

*Rabbi J. David Bleich*

## The Prohibition Against Inter-marriage

Among Jews no practice is more widely abhorred than is inter-marriage. Commitment to take as a marriage partner only a fellow member of the Jewish community is not only a matter of religious obligation but the bedrock of Jewish ethnic identity.

A popular folk saying observes that wherever there are two Jews, there are three opinions. It seems that in the area of Halakhah the number of opinions often increases geometrically according to the number of authorities writing about or discussing any given topic. In the area of inter-marriage, this is simply not the case. There is little, if any, disagreement, and there are very, very few hairs to split.

There is a well known anecdote about a modern synagogue that was wont to conduct annual meetings. Each year

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*Rosh Hayeshiva, Rabbi Isaac Elchanan Theological  
Seminary; Professor of Law, Benjamin N. Cardozo School  
of Law, Yeshiva University*

the chairman of each of the standing committees was called upon to deliver a report. Year after year, the chairman of the Ritual Committee was called upon, and year in, year out, he stood up and delivered a two word report: "*Men davent—we pray.*" Then, one year, after the composition of the congregation had undergone a radical change, he rose at the annual meeting and delivered a three word report. On that occasion he declared: "*Men davent nisht!*" The question of intermarriage can be dealt with quite briefly: "*Men tor nisht!—It is not permitted!*" In reality there is very little more to say about the subject. "*Ha-mefursamot einan tzrikhot ra'ayah—Matters which are well known do not require substantiation.*"

Yet, although aversion to intermarriage is universally recognized, the sources and nature of the halakhic prohibitions surrounding intermarriage are less widely known, even by those thoroughly dedicated to a Jewish life-style. Indeed, while Jewish law clearly and unequivocally forbids intermarriage, the biblical source of this prohibition has been a matter of considerable debate and discussion among rabbinic authorities over the centuries.

There are grounds for assuming the existence of an interdiction against intermarriage pre-dating the Sinaitic covenant. This is manifest in the biblical narrative concerning the incident which occurred between Dinah, the daughter of Jacob, and Shechem, the son of Hamor, as well as the subsequent narrative concerning Tamar, the daughter-in-law of Judah. The Torah censures the actions of Shechem in harsh terms: "*Ki nevelah asah be-Yisra'el—He has committed a heinous deed in Israel; ve-chen lo ye'aseh—and such a deed cannot be sanctioned*" (Genesis 34:7). The *Brisker Rav*, Rabbi Yitzchak Ze'ev Soloveichik, examines this verse and offers an illuminating interpretation. Given the structure of society in antiquity, Shechem's action was not entirely unparalleled. It must be remembered that Hamor ruled the area as an absolute monarch.

Shechem was a member of the aristocracy, a princeling, and, quite apparently, could do as he wished with any damsel in his father's domain. Why, then, is the deed deemed so heinous? The *Brisker Rav* points out that the Gemara, *Avodah Zarah* 36b, declares that at an early point in history, the Court of Shem, the son of Noah, promulgated a decree against intermarriage. When Tamar is found to be with child, Judah passes judgement: "Bring her forth, and let her be burnt." Tamar is condemned to death but her punishment is, in terms of Halakhah, incongruous. She was ostensibly a widow at the time. Fornication is not a capital transgression. The Gemara indicates that Tamar was punished, not for simple harlotry, but for the infraction of having violated the edict of the *Bet Din* of Shem, i.e., for apparently consorting with a gentile. The Gemara declares that even in the pre-Sinaitic era there existed a prohibition forbidding members of the family group from which stemmed the progenitors of the people destined to become the community of Israel from intermarrying with members of a gentile nation. From the early dawn of history the people of Israel sought to preserve their ethnic purity and legislated against intermarriage.

A decree of the Court of Shem does not, however, establish a biblical prohibition. Subsequently, we find Ezra and later Nehemiah decrying intermarriage, but in neither instance do we find an explicit reference to a biblical prohibition. Nehemiah goes so far as to pronounce a curse: "In those days also saw I the Jews that had married women of Ashdod, of Ammon, and of Moab . . . And I contended with them and cursed them . . ." (Nehemiah 13:23-25). Since Nehemiah pronounces a curse upon those who behave in this manner, there is strong reason to assume that such conduct must have been banned by virtue of an explicit prohibition. The question then is: where is the scriptural locus of the prohibition concerning intermarriage?

