**The Rulings of Rabbi Uziel Concerning a Father’s Obligation to Provide Child Support (*Mezonot*) for his Child Born to a Non-Jewish Woman**

**1) Introduction—The Principle of Legal Connection between a Father and his Offspring**

In [Ancient] Israel—as opposed to the laws of other nations in the Ancient Near East—it was not the bond between parents that established the legal status of the child, but rather the bond between the child and his father... It is likely that in this fashion, the Biblical lawmaker tried to prevent the existence of [legally] fatherless children, disconnected from the family framework and stripped of the rights of children and inheritors.[[1]](#footnote-1)

So asserts my father Yosef Fleishman in his study. From his conclusions there it is implied that, in general, Biblical law relates offspring to their fathers according to a natural-biological approach. This is in contrast to the legal approach of the Ancient Near East that made paternal attribution of offspring fundamentally dependent upon the legal connection between the couple that gives birth to them. The divergence between the law in Israel and the law of other nations is also evident in later periods as demonstrated by contrasting Jewish law (Halakha) to Roman law:

Roman law and its derivative continental law traditions define the parental relationship—the relationship between parents and their children—based upon the ‘legal family’ axiom; according to this, one who is born out of wedlock is considered ‘illegitimate,’ and is not recognized as the son of the biological father. By contrast, Hebrew law generally adopts a natural-biological approach, and determines fatherhood and motherhood according to the biological connection between parents and their offspring—even if they are not married.[[2]](#footnote-2)

Yet it appears that even this basic halakhic principle has its exceptions. The Mishnah determines that a man’s offspring are attributed to him, regardless of whether or not he is married to the mother, and even if the mother is forbidden in marriage to him.[[3]](#footnote-3) An exception to this rule is the offspring born to a man from a woman that cannot be married to him at all—i.e. a ‘Canaanite’ (non-Jewish) slave or a non-Jewish woman.[[4]](#footnote-4) In such a case, the offspring is not attributed to the father.

On the basis of this Mishnah, Maimonides formulates the following axiom: “This is the general rule—a child that [is born to] a slave, non-Jew, a bondwoman or the daughter of a non-Jew is like his mother; the father does not concern us.”[[5]](#footnote-5) The Shulhan Arukh rules this principle as law.[[6]](#footnote-6)

The question of paternal attribution can influence the framework of obligations and rights that generally prevail between a father and his offspring[[7]](#footnote-7)—among them, the father’s obligation to support his offspring. Halakhic decisors discuss this issue, debating whether a father’s obligation to provide child support is contingent on his legal relationship to his offspring or not. In this article, we will seek to understand Rabbi Uziel’s decisions on this matter which was brought before him for a ruling. We will examine his decisions in their own right, as well as in comparison to the decisions of others, whether they be decisors with whom he was in direct contact—their rulings responding to his decisions—or decisors that dealt with this issue independently of him.

Rabbi Ben-Tzion Meir Hai Uziel was born in Jerusalem in Sivan 5640 (1880) to his father Rabbi Yosef Rafael Uziel—the head of the rabbinical court of Jerusalem—and his mother, Sarah Hazan, a descendant of a pedigreed rabbinic family. He served as a rabbi in four different positions: Chief Sage (*hakham bashi*) of the community of Jaffa and its environs—alongside the Chief Rabbi of Jaffa and the settlements, Rabbi Avaraham Yitzhak ha-Kohen Kook (1912-1921); Chief Rabbi of Salonika (1921-1923); Chief Sephardic Rabbi of Tel Aviv-Jaffa (1923-1939); and until his death, “*Rishon le-Tzion*,” Chief Rabbi of the Land of Israel—and afterwards of the State of Israel—alongside Rabbi Yitzhak Isaac ha-Levi Herzog (1939-1953).

Rabbi Uziel was approached about this issue in 1938, when he was presiding as Chief Rabbi of Tel Aviv-Jaffa and the settlements. The question was referred to him by Rabbi Haim Yehuda Leib Auerbach,[[8]](#footnote-8) the founder and dean of the kabbalistic yeshiva, Sha’ar Shamayim. Alongside his Torah functions, it seems that Rabbi Auerbach had other areas of expertise. The following was printed on his business card:[[9]](#footnote-9)

Rabbi Haim Yeuda Leib Auerbach

Rabbinic Judge and Legal Instructor in the Holy City of Jerusalem

and Rabbi in the Nahalat Tzadok Neighborhood and its Environs (near Sha’arei Chesed)

and Dean of Sha’ar ha-Shamayim, Author of the Books, *Hakham Lev* and *Responsa of*

*Rilbah*[[10]](#footnote-10)

**Addressee for all types of legal questions**

**and expert in the regional government court...[[11]](#footnote-11)**

I would like to suggest that Rabbi Auerbach turned to Rabbi Uziel in response to an actual case in which he was representing a man in the (British mandatory) government court; this was not just a request for a theoretical ruling. This supposition is strengthened in light of Section 55 of the King’s Order in Council for the land of Israel, which promulgates that when people of different religious communities are involved in a legal dispute related to personal status, each side may make a request to the Head of the Supreme Court that he determine the court in which the case will be judged—if he finds it appropriate, he will avail himself of the assistance of advisers from the various communities involved in the matter.[[12]](#footnote-12) In principle, the adjudication of child support would be subject to the regional court and to the principles of international law since it is possible that the child is not associated with any religion (Judaism goes according to the mother and Islam according to the father). It is possible, however, that the judges investigated the personal status of each of the sides, and, as a result, there was room for the clarification of Jewish law regarding the issue of the child of a mixed marriage. If so, Rabbi Uziel was aware that his statement would be brought in front of the (mandatory) court as the opinion of an expert in Hebrew law. As far as I am concerned, it is interesting to read Rabbi Uziel’s reasoning and response in light of this assumption.

Rabbi Auerbach sent Rabbi Uziel a responsum that he wrote about the obligation of a father to provide child support for his son born to a non-Jewish woman. Rabbi Auerbach links the attribution of a child born to a Jewish father and a non-Jewish mother to the obligation for child support—ruling that (legal) nullification of attribution also nullifies the obligation of child support.[[13]](#footnote-13) This inspired Rabbi Uziel to take up the issue. He sent several responsa to Rabbi Auerbach and other rabbis dealing with two matters: the relationship of the children of a mixed marriage to their parents; and a father’s obligation to provide child support for a child born to a non-Jewish woman. These responsa were published in *Mishpetei Uziel* 2:60-62 and 7:4. Alongside these published responsa, there are also unpublished responsa and drafts stored in the Tel Aviv municipal archives.[[14]](#footnote-14)

In what follows, I will seek to understand Rabbi Uziel’s approach to the question of a father’s obligation to provide child support for a child born to a non-Jewish woman. Towards this end, I will analyze his published responsa as well as those responsa stored in the Tel Aviv archives, contrasting his position on this issue with the decisions of others.

**2) The (Legal) Relationship of the Son of a Jewish Man and a Non-Jewish Woman**

As mentioned above, the law on this matter was clearly determined. Nonetheless, in his responsum to Rabbi Auerbach,[[15]](#footnote-15) Rabbi Uziel thought it appropriate to deliberate over the law’s foundations.[[16]](#footnote-16) Based on his understanding of the underlying principles of this law (the attribution of the child of a Jewish man and a non-Jewish woman) he determines the question of the obligation to child support.[[17]](#footnote-17) Our main interest in this article is regarding the decisions that deal directly with the obligation for child support, and hence we will be brief in our presentation of Rabbi Uziel’s conclusions about the question of attribution.

According to Rabbi Uziel, the maternal attribution of the son of a Jewish man and a non-Jewish woman is not meant as a safeguard against assimilation—a means of separating a Jewish man from a non-Jewish woman and her children. Rather in every instance where a couple cannot legally marry, the child’s (legal) identity follows the mother (Rabbi Uziel bases this on the Babylonian and Jerusalem Talmuds and Maimonides). Rabbi Uziel’s ruling—that the attribution of children is a consequence of the possibility of marriage (or lack thereof) and not a safeguard against assimilation—allows for the father to be obligated in child support of a child born to a non-Jewish woman. The obligation of child support perforce creates a bond between a father and his children. Had the Torah wanted to completely separate the father from his child, the obligation of child support would have adversely impacted upon the Torah’s teaching.

In several matters, Rabbi Uziel emphasizes that this law does not represent discrimination towards the non-Jewish mother. He seeks to clear the law from any charges of racism, and—along the way—we are able to learn about his outlook on relations between Jews and non-Jews: 1) The maternal attribution of the children and placing of the burden to raise them upon her do not emanate from discrimination. Rather this is a formal law that in all cases where one of the partners is ‘defective’ (*pagum*) relative to the other, the child’s identity follows the defective one. 2) The ‘defect’ of the non-Jewish woman relative to the Jewish man is not intrinsic, but rather stems from her distance from the Torah and the commandments. 3) Rabbi Uziel emphasizes that the Torah of Israel does not distinguish between Israel and the other nations of the world based on race, but rather on the basis of beliefs and opinions. In this context, Rabbi Uziel rejects the rationale—which has its foundation in Kabbalah—that distinguishes between Israel and the other nations on a categorical basis, attributing an intrinsic defect to non-Jewish nations.

