

FURTHER IYUN

Chukot Ha'akum

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Introduction

The prohibition of imitating non-Jewish practice (*Chukot Ha'akum*) is mentioned on numerous occasions in the Talmud. Two of these passages address the root of the prohibition. The first is found in the seventh chapter of *Masechet Sanhedrin*, where the Mishna presents a dispute between Rabbi Yehuda and the Rabanan about how to perform beheading¹ according to *halacha*. The Rabanan claim the proper way to behead is using a sword, while Rabbi Yehuda holds that one needs to use an axe.

The Gemara elaborates on this dispute between Rabbi Yehuda and the Rabanan. Rabbi Yehuda agrees that his manner of beheading is demeaning to the deceased; however, he argues that it should be preferred over the Rabanan's format, which is similar to the type of beheading done by the Romans, because that involves a transgression of *Chukot Ha'akum*, imitating non-Jewish customs. The Rabanan deal with Rabbi Yehuda's rejection by asserting that anything written in the Torah is permitted even if non-Jews practice the same custom. Therefore, since in this case the word *sayif*, meaning sword,



is mentioned in the Torah² regarding criminals who are punished with beheading, there is no transgression of *Chukot Ha'akum*.

The other important source for *Chukot Ha'akum* in the Talmud is in

Avoda Zara 11a. The Gemara brings a dispute between Rabbi Meir and the Rabanan whether burning a king's belongings on the day of his death is considered a transgression of *Chukot Ha'akum* or not. Rabbi Meir holds this is not a violation of *Chukot Ha'akum*, while the Rabanan hold that it is. The Gemara questions how the Rabanan could say such a thing, as Jews themselves burnt the belongings of their kings the day that they died?

The Gemara answers that neither Rabbi Meir nor Rabanan truly consider burning a king's belongings a violation of *Chukot Ha'akum*. Rather, the custom is just a show of respect and commemoration to their monarch. The Rabanan hold that practically, idol worship was done when they burnt the king's belongings, but not that the act of burning itself is a problem.

The question that the *Rishonim* and *Acharonim* all grapple with is the following:

1. For a convicted felon who according to the Torah must receive this type of capital punishment.
2. The Torah uses the term "*lefi charev*," where *charev* means a sword and *sayif* is a synonym.

Why did the Gemara in *Avoda Zara* not answer that the reason burning a king's articles is not a problem of *Chukot Ha'akum* is because it is mentioned in the Torah,³ as the Gemara explained in *Sanhedrin* regarding beheading with a sword? Why did the Gemara in *Avoda Zara* need to find another reason to explain why it isn't a violation of *Chukot Ha'akum*? Are these two *sugyas* in conflict with each other or not?

The Explanation of Tosafot and Tosafot Rid

Tosafot (*Avoda Zara* 11a) deal with this contradiction and differentiates between two types of *Chukot Ha'akum*: a) Actions that pertain to idol worship; b) Actions that have no intrinsic purpose, and are considered "nonsensical and silly" (*chok hevel v'shtut*) but are not intrinsically idolatrous in nature. Tosafot's assumption is that the Gemara in *Avoda Zara* initially felt that burning the belongings of a king might be associated with idol worship. The Gemara rebuts that argument by claiming that the action of burning is just a sign of reverence for the king. Accordingly, Tosafot understand the Gemara to be saying that if an act pertains directly to *avoda zara* (category a), even if it is explicitly written in the Torah (as burning is in this case), it would still be prohibited to do. Hence, the Gemara had to find a different reason why it was permitted to burn the king's clothing. On the other hand, in *Sanhedrin*, where the case involves a practice not related to idolatry (category b), it is permitted according to the Rabanan because it is mentioned in the Torah.

The **Tosafot Rid** (Rabbi Yeshayahu of Trani from Italy) suggests another reason why there

is no contradiction. According to *Tosafot Rid*, both Talmudic sources agree that if a non-Jewish custom appears in the Torah it is permitted, even if the custom is rooted in idol worship. The Gemara chose not to mention that leniency in *Avoda Zara* 11a in order to emphasize that the act of burning a king's belongings is not even considered a custom of non-Jews, but rather simply a show of respect to a bereaved monarch.

