**The Rulings of Rabbi Uziel Concerning a Father’s Obligation to Provide Child Support (*Mezonot*) for his Child Born to a Gentile 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 it they are not married.[[2]](#footnote-2)

Yet it appears that even this basic halakhic principle has its exceptions. The Mishnah determines that offspring that are born to a man from a woman are attributed to him, regardless of whether or not the couple is married, and even if the woman is forbidden in marriage to the man.[[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 gentile 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 or a gentile or a bondwoman or is from the daughter of a gentile is like its 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 gentile woman. Rabbi Auerbach links the attribution of a child born of a Jewish father and a gentile mother to the obligation for child support – ruling that (legal) nullification of attribution also nullifies the obligation of child support.[[13]](#footnote-13) This tract inspired Rabbi Uziel to take the bull by the horns. 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 gentile 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 located 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 of a gentile 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 Gentile 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 relationship of the son of a Jewish man and a gentile 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 relationship.

According to Rabbi Uziel, the maternal attribution of the son of a Jewish man and a gentile woman is not meant as a safeguard against assimilation – a means of separating a Jewish man from a gentile woman and the children. Rather it is 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 gentile 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 reveal any discrimination towards the gentile 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 Israel and the other nations: 1) The maternal attribution of the children and the placing of the burden to raise them upon her do not emanate from discrimination, but rather it 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 gentile 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 pushes off a rationale – that has its foundation in Kabbalah – that distinguishes between Israel and the other nations on a categorical basis that attributes an intrinsic defect to the other nations.

After defining the formal law, Rabbi Uziel explains that maternal attribution of the children is really coming from humanitarian and sociological considerations that include the welfare of the child (that he not be damaged emotionally), the welfare of the mother (that she not experience anguish), peaceful relations between the parents and peaceful relations between Jews and gentiles. It is important to note that in the case of the child of a Jewish man and a gentile woman, the welfare of the mother means concern for the gentile mother and that this is a factor even in keeping the child out of the community of Israel.

Maternal attribution of the child has implications for additional laws: 1) Levirate marriage – a child form a gentile woman does not exempt the father’s Jewish wife from the need to undergo levirate marriage if they do not have children. 2) Inheritance – a child from a gentile woman does not inherit from his father. 3) Sexual prohibitions – in theory, a son of a Jewish man and a gentile woman is not forbidden to 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 Gentile 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 gentile woman. As opposed to the first part of the responsum, in which Rabbi Uziel dealt with legal principles that were not in dispute, the second half of the responsum – in which he deals with the obligation for child support – engendered opposition to Rabbi Uziel’s conclusions. We will now attempt 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 in light of his deepening involvement in the issue, which was a result of feedback received from the early versions of the responsum.[[18]](#footnote-18)

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

At the outset of his responsum, Rabbi Uziel opens by stating that he did not find discussion of the question of the father’s obligation to provide child support for his child born to a gentile woman among other decisors. This fact does not allow him to withdraw from it, but rather just the opposite – it obligates him to discuss it and come to a legal decision.[[19]](#footnote-19)

The main distinction drawn by Rabbi Uziel in his responsum is between the situation wherein the father *admits* that the child is his and the situation wherein he *does not admit* this. According to him, this distinction exists also in the law of a child born out of promiscuity 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 give it otherwise.[[20]](#footnote-20) 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 not obligated in child support.[[22]](#footnote-22) Based on this law, Rabbi Uziel infers that in the case of a child born to a gentile woman – even if she was legally married to him (meaning, civilly married) – her status is no different than the status of a personal mistress or a concubine; in which case there is no room to obligate the father without his admission.

