

# GESHER

BRIDGING THE SPECTRUM OF  
ORTHODOX JEWISH SCHOLARSHIP

---

VOLUME 8

5741

---

A PUBLICATION OF  
THE STUDENT ORGANIZATION OF YESHIVA  
RABBI ISAAC ELCHANAN THEOLOGICAL SEMINARY

MARK FENSTER

DAVID KOPPEL

*Editors-in-Chief*

DANIEL KATSMAN

*Executive Editor*

ALAN BRILL

*Associate Editor*

MORDECHAI BERKOWITZ

*Copy Editor*

JOSEPH WEISSTUCH

*Managing Editor*

*Staff*

STEVEN COHEN, YA'AKOV KESSLER,  
ROBERT VANAMORONGEN

We would like to thank Avi Buchen, David Sherman, Shimmy Schwartz, officers of SOY, for their support in the production of this edition of GESHER.

Special thanks to Rabbi Shalom Carmy, whose aid and guidance have become an integral part of GESHER over the past several years. Special thanks to Pesach Lichtenberg, whose advice and inspiration were indispensable in every aspect of this journal.

The views expressed in this journal are those of the individual authors and do not necessarily reflect the opinions of the Editors-in-chief and staff of GESHER, or of the administration, student body, and faculty of Yeshiva University.

© 1981, Geshher

EMPIRE PRESS

550 EMPIRE BLVD. • BROOKLYN, N. Y. • (212) 756-1473

## CONTENTS

PREFACE ..... The Editors 5

### Articles

"MATTER AND SPIRIT" HASIDIC DOCTRINE ACCORDING TO  
R. SOLOMON OF LUTZK ..... Norman Lamm 7

A NOTE ON THE MARXIST ATTITUDE TO ZIONISM  
BEFORE 1917 ..... Erich Goldhagen 14

CAPITAL PUNISHMENT IN JEWISH LAW .. Moshe Meiselman 23

NETILAT YADAYIM SHEL SHAHARIT: RITUAL OF CRISIS  
OR DEDICATION ..... Martin L. Gordon 36

TRADITION UNDER FIRE: ISAAC LEESER AND  
REFORM ..... Lawrence Grossman 73

חפץ AND חפץ ספיקא: THEIR RELATION TO SCIENTIFIC  
OBSERVATION ..... Eliezar Ehrenpreis 90

REINFORCING FAITH: THE MESSIANIC CHAPTER OF  
ABRAVANEL'S ROSH AMANA ..... Elazar R. Muskin 109

THE PROHIBITION OF TEACHING NON-JEWS TORAH:  
ITS HISTORICAL DEVELOPMENT ..... Isaac H. Mann 122

AN ANALYSIS OF A PRESSURE GROUP: THE ACTIVITIES OF THE  
BERGSON GROUP IN THE YEAR 1943 .... Elyho Matzozky 174

MAHARAL'S SYMBOLIC SYSTEM: NETIV GEMILUT  
HASADIM ..... Avie Walfish 199

THE HISTORY OF HORSERADISH AS THE BITTER HERB  
OF PASSOVER ..... Arthur Schaffer 217

## PREFACE

Publishing a journal which purports to "Bridge the Spectrum of Orthodox Jewish Scholarship" entails walking a narrow line. One begins with the basic tenets of Judaism, including divinely revealed halakha and preordained national destiny, and proceeds under the constraints of the scepticism of modern scholarship.

The first question which arises is this: Given a self-contained and complete system of doctrines and norms, in what directions can one "proceed" at all? For our purposes, these directions are two — the analysis of halakha and the interpretation of Jewish History.

Halakha classifies various sets of circumstances, proscribing and prescribing actions according to their classification. As new situations arise the borders between these sets of circumstances must be more sharply defined. That is, Halakha must be axiomatized and consequently generalized. The inductive procedure through which this is carried out differs not at all from that employed by all scholars in all fields.

The *תלמיד חכם* shares not only the techniques of the scientist but often the data as well. For while Halakha is generally defined in terms of classes of objects with particular properties, or classes of actions with particular consequences, it is the task of the *תלמיד חכם* to provide the means of readily identifying such objects and actions within their proper classifications. This he can do only with the aid of empirical investigation.

But if we are a people of normative tradition, we are also a people of historical destiny. If the suddenness of recent events does not allow us the luxury of a spontaneous and unselfconscious adherence to established cultural patterns, then we must assume — if only temporarily — a more detached historical perspective. We must gather the facts concerning the cultural and sociological trends within the Jewish community and

measure their significance in order to determine which are the aberrations and which are steps in the unfolding redemption of the Jewish People.

We have defined our goals in lofty terms, our contributors have assured that the actuality justified these aspirations, our debt of gratitude to them is great.

