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SCHUYLER 4-3511

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Mr. Saul Bernstein
Editor
Jewish Life
84 Fifth Avenue
New York, N. Y. 10011

Dear Mr. Bernstein:

Mr. Gross has completely missed the point of my "unsound" essay on the Fifth Amendment. I obviously did not advocate the complete substitution of the Halakhah for the Constitution as the legal code of the United States; even Israel has not yet adopted Halakhah as its official law. Had I intended such far-fetched notions, Mr. Gross could readily have pointed to the disqualification of all current Supreme Court Justices on the grounds of their not being Jewish. One could easily discover other such absurdities.

What I clearly had in mind, in addition to a comparative analysis for its own sake, was the suggestion that certain profound insights of the Halakhah ought to be studied and adopted by American jurists. The legal concepts considered by the Halakhah as applicable to Israelites are, in our view as traditional Jews, the product of divine wisdom, and hence ought to be emulated by all people. "For this is your wisdom and understanding in the sight of the peoples, that when they hear all these statutes they shall say, 'Surely this great nation is a wise and understanding people'" (Deut.4:6). Surely a proposal that American courts treat its citizens as benei Noach -- in other words, as strangers in their own country -- will not inspire admiration for the wisdom of the statutes of Judaism. An "understanding people" will suggest that other nations treat their citizens as Jewish law demands that Israel act towards bnei Yisrael. Of course, Mr. Gross, in his excessive literalism, may consider this "a sugary, sermonic, inapposite, and idealistic statement" of the rules of Halakhah, but if this is the price one must pay for making the wisdom of Judaism available to the rest of mankind, it is small indeed.

Having said this about the major element in his criticism, may I point out that Mr. Gross' assertions that confession by a ben Noah

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is admissible "as far as I can discover," is not quite that certain. The references he cites are indeed discoverable in the Encyclopedia Talmudit, vol.I,p.256a. However, a bit more serious exploration (even in the remainder of the same footnote containing these references!) would have yielded the further discovery that this opinion is not unanimous. Thus, his reference to the Yerushalmi is valid only according to one of the two classical commentators, not the other. The reference to Bereshis Rabba depends on which text one accepts (see Theodor's notes in his edition). The Chinuch, it is true, considers confessions of a Ben Noach valid; but the Meiri does not (see editor's notes to Meiri on Sanhedrin 57b). Such too is the opinion of the author of Chamra Ve'chayei (to San.57b). Furthermore, in the view of the late R.Meshulam Roth, Maimonides too disqualifies confessions by bnei Noah; see his Responsa Kol Mevasser, vol.II, no. 22,3.

Sincerely yours,



cc L. Kohn