## 1. Lo Titchaten Bam

### ☞ A. Rambam

The most obvious source of this ban is Deuteronomy 7:3: "Neither shalt thou enter into marriage with them; thy daughter thou shalt not give unto his son, nor his daughter shalt thou take unto thy son. For he will turn away thy son from following Me, that they may serve other gods." However, the source which appears to be the most evident is not necessarily the most correct. The exegetical problem attendant upon this apparently explicit reference is whether the prohibition encompasses only the "Seven Nations" who at that time inhabited *Eretz Yisra'el*, or whether it includes all gentile nations as well. This verse is immediately preceded by an introductory sentence in which the Torah states, "When the L-rd thy G-d shall bring thee into the land whither thou goest to possess it, and shall cast out many nations before thee . . . seven nations greater and mightier than thou." The prohibition occurs within a specific historic context, viz., entry into the promised land and conquest of the seven indigenous nations who inhabited *Eretz Yisra'el*. These seven nations are specifically enumerated in this verse. It is in this context that the Torah admonishes, "Neither shalt thou enter into marriage with them."

The Gemara, *Avodah Zarah* 36b, records a difference of opinion regarding precisely this point. The Gemara states ex-

plicitly, "The prohibition against marrying non-Jewish women is biblical as it is written, 'Neither shalt thou enter into marriage with them.' " According to the Sages, the biblical prohibition is limited to the Seven Nations specifically enumerated in this verse. According to the opinion of the Sages, marriage with members of other gentile nations is forbidden only by virtue of rabbinic decree. R. Shimon ben Yochai disagrees with the Sages and maintains that the concluding phrase of this verse, "For he will turn thy son from following Me," serves to broaden the prohibition to encompass marriage with members of other nations as well. R. Shimon ben Yochai reasons that Scripture explicitly states the rationale underlying the prohibition as a means of extending the ban to encompass all non-Jews. The fear expressed in this explanatory phrase certainly is not limited to marriage with a member of one of the Seven Nations, but is a valid consideration with regard to marriage between a Jew and any non-Jew.

In examining Rambam's codification of this law in his *Mishneh Torah, Hilkhoh Issurei Bi'ah* 12:1, we find that he rules in accordance with the opinion of R. Shimon ben Yochai:

A Jew who cohabits with a non-Jewish woman of any of the gentile nations in the manner of matrimony, or a Jewish woman who cohabits with a non-Jew in the manner of matrimony incurs the biblical punishment of lashing, as it is written, "Neither shalt thou enter into marriage with them; thy daughter thou shalt not give unto his son, nor his daughter shalt thou take unto thy son." Both the Seven Nations and all [other] nations are included in this prohibition. This is made explicit through Ezra, "And that we would not give our daughters unto the peoples of the land,

nor take their daughters for our sons." (Nehemiah 10:31)

The quotation of Nehemiah 10:31 is obviously intended to establish that the prohibition against intermarriage applies to all gentile nations. In ruling in this manner, Rambam follows the opinion of R. Shimon ben Yochai who maintains that the prohibition, "Neither shalt thou enter into marriage with them," is applicable not only to the Seven Nations indigenous to the land of Canaan, but applies to all non-Jews equally.

Rambam's formulation of this ruling, however, raises a separate problem with regard to the question of intermarriage. He declares that cohabitation is biblically forbidden, but he qualifies this statement by adding that only cohabitation *derekh ishut*—in the manner of matrimony—is forbidden. Rambam was obviously troubled by the usage of the phrase "*lo titchaten*—thou shalt not enter into marriage" in conjunction with the prohibition against intercourse between a Jew and a non-Jew. The use of the phrase "*lo titchaten*" in this context is a halakhic anomaly. It is axiomatic that there can be no *chitun*, i.e., marriage in the halakhic sense, between a Jew and a non-Jew. The institution of *kiddushin* (matrimony) as a category of Halakhah has no application insofar as non-Jews are concerned. A marriage contracted between a Jew and a non-Jew requires no *get* (religious divorce) for its dissolution, since it is a nullity *ab initio*. *Kiddushin*, with all its halakhic ramifications, applies only to a matrimonial relationship in which both parties are members of the Jewish faith-community. Yet, paradoxically, the Torah, in speaking of forbidden intercourse between a Jew and a non-Jew, states, "Thou shalt not enter into marriage with them." Rambam resolves this difficulty by postulating that this term is not to be understood as a reference to matrimony in the narrow legal sense, but as a term designed to

describe the conjugal context within which cohabitation with a non-Jew is proscribed. Thus the prohibition *lo titchaten bam* is understood as referring not simply to any act of cohabitation, but rather to cohabitation "*derekh ishut*", i.e., in a manner analogous to matrimony, viz., within the context of a permanent conjugal relationship.