GESHER is not the work of individuals, the pride we take in it we share, not only with our excellent staff but with Yeshiva University as a whole and with all those who have contributed to the financial success of our past issues. We feel confident that the quality of the present issue will serve to further inspire the support of our readers from all over the world.

THE EDITORS

MARK FENSTER

DAVID KOPPEL

Norman Lamm

Dr. Norman Lamm is the President of Yeshiva University.

"MATTER AND SPIRIT"  
HASIDIC DOCTRINE ACCORDING  
TO R. SOLOMON OF LUTZK.\*

Introduction

R. Solomon of Lutzk (d. 1813) was one of the foremost disciples of R. Dov Ber, the "Great Maggid" of Mezeritch, student of the Besht and the leading expositor of the doctrine of the growing movement. R. Solomon was the author of his own work, *Divrot Shelomoh*. It is he who collected, collated, and published the teachings, aphorisms, and *derushim* of the Maggid, and gave the work its name, *Maggid Devarav le'Ya'akov* (the first word for R. Dov Ber's "profession," and the concluding letters of all three words forming the acrostic for *Dov*). This volume, one of the most important sources of Hasidic thinking in the early history of the movement, is also probably one of its most difficult works. Its comments are pithy, its style terse, and its *derush* often arcane. The Maggid did not himself write these "words of Torah." They are records of his oral discourses. Professor Rivka Shatz-Uffenheimer has shown that the author of the Mss. of these lecture-notes is one of the more well-known disciples of the Maggid, R. Levi Yizhak of Berditchev (Introduction to her critical ed. of the work, Jerusalem: 1976).

---

\* This article is taken from a forthcoming volume by Dr. Norman Lamm on Hasidic religious thought, containing annotated translations of excerpts from the writings of Hasidic teachers of the first three generations.

R. Solomon prefaced two introductions to his edition of his master's work. Most of the Second Introduction is translated here. It reflects both the spirit and content of the Maggid's teaching, especially the reorientation of strictly Kabbalistic thought to a Hasidic mode. This brief excerpt touches upon some of the major themes that pervaded the religious thought of Hasidic circles in this heroic and remarkably fecund period of its growth. Thus, we are introduced to the concept of *devekut* (communion), Hasidic version, and the joy to which it leads; the importance of internality and the right kind of "pure" thinking (the Besht had taught: "Where a man's thoughts are, that is where he is"); the technique and content of contemplation; the concept of *tzimtzum* — the divine "contractions" in the creation of the world.

Perhaps most important of all, and the central doctrine elaborated in this passage, is the theme of divine immanence: God is present in all of creation. He is not only the transcendent Creator, but the One who sustains all creation (including the spiritual worlds) by inhering in it unceasingly.

This heavy emphasis on immanence (which should not be confused with pantheism, as has often been done; this is not the place for elaborating on this issue) took many forms — from the appropriation of recondite Lurianic doctrines, such as *tzimtzum* and especially the "elevation of the sparks" which fell from the primordial cataclysm of the "Breaking of the Vessels," to more traditional *derush*, to legend, and even to song and humor.

In this passage, Hasidic immanentism is presented in a metaphysical form: the derivation of mundane substances, properties, and affects from the "spiritual worlds" which, in turn, derive from the *En Sof* — God in His absolute self, beyond all relationships and attributes, name or description. This, in turn, becomes the pattern for proper contemplation. By meditating on this creative process in reverse, we regress from the world of matter to its root, the world of spirit, and thus approach the "Root of Roots," the *En-Sof*.

## Text

First of all, it is important to know that "the whole earth is full of His glory" (Isa. 6:3), and "there is no place that is empty of Him",<sup>1</sup> and that He is in all the worlds, etc. This matter can be sensed in everything, for in every place there exists the life-force of the Creator. Every object possesses taste or odor or appearance or love — that is, the object is beloved or feared or considered beautiful, and so for all other attributes. When we abstract [this quality] from its corporeality and contemplate only its spirituality,<sup>2</sup> such as taste or odor and the like, by and of itself, it will appear obvious to us that [the taste or odor, etc.] is intangible and invisible, and can be apprehended only conceptually by the life-force and soul of man. Therefore, certainly, it is a spiritual thing: the life-force of the Creator that dwells in this material object, as the soul does in the body. So it is with every object and with every motion, as is written in *Hovot Ha-levavot*, that "all your motions are tied to the will of the Creator."<sup>3</sup> In all of them there exist sparks of vitality drawn from the Creator, Who is the "Bond of Life" and the "Light of Life" and the "Source of Life" and the "Life of Life"; from Him is drawn the life-force of every object, from the highest heights to the lowest depths.