According to both explanations, we must evaluate whether our understanding of the dispute between Rabbi Yehuda and the Rabanan has changed. According to Tosafot, the answer is simple: The Gemara in *Avoda Zara* is discussing a custom based on idol worship, and is therefore forbidden regardless, as opposed to *Sanhedrin* where the Gemara holds that any other non-Jewish custom written in the Torah is permissible. Rabbi Yehuda disagrees because he holds that it is not clear that the practice of beheading is written explicitly in the Torah. Does the *Tosafot Rid* have a different explanation for the dispute between Rabbi Yehuda and Rabanan?

The best way to explain the Gemara in *Sanhedrin* according to *Tosafot Rid* is as follows: According to Rabbi Yehuda, if something is written in the Torah it is permitted for Jews to act in that way. We must assume, however, that according to *Tosafot Rid*, Rabbi Yehuda holds that the act of beheading is based on idol worship, and the dispute between him and the Rabanan is whether the format of beheading is in fact written explicitly in the Torah. The Rabanan hold that it is, and is therefore permitted, while Rabbi Yehuda holds that it is not, and it is therefore forbidden to practice given that it is based on idol worship.⁴ Later in our article we will see

3. See *Yirmiyahu* 34:5, quoted in the continuation of the Gemara *Avoda Zara*.

4. *Tosafot Rid's* lenient opinion seems to clash with a Midrash that Tosafot use as a proof to differentiate between two types of *Chukot Ha'akum*. The *Sifri* on *Parshat Shoftim* (146:22) describes how during the time of our forefathers (Avraham, Yitzchak

how this explanation of the Gemara can affect the practical application of *Chukot Ha'akum*.

Leniencies within *Chukot Ha'akum* (Ran and Maharik)

The Ran⁵ has a different approach to the prohibition of *Chukot Ha'akum*. He explains that when something is done out of respect for the king, the fact that the action contains logic behind it prevents it from being considered *Chukot Ha'akum*.

The Ran's explanation is somewhat perplexing. From where did the Ran derive that a custom with logic or reason be a premise to exempt it from the prohibition of imitating non-Jews? After all, the Torah did not specify that the prohibition of imitating non-Jews is dependent upon logic, and the Gemara does not spell this out either. In addition, how does the Ran address the contradiction between the *sugya* in *Sanhedrin* and that of *Avoda Zara*? Many answers have been given to explain the Ran, but we will focus on two.

The **Maharam Schick**⁶ and the **Tzemach Tzedek**⁷ explain that the *sugya* in *Avoda Zara* is the source for the notion that a practice with a logical reason is permitted. According to the Ran, the Gemara's explanation that burning the king's possessions was considered a show of

honor is demonstrating that any practice with a logical reason is not subject to *Chukot Ha'akum*. However, this approach is not shared by the *sugya* in *Sanhedrin*: According to the Gemara in *Sanhedrin*, the only way to permit a custom done by non-Jews is if it was written in the Torah beforehand, whereas according to the Gemara in *Avoda Zara*, any type of custom practiced by non-Jews is permitted as long as it has a logical reason. Thus, in contrast to Tosafot, the Ran felt that these two Gemarot present two opposing views that need not be reconciled. The Ran adds that since the issue of *Chukot Ha'akum* is central in the tractate of *Avoda Zara*, this is the main *sugya* from which the halacha must be decided. Hence, in practice we hold that any custom with logic is permitted for Jews to imitate.

The **Kehilot Yaakov**⁸ offers a second explanation for the Ran's view as follows: The deeper reason behind the Torah prohibiting customs of non-Jews is because **we might follow in their ways**. In a sense, the prohibition of *Chukot Ha'akum* is a fence surrounding a mine field. Once we've copied non-Jews in one area, there is a real danger of being lured into idol worship and other deviant non-Jewish behavior as well. But when a custom has logic or is explicit in the text, as far as the Torah is concerned it is