Rambam's position is very clear. Intermarriage between a Jew and any non-Jew is biblically proscribed; cohabitation under those conditions constitutes the violation of a negative commandment and carries with it the penalty of corporal punishment. The biblical prohibition is limited to cohabitation which takes place within the context of a permanent conjugal relationship, a state which, from the point of view of Jewish law, is roughly analogous to the secular notion of a common-law marriage.

## § B. Tur

*Tur Shulchan Arukh, Even ha-Ezer 16*, disagrees with Rambam with regard to two salient points. Firstly, the *Tur* disagrees with the Rambam in maintaining that the definitive ruling of Halakhah, and hence the normative position of Judaism, is not in accordance with the opinion of R. Shimon ben Yochai, but rather is in accordance with the opinion of the Sages. Accordingly, the prohibition "Neither shalt thou enter into marriage with them" is to be understood as referring only to intercourse with members of the Seven Nations who inhabited *Eretz Yisra'el* at the time of entry into the promised land, but is not applicable to members of other non-Jewish na-

tions. Secondly, the *Tur* understands the words, "*lo titchaten*—thou shalt not marry" quite literally as referring to actual *chitun*, i.e., marriage in the technical halakhic sense of the term. Since there cannot be a marriage, in the halakhic sense of the term, between a Jew and a non-Jew, the position of the *Tur* is that the prohibition must of necessity be limited to marriage between a Jew and a member of the Seven Nations who has converted to Judaism. The *Tur* thus understands the prohibition "*lo titchaten*" as referring to a) the Seven Nations and b) the Seven Nations *be-gerutan*—only subsequent to their conversion. According to the *Tur*, the prohibition "Neither shalt thou enter into marriage with them" applies only after one of the members of the seven indigenous nations of the land of Canaan has converted to Judaism. Prior to conversion the prohibition "*lo titchaten bam*" simply does not apply. Hence the *Tur* declares:

It appears to me, that [this prohibition] applies only to the Seven Nations for we do not rule in accordance with R. Shimon ben Yochai. And even with [members of] the Seven Nations there are no lashes for [the transgression] of *lo titchaten* other than after they have converted. However, while they are gentiles, "marriage" is not possible.

Nevertheless, the severity of the stricture against intermarriage tends to indicate that, even according to the *Tur*, some form of biblical prohibition against intermarriage with non-Jews who are not members of the Seven Nations must exist. The question to be resolved is the nature of the biblical prohibition.



## 2. Kana'im Poge'im Bo

### ❖ A. The Prohibition

Although the prohibition is not expressly formulated in Scripture, the action of Phinehas, described in Numbers 25:6-8, serves to establish that cohabitation with a non-Jewess is proscribed, at least under some circumstances. The concept of "*kana'im poge'im bo*" is one which is well known to students of Halakhah. Halakhah prescribes that, subject to certain limitations, a Jew who is apprehended *in flagrante delicto* in the act of cohabiting with a non-Jewess may be executed summarily. Translated literally, "*kana'im poge'im bo*" means that zealots may take justice into their own hands and may execute the transgressor on the spot. There are, to be sure, many halakhic fences which serve to limit implementation of this principle. First, punishment may be meted out only while the act is actually in the course of being performed. According to some authorities, the usual *hatra'ah* or warning must be administered.<sup>1</sup> Most significantly, the rule which applies is: "*Halakhah ve-ein morin ken*"; while the punishment is justified, no one may be instructed to carry it out. Nevertheless, a person who acts in accordance with this principle acts in accordance with Halakhah. The Gemara, *Sanhedrin* 82a, describes Phinehas' action with regard to Zimri as having been

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1. R. Moshe Feinstein, *Iggerot Mosheh, Even ha-Ezer*, I, no. 38, citing Rashi, *Sanhedrin* 81b, and the reported view of R. Shlomo Heiman, declares that such action is permitted only to "zealots," defined as *kesherim* whose motives are entirely noble and whose intentions are exclusively for the sake of Heaven.

based upon this principle. Zimri was engaged in an act of fornication with a Midianite woman and, while yet in the midst of the coital act, was executed by Phinehas.