This is [what is meant when we say] that He contracted<sup>4</sup> His *Sheh'inah* in order to dwell in [these] lower worlds. Every spark is derived from its own "world." For instance, an object of love: the love within it derives from the World of Love; that is, there certainly must be a source and root from which love is derived for every object which entails love. In order better to explain the idea of this "root," let us think of the spirituality of the root of love itself, as mentioned above. It is obvious that it is only the [undifferentiated] life-force of the Creator which contracted itself, as it were, in order that it be perceived as the quality of love. There is, as well, a vitality and spirituality that cannot be perceived as love, but only in some other category, such as fear or beauty or another of the attributes. All of them are [the divine] life-force and spirituality, as mentioned, but no

one of them can be perceived in the same way as the other, for each was contracted by means of a different contraction, that is, leading to a different form or perception. But in their inner essence all are alike, for they are all [divine] life-force and spirituality, as mentioned, for all derive from the same root where there is no differentiation at all. This is what is meant by the passage in *Tikkunei Zohar*, that "in [the *En-Sof*] are seen all the supernal forms," that is, through the contraction of perception, as mentioned. For it is in the category of the female, relative to what is above it, for it receives from the Root of Roots.<sup>5</sup> The intelligent will understand this.<sup>6</sup>

That is why [the loci of these attributes] are called "Worlds" (*olamot*), because the life-force of the Creator is concealed (*mit'alem*)<sup>7</sup> and contracted in the [particular] perception of each quality. They are also called "measures" (*middot*) because they are perceived and understood according to [a specific] size and measure, and none other.<sup>8</sup> In truth, each one is constituted of all others . . .<sup>9</sup>

Let us return to our subject. There is nothing which does not have a root up above, as mentioned. That is why, in the Holy Tongue, there is a source and active and passive forms; that is, the source is the root of a thing, as mentioned.<sup>10</sup> The "active" [agent] is the man who acts and draws from that source and root. The "passive" is that quality which is drawn from the source and root.

Thus, for instance, take happiness: there is a World of Happiness, as mentioned above, by which I mean the life-force of the Creator is perceived through the quality of happiness. That is the "source." The person who is happy is "active" and draws down upon himself [an effluence of happiness] from the World of Happiness, at that [specific] time [that he is happy, but not before this], for before this he was not happy. The man's happiness itself is the "passive." Therefore, when man is in a hearty state, and uses his reason, it may be that the "spark" which he sees through his physical eyes is small in measure; however, when he abstracts it from the corporeality in which it is clothed, and considers in his mind that it is the life-force of

Godliness which is derived from the supernal Root, as mentioned, then certainly its light and vitality will be great and mighty without end,<sup>11</sup> because through its spirituality and life-force it is connected to the Source.

One should see, in every thing, its supernal root and source . . . So in every matter a man ought always to contemplate his essential attributes, whether those of love or fear or any other, and also his speech and his voice and his thought, discerning that they are [in essence, divine] life-force and spirituality. For surely every one of them is derived from its supernal root and source, that is, the root of love from which [love] is drawn to all creatures and substances of love; so for the root of fear and the other attributes. So too the root of the World of Speech, from which words are drawn to all who speak — and [indeed] to all creatures, for in all of them there exist the words of the Holy One; for His life-force is like the voice, and the "garments" in which this life-force is contracted are like speech which encompass and contract the voice. The intelligent will understand this. Similarly, there is the root of the World of Thought, as mentioned.

When a man contemplates this and understands it, he certainly will be overwhelmed by great awe and shame before Him who dwells within him in all his movements, as is written in *Hovot Ha-levavot*, "do not rebel against your Master, for He sees you, and how can He cause His power and life-force, may He be blessed, to act against His [own] will?"

A man should always cleave to Him in wonderful *devekut*.<sup>12</sup> He should know that through his service of and his *devekut* to the Creator he can elevate all the worlds, because since every one of his attributes and his speech and his thought cleave to the root from which [they] are drawn to all creatures, certainly all creatures will cleave to Him, and he cleaves to the Creator.<sup>13</sup>

Thus [we may understand the dictum], "All the world rests on one pillar and its name is 'righteous' [*zaddik*]."<sup>14</sup>