and Yaakov), Hashem admired the monuments they made for sacrifice or as a commemoration of some sort. However, when non-Jews used this concept for idol worship, Hashem then despised the idea of monuments and prohibited them during Bnei Yisrael's journey in the desert. Tosafot elaborate that from this Midrash we can learn that even a custom written in the Torah is prohibited if it is used for idol worship, as Hashem prohibited monuments even though they had prior sanctity. Nevertheless, the approach of the Midrash does not pose any difficulty to *Tosafot Rid's* explanation for a number of reasons. First, not all midrashim can be taken literally, as the Rambam explains in his introduction to *Pirkei Avot*. Second, even according to the Midrash itself, the forefathers initiated the building of monuments with no prior precedence (the written Torah). Hashem felt the custom was a good one, but never Himself commanded them to do so. As such, when the idea of monuments was abused by idol worshipers, Hashem in his wisdom prohibited it. Therefore, the Midrash need not contradict the assertion of *Tosafot Rid*.

5. *Avoda Zara* 2b (in the pages of the Rif).

6. Responsa 188.

7. Responsa 91.

8. Essays, *Avoda Zara* 5.

permissible. In such cases, the fear of being led astray is not a concern.

The *Kehilot Yaakov* proves this theme from the Ran himself. The Ran in his commentary on *Avoda Zara* 11a writes that the reason for the prohibition of *Chukot Ha'akum* is because Jews might be drawn to non-Jewish ways. The Ran adds a proof from the Gemara in *Chullin* 77b. The Gemara there states that if the fruit from a tree is falling prematurely, one may cover the trunk in rocks to soak up the oil that comes from the tree, and apparently causes the fruits to fall. Although putting rocks around a tree may be a non-Jewish custom, the Gemara explains that it is permitted since the rocks serve a logical function (to heal the tree). This case, says the Ran, demonstrates that wherever such a practice has logic to it, there is no problem regarding *Chukot Ha'akum*.

The *Kehilot Yaakov* concludes by answering a very simple question: If there is simple logic behind the customs discussed in both Gemarot (*Sanhedrin* and *Avoda Zara*), why according to the Ran does the Gemara in *Sanhedrin* choose to answer that it is written in the Torah, when it could simply have said that logical customs are permitted? The *Kehilot Yaakov* replies that the Gemara in *Sanhedrin* was discussing why beheading was necessary to perform in a specific manner for **Jews**. As such, the Gemara preferred to state that it is written in our Torah to show that the Jewish logic is based in tradition. The Gemara in *Avoda Zara* though is discussing why there is logic to the non-Jewish practice for burning their monarch's clothes, and that is why the Gemara answers that logic for a non-Jewish custom is sufficient.

The Challenge of the Gra and Possible Solutions

Many authorities agree that the Ran's position is similar to that of the **Maharik**,⁹ which is cited by the **Rema** in *Yoreh De'ah* (178:2). The Maharik himself brings more than six sources for allowing Jewish doctors to wear white robes as a sign of their medical expertise, and the reasoning is the same as that of the Ran: As long as the non-Jewish custom has some identifiable logic to it, we do not suspect that it is related to *avoda zara*, and it is permitted. As seen in the sources brought in the *Tzurba shiur*, though, the **Gra**¹⁰ does not accept the opinion of the Maharik and Rema. We will try to give a deeper understanding of the Gra's opinion. The Gra rejects the Maharik and Ran based on the Gemara in *Sanhedrin* 52b. According to Rabbi Yehuda, the form of beheading practiced by non-Jewish nations is prohibited because of *Chukot Ha'akum*. Rabbi Yehuda states that even though it is a more dignified form of death, one cannot use that as a claim to override *Chukot Ha'akum*. The Gra claims that we see from this passage that even though there is reason and logic for a custom, that does not remove it from the category of *Chukot Ha'akum*. After all, even the Rabanan permitted it only because it was written in the Torah.

This is a direct refutation of the position of the Ran, Maharik and Rema. How can they respond to this difficulty?¹¹ There are a number of ways to deal with this argument. The simplest is based on the explanation of the *Tzemach Tzedek* and Maharam Schick mentioned above that the two *sugyas* disagree with each other, and the practical halacha does not follow the *sugya* in *Sanhedrin*,

9. Responsa 88.

10. *Yoreh De'ah* 178.