It certainly stands to reason that a breach of law punishable by death at the hands of a zealot should not go completely unpunished in the absence of a zealot who feels called upon to act summarily. The Gemara, *Sanhedrin* 82a, states that the punishment for such a deed is *karet*, death at the hands of Heaven. In support of this statement the Gemara cites the verse, "Judah hath dealt treacherously, and an abomination is committed in Israel and in Jerusalem; for Judah hath profaned the holiness of the L-rd which he loveth, and hath married the daughter of a strange god. May the L-rd cut off to the man that doeth this" (Malachi 2:11-12). In rabbinic literature this punishment is referred to as *karet me-divrei kabbalah*, death at the hands of Heaven as recorded in the words of the Prophets.

The punishment to which Malachi refers is incurred not only by one who is guilty of public cohabitation with a member of the Seven Nations, but also by one who cohabits with *any* gentile woman. It is clear that this punishment applies to cohabitation with any gentile woman for two reasons:

1. The narrative concerning Phinehas, described as an application of the principle of *kana'im poge'im bo*, involved Cozbi, the daughter of Zur, a Midianite woman. Midian was not one of the Seven Nations indigenous to the land of Canaan. The Gemara states that all persons subject to execution at the hands of *kana'im* are culpable with regard to *karet*. It follows, therefore, that death at the hands of Heaven is incurred by one who consorts with any non-Jewess.

2. Malachi inveighed against intermarriage in a historical epoch during which the Seven Nations were no longer extant. Sennacherib, king of Assyria, conquered virtually all of the civilized world of his day and in order to solidify his rule engaged in massive population exchanges (*Yadayim* 4:4;

*Berakhot* 28a; and *Yoma* 54a). As a result, the Seven Nations, which had originally inhabited Canaan, are no longer ethnically identifiable. Malachi, who lived much after the reign of Sennacherib, could not possibly speak of the Seven Nations as contemporaneous peoples. Therefore, it is clear that, in admonishing his contemporaries and in announcing that the punishment of *karet* would be the fate of those who consort with gentile women, Malachi refers to all gentiles, not merely to members of the Seven Nations.

The problem, then, is how is it possible to establish a biblical prohibition on the basis of a prophetic verse? The commandments and legal strictures of Judaism are contained in the Mosaic code as recorded in the Pentateuch. The Gemara, *Shabbat* 104a, unequivocally declares that the Prophets had no license to establish novel prohibitions which are not contained in the Pentateuch; they may make no additions to the Law revealed at Sinai. Therefore, since Malachi describes cohabitation with a non-Jewess as punishable by death at the hands of Heaven, it follows that a biblical prohibition must have already existed.

Rambam, in his *Commentary on the Mishnah, Sanhedrin* 9:6, and Ramban, in his commentary on Rambam's *Sefer ha-Mitzvot*, the second *shoresh*, resolve this problem by explaining that there did indeed exist a prohibition prior to Malachi's exhortation. This prohibition, although unrecorded in the Pentateuch, has the status of a *halakhah le-Mosheh me-Sinai*, one of the manifold ordinances handed down to Moses at Mount Sinai. As such, this prohibition constitutes an intrinsic component of the Oral Law. Thus, the prohibition against cohabitation with a non-Jewess is endowed with the status of a biblical law since it was transmitted by Moses to the community of Israel. Malachi's admonition served merely to record what, until that point in Jewish history, had been an oral tradition. The

identical thesis, although in a different context, is set forth by the Gemara, *Sanhedrin* 22b.

## ❧ B. Public and Private

It has been established that cohabitation with a gentile woman is, at least under some circumstances, forbidden by virtue of divine command. The question requiring further analysis is whether the prohibition with regard to cohabitation is limited to acts of public fornication or whether it encompasses private acts as well. The halakhic category of *kana'im poge'im bo* applies only to instances of public fornication. The zealot is granted license to conduct a summary execution only if the culpable act is a brazen and public one. The zealot dares not act in this manner if the transgression is performed in private. The question, then, is whether the punishment of *karet* to which the Gemara and Malachi refer, and the prohibition for which this punishment is incurred, are similarly limited to instances of public fornication, or whether death at the hands of Heaven as well as the prohibition for which such punishment is decreed, are attendant upon private acts of fornication as well.