## NOTES

1. *Tikkunei Zohar, Tikkun 57*. These are the *loci classicus* of Ḥasidic immanetism.
2. The term "spiritual" is here used as a synonym for "abstract."
3. R. Bahya Ibn Pakudah, *Hovot Ha-levavot, Shaar ha-Beḥinah*.
4. Heb.: *tzimtzem*, from whence the well known Kabbalistic term, *tzimtzum*, the "contraction" of divinity. The term first appears in rabbinic literature, in Ex. R. 34:1, where God says that He will, as it were, "contract" His presence (*Sheḥinah*) so as to dwell in the Tabernacle. The Lurianic use of *tzimtzum* is not the same as that of the Midrash. For Luria, the *En-Sof* (God in His pure transcendent essence, the *Deus absconditus*) moved into Himself *away* from a central point, thus leaving "place" for the "worlds." In the Midrash, *tzimtzum* implies the contraction of God's infinite presence *into* a finite, circumscribed area. While Ḥasidism had, of course, a great deal to say about Lurianic *tzimtzum*, our author here uses the term in its Midrashic rather than Lurianic sense. The contractions of which he speaks take place *after* the primordial act of Lurianic *tzimtzum*. The divine effluence is undifferentiated and is "contracted" into various "worlds" which it animates, and each of which, in turn, endows that effluence with finite attributes.
5. The author means by this that in the *En-Sof*, the "Root of Roots," all is One, and there is no distinction or differentiation. It is only after the divine light flows from the realm of the *En-Sof* that, as a result of "contractions," multiplicity comes into being. The divine effluence issues undifferentiated from the *En-Sof* which, as the active Source, is considered the male principle; the realm outside it, where *tzimtzum* occurs, receives the flow and, as the passive recipient, is termed female (perhaps because, it is in the womb that the differentiation of the organs takes place).
6. A reference to the esoteric nature of his Kabbalistic references.
7. Hence, the "worlds" (a synonym for the *sefirot*) are disguises of the *En-Sof*.
8. That is, the undifferentiated influx from the *En-Sof* is individuated, in the *Sefirot*, into different qualities. "Size" and "measure" are not to be taken literally, but as symbolizing finite properties which make them specific and cognizable.
9. That is, all the "worlds" or *middot* (synonyms for the *sefirot*) interpenetrate each other, so that each *sefirah* is composed of ten *sefirot*. What follows in the text, a brief excursus on Lurianic Kabbalah, has been omitted in this translation.
10. The author now turns to a linguistic analogy — a favorite theme of Kabbalists and Kabbalistically influenced Ḥasidic writers. *Makor*, usually translated as "source," is the term for the infinitive in Hebrew grammar. It can be conjugated in the active (*pa'al*) or the passive (*nif'al*) voices, amongst others. (This infinitive [*makor*, source] is equated by the author to the root [*shoresh*] of the word and the two are treated as synonyms.)
11. Thus, by means of this contemplation, man reverses the process of the declension or flow from the *En-Sof*. This regression, whereby man "reveals" the (hidden) immanence of God in any object, quality, or experience, leads him on to joy and rapture.
12. Communion, or the act of "cleaving" to God which, in Ḥasidism, became an ecstatic experience. For our author, *devekut* thus entails the contemplation of divine immanence which leads to the regression from an object to its abstraction in its source-world, and thence to its *tzimtzum*-source in the "Root of Roots," i.e., the *En-Sof*.
13. By means of this contemplation, man not only achieves his personal *devekut*, but contributes to a cosmic *devekut* as well — as he draws to himself all physical and emotional properties which he shares with the rest of the natural order and leads them back to the "root" or *En-Sof*.
14. *Ḥagigah 12b*. By effecting this cosmic elevation, the righteous man thus becomes central to all creation — explaining the Talmud's description of him as the one "pillar" of the world. Use of the term *zaddik* by Ḥasidic writers in this period is often ambivalent, referring both to the traditional use of the term as, simply, a righteous person, and the more characteristically Ḥasidic meaning, i.e., a charismatic (Ḥasidic) leader.

Professor Erich Goldhagen is the well-known authority on the History of East European Jewry.

## A NOTE ON THE MARXIST ATTITUDE TO ZIONISM BEFORE 1917

The emergence of Political Zionism was met with hostility by orthodox Marxists. They did not see in it a movement for national liberation worthy of the support of socialists, but a reactionary utopia. Some believed it to be "the reaction of the Jewish bourgeoisie to Modern anti-Semitism".<sup>1</sup> Frustrated in its ambitions by anti-Semitism, the Jewish bourgeoisie was seeking to establish a state of its own where, free from the fear haunting it in Europe, it would feel secure in realizing its aspirations. The conservative features of the Jewish state envisioned by Theodor Herzl, the founder of Political Zionism, seemed to confirm this belief.<sup>2</sup>

Others denied that the Jews constitute a viable national entity and Herzl's plans for the restoration of a Jewish commonwealth seemed to them quixotic. Assimilation had already made deep inroads into the body of West European Jewry, and it appeared well on the road to dissolution. Scattered throughout the world, speaking different languages, adopting many of the various customs and values of their host peoples, World Jewry was viewed as a collection of lifeless fragments, not as an organic whole. These Marxists looked, therefore, upon the Zionist movement as an "ephemeral phenomenon . . . a beautiful pose in which a nation that no longer lives, appears on the stage of history for the last time, only to completely disappear afterwards."<sup>3</sup>