11. The *Minchat Chinuch* seems to agree with the Gra and his logic.

but only the one in *Avoda Zara*. Alternatively, some *Acharonim* suggest that perhaps the Ran, Maharik and Rema do accept the Gemara in *Sanhedrin*, and there is another way to interpret it. The *Beit She'arim*¹² suggests that the Torah allowed any action practiced by non-Jews as long as it is not considered a “custom,” meaning some form of folklore that is done specifically for the sake of it being a custom. The Ran, Rema and Maharik only allowed a practice that has logic but was never considered a “custom.” Conversely, Rabbi Yehuda in the Gemara holds that the beheading of the Rabanan is not acceptable because even logic won't help, since it was already considered a “custom.”

We can also answer the question in accordance with the explanation of the *Kehilot Yaakov* mentioned previously. When something is written in the Torah, it shows that there is intrinsic logic to it. Therefore, the Gemara's point according to the Ran, Maharik and Rema would be that with regard to a Jewish custom that is part of Jewish law, only logic alluded to in the Torah is defined as an acceptable basis. Rabbi Yehuda on the other hand merely disagrees that in the specific case of beheading, the logic does not appear explicitly in the Torah itself.¹³

Another interesting option is to understand the Gemara like we suggested according to the *Tosafot Rid*. If we understand the argument between Rabbi Yehuda and the Rabanan using the assumption that the notion of beheading

may stem from idol worship, then there is no difficulty with the Gemara *Sanhedrin*. As we explained, according to *Tosafot Rid*, if something is not written in the Torah but has a source in idol worship it is prohibited, and Rabbi Yehuda holds that beheading is not written in the Torah. Perhaps the Ran agrees with this also, and if so, in such a case, it would still be forbidden even if there is logic to it. But with regard to non-Jewish customs that have no basis in idol worship, the Ran, Maharik and Rema would argue that they are permitted if they are logical.

The Position of the Gra

The Gra himself rejects the opinion of the Ran, Maharik and Rema and accepts the simple meaning of the Gemara in *Sanhedrin* (that only non-Jewish practices mentioned by the Torah are permitted) as practical halacha. Based on it, he argues that almost anything initiated by non-Jews (which could include even styles of clothing or language) is prohibited if it is not mentioned in the Torah. The only exception to the rule is concerning a custom that Jews would have practiced anyway regardless of the practice of the non-Jews. Based on this, the Gra agrees that if, for example, non-Jews wear a certain type of clothing to protect from harsh weather conditions, it is permitted for Jews to wear them as well. This is different though than an article of clothing which is a unique symbol for a nation or religion of non-Jews (like a kilt for example), which is prohibited.¹⁴

12. Responsa, *Orach Chaim* 57.

13. It is important to notice the practical implications of these two answers. If we hold like the *Beit She'arim*, any non-Jewish practice that already has taken hold as a set custom, e.g., a festive meal for a specific occasion that has become a set custom, might be prohibited. If we hold like the *Kehilot Yaakov*, if the non-Jews have a custom with reason and Jews find logic in the custom as well, it should be permitted.

14. It would seem from the Gra that the basis for this perspective is his understanding of the Gemara in *Sanhedrin* to mean that the existence of a practice in the Torah shows we didn't learn from them. The same would then be true concerning any custom that would have been practiced anyways by Jews: It is not considered as if we learned it from non-Jews.

The Gra's approach when applied as practical halacha appears to be quite original and far reaching. However, perhaps there is a precedent to it in an opinion offered by the Rivash.¹⁵ The **Rivash**¹⁶ wrote a responsum regarding a custom to visit the grave of the deceased every day of the first week of mourning following the burial. The Rivash writes that this practice is unequivocally permissible. His explanation is that because the idea of visiting the grave of the deceased is based on respect for the deceased or practices of mourning, there is no issue of *Chukot Ha'akum*. He adds that if we were to prohibit such conduct, we would have to stop having eulogies at funerals as well, because non-Jews do the same. The underlying approach of the Rivash is that a positive practice such as visiting a grave that seems obvious, not just logical, is not subject to the rules of *Chukot Ha'akum*. This appears to be similar to the suggestion of the Gra that only activities that Jews would have thought of themselves since they are obvious are permitted, which is different than the opinion of the Maharik and Ran that even a practice that is not completely objective is permitted if it has logic behind it.