After defining the formal law, Rabbi Uziel explains that maternal attribution of the children is really the consequence of humane and sociological considerations that include the welfare of the child (that he not be emotionally harmed), the welfare of the mother (that she should suffer no anguish), peaceful relations between the two parents, and peaceful relations between Jews and non-Jews. It is important to note that in the case of the child of a Jewish man and a non-Jewish woman, the welfare of the mother means concern for the non-Jewish mother and that this consideration is even a factor in excluding the child from the community of Israel.

Maternal attribution of the child has implications for additional laws: 1) Levirate marriage—a child born to a non-Jewish woman does not exempt the father’s Jewish wife from the need to undergo levirate marriage if he dies without children. 2) Inheritance—a child born to a non-Jewish woman does not inherit from his father. 3) Sexual prohibitions—in theory, the son of a Jewish man and a non-Jewish woman may marry his biological sister. It is however, possible that they are forbidden based on a doubt about the law. 4) Child support—this issue will be dealt with at length below.

**3) The** **Father’s Obligation to Provide Child Support for his Children Born to a Non-Jewish Woman**

The second part of Rabbi Uziel’s responsum to Rabbi Auerbach deals with the father’s obligation to provide child support for his child born to a non-Jewish woman. As opposed to the first part of the responsum (in which Rabbi Uziel deals with accepted legal principles that are not subject dispute) the second half of the responsum—in which he deals with the obligation for child support—engendered opposition. We will attempt at this point to understand the responsum of Rabbi Uziel in comparison with other decisors with whom he was in contact. This section of Rabbi Uziel’s responsum underwent changes as he grew more deeply involved in the issue, which was a result of feedback he received on the earlier recension of the responsum.[[18]](#footnote-18)

**3a) Version 1 (The Printed Archive Document)**

Rabbi Uziel opens the responsum by stating that he did not find discussion among halakhic decisors regarding this question (the father’s obligation to provide child support for his child born to a non-Jewish woman). This fact does not allow him to withdraw from the issue, but rather just the opposite—it obligates him to discuss it and reach a legal decision.[[19]](#footnote-19)

In his responsum Rabbi Uziel draws a distinction between two situations: a case wherein the father *admits* that the child is his and a case wherein he *does not*. According to Rabbi Uziel, this distinction also applies to the law of a child born out of wedlock with a Jewish woman: if the man admits that the child is his, he thereby obligates himself in child support according to his admission—even though he is not legally obligated to provide it otherwise.[[20]](#footnote-20) However, if the man does not admit that the child is his, the woman is not believed if she attributes the child to him[[21]](#footnote-21) and he is therefore not obligated in child support.[[22]](#footnote-22) Based on this law, Rabbi Uziel infers that a case of a child born to a non-Jewish woman—even if she was legally married to him (that is, civilly married)—is no different than a child born to a mistress or concubine i.e. there is no room to obligate the father without his own admission.

In a case in which the father does admit that this is his child, Rabbi Uziel writes, “I am unsure whether or not we obligate him [to provide child support] until the age of six.”[[23]](#footnote-23) Ostensibly, there should be no legal basis for Rabbi Uziel’s doubt. Since the child is not his, as Rabbi Uziel himself explained at length, the father is not obligated to support him. And yet Rabbi Uziel raises the following considerations:

**1 The Obligation to Support the Child as an Outgrowth of the Obligation towards the Mother—**Rabbi Uziel bases this obligation upon considerations of natural morality, an offshoot of Biblical morality and pre-existing legal categories: A) The rationale from natural morality: According to Rabbi Uziel, even though the child of the non-Jewish woman is not legally considered his ‘child,’ nonetheless he brought the child into the world and in this sense the child is his offspring. This being the case, the father must respond to the mother’s plea and provide support for these children; “it is the mother’s nature that she is unable to stop herself from feeding her child, so long as the child is attached to her.”[[24]](#footnote-24) Rabbi Uziel finds proof for this natural trait and its concomitant obligation in the biblical story of Hagar the Egyptian, who says, “Let me not see the death of the child.”[[25]](#footnote-25) The mother, crying out that she is unable to feed her child is answered by God who provides her child with sustenance—He opens her eyes to see to see the well, and even blesses her through the agency of an angel, “As I will make him into a great nation.”[[26]](#footnote-26) Here we see Rabbi Uziel’s reliance upon Biblical morality to understand a legal obligation;[[27]](#footnote-27) he deduces this ethic from God’s response to Hagar’s cry. B) The legal rationale: Rabbi Uziel advances two legal categories that could be extended this case, obligating him to provide child support as part of his obligations towards the *mother*. The first is tort law (*nezikin*)—the mother’s claim that she has no choice but to support her children is substantive and in order. Hence, if the father does not answer her demand, he is obligated in damages (*mazik*). The second possibility is the category of payment for sexual favors (*etnan zonah*)—the non-Jewish woman married the Jewish man in a civil union, on the premise that he would accept the burden of child support. Therefore he is obligated to support the children by force of the marriage agreement.

**2 The Obligation of Child Support as an Obligation towards the Child—**The ‘Ordinance of Usha’ forms the basis of the obligation of child support until the age of six.[[28]](#footnote-28) Rabbi Uziel goes to the root of the decree and deduces the sweep of its purview from there: A rationale of natural morality constitutes the basis of the decreeza moral obligation shared by all creatures, and even by the cruelest animals. “The snake gives birth and casts them on the residents of the town!?” (even a snake feeds it young);[[29]](#footnote-29) and “even the raven wants its children, but this man does not want his children!?”[[30]](#footnote-30) Concern for the sustenance of one’s offspring is implanted into the nature of every creature—even one that is cruel-natured like the jackal or raven. Concern for the sustenance of one’s offspring is a basic moral value that imposes an obligation on every individual; all the more so on Jewish individuals—“such that even though, it is not his child, it should be no [worse off] than the children of the snake and the raven.”[[31]](#footnote-31) The fact that the Ordinance of Usha is based upon the behavior of animals teaches about the breadth of its application—in every instance that this rationale of natural morality exists, the obligation of child support applies. The ordinance, then, does not require a legal definition of whether the ‘child,’ is attributed to him, but rather follows a biological definition that extends to all of his offspring.

**3 The Obligation to Support the Child because of the ‘Ways of Peace’—**Rabbi Uziel also bases himself upon the Ordinance of Usha in order to suggest an additional rationale: The ordinance obligates the father to support his children as part of the laws of charity (*tzedaka*);[[32]](#footnote-32) and the laws of charity apply to non-Jews as well, ‘because of the ways of peace.’[[33]](#footnote-33) Hence, even if the child is defined a non-Jew, the father has an obligation to support him based on the laws of charity.

At the end of his responsum, Rabbi Uziel qualifies his words and rules that the obligation imposed on the father is only applicable if the mother agrees to give over the sons and daughters[[34]](#footnote-34) to him for the purposes of conversion.[[35]](#footnote-35) Even in the case of a Jewish child, the Halakha determines that the children should be with their father so that he can educate them about the Torah and the commandments. While Rabbi Uziel emphasizes that the mother is not obligated to give over her child for conversion, nonetheless, conversion is necessary in order to obligate the father in child support. The father’s claim that he will support and provide for his children only if they convert is justified and consistent with the laws of the Torah, “the ways of which are pleasant and all the paths of which are peace.” With this sentence, Rabbi Uziel concludes the first version of his responsum; it implies that Rabbi Uziel links the obligation of child support with the obligations of educating the children and converting them.

One who looks at the actual text of the Rab Uziel’s responsum (as it was printed and is stored in the Tel Aviv municipal archives) will discover that an X is superimposed upon the text of the responsum, likely indicating that it was meant to be discarded. In the pages that are immediately attached to the first version of the repsonsum appears a different version of Rabbi Uziel’s responsum to Rabbi Auerbach.