Unlike the contributors to the orthodox *Die Neue Zeit*, the revisionist Marxists were more friendly towards Zionism. Hav-

ing abandoned strict adherence to historical materialism, they became more appreciative of aspirations born of historic memories. National sentiments, they admitted, could be used by a ruling class to obfuscate the class-consciousness of the proletariat, and nationalism could become a destructive force. However, the endeavor of national groups to preserve and foster their distinct cultural heritages is intrinsically valuable, for it makes for a diversity of cultures, each one enriching through its unique contribution the collective store of humanity's culture. They also understood that social life is too complex to be fully explained by a neat formula. They did not, like the orthodox Marxists, apply to the Jews a formal definition of the concept "nation", such as the possession of a common language, common territory and common economy, and on finding that it did not fit, pronounce the non-existence of a Jewish "nation".<sup>4</sup> They recognized that, even though the Jews lack some of the essential elements associated with a "nation," they form, in spite of their dispersal, a collectivity *sui generis* possessed by a strong sense of solidarity, a feeling of constituting a community of fate with common goals and aspirations. As an oppressed group and the heirs of a great civilization, they argued, the Jews have no less a right than any other nation to be the architects of their own fate. The revisionists opened the columns of their theoretical organ *Sozialistische Monatshefte* to the spokesmen of the Socialist Zionists who strove to create a Jewish socialist state but who had found no favor in the eyes of the orthodox. While *Die Neue Zeit* denounced and derided Zionism in all its shades, *Sozialistische Monatshefte*, edited by J. Bloch, a Jew and a pro-Zionist, treated it with much sympathy.

"Zionism is a movement of noble . . . men and women who would like to preserve and perpetuate their national spirit in the interest of human culture, and who, at the same time, want to free the enslaved East European Jews of the sense of homelessness and create for them a national home in which they would advance from the deep night of social and national misery to freedom and human dignity."<sup>5</sup>



To West European Marxists, Zionism was a marginal issue; it was not a competing ideology. The overwhelming majority of West European Jews were bourgeois, scarcely susceptible to socialist propaganda. Some intellectuals did abandon Socialism for Zionism; but not a single one of them was of stature, nor were the defectors numerous enough to cause serious concern. Zionism was never on the agenda of a party congress of a West European Socialist party.<sup>6</sup>

Not so in Russia. Here the Jewish Socialist Bund met in Zionism a powerful ideological competitor. The idea of salvation through the return to Zion, restored to its ancient glory, was closer to the heart of East European Jews than the promise of redemption through socialism. Throughout the generations the Jews had never given up their fervently held belief that a saving Messiah would gather the children of Israel from the four corners of the earth and lead them back to the Promised Land. Jewish lore was suffused with this belief and every day, morning, noon and evening, it was reaffirmed in prayer. By translating these dreams and hopes into modern political slogans, Zionism exercised great attraction on the Jewish masses; and it was largely in response to the Zionist challenge that the Bund, which had begun as a purely socialist organization, shunning any expression of nationalism, adopted a national program.

The substance of the Bundist argument against Zionism was this: Zionism is not only a utopia, a phantasmagoria of the frightened Jewish bourgeoisie, but a politically dangerous movement. In fixing the attention of the Jewish masses on the dreamland of Zion and in engaging their energies on an enterprise doomed to failure, the Zionists divert the Jewish workers from the struggle for Socialism, that panacea for all social ills. "They thus weaken the power of the entire Russian proletariat, and delay the hour of liberation of the proletariat in general and the Jewish proletariat in particular, thereby prolonging its enslavement."<sup>7</sup> Zionism must, therefore, be fought tooth and nail because, in the words of Kautsky — who was influenced by the Bund in this matter — it "propagates" at

a historically decisive moment "a striving which practically amounts to a desertion of the colours (*Fahnenflucht*)".<sup>8</sup>

The struggle between Bund and Zionism was one of the most bitter in the Jewish world down to World War II. The extermination of East European Jewry deprived the Bund of its social soil and reduced it to a shadow of its former self. In the eyes of most Jews the central premise of Zionism — the precariousness of Jewish existence in the Diaspora — now seemed tragically vindicated.

In its attack on Zionism the Bund was sometimes surpassed in virulence by the Russian Social Democrats and their organ *Iskra*. During the two years preceding the Second Congress of the Russian Social Democratic party, in 1903, at which the historic split between Mensheviks and Bolsheviks occurred, and for some time afterwards, the issue of Jewish nationalism loomed large in the disputations of Russian Socialists. The Russian Social Democrats fought on two fronts against Jewish nationalism: against Zionism and against what they thought to be the nationalistic perversion of socialism by the Bund.

The Bund insisted that the Russian Social Democratic party be organized as a federative union of the working-class parties of the many nationalities of the Czarist Empire and that it, i.e. the Bund, be recognized as the sole representative of the Jewish proletariat with exclusive competence in Jewish affairs. The Bund also demanded that in the future Democratic Russia, all nationalities — territorial and extra-territorial alike — be granted national cultural autonomy, the right to manage their own cultural affairs. The Iskraites branded these remarks as rank nationalism. They not only rejected the Bundist scheme of party organization, but, following the West European orthodox Marxists, they denied any *raison d'être* or even the very existence of a Jewish nation.