To summarize, according to the Gra (and possibly Rivash), a non-Jewish custom is permitted only if it is based on an objective principle that would have caused Jews to practice

it regardless of the non-Jewish custom.¹⁷ The Maharik, on the other hand, holds that any action with logic is permitted regardless of the principle.¹⁸

Does Intent Matter? (Rambam and Bach)

The Rambam's opinion is a good opportunity for understanding another unique aspect of *Chukot Ha'akum*. The **Rambam**¹⁹ himself does not deal with the contradiction between sources we brought earlier. He simply explains that Jews are commanded not to imitate non-Jews and must remain unique in all fashions of life, be it clothing or speech.²⁰ The Rambam also brings another interesting halacha in the context of *Chukot Ha'akum* based on a story in the Gemara about Avtolus ben Reuven (*Bava Kamma* 83a). The Gemara states that Avtolus ben Reuven was permitted to cut his hair in the fashion of the gentiles because he was a senior advisor to the king. The Rambam rules based on this case that anyone who is close to the monarchy may act in accordance with the customs of the kings even though they involve *Chukot Ha'akum*. However, many other halachic authorities were troubled by this Gemara: How is it possible that one may be lenient on a Torah prohibition such as this simply because one interacts with prominent gentile officials?

15. The *Seridei Eish* asks this question on the Gra as well.

16. Responsa 158.

17. Another example of such a custom might be the current practice in many places of standing when a bride walks to the *chupah* at a wedding ceremony. Although it is possible that the practice stems from non-Jewish origins (as the practice is relatively new and does not appear explicitly in classical Jewish sources), it is something that Jews might have done regardless, as it fulfills the dictum of honoring the *chatan* and *kalla*, in accordance with the dictum of "a *chatan* is compared to a king" (and a bride to a queen).

18. As long as it is not based on illegitimate sexual behavior or actually constitutes idol worship.

19. *Hilchot Avoda Zara* 11:3.

20. It would seem from the Rambam that any type of custom performed by non-Jews is prohibited. In fact, many authorities, such as the *Migdanot Eliyahu*, understood from the Rambam that any type of non-Jewish custom is prohibited regardless of logic or reason.

The **Beit Yosef**²¹ addresses the issue and gives two answers: The first is that the situation involving Avtolus was one of *pikuach nefesh* (he was trying to save Jewish children from being killed); therefore, he was allowed to conduct himself in that fashion. The second is that this Gemara demonstrates that the Torah restricted *Chukot Ha'akum* in general terms, and the Sages have the mandate to decide what the details of the restriction are.²² But both answers seem insufficient: If the situation was one of *pikuach nefesh*, why did the Rambam cite it as a specific halacha relating to *Chukot Ha'akum*? The same principle should apply with regard to the violation of any prohibition except for the three cardinal sins.²³ If the second answer is correct, then the Rambam or Gemara should have at least mentioned this key halachic factor.

The **Bach** has a different approach to this difficulty that introduces a new halachic aspect to *Chukot Ha'akum*. He argues that the prohibition of *Chukot Ha'akum* applies only when one has intent to imitate or copy non-Jews, but if there is no such intent, there is no prohibition.²⁴ Based on this, it would be permitted to dress in gentile fashion in the case of the Gemara *Bava Kamma* and the Rambam since one is not doing so with the intent of imitating the non-Jews, but rather to avoid them becoming angered over

his dress. This novel perspective also contains a number of difficulties. First, why is the prohibition dependent on intent? In all areas of halacha, there is a general rule of *pesik reisha* (if a permitted action definitely will have additional side-effects that are forbidden, it is prohibited, such as in *Hilchot Shabbat* when someone drags a chair and it will definitely make a hole in the ground). So too here, even if one does not intend to imitate non-Jews, the result is still that one is performing an action that always mimics theirs. Second, there also is a concern of *marit ayin*: Perhaps someone else will see him dressing this way and mistakenly think that imitating gentile practices is permitted even with that intent, because he sees someone else doing so.