**3b) Version 2 (The Handwritten Archive Document)[[36]](#footnote-36)**

This version also begins with Rabbi Uziel’s statement that he has not found a previous discussion of this question by halakhic decisors. The basic distinction Rabbi Uziel makes in this version of the responsum is between a child who is the product of **promiscuous relations** with a non-Jewish woman and a child born who is the product of a **civil marriage**. From the very distinction between these two cases, we learn that it is possible—for Rabbi Uziel—that civil marriage to a non-Jewish woman carries legal significance regarding the question of financial obligations—even if not regarding the question of personal status.[[37]](#footnote-37)

Rabbi Uziel begins by clarifying the obligation to provide child support for a child born out of promiscuity—be it from a Jewish or non-Jewish woman. Regarding a child born out of promiscuity from a Jewish woman, he cites the dispute between Rabbi Moshe Isserles (Rema)[[38]](#footnote-38) and Rabbi Moshe Lima (the author of *Helkat Mehokek*)[[39]](#footnote-39) regarding a case of a father who does not admit that the child born from an unmarried Jewish woman is his. According to Rema, he is not obligated in child support for a child born of promiscuity, even if it is the child of his personal mistress. According to Rabbi Moshe Lima, however, in the case of a personal mistress, the mother is believed in attributing the son born out of promiscuity to the father because of legal presumption (*hazaka*) that “most intercourse is with the husband.”[[40]](#footnote-40) According to both of them, if the father admits that the child is his, he is considered the child’s father in all respects. In the case of a child born out of promiscuity from a non-Jewish woman, Rabbi Uziel opines that when the father does not admit that the child is his, even the author of *Helkat Mehokek* would concede that he is not considered his son. His reasoning is that we are not familiar with the conduct of the non-Jewish woman, and therefore it is impossible to say that she is exclusively his mistress. Hence the assumption that “most intercourse is with the husband” would not apply. When the father does admit that this is his child, Rabbi Uziel is in doubt about the law and presents the same arguments appearing in the first version of the responsum.

In this second version of the responsum, Rabbi Uziel does not deal with the rationale of *etnan zonah* which would obligate the father. Rather, he discusses this issue in a broader context, addressing the obligation entailed by a civil marriage. According to Rabbi Uziel, if the couple is married in a civil union, the father is obligated to provide child support for his children from the non-Jewish woman, even if he does not admit that they are his:[[41]](#footnote-41) State law obligates a woman married civilly to refrain from “married life” (sexual relations) with any other man. Based on this, he concludes that in such a case one can invoke the presumption )*hazaka*) that “most intercourse is with the husband,” allowing us to determine that the child born to the woman is the child of the man that is civilly married to her.[[42]](#footnote-42) Hence civil marriage creates a legal presumption that these are his children—even if he does not admit as much.

The agreement forming the basis of a civil marriage creates a type of contractual obligation on the father to support his children. It is reasonable to surmise that the woman married him on the premise that he would assume the burden of child support. That is to say that the agreement of the woman to marry him civilly was conditional upon this obligation. “This is the [legal] category ‘we witness’ [it is evident to all, as if observed by witnesses] that he obligated himself to her at the time of the marriage to support his children.”[[43]](#footnote-43) Indeed, this is the rationale that was referred to as the law of *etnan zona* in the first version. The fact that the man entered into the framework of civil marriage with the non-Jewish woman shows that he willingly obligated himself to support his children from her. In this he is considered like someone “who obligates himself in something that he is not obligated”; which is to say that even though legally there was room to exempt him from this obligation—the child not being attributed to him in any other matter[[44]](#footnote-44)—he nonetheless obligated himself.

Thus, there are two implications to civil marriage in Halakha: 1) When the couple is married civilly, it is possible to obligate the father to support the children by force of the civil agreement. 2) It is possible to obligate the father in child support, even if he does not admit that it is his child, because of the presumption that “most intercourse is with the husband.” This presentation sits well with Rabbi Uziel’s explanation of Rabbi Moshe Lima’s approach above; if we are familiar with the woman’s conduct, and we know that she does not cohabit with other men, the presumption of “most intercourse is with the husband” applies. This creates a proof that the child born to that woman is the child of the man to whom she is married, even if he does not admit it.

The second version of the responsum does not end there. Rabbi Uziel proceeds to discuss the response to his first version of the responsum, which he received from Rabbi Yosef Mordechai ha-Levi,[[45]](#footnote-45) the head of the rabbinical court of the Sephardic community and a member of the council of the chief rabbinate. Rabbi ha-Levi writes that one cannot obligate the father in child support for his son born to a non-Jewish woman, based on an a fortiori argument (*kal ve-homer*) from the case of a *mamzer*:

And since in the case of a *mamzer—*who is his offspring, whom he brought into the world, and who is his son in every matter—it is not self-evident that the father is obligated in child support; in the case of a child from a non-Jewish woman—who, even after conversion, is not his son at all—how is it possible to obligate him in child support? And maybe a mishap will come out of this; since as a result of this, they will consider him his child... And so, my opinion is that we should not obligate him in child support.[[46]](#footnote-46)

On the handwritten document in the archive, we find that Rabbi Uziel initially acquiesced to consider these doubts and therefore refrained from re-stating his original decision and obligating the father in child support. Instead, he suffices with a general statement about refraining from making definitive pronouncements on this issue, and concerning oneself with each specific case according to its particulars. He concludes by offering a prayer for the sanctity of the offspring of Israel.

 It is clear from our analysis that Rabbi Uziel’s inclination is to obligate the father in child support in this case. Nonetheless, the bottom line is that all of his arguments towards obligating him—both the ethical arguments and the legal arguments—are unable to prevail against the doubt raised by Rabbi ha-Levi, based on the comparison to the obligation of the father in child support for his *mamzer* son.

However, in the archives, immediately after the end of his responsum, there is an additional page, wherein Rabbi Uziel recants on his uncertainty and determines that there is no doubt that a father is obligated in child support for his *mamzer* son:

*As there is no doubt in the matter* that the father is obligated in child support of his *mamzer* sons. And just the opposite—since it is not explicitly mentioned that a *mamzer* is not included in a father’s obligation in child support; from this itself we can learn that *the matter is so very simple, to the point that there was no reason to say it*.[[47]](#footnote-47)

That is to say the *mamzer* son is not excluded from being grouped with his normative (*kesherim*) siblings. Rabbi Uziel enumerates several reasons to obligate the father in child support for his *mamzer* son, they too being of an ethical-educational nature: 1) We do not say to an evildoer, “Do more evil.”[[48]](#footnote-48) This man sinned by having forbidden intercourse, from which his *mamzer* son was born. An exemption from supporting his *mamzer* son would compound his original sin with further evil. 2) There is no room to obligate the community in child support while the father is still alive. Otherwise, “the sinner would gain.”[[49]](#footnote-49) 3) That the father not be counted among the group of low and evil people.

These reasons are intended to ground the obligation of a father in child support for his *mamzer* son. Nonetheless, according to Rabbi Uziel, they are also relevant to the case of his child from a non-Jewish woman. In spite of that, he qualifies his words writing: “It seems *almost* certain that his child from a non-Jewish woman is also considered his son in this matter.”[[50]](#footnote-50)

Rabbi Uziel adds another rationale from an aggadic source in the Talmud. According to this, Tamar and Absalom were the offspring of a captive woman (*eshet yefat toar*)[[51]](#footnote-51) and they were conceived before her conversion. In other words, they were David’s children born of a non-Jewish woman. Nevertheless, he treated them like his own children, dressing Tamar in regal clothing[[52]](#footnote-52) and calling Absalom, “My son, my son,”[[53]](#footnote-53) even after the latter rebelled against him.[[54]](#footnote-54) According to Rabbi Uziel this source constitutes “a proof of sorts.”

In his conclusion, Rabbi Uziel re-emphasizes that the obligation to support children is a natural outgrowth of the father’s responsibility for bringing the child into the world. Once the children are transferred to his domain, he is obligated in their support; at the very least from the obligation to support the creatures found in a man’s domain.[[55]](#footnote-55) Rabbi Uziel concludes his words with a phrase that basically determined the course of his responsum, “And this is the way of the Torah, the ways of which are pleasant and all the paths of which are peace.” ‘Pleasant ways’ and ‘paths of peace’ obligate a father to support ‘those that come out of his loins,’ even when there is no legal validation to connect him with the mother.

According to Rabbi Uziel, there is really no halakhic stumbling block created by the obligation of the father in child support for his children born of a non-Jewish woman. Rabbi Uziel submits his calculation of the arguments enumerated, together with the delicate situation, to every decisor who may have such a question come to him. He concludes that in each case, “the judge has only what his eyes can see”—and so in each case is determined by whichever judges deal with it.

