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Dedicated in loving memory of  
HaRav Yosef Grossman zt"l

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## SEPARATE AND UNEQUAL: IS DISCRIMINATION ACCEPTABLE?

Adapted from the writings of Dayan Yitzhak Grossman

Arutz Sheva reports:

New York State Assemblyman Simcha Eichenstein, who represents New York's 48th State Assembly district, published a video in which he urged car wash operators not to overcharge their Jewish customers before the holiday of Passover.

"Last year, it was brought to my attention that some local car wash operators, throughout our neighborhoods, have been increasing their prices in a discriminatory manner for their Jewish customers before Pesach," he said.

Eichenstein noted that he is "specifically addressing car wash operators because of the bias and discrimination in deliberately charging their Jewish customers more for the same service that they provide to non-Jewish customers, because they know that

we are obligated to clean our cars before Pesach.

"It is illegal to raise the price for a particular service solely for one religious community at a specific time of year, while the prices remain reduced for everyone else. This is wrong. It is unethical and, above all, it is illegal," he stated.<sup>1</sup>

If the behavior in question is indeed illegal, it is certainly wrong. The halacha, however, is rather more tolerant of discrimination based on religion, including economic discrimination against Jews, than the modern liberal consensus. Following is a (slightly edited and expanded) discussion of this topic originally written a decade ago.<sup>2</sup>

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<sup>1</sup> NY's Assemblyman Eichenstein: Illegal for car wash operators to overcharge Jewish customers. Israel National News/Arutz Sheva. <https://www.israelnationalnews.com/news/368953>. Cf. here and here.

<sup>2</sup> Dina Demalchusa Dina and Discrimination, Invidious and Otherwise. Bais HaVaad



PARSHAS TZAV

TRAVEL ALLOWANCE

Excerpted and adapted from a shiur by  
Dayan Yitzhak Grossman

If he shall offer it for a thanksgiving-offering, with the sacrifice of the thanksgiving-offering shall he offer unleavened loaves mixed with oil, unleavened wafers smeared with oil, and loaves of scalded fine flour mixed with oil.

Vayikra 7:12

The Gemara says (Brachos 54b) that four people must recite *birkas hagomel* to express their thanks for being saved from danger: seafarers, desert travelers, recovered patients, and released prisoners. The Rosh explains that in the Bais Hamikdash, these people would have had to bring a *korban todah*, and *hagomel* was instituted in its stead. Many *Acharonim* ask, if sea and desert travel is dangerous enough to warrant special thanks, and self-endangerment is forbidden, why is such travel permitted?

The Yad Hamelech answers that one makes *hagomel* only if he encountered actual danger on the journey, such as an unusually fierce storm at sea. But all the other *Acharonim* reject this.

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## Triskaidekamechirah

**Q** I understand that many rabanim perform a sale of chametz the day before Erev Pesach, in addition to the regular Erev Pesach sale. Under what circumstances should one participate in this "mechiras yud gimmel" rather than the usual sale the next day?

**A** One reason to do this is if you will be away for Yom Tov, and on Erev Pesach you plan to be far enough east of the site of the sale that by the time of the *issur* chametz in your location, your *rav* will not yet have completed his sale. Because that *mechirah* won't work for you, you must sell earlier.

Another reason to sell early relates to the dispute among the *poskim* whether during *bedikas* chametz one must search the locations that will be sold the next morning. The Mishnah Brurah (436:32) writes that the lenient opinion may be relied upon, but he says it is best to sell

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### DISCRIMINATORY TAXATION

The halacha is unequivocal that bills of attainder that arbitrarily impose taxation or confiscation are illegitimate; what is less clear, however, is the definition of “arbitrary.”<sup>3</sup> Perhaps surprisingly, the general consensus apparently is that enactments that discriminate against Jews in particular are entirely legitimate, as religion is a perfectly valid basis for discrimination. Taxes that are assessed upon Jews at higher rates than non-Jews,<sup>4</sup> or even those that are assessed upon Jews exclusively,<sup>5</sup> are valid exercises of governmental authority, as are taxes against shechitah<sup>6</sup> and the printing of sfarim.<sup>7</sup> (The latter two have the additional justification that they do not technically discriminate against Jews, as they theoretically apply even to non-Jews, should they decide to shecht or print sfarim.<sup>8</sup>)

Indeed, R' Tam ibn Yachya (c. 1475–1542, one of the *gedolei haposkim* of Turkey in his era) responded to a report that “some *lomdim*” were justifying tax evasion by pointing to discrimination among different ethnic groups by calling the *lomdim* “errant,” insisting that the tax regime is valid as long as it treats all members of each ethnic group consistently, discrepancies among ethnic groups notwithstanding.<sup>9</sup>

R' Yosef Eliyahu Henkin, however, explains that the legitimacy of assessing higher taxes on Jews than on non-Jews is limited to where Jews have not yet achieved the status of citizens, and noncitizens are being taxed at a higher rate than citizens, but simple oppression of a particular group is illegitimate.<sup>10</sup>

### THE ANCONA TRAGEDY

Perhaps the most sensational case of discriminatory legislation whose validity is discussed by the *poskim* arose in the aftermath of the terrible tragedy that befell the Jews of