In a case in which the father does admit that this is his child, Rabbi Uziel writes, “I am in doubt as to whether to say that we obligate him [to provide child support] until age six.”[[23]](#footnote-23) Ostensibly, there should be no legal basis for Rabbi Uziel’s doubt. Since he is not his ‘child’ – 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 natural morality considerations, which in turn rely upon Biblical morality, as well as upon pre-existing legal categories: A) The rationale from natural morality: According to Rabbi Uziel, even though the child of the gentile woman is not legally considered his ‘child,’ nonetheless he is the one who caused him to see the light of day and therefore he is his offspring. And so he must respond to the mother’s plea and provide support for these children; as “it is the mother’s nature that she is unable not to feed her child, so long as the child is attached to her.”[[24]](#footnote-24) Rabbi Uziel sees a proof for this natural characteristic, and the obligation that emanates from it, in the story of Hagar the Egyptian, who says, “Let me not see the death of the child.”[[25]](#footnote-25) God answers the cry of the mother that yells out that she is not able to feed her child and provides her with support for her child – 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 witness Rabbi Uziel’s reliance upon Biblical morality to understand the legal obligation,[[27]](#footnote-27) since he deduces this ethic from God’s answering the cry of Hagar the Egyptian. B) The legal rationale: Rabbi Uziel advances two legal categories that could show an obligation of the father to support his child born from a gentile mother as part of his obligations towards the mother. The first is the law of one who causes damage (*mazik*) – the claim of the mother that she cannot but support her children is substantive and in order. Hence, if the father does not answer her demand, he is considered one who causes damage. The second possibility is the category of payment for sexual favors (*etnan*) – the gentile woman married the Jewish man civilly, on the premise that he would take on the yoke of child support. Therefore he is obligated in support of the children by force of the marriage agreement.

**2 The Obligation to Support the Child 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 natural morality rationale stands at the bottom of the decree – one that is shared by all creatures, and even by the cruelest animals. “The snake gives birth and throws it at the townspeople” (it gives birth to its offspring and has the townspeople give it sustenance);[[29]](#footnote-29) and “the raven wants its children, but this man does not want his children.”[[30]](#footnote-30) Concern for the sustenance of its offspring is implanted into the nature of every creature – even one that is cruel-natured like the snake 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 Ordnance of Usha is based upon the behavior of animals teaches about the breadth of its application – in every instance that this natural morality rationale exists, the obligation of child support applies. The ordinance, then, does not require a legal definition of who is his ‘child,’ 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 (*tzedeka*);[[32]](#footnote-32) and the laws of charity apply to gentiles as well, ‘because of the ways of peace.[[33]](#footnote-33) Hence, even if the child is defined a gentile, there is an obligation on the father to support him based on the laws of charity.

At the end of his responsum, Rabbi Uziel qualifies his words and decides that the obligation 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 the father so that he educate them about the Torah and the commandments. It is emphasized that the mother is not obligated to give over her child for conversion; nonetheless, conversion is necessary in order to obligate child support. The claims of the father that he will support and provide for them only if they convert are 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 closes the first version of his responsum; and from it, it is implied that Rabbi Uziel connects 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, which most likely means that it was meant to be discarded. In the pages that are immediately attached to the first version of the responsum 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 testimony that he has not found a question like this discussed by the decisors. The basic distinction Rabbi Uziel makes in this version of the responsum is between a child born out of promiscuity with a gentile woman and a child born from a gentile woman to whom he is obligated by civil marriage. From the very distinction between these two situations, we learn that it is possible – for Rabbi Uziel – that civil marriage to a gentile 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 in child support for a child born out of promiscuity – be it from a Jewish woman or a gentile woman. Regarding a child born out of promiscuity from a Jewish woman, he presents the disagreement between Rabbi Moshe Isserles (Rema)[[38]](#footnote-38) and Rabbi Moshe Lima (the author of *Helkat Mehokek*)[[39]](#footnote-39) about a father who does not admit that the child born form a single Jewish woman is his. According to Rema, he is not obligated in child support for a child born of promiscuity, even if it is from his personal mistress. According to Rabbi Moshe Lima, however, when we are dealing with a personal mistress, the mother is believed in attributing the son born out of promiscuity to the father, because of the assumption that “most intercourse is with the husband.”[[40]](#footnote-40) According to both of them, if the father admits that it is his child, it is considered his child in all matters. In the case of a child born out of promiscuity from a gentile 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 do not know the ways of a gentile woman, and so it is not possible to say that she is his personal mistress, Hence the assumption that “most intercourse is with the husband” does not apply in this case. When the father does admit that this is his child, Rabbi Uziel is in doubt about the law and presents the same arguments that we saw above – in the first version – in this version as well.