From both versions of the responsum, we can conclude that Rabbi Uziel did not change his approach on this topic. To the contrary, he actually broadened a father’s obligation to provide child support in such a case—determining that in the case of civil marriage, the obligation of a father to support his child applies even when he does not admit that the child is his

**4 Other Rulings**

According—to the accepted ruling, the father’s obligation to support his offspring does not apply to those that are born from a non-Jewish woman. In general, decisors conclude that the legal separation of the bond between a man and his offspring from a non-Jewish woman, also entails an automatic severance of all mutual obligations and rights—among them, the obligation of child support. For example, Rabbi Moshe Klein (Israel, 21st century) rules as follows:

In the case of a man that has relations with a non-Jewish woman and a child is born from them, that child is not attributed to him and he is not obligated in child support. This is also the case when a non-Jew converts together with his son—that his son is not attributed to him—because we have a principle that “a convert is similar to a newborn infant” [see t. Yevamot 62a, Tur and Shulhan Arukh, Yoreh Deah 269]. And hence, he is not obligated in child support.[[56]](#footnote-56)

Rabbi Binyamin Aryeh ha-Kohen Weiss (Galicia, 19th century) reaches a somewhat different decision in *She’elot ou-Teshuvot Even Yekara*. Rabbi Weiss was approached about the question of paternal support of a child from a non-Jewish woman in connection with a question dealing with the laws of determining paternity and of a man married to a woman pregnant with another man’s child. In his responsum, he distinguishes between the obligation to provide support for the offspring of a converted couple and a child born to a Jewish man and a non-Jewish woman:

My entire reasoning for her being prohibited to marry during the days of her pregnancy or nursing is out of the danger to the child: the child is not attributed to him [the new husband], he does not have an obligation to support him, and will not coddle him with eggs and milk. If so, this is the case when a Jew that has a child from a non-Jewish woman; the Torah does not obligate him in any way to support the child, as he is not called according to his name, but rather her name. But this is not the case with a converted couple; since while he was a non-Jew, he had an obligation to support the child—with the other nations, attribution follows the male—therefore the child [continues] to be attributed to him. If so, his obligation towards his young child is certainly not annulled as a result of his conversion... and he is obligated in child support even after his conversion.[[57]](#footnote-57)

According to Rabbi Weiss, in the case of a converted couple, the law is different; this is because when the couple was non-Jewish, the father was already obligated in the support of his children. The conversion does not remove this obligation. However, in the case of a child born of a non-Jewish woman, the obligation in child support was never engendered in the first place—as the child was never attributed to him but to her. As far as our discussion is concerned, we see that, according to Rabbi Weiss we do not obligate the father in child support of his child born from a non-Jewish woman also according to this approach—as per the accepted opinion and unlike Rabbi Uziel’s rulings.

This is also the approach taken by academics seeking to summarize Hebrew law’s (*mishpat ivri*) position on the issue.[[58]](#footnote-58) Y. Shiber, for example, writes, “In this situation (wherein the father is Jewish and the mother is a non-Jew)—according to Hebrew law which is the relevant law of the defendant (the father)—he is not obligated in child support for his children from the non-Jewish woman, as the child is not attributed to him at all.”[[59]](#footnote-59)

This was also the predominant opinion among halakhic decisors who responded directly to Rabbi Uziel. The position of Rabbi Auerbach (who asked Rabbi Uziel the question in the first place) is cited by Rabbi Uziel, who quotes him as saying, “As the son of a Jew who is born of a non-Jewish woman is not [considered] his son *in any matter*.”[[60]](#footnote-60) This was also the position maintained by Rabbi Y. M. ha-Levi to whom Rabbi Uziel turned for feedback to his responsum.[[61]](#footnote-61)

**4a) Rabbi Herzog’s Response[[62]](#footnote-62)**

The most emphatic response Rabbi Uziel received was from Rabbi Yitzhak Isaac ha-Levi Herzog and we will therefore analyze it in detail. Rabbi Herzog writes that he received the text of Rabbi Uziel’s responsum from Rabbi ha-Levi, which is to say that he saw the first version of the responsum. He apologizes for the delay of his response—indicating Rabbi Uziel requested his feedback. Rabbi Herzog firmly opposes Rabbi Uziel’s decision, basing himself upon legal and ideological considerations. We will analyze his response at length while also reviewing Rabbi Uziel’s counter-responses.[[63]](#footnote-63) Our treatment of the halakhic proofs and disagreements will be brief, as we will focus primarily on the differences in the rabbis’ ethical and fundamental approaches to this issue.

**4a-i) The Halakhic Dispute**

Rabbi Herzog opens with an apology: due to his various commitments, he will only relate to the question of a father’s obligation in child support for children from a non-Jewish woman and not to the question of the children from a mixed marriage’s attribution (about which there is no disagreement—as we already mentioned). Rabbi Herzog disputes several of Rabbi Uziel’s halakhic rationales, such as how to understand the positions of Ran[[64]](#footnote-64) and Rivash[[65]](#footnote-65) on the obligation of a father to support his children from an unmarried woman. He also disputes Rabbi Uziel’s suggestions to obligate the father based on the law of *mazik*. Rabbi Herzog does not accept this argument because he posits that the woman was aware of the consequences of her marriage—that she would bear responsibility for the child support—“and considered and accepted it,” meaning to say that she agreed to the marriage based on that condition. The only possibility to obligate the father is if it be determined that the ‘agreement’ of the civil marriage entails an obligation according to Jewish law. According to Rabbi Herzog, such an agreement does not obligate him and does not carry any validity in Jewish law. The non-Jewish woman’s belief that he would support the children is a fundamental mistake on her part and is not enough to obligate him or to define him as a *mazik*. In any event, we are dealing here with a case of someone deceived and not with a case of *mazik*.[[66]](#footnote-66)

Rabbi Uziel disagrees with Rabbi Herzog:[[67]](#footnote-67) Preventing anguish to the mother is enough of a reason to obligate the father to support the children. In the case of a child born of promiscuity from a Jewish woman, we are also dealing with a case of someone deceived, and, nonetheless, Ran rules that there is basis for the mother’s claim that it is impossible for her not to feed her children. The compassion of a mother on her children—which is the rationale to obligate the father in child support—is not limited to the child of promiscuity from a Jewish woman. It is rooted in human nature, and even practiced among animals—“Even jackals draw out the breast and suckle their babies.”[[68]](#footnote-68)

Rabbi Uziel adds that a Jewish court should certainly not assist the father in exempting himself from child support based on the claim that the mother had erred. Such a claim represents ‘adding an iniquity to a sin’—not only did this man marry a non-Jew, but now he also seeks to abandon his children. Ulla’s statement is applicable here: “[Should] one who has eaten a [clove of] garlic, and its odor is wafting, go ahead and eat another [clove of ] garlic?!”[[69]](#footnote-69) Let not the ruling of the court deny the natural feeling of compassion and excacerbate the injustice already done:

Is the symbol of compassion in Israel not [the phrase], ‘like the compassion of a mother upon her children’...? And how can we say that a Jewish man who has sinned and bore a child of promiscuity should add iniquity to a sin, and be in the category of “a cruel one hurts himself” (Prov. 11:17).[[70]](#footnote-70)

Rabbi Herzog also rejects the argument that the father is obligated to support his based on the category of *etnan zonah*.[[71]](#footnote-71) A father’s obligation in child support for his normative children emerges from the Ordinance of Usha. No one claims that the obligation emerges from an assumption (*umdena*) “that she married on condition that he obligate himself to support the children and that he thereby becomes obligated.”[[72]](#footnote-72) This is the case if the obligation was not made explicitly. However, even if the father did obligate himself explicitly; his obligation is still not binding, since he is obligating himself about ‘a thing that does not yet exist.’[[73]](#footnote-73) And even if we argue that the man’s obligation is towards the woman (as opposed to the unborn children)—that is, he must ensure she has enough money to support the children—this is still subject to dispute by early commentators: this would be ‘a matter that is unlimited’ (an undefined obligation),[[74]](#footnote-74) about which Maimonides’ opinion is that there can be no such obligation.[[75]](#footnote-75)

Rabbi Uziel protests against Rabbi Herzog’s comparison of *etnan* *zonah* to the obligations of a father to support his normative children: “How can it even be entertained to utter the concept of *etnan*,about a case of a wedding ‘with a canopy and betrothal like the law of Moshe and Israel’?”[[76]](#footnote-76) Rather, in his opinion, the concept of *etnan* can only apply when speaking about a non-Jewish woman. Civil marriage is considered evidence (“we witness”) that he obligated himself to support the children; “the entire world knows that anyone who festively marries a woman in a civil marriage is doing so to have children and to raise them. There is nothing more explicit than this.”[[77]](#footnote-77) Rabbi Uziel also disagrees with Rabbi Herzog’s challenge from the laws of acquisition—that is, the inability to legally acquire a ‘thing that does not yet exist’ or ‘a thing that is unlimited.” The man’s obligation is towards the woman and, due to his marital love for he, he even obligates himself to ‘a thing that is unlimited.’

**4a-ii The Ethical and Ideological Dispute**

With regards to Rabbi Uziel’s argument to obligate the father in child support based on ‘enmity and the ways of peace,’ Rabbi Herzog claims that there is no room for such a concern here, since it is possible to explain the rationale for this ruling to the ‘nations of the world.’ It should be explained that the support of the children falls upon the non-Jewish mother because the question of child support is dependent upon the question of relationship, and therefore the Ordinance of Usha is not applicable in this case. In a mixed marriage, the status of the child is determined by the mother—if the mother is a non-Jew and the father a Jew, the burden of child support falls upon the non-Jewish mother; similarly, if the mother is Jewish and the father a non-Jew, the Jewish mother is obligated in their child support. According to him, the nations will be convinced that there is no discrimination here and, therefore, no enmity will be created.

