

# Adapting the Law

by: Rabbi Jeremy Rosen

The Bible

emerged in, and out of, a world that was predominantly agricultural. A world where seasons and produce determined how societies flourished or perished. Biblical stories such as that of Cain and Abel illustrated the rivalry of shepherds and farmers. Ranchers versus cowboys. The Tower of Babel was concerned with the complexities of new urban centers. As societies turned towards different economic models, rabbinic leaders acted creatively and sought ways of making life livable for Jews in a rapidly changing world without jettisoning many of the important concepts and ideals of Judaism.

Many of the

Biblical Laws became very difficult to adhere to. Many others were confined to Temple service only. We do not know for certain to what extent most Israelites actually kept what. How many struggling farmers could survive without being able to till the land at all for one year out of every seven? And then during the Jubilee for two consecutive years? If you read about the Prophets and the Kings, it seems that most during that period didn't bother to keep very much of what we now recognize as Jewish Law.

In the Bible,

charity consisted of letting the poor share in your harvests. If you had no land, you fulfilled your obligations by inviting the poor to join you for meals. Or lending money without interest to encourage the poor to set up their own businesses and be self-sufficient. However, such loans would be cancelled in the seventh year. As were contracts for indentured service and slavery.

When faced

with the challenge of credit and commercial lending in a different world order, Hillel (the greatest of rabbis) might have simply scrapped the law of the seventh-year release, the *shmittah*, or declare it redundant. But he did not. He

wanted to find a way of preserving the original idea and reminding people of its moral intent. So he left the law in place but found a way around it by getting creditors to transfer their debts to the Beth Din – the government so to speak. (Only individual debts were cancelled not civil ones). The Beth Din then collected on behalf of the creditor and ensured the money was not lost. The mechanism was known as the *Prosbul* in Aramaic.

For those with neither land nor outstanding debts, an agriculture ideal was turned into an ideal of study for all. A sabbatical to devote time to return to one's holy texts and provide free adult education. The law remained on the books. It was a great idea in theory even if the emphasis shifted. And nowadays, thousands of years later, we all know what a sabbatical is.

As banking expanded and lending for interest became the norm, Jews had to find ways of carrying on normal business practices against a Torah ban on lending for interest. They introduced the *Heter Iska* (Allowing Business) which was the forerunner of the Muslim Shariah compliant ways around the ban on interest (the Muslim word *Riba* derives from the Biblical and Talmudic word *Ribit*: interest). Instead of completely scrapping the law, finding a practical solution keeps the idea on the books and in the minds of the faithful, in turn, reminding them of their ideals.

On matters of civil law, they instituted the principle of "*Dina De Malchuta.*" The Law of the Land is the Law. This enabled Jews living under other systems to preserve their ritual individuality while engaging within the framework of local civil laws.

They were even creative with what we would call "ritual laws". The Bible said, "No fire in your homes on Shabbat." That was fine in the wilderness or for wealthy Judeans who could escape in winter to the coastal plain. The rabbis wanted to ameliorate the lot of freezing peasants while keeping the idea of Shabbat as a break with the routines of weekly activity. Their answer was to arrange the fire and the hot food beforehand (and that's the origin of lighting candles on

Friday nights). Nowadays it's how we, who keep Shabbat strictly, have come to use time-switches and hot plates!

The Bible

said we shouldn't leave our local area of habitation on Shabbat. No problem if

you're living in close family units. In the old days, cities had walls that defined your locality. Two thousand years ago, as cities began to expand enormously, the rabbis wanted to find a way of preserving the law to discourage

splitting up families or going on long journeys. But they also wanted to enable

people to go to meet other families or listen to lectures or pray communally. That

was why they created the *Eiruv* – another fiction or device – as a way of fencing in an area to define it as 'your area, your village.'

Of course, you

may say it was a fiddle. But it was designed to preserve the idea of restricting oneself to one's locale on a Shabbat while making life livable.

Those who care to keep a traditional Shabbat will live within Jewish communities – as happens even in the USA in several cities. For those who choose to live farther away and want to drive on Shabbat, they simply make their own decisions. But the law makes sense – even nowadays.

Similarly, one

may not carry out of one's home on Shabbat. Another way of making Shabbat as different as possible to the rest of the week. When, in ancient cities, people

lived on top of each other and courtyards led into each other, there was no problem in passing food to one neighbor or another without going beyond one's habitable area. But as homes expanded and grew more private, the idea of an *Eiruv*

for courtyards technically combined all the houses (or apartments in a block of flats) into one symbolic area to enable carrying on Shabbat.

In modern

times, where we often live much further apart from family than we used to and have

things like prams and buggies, this device was extended to allow mothers to use

them on Shabbat by creating a notional 'home area' and extending it symbolically. I stress the symbolic way. It is not about real fences or walls but simply poles and wire and if the poles are intrusive there are lots of different ways of making them less so.

When

comedians, Jewish and non-Jewish, make fun of our religious laws, most Jews don't mind because they themselves make fun of them. We can laugh at ourselves

for caring about wires on poles. And yet, we religious take it seriously, too.

An *eiruv* makes a tremendous difference to practicing Jews all over the world. Here in Manhattan, we have one. Despite the opposition (too often from other Jews) and all the furor about unsightly barriers, no one notices. An influx of religiously committed Jews certainly does not usually increase violent crime!

Another

familiar way around the law was designed to deal with Hametz on Pesah. The Torah forbade us having any Hametz in our homes on Pesah. But what if you were

in a business like, say, a distillery with lots of expensive grain-based stock?

Or a modest store owner buying foods wholesale in larger quantities. Do you just throw it all out for Pesah? We now have the tradition of selling our valuable Hametz to a non-Jew with a legal commercial contract. At least the fiction makes you realize the importance of Hametz on Pesah. And if you think it is ridiculous, well you and your friends can just consume it all beforehand.

Or give it a food bank.

You may say all

this is a fiddle. In a way it is. But it preserves the ideal, even beautiful, idea

of the law while making life livable. It is indeed a way of having your cake and eating it. And, in fact, every modern legal system has what we call legal fictions.

Some of us

may bridle at these restrictions. But old ideas can have new relevance. With new technology (iPods, iPads and iPhones) it is becoming clear that a day's break over a Shabbat may be highly beneficial – psychologically, socially and physiologically. How brilliant of the

rabbis not to scrap the law about fire (which was as central to life then as electricity is today) but to find a way round it. To use technology differently

once a week and on festivals.

We are now preparing for Pesah (those of us who cannot or choose not to go away on a cruise or to a desert island). Why do we bother? Because it is our tradition. We can make fun of all sorts of theologies

and customs and holy waters and bits of wafer. But if they provide us a way of  
of  
looking at the world differently and keeping us in touch with our roots, why  
not? They do not harm anyone. The Amish and the Sikhs manage pretty well with  
their quaint customs and traditions. And we do with ours. Fiddles and all.