

Introduction

1. *Israeli Supreme Court ruling favors women's prayer at Western Wall*, JTA 1/11/17

Israel's Supreme Court has ruled in favor of women being allowed to read from the Torah in the women's section at the Western Wall and declared that an egalitarian prayer area set aside at nearby Robinson's Arch does not constitute access to the holy site. In an interim injunction announced Wednesday, the court gave the wall's Orthodox administrators and state agencies 30 days to show cause why women cannot pray "in accordance with their custom" or allow them to pray as they choose.

Approach 1: The Service

2. Rabbi Avigdor Nevenzahl, Letter of February '17, available at <https://rotter.name/kolot/think/14098.php>

באתי לחזק את ידי הרה"ג שמואל רבינוביץ', רב הכותל המערבי, העומד בפרץ לשמור על מחנינו קדוש, ולוהם במשך שנים כנגד פורצי חומת הקדושה המבקשים לחלל את הכותל המערבי במנהגים שהם נגד התורה ומסורת ישראל, ועומד בזה כחומה בצורה ולא נכנע לדרישותיהם, והכל ברוב תבונה וחוכמה במסירות לד' ולתורתו.

I have come to strengthen the hands of Rabbi Shemuel Rabinovitch, Rav haKotel haMaaravi, who stands in the breach to guard our sacred camp, who has fought over the years against those who would breach the wall of holiness, who seek to desecrate the Western Wall with practices which are against the Torah and Jewish tradition, and he stands in this like a reinforced wall and he does not capitulate to their requests, all with great understanding and wisdom and commitment to Gd and to His Torah.

3. Rabbi Shemuel Rabinovitch, cited in <https://news.walla.co.il/item/2911942>, Dec. 2 '15

רב הכותל והמקומות הקדושים שמואל רבינוביץ' הגיב אתמול לעמדה של המשנה ליועץ המשפטי לממשלה, עו"ד דינה זילבר, שלפיה מניעת השתתפותן של נשים בטקס הדלקת נרות החנוכה המסורתי ברחבת הכותל המערבי בירושלים היא "אפליה פסולה". בהודעה שפרסם לעיתונות הצהיר רבינוביץ' כי שרות הממשלה ידליקו את אחת החנוכיות בכותל המערבי, אך לא באירוע המרכזי המתקיים בעזרת הגברים. Rav HaKotel v'haMekomot haKedoshim Shemuel Rabinovitch responded yesterday to the position of the deputy attorney general of the state, lawyer Dinah Zilber, whose view was that preventing women from participating in the traditional ceremony of kindling Chanukah lights on the plaza of the Western Wall in Jerusalem would be "prohibited discrimination." In an announcement publicized to the newspapers, Rabinovitch declared that the ministers would light one of the *chanukiyot* at the Western Wall, but not in the central event in the men's section.

Approach 2: The Relationship

4. Vayikra 19:17

לֹא תִשָּׂא אֶת אָחִיךָ בְּלִבְךָ הוֹכֵחַ תּוֹכִיחַ אֶת עַמִּיתְךָ וְלֹא תִשָּׂא עָלָיו חֵטָא:

You shall not hate your brother in your heart; educate your friend, and do not bear sin for him.

5. Devarim 24:4

וְלֹא תַחֲטִיֵּא אֶת הָאָרֶץ אֲשֶׁר ד' אֱלֹהֶיךָ נֹתֵן לְךָ נַחֲלָה:

And you shall not cause sin in the land which HaShem your Gd is giving to you, as your portion.

6. Lizzie Dearden, Muslim girls must swim with boys in Switzerland, The Independent 1/10/17

The couple then lodged their case with the ECHR, alleging that the requirement to send their daughters to mixed swimming lessons violated Article 9 of the European Convention on Human Rights. The ECHR unanimously threw out their complaint, finding there had been no violation of freedom of religion, and that Switzerland's right to facilitate "successful social integration according to local customs and mores" took precedence over parents' wish to refuse.

7. The Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario, 2018 ONSC 579, paragraph 212

I therefore conclude that the limit on objecting religious physicians imposed by the effective referral requirements of the Policies has been demonstrated to be justified under section 1 of the Charter. The goal of ensuring access to healthcare, in particular equitable access to healthcare, is pressing and substantial. The effective referral requirements of the Policies are rationally connected to the goal. The requirements impair the Individual Applicants' right of religious freedom as little as reasonably possible in order to achieve the goal. The alternatives proposed by the Applicants would compromise the goal of ensuring access to healthcare in many situations, often involving vulnerable members of our society at the time of requesting medical services. Finally, the requirements are proportionate in terms of effects: the positive effects associated with the effective referral requirements of the Policies are significant, while the impact on the Individual Applicants, while not trivial, does not extend to deprivation of the ability to practice medicine in Ontario although it may require an accommodation on their part.