According to Rabbi Uziel’s counter-claim, the possibility of explanation is irrelevant. In the case of charity also, it would have ostensibly been possible to explain to the nations of the world that we do not take charity from them, and therefore they are not entitled to receive charity from the Jews. Nonetheless, it was ruled that we support the poor of the nations because of enmity and the ways of peace; all the more so in our case, wherein the explanation would be less accepted by the nations of the world. Such an explanation will it not only fail to foster peace, but it will even increase conflict:

But rather these are actually the ways of conflict; to say to them that since you are a non-Jew, we will hinder you from the natural obligation of a father’s compassion; and to say to the father, “Place your children on this wife of yours, now that you left her and her children like a vessel that you do not want want, and after you abused her.”[[78]](#footnote-78)

It seems that the concept of offering an explanation to the nations of the world had practical implications— as we suggested at the beginning of the article, the responsum was directed to the British mandatory court.

Rabbi Uziel seeks to awake the compassion of the father upon his children, and according to his approach, father’s natural ‘trait of compassion’ legally obligates him to support his offspring. By contrast, Rabbi Herzog seeks to awake the compassion of the Heavens and offers a prayer, “May the Merciful One save His people from such cases.”[[79]](#footnote-79) Rabbi Herzog agrees that if the man separates from the woman—and especially if the children are given over to the father for the purposes of conversion—“it is proper to seek private efforts as much as is possible on their behalf”;[[80]](#footnote-80) nevertheless, it is not proper to make a general ruling to obligate the father to support them. Obligating the father in child support is not legally enforceable; nor should moral public pressure even be applied. The latter is for two reasons:

1) Moral public pressure is applied towards a father who does not support his young children (above six years of age); if we also apply pressure in this case, “what have you left for the normative children,”[[81]](#footnote-81) That is to say that the ordinance of the sages was intended to improve the situation of Jewish children older than six. Applying this pressure for the sake of children that are considered non-Jews nullifies that advantage of the normative children over the disqualified ones.

2) If the rabbis use their authority to apply moral pressure in this matter, the ‘ popular masses’ will err and attribute some validity to mixed marriages,

and this is really a great danger—especially outside of the Land of Israel, in the enlightened states where Jews are in close contact with their non-Jewish neighbors and heavily influenced by them. ‘And the wise man has eyes in his head.’ The final word is that the matter should be dropped and not even spoken![[82]](#footnote-82)

Rabbi Herzog’s concerns are heightened by his familiarity with the sweep of assimilation outside of Israel. Rabbi Herzog takes more general considerations about preventing assimilation into account, whereas Rabbi Uziel is not shaken from the specific considerations of personal compassion on children, even in a case such as this.

Rabbi Uziel adds a prayer in response to the prayer of Rabbi Herzog: “May it be His will that the Children of Israel not come to [possess] such a trait.” And he adds, “and even our prophets and rabbis said this prayer as a powerful curse, ‘May the Lord cut off the man that does it, that none may heed him nor answer him in the tents of Jacob and none of his offspring bring an offering to the Lord of Hosts” (Mal. 2:12; Sanhedrin 82a).[[83]](#footnote-83) Even so, the treatment of the sin and the sinner does not prevent us from demanding that the father not be cruel to his offspring.

In response to the claim, “what have you left for the normative children,” Rabbi Uziel answers that the child of a non-Jewish woman is not entitled to every benefit enjoyed by a normative child—for example, he does not inherit from his father. Here he reiterates that the father obligation only takes affect after the children convert and are transferred to the father’s domain. In such a situation the obligation arises by virtue of the law mandating feeding creatures in a man’s domain;[[84]](#footnote-84) from the law of “and you shall love the convert”;[[85]](#footnote-85) and from the natural compassion of the father. Rabbi Uziel concludes that God commanded us to act with compassion towards all of the creatures, and even towards animals in one’s domain, and that He

does not permit a Jewish man to hinder the compassion of a father towards his offspring after they have converted. And He would not want that ‘one be pushed away from us’; but rather just the opposite—it is beautiful and fitting for us to be compassionate and to bring in these children that have been pushed off, into the seed of the House of Israel and ‘under the wings of the Divine presence.’[[86]](#footnote-86)

In this ruling, Rabbi Uziel uses God’s ways as an example for imitation: to cling to the trait of compassion, a lesson He sought to inculcate through His Torah. Even when there is no explicit command to act with compassion—as in the issue under discussion—one should follow the path paved by explicit laws. Rabbi Uziel uses the expression, ‘so that none be banished from us,’ in the context of a child born of a Jew and a non-Jewish woman who is not legally defined as a Jew. However, when he discusses the obligation of the father to support his son from a non-Jewish woman, he writes that the child should be converted to bring him “into the seed of the House of Israel and ‘under the wings of the Divine presence,’” so as to enable the enforcement of the father’s obligation.

As for the concern about popular error—lest it be thought that there is some legal validity, however slight, to mixed marriages—Rabbi Uziel claims that even if there is room to create such a decree, there is no need: “as the people of Israel are not so ignorant as to make such an error.”[[87]](#footnote-87) His proof for this is from a *mamzer* son: the sages did not prevent him from being identified as a Jew and from being entitled to inheritance out of a concern for error—even though he is the product of a sin that carries the severe punishment of excision. In both cases, the Torah follows ‘the ways of pleasantness and peace.’

It is possible to discern significant differences between the perspectives evinced in the two responsa:

1 Enmity and the Ways of Peace

We have seen the different approaches taken by Rabbi Uziel and Rabbi Herzog in applying this principle. Rabbi Herzog maintains that in certain cases it is possible to conduct an enlightened dialogue with the nations of the world and, thus dispel the concern of enmity from them. Rabbi Uziel’s opinion is that, in this case, it is impossible to base a legal exemption upon a rationale that will be accepted by the nations of the world. Therefore, the father is obligated to support his children because of enmity and the ways of peace. Rabbi Uziel further rejects Rabbi Herzog’s suggestion in light of the discussion of ‘the ways of peace’ in conjunction with the laws of charity. In our issue, there is ostensibly room for Rabbi Herzog’s proposal—yet in the final analysis, the discussion about charity implies that it is irrelevant.

2 Application of the Ordinance of Usha

Rabbi Herzog relates to the formal and legal limitations of the Ordinance and concludes that it does not apply in this case. Rabbi Uziel looks to the natural morality basis underlying the Ordinance; one which extends even to the animals, and—all the more so—to people, and particularly to the people of Israel. From the idea that underlies the Ordinance, it is possible to learn about the breadth of its application, which also includes cases that are beyond its formal and legal boundaries.

3 Attitude to the ‘ Popular Masses’

Rabbi Herzog explains his hesitations due to his familiarity with the Jewish population of the ‘enlightened states’ and with the ‘popular masses’ unknowledgeable of the basic principles of Halakha. He also raises the subject of a rise in intermarriage, the result of Jewish integration into all walks of life in these countries. In contrast to this, Rabbi Uziel feels that the people are not so ignorant; they know that mixed marriages have no halakhic validity. Therefore, it is possible to make a more complex legal ruling grounded in ethical considerations. While Rabbi Herzog rejects neither the humanitarian argument, nor the feelings of compassion, he believes that the danger of misleading the people trumps these arguments. He offers a prayer that such cases should never arise but does not suggest a comprehensive legal solution to facilitate practically coping with the situation. We saw above that this was the original penchant of Rabbi Uziel also. However, in contradistinction to Rabbi Herzog, Rabbi Uziel shakes off his feeling of helplessness to resolve the halakhic doubts raised. Instead he extricates himself from his inertia to grapple with the issue and to determine rulings.

The rationale raised by Rabbi Herzog is similar to Rabbi ha-Levi’s argument cited above concerning the mishaps that could be caused by such a novel ruling—a concern expressed by both rabbis in their responses to Rabbi Uziel. And this also brings into relief the uniqueness of Rabbi Uziel’s fearlessness in expressing his controversial opinion. In response to Rabbi Herzog, he actually emphasizes this: “Rather I say the opposite without any hesitation, ‘Let this whole matter be said in my name.”[[88]](#footnote-88)

**4c The Ruling of Rabbi Unterman**

Rabbi Isser Yehuda Unterman, the Ashkenazi chief rabbi of Israel after Rabbi Herzog’s death, was also forced to deal with this issue. In his book of responsa, *Shevet mi-Yehuda*,[[89]](#footnote-89) Rabbi Unterman wrote a responsum concerning the conversion of a child and the obligation to provide child support. Rabbi Unterman rules that after the child’s conversion, the Jewish father may not exempt himself from providing child support, claiming that there is no legally binding connection between them (so much so that, in theory, it is permissible for the father to marry his converted daughter!). “Regardless, he is obligated to support them; as this is a natural obligation, since they are ‘those that come out of his loins,’”[[90]](#footnote-90) This is how Rabbi Unterman understands the rationale underlying the Ordinance of Usha.