In the second version of the responsum, Rabbi Uziel does not deal with the rationale of payment for sexual favors which would obligate the father here. Rather, he discusses this issue more broadly when he deals with the obligation derived from the marriage agreement that exists in civil marriage. According to Rabbi Uziel, if the couple is married civilly, the father is obligated in the child support of his children from the gentile woman, even if he does not admit that these are his children:[[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 one can now invoke the assumption that “most intercourse is with the husband,” allowing us to determine that the child born of the woman is the child of the man that is married to her.[[42]](#footnote-42) Hence a legally conclusive assumption that these are his children is created, even if he does not admit that this is so.

The agreement that is at the bottom of civil marriage creates a type of contractual obligation on the father to support his children. There is a plausible foundation to surmise that the woman married him on the premise that he would take on the yoke of child support. That is to say that the agreement of the woman to marry him civilly was conditional upon his obligating himself to support his children. “This comes in the way of, ‘we witness’ (it is something that anyone could understand) 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 payment for sexual favors in the first version. The fact that the man entered into the framework of civil marriage with the gentile 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 there was legally room to exempt him from this obligation – since the child is not attributed to him in any other matter[[44]](#footnote-44) – he nonetheless obligated himself, and thereby created a legal obligation.

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 the 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 assumption that “most intercourse is with the husband.” This presentation sits well with Rabbi Uziel’s explanation of Rabbi Moshe Lima’s approach above; according to which if the ways of the woman are known – such that she will not cohabit with other men – the assumption of “most intercourse” applies. And so a proof is created that the child born to that woman is the child of the man to whom she is married, even if he does not admit that it is his child.

The second version of the responsum does not end there. Rabbi Uziel now turns to discuss the response that 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, to the first version of his responsum. Rabbi ha-Levi writes that one cannot obligate the father in child support for his son born of a gentile 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 and he caused him to see the light of day and he is his son in every matter – it is not simple to obligate the father in child support; in the case of a child from a gentile 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 acquiesced to these doubts and so refrained from going back to his original decision and obligating the father in child support. Instead, he suffices with a general statement, according to which one should refrain from making definitive pronouncement on this issue, and concern oneself with each specific case according to its particulars. At the end of his words, he offers a prayer for the holiness of the seed of Israel. From analysis of his responsum, it comes out that Rabbi Uziel’s clear leanings are to obligate the father in child support of his child born from a gentile woman. Nonetheless, the bottom line is that all of his arguments towards obligating him – both the ethical arguments and the legal arguments – are not able 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 one who looks at the pages in the archive will see that right after the end of his responsum, there is another page, wherein Rabbi Uziel recants on the doubt 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)

This is to say that the mamzer son is not excluded from being grouped with his normative (*kasherim*) offspring. Rabbi Uziel enumerates several reasons to obligate the father in child support for his *mamzer* son. And they too are 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 add evil upon his first sin. 2) There is no room to obligate the community in child support while the father is still alive. Otherwise, “the sinner would be rewarded.”[[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 gentile woman. In spite of that, he slightly qualifies his words: “It seems almost certain that his child from a gentile woman is also considered his son in this matter.”[[50]](#footnote-50)

Rabbi Uziel adds another reason to these, from a homiletical source in the Talmud. According to this source, Tamar and Avshalom were children of a captive woman (*yefat toar*)[[51]](#footnote-51) who conceived before she converted. In other words, they were David’s children born of a gentile woman. And nonetheless, he treats them like his children: David dresses Tamar in regal clothing[[52]](#footnote-52) and he calls Avshalom, “My son, my son,”[[53]](#footnote-53) even after the latter rebels against him.[[54]](#footnote-54) Rabbi Uziel refers to this source as being “a proof of sorts.”

In concluding, Rabbi Uziel reitirates and emphasizes that the obligation to support children is a natural outgrowth of his being responsible for their seeing the light of day. 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 in a man’s domain.[[55]](#footnote-55) Rabbi Uziel concludes his words with a phrase that truly colors the flow 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 gentile woman. Rabbi Uziel places his calculation of the arguments enumerated – together with the delicate situation – in front of any decisor who may have such a question come to him. He ends that in each case, “the judge has only what his eyes can see” – and so in each case the law is given over to the judges dealing with it.

From both versions of the responsum, it can be concluded that Rabbi Uziel did not change his approach to this topic. Rather, he actually broadened the obligations of a father in child support for his child born of a gentile woman – and determined that in the case of civil marriage, the obligation of a father to support his child applies even when he does not admit that this is his child.