Many commentators attempt to resolve these difficulties on the *Bach*. The **Arugot Habosem**²⁵ and **Rav Moshe Feinstein**²⁶ offer similar answers to the problem of *marit ayin*. In addressing the issue of wearing modern clothing, Rav Moshe Feinstein explains that if there is a reason for imitating non-Jewish styles, such as for benefit (wearing a flower pin to show support) or comfort (wearing lighter shirts because of the heat) then it is permitted. His reasoning is that once the basis for doing so is known to others, there is no reason to be suspicious that it is related to idol worship in any way.²⁷

21. *Yoreh De'ah* 178.

22. Just like the laws of *Chol HaMo'ed*.

23. One might argue that the Rambam is trying to show that *Chukot Ha'akum* is not halachically equivalent to idol worship (despite being based on it), where a Jew must give his life rather than transgress. However, this seems unlikely, since the Rambam could have mentioned this in *Hilchot Yesodei Hatorah*, or at least mentioned the reason why this halacha is unique.

24. The *Minchat Chinuch* also agrees with this idea.

25. Responsa, *Yoreh De'ah* 130.

26. *Igrot Moshe, Orach Chaim* 1:81

27. Both Rav Moshe and the *Arugot Habosem* disagree with the Maharam Schick, who holds that there has to be an obvious indication within the individual's action as to its logic in order to allow it halachically, and it is not sufficient if the custom itself has reasoning.

The *Migdanot Eliyahu*²⁸ and the *Maharshag*²⁹ answer the first question by claiming that the Torah only prohibited *pesik reisha* when the prohibition itself is physical, but not when the prohibition is psychological. As we explained earlier according to the *Kehilot Yaakov* and the *Ran*, the prohibition of *Chukot Ha'akum* is based on concern of one ultimately following the ways of non-Jews in other respects; since the transgression revolves around one's intent, *pesik reisha* is not relevant.

An additional hypothesis that would explain the *Bach's* approach is that *Chukot Ha'akum* is not unique with regard to the focus on intent. Rather, the entire prohibition of idol worship upon which it is based is also applicable only if one's intention is to pray or serve foreign gods. Indeed, it is logical that bowing down to a statue would not be considered a sin if one didn't intend on serving it, since without the element of servitude, the worship has no meaning. Therefore, since as we saw in the *Ran*, *Chukot Ha'akum* is a derivative of idol worship, the same rules of intent should apply to *Chukot Ha'akum* as well.

The theory that intent is the main focus of the sin of idol worship is suggested as well by **Rav Yosef Dov Soloveitchik**³⁰ in a brilliant explanation of the Gemara in *Sanhedrin* 61b. In that Gemara, Rava holds that an individual who worships an idol out fear or love is exempt from punishment because only worshipping a foreign god with a sense of servitude is considered idol worship. **Tosafot**,³¹ **Rabbeinu David**³²

and many other *Rishonim* are dumbfounded by Rava's definition of idol worship in light of the fact that it is one of the cardinal sins for which a Jew has to give his life. According to Rava, how could there ever be a practical application of a Jew giving up one's life to avoid worshiping idols? After all, one is only doing so out of fear. Rav Soloveitchik explains that Rava's opinion in no way contradicts the status of idolatry as a cardinal sin. It is true that one must give his life when faced with that scenario, but the reason is not because of idol worship. Rather, it is because Jews have a commandment to sanctify Hashem's name, and in such a case giving one's life is the greatest act of sanctification. Rav Soloveitchik's explanation teaches us that real idol worship is only a transgression when one has intent to serve another god. If so, within *Chukot Ha'akum* as well, which is based on that theme, one can claim that without intent there is no sin.