It is precisely this point which is the subject of considerable dispute among halakhic authorities. Two early authorities, Rambam and *Nemukei Yosef* in their commentaries on *Sanhedrin* 82a as well as *Sefer ha-Chinnukh*, no. 420, followed by *Chelkat Mechokek*, in the latter's commentary on *Even ha-Ezer* 16:5, and apparently by Rema as well, maintain that the punishment of *karet* is limited to acts committed in public. Another early authority, Rabbenu Nissim, in his commentary on *Sanhedrin* 82a, states that he is in doubt with regard to this point. *Bet Shmu'el*, in his commentary on *Even ha-Ezer* 16:4, cites *Derishah* and *Bach* in remarking that insofar as the biblical prohibition and the prescribed punishment

are concerned, there can be no difference between public and private acts. Insofar as the provision of *kana'im poge'im bo* is concerned, the zealots may take the law into their own hands only in matters affecting public morality; but, insofar as the intrinsic prohibition is concerned, there exists no essential difference between a public act and a private one. Accordingly, rules *Bet Shmu'el*, the prescribed punishment for cohabitation with a non-Jewish woman is death at the hands of Heaven, whether the act is committed in public or in private.

However, insofar as the prohibition attendant upon inter-marriage is concerned, this controversy is entirely academic. This highly significant point is made by the nineteenth-century authority, *Maharam Schick*, in two separate responsa, *Even ha-Ezer* no. 37 and no. 155, as well as by his contemporary, R. Zevi Hirsch Chajes, in a footnote appended to the latter's *Minchat Kena'ot* (*Kol Kitvei Maharatz Chayes*, II, 998). The principle established independently by these authorities is that cohabitation within the context of matrimony, as that term is conventionally understood, must be considered to be a public act. The rationale underlying this thesis is not at all difficult to fathom. It is a principle of Halakhah that certain acts, while ostensibly performed in private, are nevertheless considered to be public in nature. Thus, with regard to certain aspects of the law of testimony it is not necessary for witnesses to have direct knowledge of the sexual act itself; witnesses testifying to seclusion of the two parties are deemed *ipso facto* to be witnesses to the sexual act. The Gemara, *Sanhedrin* 74b, describes Esther's cohabitation with Ahasuerus as a public act. Although there is no reason for assuming that Ahasuerus violated prevailing norms of modesty in his relationship with Esther, the Gemara finds it necessary to seek grounds justifying what is described as public adultery on the part of Esther. Here, then, is clearly a case of an ostensibly private act which is halakhically categorized as a public act.

The reason for this categorization is quite simple. A Jew is obligated to suffer martyrdom rather than renounce his faith-commitment. He is therefore obliged to allow himself to be killed rather than permit himself to be coerced into committing a transgression in public when such an act is construed as a renunciation of Jewish teaching and practice. This obligation is mandated by the commandment concerning *kiddush ha-Shem*, sanctification of the Divine Name. It is, of course, necessary to establish the precise definition of a "public" act for purposes of this obligation. The commandment is couched in the words, "And I shall be sanctified among the children of Israel" (Leviticus 22:32). On the basis of Talmudic exegesis, the Gemara, *Sanhedrin* 74b and *Bera-khot* 21a, establishes that a Jew is obligated to sacrifice his life rather than profane the Name of G-d in this manner only if it is demanded that the act of profaning the Name of G-d be performed publicly in the presence of the "congregation". The term "*edah*" or congregation is defined as denoting a group of ten Jews. An act is, therefore, considered to be performed in public if it is witnessed by ten people. Nevertheless, *Shakh*, *Yoreh De'ah* 154:5, rules that for purposes of the *mitzvah* of sanctification of the Divine Name, an act is considered to be a public one not only if it is witnessed by ten persons, but even if the act is merely *known* to ten people. A transgression of which ten people have knowledge constitutes a "public" act of profanation of the Divine Name.