Ancona, Italy in the sixteenth century, and is still commemorated by Sphardim today. From the end of the fifteenth through the first half of the sixteenth centuries, Jewish refugees from the Iberian peninsula, fleeing Catholic persecution, had settled in Ancona. They had permission (apparently motivated by mercantile considerations) from Popes Paul III and Julius III, who allowed them to revert to Judaism, acknowledging that their earlier conversions to Catholicism were not valid because they were compelled. Unfortunately, however, “there arose a new king”—Pope Paul IV—who in 1555 began to persecute the Jews of Ancona and the conversos in particular, culminating in an auto-da-fé in which about two dozen Jews who refused to accept baptism were hanged or burned at the stake in sanctification of Hashem’s Name—may He avenge their blood.<sup>11</sup>

Many Jews managed to escape, however, and two of these eventually became embroiled in a financial dispute: During the persecutions, the pope had decreed that all of Shimon’s assets in anyone’s possession must be turned over to “the judges of the land,” under penalty of death and forfeiture of property. Reuven, who owed a debt to Shimon, had followed the edict and turned over the amount of the debt to the authorities. Reuven and Shimon were both fortunate to have subsequently escaped with their lives. Shimon sued Reuven for the repayment of his debt, and the latter responded that he had had no choice in turning over the funds to the authorities, as evasion was impractical, and “nothing stands in the way of *piku’ach nefesh*.”

This case was analyzed by three of the greatest contemporary Salonikan *poskim*, and the central issue was whether the confiscation of the assets of recidivist, relapsing conversos by the church is a valid exercise of governmental power. Remarkably (at least to our modern, Western sensibilities), all three agreed that at least in principle, such confiscation could be valid under the principle of *dina demalchusa dina*. R’ Shmuel di Medina (the Maharashdam) actually ruled that it is,<sup>12</sup> and while R’ Yosef (Mahari) ibn Lev and R’ Yitzchak (Mahari) Adarbi argued that it is not,<sup>13</sup> this is not

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the location on the 13th, prior to the *bedikah*. (But this might be impractical, because once someone sells or rents out the location, he should not enter it, barring exigent circumstances, and this might be hard to avoid.) One who seeks to avoid *bedikah* by selling should not sell his entire home, because then he will still be obligated in *bedikah* (see Shulchan Aruch 436:3; *poskim* view this case as similar). Rather, he should leave unsold one room that is used for chametz during the year and perform *bedikah* there. Alternatively, he may sell the entire home and do *bedikah* in his rented hotel room; one spending Pesach in his parents’ home may rent his room from them and do *bedikah* there.



DAYAN YEHOSEHA  
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necessarily because they viewed such a policy as intrinsically unfair. They cited a variety of other reasons, including the historical novelty of the policy (“we have not heard...of such an edict...neither in the time of his honor the current pope, nor in the times of the others”); its uniqueness to Ancona, as opposed to the rest of the papal dominions; and the perfidy of the pope in reneging on the previously signed, sealed, and delivered permission for the conversos’ return to Judaism:

And according to what we have heard, these righteous ones that were burned *al kedushas* Hashem in Ancona had had permission from the previous pope, who had written in a book and signed with his seal that they may observe Judaism there in Ancona, for the apostasy that had been decreed upon them in Portugal was forced on them. And since this is so, it is obvious that we do not say here *dina demalchusa dina*.<sup>14</sup>

Halacha Journal, Circa Dec. 2013/Jan. 2014. (I do not know the title under which the article was published or the precise date of publication.)

Cf. Pischei Choshen, Hilchos Genevot Ve'onah, perek 1 n. 4 sv. HaBais Yosef besiman 369, pp. 12-13.

3. Regarding discrimination among provinces within a country, see Ran Nedarim 28a; Rosh ibid. perek 4 siman 11; Or Zarua Bava Kama perek 10 siman 447; Shu”t Lechem Rav siman 157. Regarding discrimination among professions, see Shu”t Maharik end of shofresh 66, cited by Rama C.M. 369B (as “yeish omrim”), and cf. Biur HaGra ibid. os 33; Shu”t Maharam Brisk siman 108 os 3.

4. Shu”t Maharik shofresh 194, codified by Rama ibid. 369:6. Cf. Shu”t Shem Aryeh C.M. siman 20 os 9.

5. Shu”t Turmas Yesharim (Ahalei Tam) siman 16, cited in Divrei Geonim Kfar 25 os 9.

6. Shu”t Maharsham cheilek 7 siman 34.

7. Shem Aryeh ibid.

8. Maharsham and Shem Aryeh ibid.

9. Turmas Yesharim ibid.

10. Teshuvos Ivra siman 96 section 2 os 5, in Kisvei Hagaon R’ Yosef Eliyahu Henkin, Vol. 2 p. 176.

11. See the Jewish Encyclopedia, entry for Ancona; Encyclopaedia Judaica, entry for Ancona; Rivka and Ben-Zion Dorfman, The Jewish Community of Ancona, Italy.

12. Shu”t Maharashdam C.M. siman 55.

13. Shu”t Mahari ibn Lev cheilek 2 siman 54; Shu”t Divrei Rivos siman 83.

14. Mahari ibn Lev ibid.

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The Divrei Malkiel answers that crossing the sea or desert is not sufficiently dangerous to be prohibited, but the elevated risk is enough to require a *korban todah* or

*hagomel*.

The Binyan Tzion answers that the dangers of sea and desert travel often only arise long after the trip begins. Since most sea and desert travel concludes without incident, it is permitted to begin a journey if one is not

aware of a storm or the like at departure time.

The Noda Bihuda and Imrei Shefer answer that sea and desert travel is in fact forbidden for leisure purposes, but a certain amount of risk is permitted in the pursuit of a livelihood, and it

is in that case that such journeys may be undertaken.



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