**4) The Rulings of Other Decisors on the Issue**

It seems that according to the accepted rulings, the father’s obligation to support his offspring does not apply to those that are from a gentile woman. In general, decisors conclude that due to the legal separation of the bond between a man and his offspring born to him from a gentile woman, all of the mutual obligations and rights automatically fall away – and among them, the obligation in child support. For example, Rabbi Moshe Klein (Israel, 21st century) ruled this way:

In the case of a man that has relations with a gentile 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 with a gentile who 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) comes to a slightly different decision in *She’elot ou-Teshuvot Even Yekara*. Rabbi Weiss was approached about the question of paternal support of a child from a gentile woman in connection with a question dealing with the laws of distinguishing 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 gentile 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; as [the new husband] does not have an obligation to support him since he is not attributed to him, and [so] he will not coddle him with eggs and milk. If so, let it be with a Jew that has a child from a gentile woman that 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 gentile, he had an obligation to support the child – as with the other nations, the attribution follows the male, and so the child is attributed to him. If so, his obligation towards his young child certainly does not fall away as a result of his conversion... and he is obligated in child support even after his conversion.[[57]](#footnote-57)

According to him, in the case of a converted couple, it is different; as when they were gentiles, the was already obligated in the support of his children and the conversion does not remove this obligation. Whereas with the child born of a gentile woman, the obligation in child support was never engendered – as the child is not attributed to him but to her. As far as our discussion is concerned, we see that we do not obligate the father in child support of his child born form a gentile woman also according to this approach – as per the accepted opinion and not like the ruling of Rabbi Uziel.

This is also the approach taken by academics coming to summarize the position taken in Hebrew law (*mihspat ivri*) on the issue.[[58]](#footnote-58) Y. Shiber, for example, writes, “In this situation (wherein the father is Jewish and the mother is a gentile) – 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 gentile woman, as the child is not attributed to him at all.”[[59]](#footnote-59)

Also among the decisors that responded to Rabbi Uziel directly, this was the predominant position. The position of Rabbi Auerbach, the rabbi that asked the question, is brought in the words of Rabbi Uziel, who quotes him as saying, “As the son of a Jew who is born of a non-Jewish woman is not [considered] as his son *in any matter*.”[[60]](#footnote-60) This was also the position held 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 was received from Rabbi Yitzhak Isaac ha-Levi Herzog and we will hence analyze it in more detail. Rabbi Herzog grants that he received the tract of Rabbi Uziel’s responsum from Rabbi ha-Levi, which is to say that the had the text of the first version of the responsum. He apologizes for the delay of his response – and from this, we can see that Rabbi Uziel had requested his response. Rabbi Herzog firmly opposes the decision of Rabbi Uziel, basing himself upon legal and fundamental-ideological considerations. We will analyze his response at length and – side by side – look at Rabbi Uziel’s 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 his response by apologizing that because of his various commitments, he will only relate to the question of a father’s obligation in child support for children from a gentile 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 a single 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 brings along 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 gentile woman’s thinking that he would support the children is not enough to obligate him or to define him as a *mazik*, as it is based on an error. 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 holds that there is room 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 found among animals – “Even jackals release the breast and suckle their babies.”[[68]](#footnote-68)

Rabbi Uziel adds that a Jewish court would certainly not help the father exempt himself from the obligation of child support based on the claim that her reliance on the agreement was really in error. Such a claim represents ‘adding an iniquity to a sin’ – not only did he marry a gentile, but now he also seeks to abandon his children. Fitting here is the statement of Ulla, “[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 worsen the injustice already done:

Is the symbol of compassion in Israel not [the phrase], ‘like the compassion of a mother upon her children’...? And we should come and say that a Jewish man that sinned and engendered a child of promiscuity add an 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, according to which the father is obligated to support his child from the gentile woman based on payment for sexual favors.[[71]](#footnote-71) The obligation of a father in child support for his normative children emerges from the Ordinance of Usha. There is no one who claims that the obligation emerges from a presumption (*umdena*) “that she married on condition that he obligate himself to support the children and that he thereby becomes obligated,”[[72]](#footnote-72) in a case where they did not make this condition explicit. However, even if the father did obligate himself explicitly; his obligation is not binding, since he is obligating himself about ‘a thing that has not come into the world.’[[73]](#footnote-73) And even if we say his obligation is towards the woman (and not to the unborn children) in order that she have enough money to support the children, we still only come to a matter that was disputed by the early commentators – ‘a thing 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 the words of Rabbi Herzog who wants to learn about the concept of payment for sexual favors (*etnan*) from a comparison to the obligations of a father to support his normative children: “As how can it even be thought to put out from one’s mouth 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, according to his opinion, the concept of *etnan* can only apply when speaking about a gentile woman. Civil marriage comes “in the way of, ‘we witness’” (it is something that anyone could understand) that he obligated himself to support the children; “and 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 about the challenges from the laws of acquiring a debt for a ‘thing that has not come into the world’ and for ‘a thing that is unlimited,’ since his obligation is towards the woman; and out of marital love, he even obligates himself to ‘a thing that is unlimited.’