The *Seridei Eish*³³ offers another explanation to the question of the *Beit Yosef* on the actions of Avtolus (which is similar to, but somewhat different than that of the *Bach*) by resolving a contradiction in the Rambam's opinion. The *Seridei Eish* claims that in the Rambam's *Sefer HaMitzvot*³⁴ the Rambam indicates that *Chukot Ha'akum* consists of two distinct categories. One category includes ancient customs that date back many generations and are directly linked to idol worship, while the second category includes any custom or behavior that imitates that of non-Jews. However, the *Seridei Eish* says that

28. Reponsa 1:15, first edition.

29. Responsa 2:62.

30. *Harerei Kedem* 1:160.

31. *Sanhedrin* 61b.

32. *Ibid.*

33. Responsa 2:39.

34. *Lo Ta'aseh* 30.

this differentiation is not at all apparent in the Rambam's *Mishneh Torah*.

In order to make sense of the Rambam's position, the *Seridei Eish* claims that the two categories of *Chukot Ha'akum* actually contain different parameters. The Torah-based restriction (*d'orayta*) applies when the custom has an ancient source and is obviously based on some kind of idol worship, while the second category is based on a rabbinical decree. In the *Mishneh Torah*, the Rambam focused primarily on the Torah-based restriction (though with the additional rabbinic leniency concerning *karov l'malchut*), while in his *Sefer HaMitzvot* he developed the other aspect. This hypothesis is similar to the *Bach's* concept of *Chukot Ha'akum* based on intent, just that the *Seridei Eish* believes (according to his understanding of the Rambam) that the leniency applies only to the rabbinic prohibition of copying and imitating a non-Jewish custom (that is not directly linked to idol worship). This explanation would also resolve all of the difficulties raised above with the *Bach*.

***Chukot Ha'akum* in Modern Times**

Contemporary authorities add an additional dimension to the parameters of *Chukot Ha'akum*. They argue that not only is it prohibited to imitate non-Jewish customs (because of the possibility of being lured to follow non-Jewish religions and cultures) but even imitating heretical customs performed by Jews is forbidden. This expansion of *Chukot Ha'akum* is based

on the Gemara in *Chullin* 41b. The Mishna mentions a number of locations where animal slaughter is prohibited, one of them being a *guma*, or hole dug in the ground of a field. The Mishna explains that a *guma* is a problematic location for slaughter because heretics would slaughter animals over holes in the ground. Some *Rishonim*³⁵ explained that the custom is based on idol worship, but other authorities, such as the *Torat Chaim*,³⁶ *Melamed Leho'il*³⁷ and *Seridei Eish*³⁸ explain that any custom that is initiated by heretics and viewed as a sign or symbol associated with their belief is strictly prohibited. On this basis, the *Melamed Leho'il* (Rav David Tzvi Hoffman) and all German rabbinic scholars of the 19th and 20th century profusely rejected the idea of using an organ in a synagogue, even on weekdays, as its use in shul was initiated by the Reform community of the time and became a symbol of the movement, which had the status of heresy.

Rav Zalman Nechmia Goldberg, son-in-law of Rav Shlomo Zalman Auerbach and leading *posek* in Jerusalem today, applies this concept of imitating a symbol associated with heretics to the service run by the "Women of the Wall" as well, where women gather at the Kotel on a monthly basis and read from the Torah and don *Talit* and *Tefilin*. According to Rav Goldberg, this practice too is prohibited on the grounds of *Chukot Ha'akum*.³⁹

On a conceptual level, this notion of comparing customs of heretics to those of non-Jews can

35. See Rambam, *Hilchot Shechita* 2:5.

36. *Chullin* 41b.

37. Responsa 15.

38. *Ibid*.

39. See Rav Goldberg's article on the subject in *Techumin*, Volume 18. The foundation of this practice is either that women and men have the same halachic obligation with regard to these issues, or by contrast, that 21st century modern culture has changed the halachic obligation. These ideas serve as the foundations of movements in Judaism that are heresy according to many authorities.

be found in the Ran we elaborated on earlier. The Ran claims that the reasoning behind this transgression is that the Torah was concerned Jews might follow the ways of non-Jews, specifically by not observing the Torah laws and serving foreign gods. If this is in fact the theme behind *Chukot Ha'akum*, then following the prominent customs of heretics should also be prohibited based on the same logic that one may ultimately accept other heretical beliefs and practices. May we all be blessed to follow the ways of our beautiful Torah.