Of crucial significance in defining the nature of the prohibition against cohabitation with gentile women is the terminology employed by Malachi in castigating those who transgressed in this manner. Malachi, assailing the abominable nature of this deed, declaims "... for Judah hath profaned the

holiness of the L-rd." This sexual relationship is described by the prophet as *chillul ha-Shem*, profanation of the Divine Name, and hence as being tantamount to a renunciation of Judaism. Accordingly, both *Maharam Schick* and R. Zevi Hirsch Chajes argue that, even assuming that the prohibition against cohabitation with a non-Jewess is limited to public acts, consorting with a gentile woman within the context of a matrimonial relationship constitutes the transgression of a biblical prohibition. Both authorities argue that intermarriage, despite the absence of sexual acts of a public nature in the literal sense, constitutes a public profanation of the Divine Name. The essence of matrimony is the establishment of a permanent conjugal relationship between two individuals. Cohabitation between marriage partners is presumed as a matter of course and hence is a matter of public knowledge. Therefore, marriage to a non-Jewish woman is tantamount to public cohabitation even though no person has seen the couple actually engaged in a sexual act. For this reason, cohabitation within the context of intermarriage constitutes a violation of a biblical prohibition punishable by death at the hands of Heaven according to all authorities, including those who maintain that private sexual acts do not fall within the parameters of this prohibition.

## ❧ C. Women

One further point requires clarification. The provision for *kana'im poge'im bo* applies only to the case of a Jewish male who consorts with a non-Jewish female. What is the status of a Jewish woman who intermarries or publicly consorts with a non-Jewish male? Ramban, in his *Milchamot ha-Shem*,

*Sanhedrin* 74b, declares that the punishment of *kana'im poge'im* does not apply to a Jewish woman who cohabits with a gentile. A number of early authorities (including Rambam, cited by Rabbenu Nissim, *Yoma* 82a; *Chiddushei ha-Ran*, *Sanhedrin* 74b; *Nemukei Yosef*, *Sanhedrin* 74b; and *Tosafot*, *Kiddushin* 75b) maintain that there is no *chiyyuv karet* associated with such an act, i.e., that the act is not punishable by death at the hands of Heaven and, indeed, is not the subject of a biblical proscription.<sup>2</sup> However, *Hagahot Mordekhai*, *Yevamot* 4:108, asserts that *kana'im poge'im* applies to a Jewess who consorts with a gentile no less than to a male Jew who consorts with a non-Jewess.<sup>3</sup> *Chazon Ish*, *Even ha-Ezer* 4:10, expressly indicates that, according to this opinion, the punishment for a Jewess who consorts publicly with a gentile is identical in every respect to that of a Jewish male who consorts with a non-Jewish female.<sup>4</sup>

*Maharam Schick* demonstrates that even those previously cited early authorities who maintain that a Jewish woman who consorts with a gentile does not incur the penalty of *karet* would nevertheless agree that, despite the absence of this severe punishment, the act constitutes a violation of a divine edict. The biblical prohibition against intercourse with gentiles applies equally to both sexes according to *Maharam Schick*,

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2. See also *Noda bi-Yehudah*, II, *Even ha-Ezer*, no. 150, and R. Israel Jacob Algazi, *Kehillat Ya'akov*, *Tosafot de-Rabbanan*, sec. 77.

3. See *Teshuvot Bet Yitzchak*, *Even ha-Ezer*, I, no. 29, sec. 1, who maintains that this is also the position of *Tosafot*, *Yevamot* 16b. See also the similar opinion of *Maharik*, *shoresh* 175, and R. Joseph Saul Nathanson, note to *Noda bi-Yehudah*, II, *Even ha-Ezer*, no. 150.

4. See also R. Ezriel Hildesheimer, *Teshuvot Rabbi Ezriel*, *Yoreh De'ah*, no. 189.



even though the punishment for a male is more severe than for a female. In demonstrating the cogency of this conclusion, *Maharam Schick* refers to the previously cited verse, Nehemiah 10:31. It is this verse which is adduced by Rambam in order to show that the prohibition encompasses all gentiles. Nehemiah refers explicitly to both "our daughters" and "our sons" thereby demonstrating that both Jewish males and Jewish females are forbidden to cohabit with non-Jews.