They did not, therefore, rely on the Bund to fight Zionism, for it only strove, in the words of Lenin, "to substitute its own brand of nationalism for that of Zionism."<sup>9</sup> During the crisis of Zionism, at its 6th Congress in 1903, when it threatened to split

over the offer of the British Government to proclaim Uganda a Jewish territory, Trotsky predicted that "the romanticists of Zion" led by "that shameless adventurer" Herzl would soon go bankrupt and that its disillusioned members would flock into the ranks of the Bund and so strengthen its nationalistic tendencies that it would be emptied of any socialistic content.<sup>10</sup>

In the summer of 1903, after the Kishinev pogrom, when Jewish susceptibilities were intensified to the extreme, *Iskra's* attacks on Zionism provoked the bitter charge of the Bund that the Russian Social Democrats were more zealous in their campaign against Zionism than in combatting anti-Semitism. In his retort, Lenin denied that it was the special task of Russian Social Democrats to combat anti-Semitism. But even if it were, he went on, it would still be more important for Russian Socialists to concentrate their weak forces against Zionism rather than against anti-Semitism:

"Zionism diverts from the workers' movement a cultured strata of the Jewish proletariat. In this respect Zionism is a greater enemy of Social Democracy than anti-Semitism, which attracts those elements of the Russian population which are politically and culturally backward.

The Zionist movement constitutes a much more direct threat to the development of the class organization of the proletariat than anti-Semitism; and since we Social Democrats do not recognize the existence of 'chosen' and 'non-chosen' peoples, we cannot renounce the task of struggling against the prejudices of the Jewish masses."<sup>11</sup>

It would be a mistake to read into Lenin's words an anti-Jewish bias. The founder of Bolshevism was a genuine 'internationalist'; he seems to have been free of any national prejudice. He, like many other *Iskra*ites, was, however, exasperated by the "separatism" of the Jews and their distrust of the Gentiles; qualities reflected even in the ideology of the Bund. To his mind this isolationism weakened the Russian revolutionary movement. An oppressed minority craving for freedom, with a high degree of literacy and possessing a capacity, repeatedly shown in its history, for sacrificing themselves to great ideals, the Jews were an important potential

reservoir of revolutionary energy.<sup>12</sup>

The Zionists diverted this energy into futile channels. The Bund, with its "separatist" scheme of organization, violated the principle of unity of the Party and encouraged other national minorities to form separatist socialist parties. The Bund's scheme for a federative party was particularly outrageous to Lenin's conception of the closely knit monolithic party as the only effective instrument of revolution. For all these reasons the issue of Jewish nationalism was a frequent theme on the pages of *Iskra*,<sup>13</sup> and Lenin turned the full force of his polemical fire against it.

Underlying the conflict between Marxism and Zionism were also contrasting outlooks on the prospects of European civilization. Implicit in Zionism was a certain pessimism about the capacities of Western civilization. In denying that anti-Semitism could be eradicated as long as the Jews remained dispersed among the nations, Zionism denied the Marxist claim of the perfectability of society. Marxists dismissed with derisive contempt what they called the Zionist belief in "the eternity of anti-Semitism." Anti-Semitism, they argued, is bred by a society torn by class conflicts and would, together with other forms of human Unreason, disappear under the classless socialist dispensation. While Marxists looked forward to the "Revolution," that great cathartic upheaval that would sweep away all that is evil in social life and open a new era in history, the contemplation of revolution filled the Zionists with deep anxiety for the fate of the Jews. They feared that in the great social struggles of the future, European Jewry might be crushed. Indeed, in retrospect, the foreboding utterances of the Zionist ideologues strike us as remarkably prophetic. "Will not all these towns be but names in Jewish history?", Sokolov, a Zionist leader, rhetorically asked in Vilna in 1908, in an address to delegations of surrounding towns that had come to greet the President of the Zionist organization. While walking the streets of Cordova, in Spain, Sokolov went on, he could not escape the gloomy thought that the fate of the Jews of Spain might also befall the Jews of Russia.<sup>14</sup>

To the Marxists these were morbid phantasies, and in their eyes the Zionists were "objective" saboteurs of the revolution, or at best fools and adventurers.

Zionism could hope for little tolerance from the Leninist-Marxists once they became the masters of Russian society.