8. Brian Platt, *Religious groups meet to discuss concerns over abortion clause in summer jobs grant application*, National Post Jan. 16 '18

The concern arises out of the Canada Summer Jobs program, which this year comes with a new "attestation" box that all applicants must check off before submitting. The wording of the attestation, which many still find confusing, seems to require a declaration that the applicant does not advocate an anti-abortion position.

A growing number of faith-based groups see the attestation as a threat to the principle of religious freedom in Canada. While some of them are staunchly pro-life, others don't take a firm stance on abortion rights but don't want to be forced to take a side in order to apply for a grant.

9. Rabbi Shlomo Zalman Auerbach (20th century Israel), *Minchat Shlomo* 1:35

ה"ז דומה למי שקוטע אצבע מרגלו של חברו בכדי להציל אותו בכך מקטיעת כל היד שלו, דפשוט הוא דאינו קרוי מזיק אלא מתקן, ומצוה הוא דקעביד ולא עברה, כך גם כאן אינו חשוב כמכשיל אלא אדרבה במעשהו זה הוא מציל אותו מעון חמור של שנאת תורה ולומדי... ואעפ"כ הדבר צריך הכרע.

This is like one who cuts off a person's toe in order to save him from needing to cut off his entire hand; obviously, this is not called harm, but repair! He is performing a mitzvah, not a transgression. So, too, he is not causing this person to stumble; just the opposite, with this deed he is saving this person from the grave sin of hating Torah and its students... Still, the matter requires resolution.

10. Rabbi Avraham Yeshayah Karelitz (20th century Israel), *Chazon Ish*, *Yoreh Deah* 2:16

בזמן ההעלם שנכרתה האמונה מן דלת העם אין במעשה הורדה גדר הפרצה אלא הוספה הפרצה שיהי' בעיניהם כמעשה השחתה ואלמות ח"ו וכיון שכל עצמנו לתקן אין הדין נוהג בשעה שאין בו תיקון ועלינו להחזירם בעבותות אהבה ולהעמידם בקרן אורה כמה שידינו מגעת. At a time of [Divine] invisibility, when faith has been cut off from the poor of the nation, punishment does not mend the gap, but only increases it, for it appears like a deed of destruction and coercion, Gd-forbid. Since our entire goal is to repair, the law [of punishment] does not apply when it does not repair. We are obligated to bring them back with ropes of love, to bring them to the radiant light to the extent we can.

11. Rabbi Moshe Avigdor Amiel (20th century Israel), *לנבוכי התקופה*

אינני מאמין כלל וכלל שאלה הם בלתי מאמינים. נראה יותר הדבר שהמה צבועים בזה ופיהם ולבם אינם שווים... ומסירותם לארץ ישראל שמגיעה לעיתים לפאנאטיות קיצונית, האם אינה מעידה על ניצוצות קדושה הבוערים בלבם?

I do not believe in any way that these are people who do not believe. It is more likely that they are "died" in this; their mouths and hearts are not aligned... Their commitment to the Land of Israel borders on the fanatic extreme at times, does that not testify to the sparks of holiness burning in their hearts?

12. Rabbi Chaim Dovid haLevi (20th century Israel), *בין ישראל לעמים*, translated in R' Aviad Hacoen, *Religious Zionist Halakhah?*, footnote 125

We have a strong desire to give our state a religious character where the Torah of Israel will be its law (though none of us believe that we will succeed, at least not in this generation). But does anybody think that we will achieve this by way

of party tactics and parliamentary politics, based on coalition promises, having the nature of 'Watch out for me, and I will watch out for you, give me, and I will give you'? Obviously, this approach as well should not be totally rejected, but this is not the way of the Torah, and this is not the way we will succeed... Even coalition promises have certain limits, and we will never be able to force our views and beliefs on the entire country by way of the law. We will certainly succeed in passing a larger number of laws that will guarantee the Jewish nature of the state, but will this suffice to guarantee their fulfillment? How can we impact upon beliefs and opinions through the help of statutes? Moreover, besides the nice impression that a religious law makes on the book of statutes, what is the concrete benefit as long as it is not implanted in the conscience and belief of the heart? There are many laws and municipal by-laws in the country which are almost not carried out at all, because the public does not understand their value. What good are laws regarding the Sabbath, family purity and kosher food when the community upon which we come to bestow the Torah of life, sees them merely as coercion, since they are so far removed from these eternal values?... Therefore, even statutes and punishments will not help very much to improve the poor religious and spiritual situation. It is our obligation then to embark on a grand and comprehensive campaign to fortify Israel's belief in G-d and His Torah, by teaching Torah and disseminating it among the masses of the house of Israel.