Another authority, *Avnei Milu'im*, *Even ha-Ezer* 16:1, adduces yet another proof in establishing a biblical commandment prohibiting a Jewess from cohabiting with a non-Jew. According to *Avnei Milu'im*, the primary reference of the verse "For he will turn away thy son from following Me" (Deuteronomy 7:3) is to a Jewess who consorts with a non-Jew and applies only secondarily to a Jew who cohabits with a gentile woman. In the latter case, argues this authority, a child born of the liaison is a gentile and cannot properly be spoken of as "thy son", since Jewish law recognizes no relationship between a Jewish father and his non-Jewish progeny. However, since the child of a Jewish mother is a Jew even if the father is a non-Jew, a filial relationship does exist in Jewish law between the child and the mother. Accordingly, concludes *Avnei Milu'im*, in speaking of intermarriage as being forbidden "For he will turn away thy son from following Me" the verse must be addressed primarily to Jewish women. Hence, this verse serves to establish the existence of a biblical prohibition against cohabitation between a Jewess and a gentile.

### 3. Lo Yiheyeh Kadesh

It may cogently be argued that yet another prohibition is associated with the act of cohabitation with a gentile. This

prohibition is based upon Deuteronomy 23:18: "*Lo tiheyeh kedeshah mi-benot Yisra'el ve-lo yiheyeh kadesh mi-benei Yisra'el.*" This passage is rendered in standard English translation as "There shall be no harlot of the daughters of Israel, neither shall there be a sodomite of the sons of Israel." Rashi, following one opinion presented in *Sanhedrin* 54b, does indeed understand the term "*kadesh*" as referring to a male prostitute who makes himself available for homosexual activity. Rambam, *Sefer ha-Mitzvot, lo ta'aseh*, no. 350, records the latter part of this verse as an injunction against homosexual relations. However, this passage was not universally understood in this manner by Jewish exegetes. Rambam, *Hilkhos Ishut* 1:4, understands the first section of this verse as establishing a prohibition against fornication. Sexual intercourse between unmarried persons constitutes a violation of this commandment according to Rambam. *Targum Onkelos* translates this verse as follows: "No Jewish woman of the daughters of Israel shall marry a slave and no male of the children of Israel shall marry a female slave." *Maharam Schick* and others point to the fact that the verse in the original Hebrew does not specify cohabitation with a slave.<sup>5</sup> They observe that *Targum Onkelos* speaks of a slave simply as an example of the type of sexual liaison to which reference is made. Instead of rendering a literal translation the *Targum* offers an example of a sexual relationship between individuals who cannot be united in matrimony with the implication that all comparable relationships are likewise included in the prohibition. Fornication between an unmarried male and an unmarried female does not fall within the scope of this prohibition according to the *Targum* because

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5. See commentary of Ramban, *ad locum*.

such persons are eligible to contract a valid marriage. The prohibition, for the *Targum*, is limited to a situation in which matrimony is halakhically precluded but includes cohabitation between any male and female who are halakhically incapable of contracting a valid marriage. A liaison between a Jewish male and a non-Jewish female slave or between a Jewish woman and a male slave is merely an instance of such a relationship. According to this analysis, *Targum Onkelos'* example of a slave serves as a general paradigm applying to all situations in which marriage between the two individuals is a halakhic impossibility. It follows, therefore, that since Jewish law does not under any circumstances recognize the existence of a matrimonial relationship between a Jew and a non-Jew, the prohibition "*lo yiheyeh kadesh*" is applicable in all cases of intermarriage.

#### 4. Rabbinic Edicts

In addition to the biblical prohibitions which have been discussed, cohabitation with non-Jews is proscribed by virtue of two rabbinic edicts. The first of these, recorded in *Avodah Zarah* 36b, is the previously mentioned decree of the Bet Din of Shem forbidding a Jewish woman to consort with a non-Jew. The Gemara, *Sanhedrin* 82a, reports that subsequently, during the Maccabean period, the *Bet Din* of the Hasmoneans similarly promulgated a decree forbidding sexual intercourse between a Jewish male and a non-Jewess. The latter decree forbids all acts of fornication and, moreover, prescribes corporal punishment for violation of this edict. There can, then, be no question that not only is intermarriage between a Jew and a non-Jew for-

bidden, but that all forms of sexual intercourse between a Jew and a non-Jew constitute a violation of Jewish law.

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To be sure, an analysis of halakhic prohibitions and their ramifications does nothing for the resolution of a problem which currently has reached epidemic proportions. The solution lies in an undertaking of an entirely different nature.