NOTES

1. Zetterbaum, M., "Probleme der Juedischen Proletarischen Bewegung", *Die Neue Zeit*, Vol. XIX (1900-1901), p. 325.
2. Herzl had the conservative's distrust and fear of the plebs and he was somewhat contemptuous of the machinery of parliamentary government:  
 "Without the useful counter-balance of monarchy, Democracy... leads to Parliamentary chattering (*Parlamentsgeschwatz*) and to the ugly category of professional politicians." — T. Herzl, *Der Judenstaat*, Berlin, 1918, p., 78.  
 Since it would be ludicrous even to suggest that a restored Jewish state be a monarchy, Herzl thought that an aristocratic republic based upon the model of the constitution of Venice would be the best form of government. Herzl, T., *Ibid*, p. 79.  
 It must be emphasized that the Zionist movement as a whole never shared these views of its founder. Most of its leaders were thorough-going democrats.
3. Pollak, J., "Der Politische Zionismus", *Die Neue Zeit*, Vol. XIV, p. 600. For other representative articles of the orthodox Marxist view on Zionism see Emanuel, B., "Ueber dem Zionismus", *Die Neue Zeit*, Vol. XIII, No. 1, 1894-95, pp. 599-603; Stern, J., "Herzl, Der Judenstaat" *Die Neue Zeit*, XV, No. 1, 1896-97, p. 186; "Der Poale Zionismus", *NZ*, XXIV, (1905-06), pp. 804-813; Rosin B., "Die Zionistisch-Sozialistische Utopie", *NZ*, XXVII, (1908-09), pp. 29-34.
4. Stalin's arguments in refuting the existence of a Jewish nation ([Engl. Ed.], *Sochineniya*, Vol. 11, p. 307) are strikingly similar to Pollak's reasoning. Pollak, J., *Ibid*.
5. Quessel, Z., "Die Juedische Neukolonisation Palastinas", *Soz. Monatshefte*, 1914, p. 676.  
 See also Schreiber, A., "Ein Dichter des Juedischen Proletariats", *SM*, VII, No. 1, 1903, pp. 449-54, esp. p. 453; and Ratner, M., "Die Nationale Frage in den Juedischen Sozialistischen Parteien", *SM*, XII, No. 3, 1908, pp. 1533-41.  
 E. Bernstein, the father of Marxist revisionism, though declaring that he was not a Zionist, wrote that "the idealistic elements in Zionism are

of value to cultural life". (Bernstein, E., *Die Aufgaben der Juden in Weltkriege*, Berlin, 1917, p. 32) Bernstein was of Jewish origin; but in 1877, when the leaders of German Social Democracy of all faiths demonstratively left their respective churches, he, too, formally withdrew from the Jewish religion.

Most Jews in the German and Austrian Socialist parties were thoroughly assimilated and approached Jewish problems not as Jews, but as Socialists. Some, with a zeal characteristic of someone who had forsworn his ancestry, outdid their Gentile comrades in their hostility to Jewish nationalism.

Bernstein warned "the comrades of Jewish descent who, just because they themselves are of Jewish origin, consider it their special obligation to protect the party against all suspicion of favoring Jewish interests." (Bernstein, E., "Das Schlagwort und der Antisemitismus", *Neue Zeit*, Vol. XI, No. 2, pp. 228-237.)

6. In June, 1907, the International Socialist Bureau considered the request of the United Poaley Zion parties for membership in the Socialist International, and referred it to its Russian section. See "Memorandum fundi fareynikte Poaley Zion parteyen in Rusland, Estraykh un Amerike tsum Internatsionaln Sotsialistishn Byuro in Briusl", *Yidisher Arbeter Pinkes*, Vol. 1, Warsaw, 1928, pp. 431-434.  
 This was a polite way of burying the request. The Russian Social Democratic Party was implacably opposed to Zionism, and its Central Committee had passed a resolution against the admission of the Socialist Zionists to the International. See *Folktsaytung*, No. 398, 1907 and Kirzhnits, *Der Yidisher Arbeter*, Vol. 11, Moscow 1925, pp. 317-18.  
 On May 1, 1911 the three Jewish national Socialist parties — Poaley Zion, SS, SERP — submitted a joint memorandum to establish a Jewish section of the International. See *Ha-Ma'avak BeZirah ha-Proletarit ha-Bein-le'umit*, Vol. 1, pp. 27-31. Tel Aviv 1955. But before it could be considered by the International Bureau, the war broke out.
7. Lonu, *Tsionizm*, London, July 1903, p. 12.  
 At the 4th Congress of the Bund, in 1901, the following resolution against Zionism was adopted:  
 "The Congress regards Zionism as a reaction of the bourgeois classes against Anti-Semitism and the abnormal political situation of the Jewish people. Since the Jewish territory which the Zionists seek to obtain can only accomodate a fraction of the Jewish people, it is not capable of solving the Jewish question. The Zionist promise to transfer to that territory the entire Jewish people or a considerable part of it is unrealizable — it is utopian. Zionist agitation fans the national sentiment and could impede the development of class-consciousness."

(4 s'ezd vseobshchego yevreiskogo robochogo soyuza v Rossii i Pol'shi (n.d., n.p.) p. 4.)

