the case as they would. On the other hand, when the ox of a gentile gores the ox of a Jew, he is fully liable for the damages, even if the ox is a *tam*, because the gentiles do not have laws compelling them to prevent their animals from causing damage; this law was imposed upon them as a penalty that will cause them to watch their animals more closely.

It seems we can conclude from this that when circumstances change, and gentiles do watch over their animals and impose liability for damage caused by them, the *halakha* should change as well. However, the *Shulchan Arukh* codified this law without mention the Rambam’s reasoning:

When an ox belonging to a Jew gores an ox belonging to a gentile, [the Jew] is exempt. When an ox belonging to a gentile – whether a *tam* or a *mu'ad* – gores an ox belonging to a Jew, [the gentile] must pay the entire amount of the damages. (*Shulchan Arukh Choshen Mishpat* 406:1)

The Meiri follows the same approach in this case that we saw earlier, distinguishing between idol worshippers of the past and the gentiles of our times:

And according to what is stated in the Gemara, this applies only to the nations that are not bound by religious behavior and law, as is stated about them in the Gemara: "God saw the seven commandments which were accepted by the descendants of Noach, that they did not observe them, and so He rose up and permitted their money” – as long as justice obligates them in that manner. But when the seven commandments are in their hands, their law by us is like our law by them, and we do not show favoritism to ourselves. Needless to say, this is the case regarding nations that are bound by religious behavior and laws. (Meiri, *Bava Kama* 37b, s.v. *shor*)[[6]](#footnote-6)

This question is not very relevant nowadays on the practical level, and therefore it is difficult to see a discussion about it in recent generations. However, here too the unique position of the Meiri finds expression.

(Translated by David Strauss)

1. Many have related to this issue. Among others, see: Y. Katz, *Halakha ve-Kabbala*, Jerusalem 5744, pp. 291-310; Y. Blidstein, "*Yachaso shel Menachem ha-Meiri le-Nokhri*," *Zion* 51, 5746, pp. 153-166; Rabbi M. Avraham, "*Ha-im Yesh Avoda Zara Ne'ora*?" *Akdamot* 19, 5767, pp. 65-86; G. Oren, "*Achvat Ba'alei ha-Dat ha-Gedurim be-Darkhei ha-Datot: Ger ve-Toshav ve-Isha be-Mishnat ha-Meiri*," *Da'at* 60, 5767, pp. 29-49. [↑](#footnote-ref-1)
2. It stands to reason, however, that the limitation in the case of a desecration of God's name applies in the case of a non-Jew's error as well – as indicated in Rashi’s words (ad loc.), s.v. *ta'uto*: "The Jew owed him money, and [the non-Jew] erred in the calculation, where there is no desecration of God's name.” [↑](#footnote-ref-2)
3. This stands in contrast to Rashi, ad loc. (s.v. *ve-ha-machzir*), who saw the transgression as stemming from an entirely different reason: "He equated and connected a non-Jew to a Jew, demonstrating that he does not consider restoring lost property as a commandment given by his Creator, for he does this even for a non-Jew, about whom he was not commanded." Rashi in *Ketubot* (15b, s.v. *le-hachzir*) offers a different reason, relating not to one’s religious commitment but to Israel’s status: "That he attached equal importance to Egypt and Israel." [↑](#footnote-ref-3)
4. The *Chatam Sofer* (*Kovetz Teshuvot*, Jerusalem 5733, no. 90) came out strongly against this allowance, which was also cited in the *Shita Mekubetzet*. He writes there as follows: "As for the ruling in the name of the Meiri, there is a *mitzva* to erase it, because it did not issue from his holy mouth…." However, as noted by the editor, ad loc., this position is not only reported in his name, but is also found in his novellae; moreover, these words are part of a comprehensive position maintained by the Meiri. [↑](#footnote-ref-4)
5. One of the greatest Torah sages of Vilna in the seventeenth century. [↑](#footnote-ref-5)
6. A similar position was presented already by Rabbeinu Yehonatan of Lunel, about a hundred years before the Meiri: "God knows the hidden things in the hearts of men, and He punished the gentile in accordance with his cruelty and exempted the Jew in accordance with his heart. And in response to the heretics, we can say that the Mishna speaks only of the seven nations whose blood was permitted to us, as it is written: 'You shall save alive nothing that breathes' (*Devarim* 20:16). And it is right that their money should not be more valued than their bodies" (Rabbeinu Yehonatan of Lunel on the Rif, *Bava Kama* 19a). However, Rabbeinu Yehonatan said this only as "a response to the heretics," and it is possible that he didn't really believe it, whereas the Meiri saw it as a matter of principle, and as we noted, it is part of a broader approach on his part. [↑](#footnote-ref-6)