We would do well to focus our attention upon the last chapter of the Book of Nehemiah in which Nehemiah inveighs against intermarriage. Upon careful examination of the text one notes that before addressing himself to the problem of intermarriage, Nehemiah first expresses his concern regarding Sabbath observance. He addresses the populace and tells them of how he saw people publicly carrying their wares in the streets of Jerusalem for sale on the Sabbath. Before he speaks of intermarriage and before he admonishes his listeners to put away their non-Jewish wives, he tells them how he personally went and locked the gates of the walls surrounding Jerusalem so that no one would be able to bring merchandise into the city on the Sabbath. Only then does he address himself to the problem of intermarriage. Nehemiah was very well aware of the fact that, before one attacks the problem of intermarriage, it is first necessary to do something about the problem of commitment. Only after the problem of commitment has been addressed in a resolute manner can one address oneself to the problem of intermarriage.

There is a well-known story which bears repetition.<sup>6</sup> The

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6. See Immanuel Jakobovits, "The Problem of Intermarriage," transcript of the Annual Lecture of the Jewish Marriage Education Council, London, 1967, p. 14.

anecdote involves a young man who arrives at a train station and, spying an elderly gentleman, walks over to the gentleman and asks him what time it is. The elderly man just stares at him and does not answer. The young man asks a second time, "What time is it, please?" and, again, no reply. The young man asks a third time. Finally, he says, "I asked you nicely and politely to tell me the time. Why don't you answer?" Thereupon, the elderly gentleman turns to the young man and says: "My friend, if I tell you the time, then, when the train arrives, you will board the train with me and you will sit down next to me. You will begin talking to me and then you will ask me where I live. When we reach our destination, you will find some excuse to come to my house. When you come to my house, you will see that I have an attractive daughter. You will begin dating her and eventually you will marry her. But I don't want a son-in-law who doesn't even own a wristwatch!" These things can be prevented only at a very, very early stage. The time to prevent them is in early childhood; and the way to prevent them is by providing an intensive Jewish education, an education which is geared to promoting observance of *mitzvot*.

Where one finds intensive education, deep commitment and maximum observance, instances of intermarriage are much, much lower than elsewhere. We live in an open society and, of course, there may well be individuals who will be lost to our community no matter what we do. Those are the exceptions which prove the rule. The chances of a Bridget marrying a Bernie are statistically very high, but the chances of a Bridget marrying a Baruch or a Berel are remote, to say the least.

Quite apart from the gravity of the formal prohibition, Jews have always seen intermarriage as the greatest threat and danger to their very survival. In his commentary to the Song of Songs, Rashi eloquently gives voice both to our perception of the extent of this peril and to our conviction that, as a community, we will never succumb.

Song of Songs 8:9 declares "If she be a wall we shall build upon her a turret of silver; but if she be a door we shall enclose her with panels of cedar." According to Rashi, G-d addresses Israel and describes two alternative modes of conduct open to Israel in the Diaspora. The community of Israel may resolve to "be a wall," and to comport itself as if fortified with "walls of brass" (Jeremiah 1:18) which cannot be penetrated, i.e., Israel may gird herself as a defensive wall, withstand incursions and refuse to allow the nations to infiltrate through intermarriage. If Israel acts in this manner "a turret of silver" will be erected, i.e., Israel will survive to witness the rebuilding of the Holy City and the Temple. However, if the community of Israel "be a door which revolves on its hinges," the result will be far different. If Israel wavers and succumbs to every alien knock, opening her door to foreign nations through intermarriage, rather than being fortified with non-corroding silver, her doors will be lined with wooden panels which are exposed to rot and decay. The corrosive effect of intermarriage is such that the community decays and withers away.

In the immediately following verse the Jewish people reply with the resounding words: "*Ani chomah*—I am a wall!" In effect, Israel addresses the Almighty, proudly assuring Him that all fears for her future are unjustified. The Jewish people vows to comport itself, not as a door, granting entry to all who knock, but as a fortified wall, jealously guarding the security and integrity of the nation.

In an open society, the losses sustained as a result of intermarriage are staggering and painful. There is no greater or more pressing problem which besets the contemporary Jewish community. Nevertheless, the words "*Ani chomah*" resound over the centuries as a vow and as an assurance that the integrity of *Klal Yisrael* as a people will be preserved through the

fortitude of those who stand firm in their commitment to uphold the covenant between the Jewish people and the G-d of Israel.