Rabbi Unterman adds a new proof to the arguments offered Rabbi Uziel. The Mishnah,[[91]](#footnote-91) dealing with the blessing inviting others to the grace after meals, rules that when ten are present, the term, ‘our God,’ should be used. Rabbi Yom Tov Lipman ha-Levi Heller, in his commentary *Tosafot Yom Tov*, explains that God sustains all of His creatures—even the idolaters among them—and therefore this phrase, which represents God’s universal justice, is employed. (This is in distinction to the blessing over the Torah—which was only given to the Jewish people via His trait of compassion—wherein a different term is used.) From this, Rabbi Unterman concludes, “if this is the trait of justice—that the Creator is obligated to sustain His creatures—it is also justice that the father is obligated to support ‘those that came out of his loins’... even though he is not considered a parent in other matters according to Halakha.”

Rabbi Unterman maintains that even in a case where the child does not convert, the father should provide support even though he cannot be obligated, since his children are “being raised to worship idolatry.” This implies that if the children *have* been converted, it even possible to compel the father to take up the expenses of the children’s sustenance.

At the end of his responsum, Rabbi Unterman reveals that he is aware of Rabbi Uziel’s responsum which preceded his own:

Then I found in the book, *Mishpatei Uziel* (second edition)*,* in the section on Yoreh Deah, responsum 60 (and afterwards in the responsa following it), [that] he rules that they should be supported; he also brings this rationale—that there is a natural obligation—and also adds that this is a consequence his obligation to the woman, whom he obligated himself to support; and it is impossible for her not to also feed the child, as it is stated, “Let me not see the death of the child.” And there is a basis for that rationale as well.

**4d The Rulings of Israeli Family Courts**

The claim of child support for a child born to a non-Jewish woman was also brought to the family courts in Israel.[[92]](#footnote-92) The accepted ruling of the Israeli civil courts followed the accepted (conventional) ruling in Halakha, by which if the child is not considered Jewish no obligation based on personal law obligation applies—only civil obligations.

Judge Tzvi Weitzman cites the following in his article on the topic:[[93]](#footnote-93)

... the father is Jewish and the mother has no religion (from a Christian background); and therefore the child of the couple is not considered Jewish. That being the case, there are no personal law obligations on the father (in Jewish law) to support his children. So, paragraph 3a of the Statute for the Amendment of Family Law (child support) of 1959 applies; and it stipulates that the support should be determined in proportion to the income of the two parents. This the ruling that appears in the legal literature already for many years.[[94]](#footnote-94)

Following this logic, Judge Weitzman calls for civil court judges to apply the Hebrew law in such cases, and to rule according to the decisions of Rabbi Uziel:

I feel that it is fitting for civil courts to alter their convention and adopt the approach of Rabbi Uziel, which fits well with the democratic and egalitarian principles of the State of Israel—to obligate the Jewish father in child support for his children from a non-Jewish woman, based on his personal law—meaning Hebrew law—before his obligation from civil law is applied.

In a ruling by Judge T. Koppelman-Pardo dealing, inter alia, with support of a minor who converted along with his mother, she actually took such an approach and based her decision on the decisions of Rabbi Uziel and Rabbi Unterman:

The opinion of most decisors is that according to Halakha the fact that the minor converted to Judaism and his father is Jewish from birth is insufficient to obligate the father to support his child born to a non-Jewish woman. However, I maintain that in a case where the mother of the minor and the minor both converted with a proper conversion, one should adopt the positions of Rabbi Ben Tzion Meir Hai Uziel in his book, *She’elot ou-Teshuvot Mishpetei Uziel* (second edition) 2 (on the laws connected to Shulhan Arukh, Yoreh Deah, vol. 1) (henceforth Rabbi Uziel) and Rabbi Isser Yehuda Unterman in his book, *Shevet mi-Yehuda me’Arba’a Helkei Shulhan Arukh*, (henceforth Rabbi Unterman) as will be detailed below, and rule support of the minor in accordance with the provisions for child support of any Jewish child in accordance with Halakha.[[95]](#footnote-95)

**5 Conclusion**

Rabbi Uziel wrote his responsum during his tenure as Chief Rabbi of Tel Aviv-Jaffa and the settlements in 1938, during the Mandatory Era. In his official government position, Rabbi Uziel was faced both by his official responsibility to the members of the Jewish community as well as his accountability to the powers from which, and through which, he functioned.[[96]](#footnote-96) From this perspective, Rabbi Uziel’s responsa addressed both the halakhic and the natural morality aspects of the issue, determining that it is incumbent upon the father to support his offspring, even when his children are from a non-Jewish woman, and hence not legally attributed to him. In the course of his rulings and responses, it is evident that the natural morality arguments play a significant and—perhaps, even decisive—role in guiding his decisions.

At the beginning of this article, we discussed the natural basis underlying the definition of the relation between parents and children, and we saw that the relation of the son born to a non-Jewish woman is an exception to this nature-based determination. It appears that concerning the question of child support, Rabbi Uziel chose to re-emphasize the natural side of the equation and bring the issue back to the natural morality layer with which we began. It also appears to me that by doing so, he continued in the spirit of ancient sources—as they were elucidated by my father, Prof. Fleishman, in his book—that see the obligation of child support emerging from natural morality:

These metaphors [from the animal world] reflect a clear and unambiguous consensus well-known to the reader; that human parents—like ones from the world of nature—protect their offspring and see to their preservation. The first condition to the very existence of their offspring is feeding them—especially during the period of time when they are too young to see to it themselves [...] This relationship appears to emerge from a natural instinct, without which life would not continue for people, or for animals.[[97]](#footnote-97)