Approach 3: The State

13. Rabbi Yitzchak HaLevi Herzog (20th century Israel), **זכויות המיעוטים לפי ההלכה**, Techumin 2 pp. 169-179

מה עלינו לעשות? להגיד לאומות: אין אנחנו יכולים לקבל את התנאי הזה, מפני שתורתנו הק' אוסרת על ממשלה יהודית להתיר הישיבה בארצנו לנוצרים ומכ"ש לעובדי אלילים, ונוסף על זאת היא אוסרת עלינו להרשות פולחנם בארצנו ואוסרת עלינו להרשות להם לרכוש קרקעות? דומני שלא ימצא רב בישראל בעל מוח ובעל שכל ישר שיסבור שעלינו להשיב כך, כלומר שזוהי חובתנו מדין תוה"ק. אפילו אם נניח שבקבלנו את המדינה בתנאי הנ"ל תעבור הממשלה היהודית עבירה כשתקיים אם התנאי, גם אז הייתי אומר שהעבירה נדחית מפני פק"נ של עם ישראל, בשים לב למצב האומה בעולם....

What should we do? To tell the nations: We cannot accept this condition, because our sacred Torah prohibits a Jewish government from allowing Christians, and certainly pagans, to dwell in our land, and further, it prohibits us from allowing their worship in our land, and it prohibits us from allowing them to acquire land? I cannot imagine finding a Rabbi in Israel with a brain and straight intellect who would think we should respond with this, meaning that this is the Torah's duty for us. Even if we would allow that accepting a State with such a condition would violate a prohibition in upholding that condition, even still I would say that the transgression would be overridden by concern for saving the nation of Israel, noting our nation's position in the world...

14. Rabbi Avraham Yitzchak Kook (20th century Israel), *Orot haTehiyah* 20

אין קץ לרעות הגשמייות והרוחניות של התפרדות האמה לחלקים, אף-על-פי שפרוד גמור, כהעולה על לב המנתחים באכזריות אי-אפשר הוא והיה לא יקרה. זאת היא ממש מחשבה של עבודה זרה....

There is no end to the material and spiritual ills involved in splitting the nation into segments, even though a full separation, as imagined by those who would cut cruelly, cannot and will not be. Such is an idolatrous plan...

15. Rabbi Shlomo Goren (20th century Israel), *With Might and Strength* pg. 213

I asked the meeting's participants what would be the ramifications of the religious soldiers being segregated in religious units. The result would be that the entire army wouldn't observe religious precepts, wouldn't eat kosher food, wouldn't observe Shabbat and Holidays, wouldn't have any synagogues. Only the few, special units that would be defined as religious would have kosher food, and observe Shabbat... Now that we had won the right to establish our own state and had created the IDF, we had the right to demand that the entire army behave like a Jewish army.

16. Rabbi Shlomo Riskin, <https://www.ynet.co.il/articles/0,7340,L-4873161,00.html> Nov. 1 '16

היהדות בכלל והכותל המערבי בפרט כל כך יקרים וכל כך חשובים, ובלתי אפשרי שאנחנו נשאיר את עתיד היהדות רק ליהודים אורתודוקסים... ד' עשה ברית עם כלל ישראל ועם כל יהודי באשר הוא שם, ואנחנו מוכרחים להכליל כל יהודי גם בתוך היהדות וגם באפשרות לגשת ולהתפלל ליד הכותל המערבי.

Judaism in general, and the Western Wall specifically, are so precious and so important, and it is not possible that we leave the future of Judaism only to Orthodox Jews... Gd made a covenant with the Jewish nation and with each Jew, as he is, and we must include every Jew within Judaism and within the opportunity to venture forth and pray beside the Western Wall.

17. Rabbi Benny Lau, <http://www.srugim.co.il>, Jan. 31, '16

לא כדאי לנסות ולהשיב את הקפיץ למקומו. זה לא יצלה ולא יועיל. כדאי להפיק לקחים להמשך הדרך הארוכה שמחכה לנו ביחד, ציבור המאמין שאנחנו עם אחד שמוכרח להיות כאן ביחד, בכבוד ובנתינת מקום של ממש זה לזה.

It would not be worthwhile to try to return the spring to its place. This will not succeed and will not help. It would be worthwhile to draw lessons for the rest of the long road waiting for all of us together, a community that believes we are one nation which must live here as one, with respect and providing a substantive place for each other.

A concluding note

18. Rabbi Aharon Lichtenstein, <http://etzion.org.il/he/קדושה-וטומאה>

הרב סולובייצ'יק כותב שבהר סיני, חרף המאורע הנשגב ומלא הקדושה שהתרחש בו, אין היום שום קדושה ואף אין ידוע מיקומו. ואילו המקום המקודש ליהדות הוא דווקא הר המוריה שנתקדש ע"י האדם - בו ניסה האדם להתקרב לקב"ה ולא להיפך.

Rabbi Soloveitchik writes that at Har Sinai, despite the lofty and entirely holy event that occurred there, there is now no holiness, and its location is not even known. The place that is sacred to Judaism is specifically Har HaMoriah, which was sanctified by a human being – there a person attempted to draw close to G-d, and not the inverse.