**4a-ii The Ethical and Fundamental 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 the placing of the obligation of support on the mother, to the nations of the world. It should be explained that the support of the children falls upon the gentile mother because the question of child support is dependent upon the question of relationship, and that 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 gentile and the father is a Jew, the burden of child support falls upon the gentile mother; but if the mother is Jewish and the father a gentile, the Jewish mother is obligated in their child support. According to him, the nations will be convinced that there is no discrimination here; and, automatically, no enmity will be created.

According to Rabbi Uziel’s counter-claim, the possibility of explanation is not relevant. Also concerning charity, 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 should it follow about our issue, wherein the explanation would be less accepted by the nations of the world. Therefore not only will it not bring peace, but it will increase conflict:

But rather these are actually the ways of conflict; to say to them that since you are a gentile, 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 don’t want, and after you abused her.”[[78]](#footnote-78)

Apparently, the question of the possibility of explanation to the nations of the world had practical implications on the issue discussed – as we suggested at the beginning of the article – and, if we are correct, the responsum was brought to the British mandatory court.

Rabbi Uziel seeks to arouse the compassion of the father upon his children, and according to his approach, the ‘trait of compassion’ naturally found in the father legally obligates him to support his offspring. In contrast, Rabbi Herzog seeks to arouse 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) however, it is not proper to make a general ruling to obligate the father to support them. Obligating him 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); and if we also apply it in this case, “what have you left for the normative children,”[[81]](#footnote-81) That is to say that the ordinance of the sages came to improve the situation of Jewish children older than six. Also applying pressure for the benefit of children that are considered gentiles, nullifies that advantage of the normative children over the disqualified ones.

2) If the rabbis apply their authority to apply moral pressure in this matter, the ‘ popular masses’ will err and think that there is some slight 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 gentile neighbors and heavily influenced by them. ‘And the sage 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. 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 such a trait.” And he adds, “and even our prophets and rabbis prayed this prayer as a powerful curse, ‘May the Lord cut off the man that does it, from having a vibrant or bright one in the tents of Ya’akov and bringing 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 form 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 gentile woman is not entitled to everything that is a normative child – for example, he does not inherit from his father. Here he reiterates that the obligation placed on the father is only after the conversion of the children and their transfer to the father’s domain. In such a situation the obligation arises from the law mandating the feeding of 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 learns that it is from God’s ways to cling to the trait of compassion, which He sought to give over to us in His Torah. Even when there is no explicit command to act with compassion – as in the issue under discussion – one should follow the path identified for us by the explicit laws. Rabbi Uziel uses the expression, ‘so that none be pushed away from us,’ in the context of a child born of a Jew and a gentile woman who is not legally defined as a Jew. However, when he discusses the obligation of the father to support his son from a gentile 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 they think that there is some slight legal validity 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 come to such an error.”[[87]](#footnote-87) His proof for this is from a *mamzer* son; as the sages did not decree to push him off 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 goes according ‘to the ways of pleasantness and peace.’

It is possible to distinguish significant differences between the perspective shown in the responsum of Rabbi Uziel and that shown in the responsum of Rabbi Herzog:

1 Enmity and the Ways of Peace

We have seen different approaches from Rabbi Uziel and Rabbi Herzog in the use of this principle. Rabbi Herzog holds that in certain cases it is possible to conduct an enlightened dialog with the nations of the world and, so, nullify the concern of enmity from them. Rabbi Uziel’s opinion is that it is impossible to base a legal exemption from the law of a father’s child support for his children born from a gentile woman based upon a rationale that will be accepted by the nations of the world. Therefore, he is obligated in their support because of enmity and the ways of peace. He further pushes off 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 suggestion – yet in the final analysis, the discussion about charity implies that it is not relevant.