1. Y. Fleishman, *Horim ve-Yeladim be-Mishpetei ha-Mizrah ha-Kadum ou-beMishpat ha-Mikra* (Jerusalem, 1999), 55-56. [↑](#footnote-ref-1)
2. M. Halperin, “*Horut Biologit ve-Horut Geniti,”* *Parshat ha-Shavua* *– Israel Ministry of Justice*, 204 (2004). [↑](#footnote-ref-2)
3. Kiddushin 3:12, t Kiddushin 68a; “*av*” (first entry), *Encyclopedia Talmudit,* 1. [↑](#footnote-ref-3)
4. Kiddushin 3:12, t Kiddushin 68b. [↑](#footnote-ref-4)
5. Maimonides, Mishneh Torah, Hilkhot Isurei Biah15:4. [↑](#footnote-ref-5)
6. Shulhan Arukh, Even ha-Ezer 8:5. [↑](#footnote-ref-6)
7. For the specifics of the framework of respective obligation, see “*av*,” *Encyclopedia Talmudit,* 1; Tur, Even ha-Ezer 13; Y. T. Gilat, *Relations between Parents and Children in Hebrew Law* (Ph.D diss., Bar Ilan University, 1994 [Hebrew]). [↑](#footnote-ref-7)
8. Auerbach (Jaffa, 1887-Jerusalem, 1954) was the author of the book, *Hacham Lev*, and the father of Rabbi Shlomo Zalman Auerbach.. Rabbi Auerbach corresponded with Rabbi Uziel on other issues, see *Mishpetei Uziel* (Jerusalem, 1995-2004) 2:52,53; 4:33,35: 6:Appendix 3; 7:5,85,104. Rabbi Uziel also corresponded with the sons of Rabbi Auerbach—with Rabbi Eliezer (*M. Uziel* 9:3) and with Rabbi Shlomo Zalman (*M. Uziel* 3:36; 8:29). Further correspondence between the two concerning a present given by a husband to his wife (1 Shevat, 5698) and concerning a woman requiring levirate marriage (*yibum*) from a levirate husband who demands a portion of her inheritance (27 Sivan, 5698) are found in the Tel Aviv municipal archive. [↑](#footnote-ref-8)
9. Y. and R. Eliyahu, *Ha-Torah ha-Misamahat* (Beit El: Sifriat Beit El, 1998), 16. [↑](#footnote-ref-9)
10. According to Rabbi Auerbach’s family, *Responsa of Rilbah* was never published. [↑](#footnote-ref-10)
11. Emphasis in the original. [↑](#footnote-ref-11)
12. E. Vitta, *The Conflict of Laws in Matters of Personal Status Palestine* (Tel Aviv:S. Bursi, Ltd., 1947), 227-234. [↑](#footnote-ref-12)
13. I have not succeeded in locating Rabbi Auerbach’s responsum—not among his writings and not among the documents from the Tel Aviv municipal archives that I will cite below. Hence, we can only learn about his position from Rabbi’s Uziel’s references to it. [↑](#footnote-ref-13)
14. Tel Aviv municipal archives document 8-1077 and 8-081. [↑](#footnote-ref-14)
15. Tel Aviv archives 8-1081 ; *M. Uziel* 2 :60. The section that deals with relationship is identical in both documents. The responsa is dated 2 Chesvan, 1938 and—according to its dating—is the first in the context of their correspondence about the topic. [↑](#footnote-ref-15)
16. In the responsa that will be discussed here, Rabbi Uziel does not generally express his opinion about the prohibition of sexual relations between a Jewish man and a non-Jewish woman and its stringency, but rather addresses the reality as it was presented to him in the question, and about its implications. He reveals his opinion about this in other places; for example in *M. Uziel* 7:68 “Concerning a Jew that has Sexual Relations with a Cuthite.” In that responsum, Rabbi Uziel relates to the law legislated by the Nazis, according to which a Jew that comes into contact with a Christian is castrated, and if he has sexual relations with her, he is killed. The Nazis legislated this law after they learned the Jewish law as ruled by Maimonides (MT, Hilkhot Isurei Biah112:9-10), whereby if a Jew has sexual relations with a Cuthite woman, the Cuthite is killed, “because a disaster befell a Jew through her as [is the case] with an animal.” From there, they deduced that a Jew can “fulfill his animal desires with any Christian woman, and then kill the Christian woman that listens to him” (*M. Uziel* 7:68, p. 245). Rabbi Uziel proves in this responsa that this law only refers to a Jew that has sexual relations with a Cuthite in public, and in a case where it is clear that he is doing so out of “heresy; to rebel against the Torah of Israel” (ibid.). In this case, the punishment of the man is also excision according to the words of the tradition. While dealing with the question of the stringency of the sin, Rabbi Uziel writes, “Behold, you have learned that one who has intercourse with a Cuthite is as if he marries idolatry... Even though this son does not receive the death penalty from the court, let it not be light in your eyes; as there is a loss in it that does not exist in any of the sexual prohibitions like it—as the child from a [typical] sexual prohibition is considered his child in all matters and is considered a Jew, even though he is *mamzer* (the offspring of a forbidden union); but the child from a Cuthite is not his son... and this belongs to the category of sins that entail a desecration of the divine name, which has no atonement until the time of his death” (ibid., pp. 245-246). [↑](#footnote-ref-16)
17. I have spoken about the approach of Rabbi Uziel to understand the foundations of the law as the basis for decision-making in another place—see N. Sat, *Darkhei Pesikato shel ha-Rishon le-Tzion ha-Rav Ben-Tzion Meir Hai Uziel be-Sugiot be-Dinei Mishpaha* (Ph.D diss., Bar Ilan University, 1995-2008), 290-293. [↑](#footnote-ref-17)
18. I have dealt with the chronology of the versions elsewhere; in this article, I base myself upon what I wrote there. See *Darkhei Pesikato*, 179. [↑](#footnote-ref-18)
19. This follows Rabbi Uziel’s fundamental approach to new questions: “Conditions of life, changing values and technological and scientific discoveries create new questions and problems that require solutions in each generation. We may not close our eyes from these questions and say, ‘*chadash asur min ha-Torah*’ (the new is forbidden by the Torah)—meaning to say that anything that has not been explicitly mentioned by those that came before us is automatically considered forbidden; and all the more so to simply allow it based on our own personal evaluation. We cannot allow these laws to be silent and closed, such that anyone can act upon it according to his personal opinion.” *M. Uziel*, Introduction, ix. This position is seen again in the introduction to *M. Uziel* 3:5. [↑](#footnote-ref-19)
20. Shulhan Arukh, Even Ha-Ezer 71:4. [↑](#footnote-ref-20)
21. In such a case, we are concerned lest the woman had sexual relations with others (‘she is whispered about by the world’). If so, there is a doubt whether the child is his, and we do not extricate money based on a doubt. [↑](#footnote-ref-21)
22. Shulhan Arukh, Even Ha-Ezer 4:26; *Sha’arei Uziel* (Jerusalem, 1991), vol. 2, section 40, chap. 1, p. 193; A. H. Freiman, “*Mezonot shel Yeled she-Nolad she-lo be-Nisouin al-pi Dinei Yisrael,*” *Ha-Praklit*  2 (1945): 163-173. [↑](#footnote-ref-22)
23. Archive document 8-1081, p. 11. [↑](#footnote-ref-23)
24. Ibid. [↑](#footnote-ref-24)
25. Gen. 21:16. [↑](#footnote-ref-25)
26. Ibid., 18 [↑](#footnote-ref-26)
27. Concerning Rabbi Uziel’s use of rationale based on the ‘spirit of the Halakha’—and especially on prophetic ethics, see B. Lau, “*Musar haNevi’im be-Shikulei Pesikato shel ha-Rav Uziel*,” *Akadamot* 21 (2008): 96-109. See also *Darkhei Pesikato*, 293-294. Concerning the integration of prophetic principles into Halakha, see R. Y. Sherlow, “*Be-Ikvot ha-Halakha ha-Nevui’it – Ofakim Hadashim be-Halakha*,” in *Masa el ha-Halakha* (ed. A. Berholtz; Jerusalem: Beit Morasha, 2003), 102-124. [↑](#footnote-ref-27)
28. t. Ketuvot 49a. S. Ha-Kohen, *Mezonot Yeladim – Hithavot ha-Halakha, Hishtalshelutah, ve-Nesiboteah* (Ph.D diss., Bar Ilan University, 1999), 82-93 explains that based on its wording, the Ordinance of Usha was not intended to be an enforceable legal pronouncement, but rather only an ethical recommendation. Only at a much later juncture was it seen as a legal ordinance that would allow for the obligation of the father—even by force—to support his children. [↑](#footnote-ref-28)
29. See Rashi on t. Ketuvot 49b, s.v. *de-arod yalad*. [↑](#footnote-ref-29)
30. Ibid. [↑](#footnote-ref-30)
31. Archive document 8-1081, p. 11. [↑](#footnote-ref-31)
32. Concerning the reliance of the obligation to support children on the laws of charity, see Ha-Kohen, *Mezonot*, 191-242. [↑](#footnote-ref-32)
33. Shulhan Arukh,Yoreh Deah 251:1. [↑](#footnote-ref-33)
34. Even though there is common rule that “a daughter is [to be] with her mother” (t. Ketuvot 102b; Mishneh Torah, Hilkhot Eeshut 21:18; Shulhan Arukh, Even Ha-Ezer 82:7). [↑](#footnote-ref-34)
35. Rabbi Uziel proves that the obligation of the father in child support is dependent upon the agreement of the mother to give over the offspring to the father’s domain from another case, by way of a fortiori reasoning (*kal ve-homer*): Rabbi Yehzkel Landa wrote that a court may not force a man to support his children that are kept by his Jewish wife who lives in a different city, because the goal of being “able to educate them about the Torah and the commandments” is not attainable in this case. The same is true in our instance. According to the letter of the law, the mother is not obligated to hand over her children to their father, and we can also not force them to convert. However, if she chooses to keep them with her, we do not obligate the father to support them while they are being educated by the non-Jewish mother to his displeasure. [↑](#footnote-ref-35)
36. It is also found as a printed document in the archives and so too in *M. Uziel* 7:4. [↑](#footnote-ref-36)
37. The position of Rabbi Uziel, totally rejecting the validity of civil marriage in impacting upon the status of the couple is well known. See *Darkhei Pesikato*, 128, n.59. [↑](#footnote-ref-37)
38. Rema on Even Ha-ezer 4:26. [↑](#footnote-ref-38)
39. *Helkat Mehokek* on Even Ha-ezer 4, n. 25. [↑](#footnote-ref-39)
40. t. Sota 27a; t. Hulin 11b. There is a disagreement among the early commentators (*Rishonim*) whether the assumption that “most intercourse is with the husband,” applies also to a personal mistress. See “*yahas*,” *Encyclopedia Talmudit,* 24, columns 136-138. [↑](#footnote-ref-40)
41. Ibid. [↑](#footnote-ref-41)
42. Concerning the assumption of “most intercourse” in the decisions of Rabbi Uziel, see *Darkhei Pesikato*, 145-146. [↑](#footnote-ref-42)
43. Archive document 8-1077, p. 9. [↑](#footnote-ref-43)
44. There is a similarity here between his decisions regarding the obligation of a man in child support and the obligation of a man in supporting his wife from a civil marriage (*M. Uziel* 7:77). According to Rabbi Uziel, civil marriage has no validity in Halakha (see note 37 above). That being said, he does not fully exempt the man from supporting his civil law wife—rather, he makes the husband’s obligations dependent upon his usage of obligating language and its validity in the civil courts. In both topics—the obligation in child support for the children born to a non-Jewish woman and the obligation to support his wife from a civil marriage—Rabbi Uziel is not able to bestow halakhic status to the ‘children’ or the ‘wife.’ However in both cases he obligates the man financially by way of a type of a contractual obligation, according to which it is not feasible that a man willingly marries and afterwards seeks to exempt himself from all of his obligations. It is easy to understand that there is an ethical issue here—when a man wants to exempt himself from his obligations, especially when his behavior adversely effects the helpless. [↑](#footnote-ref-44)
45. Rabbi Yosef Mordechai ha-Levi (Jerusalem, 1875-1947). Rabbi ha-Levi and Rabbi Uziel knew each other well, since Rabbi Uziel’s father, Rabbi Yosef Rafael Uziel, was Rabbi ha-Levi’s trustee after his parents died—see Rabbi Y. M. ha-Levi, *She’elot ou-Teshuvot She’erit Yosef* (Jerusalem, 1948), Preface. Rabbi ha-Levi’s words about our topic were published there, entry 11. In his conclusion, Rabbi ha-Levi disagrees with Rabbi Uziel and holds that we cannot obligate the father in child support. [↑](#footnote-ref-45)
46. *She’erit Yosef*, 11. [↑](#footnote-ref-46)
47. Archive document 8-1077, p. 11 (emphasis added). Rabbi Uziel also came to this decision in *Sha’arei Uziel* 2:41:5:1. [↑](#footnote-ref-47)
48. Based on Maimonides MT, Hlkhot Nesiat Kapayim 15:6—“We do not say to an evildoer, ‘Do more evil and do not do the commandments.’” [↑](#footnote-ref-48)
49. Mish. Challah 2:7 [↑](#footnote-ref-49)
50. Archive document 8-1077, p. 11. [↑](#footnote-ref-50)
51. t. Sanhedrin 21a. In the Talmud, it is not explicitly stated that Absalom, Tamar’s brother, was also born before Ma’acha converted. From the simple meaning of the verses in II Sam. (13:18, 19:5), it cannot be determined if Absalom was born before Tamar or after her. [↑](#footnote-ref-51)
52. II Sam. 13:18. [↑](#footnote-ref-52)
53. II Sam. 19:5. [↑](#footnote-ref-53)
54. t. Sanhedrin 21a. [↑](#footnote-ref-54)
55. t. Gittin 62a: Rav Yehuda said that Rav said, “It is forbidden for a man to taste anything until he gives food to his animal.” According to most decisors, this prohibition is rabbinic. See R. Yakov Risher, *She’elot ou-Teshuvot Shevut Ya’akov* (Jerusalem, 1972) 3:13; R. H. H. Medini, *Sdei Hemed* (New York, 1950) 1:*kof*. From the wording of Maimonides (MT, Hilkhot Avadim 9:8), it is implied that it is an (optional) act of piety. [↑](#footnote-ref-55)
56. *Mishnat ha-Ketuva* (Modi’in Eilit, 2013) – *Hiuv Mezonot ha-Banim*, 12. [↑](#footnote-ref-56)
57. *She’elot ou-Teshuvot Even Yekara* (Prezymsl, 1902), 2nd ed. 2:39. [↑](#footnote-ref-57)
58. See B. Sharshivski, *Dinei Mishpacha* (Jerusalem, 1993), 396-397. It should be noted that Sharshiviski is familiar with the rulings of Rabbi Uziel. It appears, however, that he does not accept them. See note 36a there. [↑](#footnote-ref-58)
59. Y. Shiber, “*Mezonot Yeladim Ketanim: Megamot Hadashim*,” *Mispaha be-Mishpat* 3-4 (2009-2010), note 4. [↑](#footnote-ref-59)
60. Archive document 8-1077, p. 1 (emphasis added). [↑](#footnote-ref-60)
61. *She’erit Yosef* 11. [↑](#footnote-ref-61)
62. Ibid. (The date of the response is 4 Kislev 5738/1937). The response was also published in *She’elot ou-Teshuvot Heikhal Yitzhak* (Jerusalem, 1940) Even ha-Ezer 1:22 (Decisions and Writings 7: Even ha-Ezer 88). Editors notes are interspersed in these responses; therefore we will refer to the original text from the archive, as it was in front of Rabbi Uziel. [↑](#footnote-ref-62)
63. Rabbi Uziel’s response back is found in the archive (both handwritten and printed, in archive document 8-1077) and in *M. Uziel* 2:61. There is no difference in the body of the documents. Later we will discuss the differences between them in the introduction and the conclusion of the response. The notations in the response of Rabbi Uziel here follow the printed archive document. [↑](#footnote-ref-63)
64. Rabbenu Nissim on t. Ketuvot 28b in the pagination of Rif. [↑](#footnote-ref-64)
65. Rabbi Yitzhak ben Sheshet, *She’elot ou-Teshuvot Ha-Rivash* (Jerusalem: Metzger, 1993) 43. [↑](#footnote-ref-65)
66. An additional argument that can be brought against the application of the law of *mazik* is that of indirect causation (*grama*). Concerning this argument, see M. Klein, *Mishnah Ketuva*, n. 25: “As since the pregnancy is only *grama*—and as it is written at length in *She’elot ou-Teshuvot Maharit* (1:98) concerning the case of one who has sexual relations with his fellow’s maidservant, and she becomes pregnant from promiscuity and her value is reduced as a result, this is only considered *grama*. If so, how is it possible to indemnify him with payments for damages? This requires further study. But perhaps it is possible to say that even though concerning the diminishing of the mother’s value, the matter is considered like *grama,* nonetheless concerning the actual birth of the child, it is considered like a direct cause; and it requires further study. [↑](#footnote-ref-66)
67. Archive document 8-1077; *M. Uziel* 2:62. [↑](#footnote-ref-67)
68. Lam. 4:3. [↑](#footnote-ref-68)
69. t. Shabbat 31b. [↑](#footnote-ref-69)
70. Archive document 8-1077, p. 2. [↑](#footnote-ref-70)
71. In *Heikhal Yitzhak*, an explanation was added to the argument: “As it is like he obligates himself to support his children from her.” [↑](#footnote-ref-71)
72. Archive document 8-1077, p. 3. [↑](#footnote-ref-72)
73. Regarding the definition of ‘a thing that has not come into the world,’ see “*devar she-lo ba le-olam*,” *Encyclopedia Talmudit,* 7, columns 30-67. [↑](#footnote-ref-73)
74. Regarding the definition of ‘a thing that is unlimited,’ see “*devar she-eino katzuv*,” *Encyclopedia Talmudit,* 6, columns 655-661. [↑](#footnote-ref-74)
75. MT, Hilkhot Mekhira 11:16. [↑](#footnote-ref-75)
76. Archive document 8-1077, p. 6. [↑](#footnote-ref-76)
77. Ibid. [↑](#footnote-ref-77)
78. Ibid., 7. [↑](#footnote-ref-78)
79. Archive document 8-1077, p. 3. [↑](#footnote-ref-79)
80. Ibid. [↑](#footnote-ref-80)
81. Ibid., 4. [↑](#footnote-ref-81)
82. Ibid. [↑](#footnote-ref-82)
83. Archive document 8-1077, p. 7. [↑](#footnote-ref-83)
84. t. Gitin 62a [↑](#footnote-ref-84)
85. Deuteronomy 10:19. [↑](#footnote-ref-85)
86. Archive document 8-1077, p. 7. [↑](#footnote-ref-86)
87. *M. Uziel* 2:61, p. 221. [↑](#footnote-ref-87)
88. Archive document 8-1077, p. 8. [↑](#footnote-ref-88)
89. *Shevet mi-Yehuda* (Tel Aviv, 1998) 2: Yoreh Deah 30, pp. 162-163 (undated). [↑](#footnote-ref-89)
90. Ibid., 163 [↑](#footnote-ref-90)
91. Berakhot 7:3. [↑](#footnote-ref-91)
92. Paragraph 3(b) of the Statute for the Amendment of Family Law (child support), 1959. [↑](#footnote-ref-92)
93. T. Weitzman, “*Hiuv ha-Av be-Mezonot Beno min ha-Nokhrit*,” *Alon ha-Shoftim al shem ha-Shofet Shmuel Barukh, z’l,* February 2013:212-214 (the quote is on 213). [↑](#footnote-ref-93)
94. Family appeal case 87/97 (Tel Aviv) – Shapushinkov vs. Skornik (unpublished). See also the ruling of Judge A. Glubinski in family case 40161/98 (Haifa) – B. B. (minor) vs. Y. B., Family law database 2000(1), 100, 103 (2000). [↑](#footnote-ref-94)
95. Family law case 39930-04 (Tel Aviv-Jaffa) – A. G. and brothers vs. Y. G., Family law database 2010(4), 679 in the ruling in paragraph 55. The ruling was made on November 14, 2010. I am indebted to Judge Tzvi Weitzman for this reference. [↑](#footnote-ref-95)
96. Regarding Rabbi Uziel’s governmental approach and the trait of communal responsibility that he took concerning it, see A. Radziner, “*Ha-Rav Uziel, Rabbanut Tel Aviv-Yafo, ou-Beit Din ha-Gadol le-Irurim: Sipur be-Arba’a Ma’arakhot*,” *Mehkarei Mishpat* 21:1 (2004): 129-243. [↑](#footnote-ref-96)
97. Fleishman, “*Horim ve-Yeladim*,” 89. [↑](#footnote-ref-97)