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, and also include 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’ that are not knowledgeable about the basic principles of Halakha. He also brings up the subject of the proliferation of mixed marriages caused by the integration of Jews into all walks of life in these states. In contrast to this, Rabbi Uziel feels that the people are not ignorant and know that there is no legal standing at all to mixed marriages. Therefore, it is possible to make a more complex legal ruling grounded in ethical considerations. Rabbi Herzog does not push off the humanitarian argument, nor the feelings of compassion. However, according to his opinion, the danger of misleading the people trumps these arguments. And so he offers a prayer that there should not be other cases like this; but he does not suggest a comprehensive legal solution to facilitate coping with the actual situation. We saw above that this was the original penchant of Rabbi Uziel also. However, in contradistinction to Rabbi Herzog, Rabbi Uziel shakes off the feeling of helplessness with regards to the many doubts that were raised and extricates himself to do battle and overcome all of the questions.

The rationale raised by Rabbi Herzog is similar to the argument of Rabbi ha-Levi brought above concerning the mishaps that could be caused by such a novel ruling. This concern brings together the opinions of the two rabbis that responded to the ruling. And this also brings into relief the uniqueness of Rabbi Uziel’s lack of fear to express his 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 required to deal with the issue of a father’s obligation in child support for his son born of a gentile woman. In his book of responsa, *Shevet mi-Yehuda*,[[89]](#footnote-89) Rabbi Unterman wrote a responsum concerning the conversion of a child and his support. Rabbi Unterman rules that after conversion of the child, the Jewish father may not get out of furnishing child support with the claim 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) That is how Rabbi Unterman learned the rationale underlying the Ordinance of Usha.

Rabbi Unterman adds a new proof to the arguments of 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 *Tosafot Yom Tov* commentary, explains that God sustains all of His creatures – even the idolaters among them – and therefore this phrase which represents the universal justice aspect of God is used. (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 was 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 thought it is not considered parenthood concerning other matters by Halakha.”

Rabbi Unterman holds that even in a case where the child does not convert, it is incumbent on the father to provide support for his offspring. However in such circumstances, it is not possible to obligate the father, since they are “growing up to idolatry.” This implies that after the conversion of the children, it is possible to even 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 decides that they should be supported and also brings this rationale – that there is a natural obligation – and also adds that this comes from the law of 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 of a gentile woman was also brought to the family courts.[[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, there is no personal law obligation that applies, but rather only what comes out of civil law.

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, but rather gentile. 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 law that appears in the legal literature already for many years.[[94]](#footnote-94)

In the continuation of his article, 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; and to obligate the Jewish father in child support for his children from a gentile 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 changed his religion to Judaism and his father is Jewish from birth is insufficient to obligate the father to support his child born of a gentile woman. However, I hold 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 – may his days be long and pleasant (sic) – 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 decide on 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 time of the British mandate over the Land of Israel. In his official government position, Rabbi Uziel had in front of him both his official responsibility for the members of the Jewish community as well as that to the powers from which, and through which, he functioned.[[96]](#footnote-96) From this perspective and with profound application, Rabbi Uziel’s responsa addressed both the halakhic and the natural morality layers; and he determined that it is incumbent upon the father to support his offspring, even when his children are from a gentile woman, and hence not legally attributed to him. In the course of his rulings and responses, is evident that the natural morality arguments have a significant and – perhaps, even decisive – role in his decisions here.

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 of a gentile 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 the spirit that comes out of the 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: Magnes Press, 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, 5698/1938) are found in the Tel Aviv municipal archive. [↑](#footnote-ref-8)
9. Y. and R. Eliyahu, *Ha-Torah ha-Misamahat* (Beit El: Sefriat 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, 5798/1937 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 gentile woman and its stringency, but rather about 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 he 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 a *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 Rabbi Uziel’s approach to understanding 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, ‘*hadash 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. 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 gentile 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 gentile 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 a moral 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 Avshalom, Tamar’s brother, was also born before Ma’akha converted. From the simple meaning of the verses in II Sam. (13:18, 19:5), it cannot be determined if Avshalom 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 Mishpaha* (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 resultantly reduced, it is only considered *grama* and, if so, how is it possible to indemnify him with payments for damages; and it 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)