At the 5th Congress, in 1905, a stronger and more categorical resolution was passed. The party agitators had found the resolution of the 4th Congress misleading; it admitted the interpretation that the Bund opposed Zionism not on principle but only because it was not feasible. It was interpreted to imply that should the Zionist goal prove realizable, there would be no reason to oppose it. (See Kirzhnits, *Der Yidisher Arbeter* (Moscow 1925), Vol. 11, pp. 331-32.)

The 6th Congress, held in 1905, reaffirmed the anti-Zionist resolutions of the 5th with added shafts directed against the Poaley Zionists (Socialist Zionists) who had grown from meager beginnings to a serious adversary. (*Izveshchenie o shestom s'ezde vseobshchego rabocheho soyuza v Litve, Pol'shi i Rossii, Yevreiskii Rabochii*, 1905, No. 1, p. 23.)

8. Kautsky, K., *Rasse Und Judentum*, Stuttgart, 1909, p. 96.
9. Lenin, V.I., "O yevreiskom voprose v Rossii", *Iskra*, No. 41, June 1, 1903.  
This article, like most other articles in *Iskra*, is unsigned. S. Dimenshtayn, in his *V.I. Lenin, O Yevreiskom Voprose V Rossii* (Zaporozhe, 1924) p. 35, ascribes it to Lenin. It is, however, not included in any of the four Russian editions of Lenin's *Collected Works*. There seems to have been no political reason for this omission. Mistakes have been made in determining the authorship of articles in *Iskra*. Internal evidence, style, and the fact that Dimenshtayn had consulted Lenin before writing his pamphlet make it reasonably safe to assume that the article comes from Lenin's pen.
10. Trotsky, L., "Razlozhenie sionizma i yego vozmozhnye priemniki", *Iskra*, No. 56, January 1, 1904.  
Many years later, while in exile in Mexico, Trotsky no longer believed that assimilation could solve the Jewish problem. He thought that even under Socialism the Jews may have to establish themselves on their own territory. But he still regarded Zionism as incapable of providing the solution. See his interview with the *Jewish Daily Forward*, June, 1937.
11. Lenin V. I., *Ibid.*
12. Although the Jews formed only 4% of the total population of the Russian Empire, the Bund had 32,000 members in 1903 (*Di tetikeyt fun Bund far di letste tsvey yor*, London, 1903, p. 6.), almost four times as many as the Bolshevik wing of the Russian Social Democratic party, for which the figure 8,400 is available for 1905. (Bubnov), *Bol'shaya Sovetskaya Entsiklopediya*, Vol. XI, p.533.
13. See, for instance *Iskra*, Nos. 46, 48, 49, 50, 51, 52, 55, 58.
14. *Razsvet*, July 6, 1908, p. 10-11.

Rabbi Moshe Meiselman is the *Rosh ha-Yeshiva* of Yeshiva University of Los Angeles.

## CAPITAL PUNISHMENT IN JEWISH LAW\*

Anyone mildly familiar with the rudiments of Jewish law is familiar with certain aspects of Jewish attitudes towards the death penalty. To the uninitiated reader, the Bible abounds in crimes for which the penalty is death (in point of fact there are thirty-six).<sup>1</sup> Opposing this, the rabbinic statement "A court that killed once every seven years is a murderous one; Rabbi Elazar ben Azariah said once in seventy years; Rabbi Tarfon and Rabbi Akiva said, 'Had we been on the Sanhedrin, no man ever would have been executed,'" <sup>2</sup> is often marshaled as evidence of Jewish opposition to the death penalty. Less known than either of the above is a rabbinic response to Rabbi Akiva and Rabbi Tarfon: "Rabbi Shimon ben Gamliel said, 'They (i.e. Rabbi Akiva and Rabbi Tarfon) would increase the number of murderers in Israel.'" <sup>3</sup>

In a fair assessment of the Jewish attitude, Charles Black of Yale wrote, "Though the justice of God may indeed ordain that some should die, the justice of man is altogether and always inefficient for saying who there may be."<sup>4</sup> For someone who prefers the ease of dealing in generalities, the above gives a comfortable picture of Jewish thought on capital punishment. It is the purpose of this article to present a more complete picture of Jewish thinking on this topic and to explore the relevance of this thinking to contemporary judicial practice.

As attractive as the possibility might be to see *lex talionis* — the compensation of an injury through the infliction of the same injury — as the basis for capital punishment in Judaism,

\* This paper was delivered at the Hillel Foundation of the University of Chicago in February, 1977.

it is a position that is difficult, though not impossible, to maintain. The oral tradition rejected a literal interpretation of the biblical "eye for an eye"<sup>5</sup> because of the essential inequity of such a law. An eye is worth different things to different men, and the substitution of an eye for an eye is an essentially uneven exchange.<sup>6</sup> Instead, *lex talionis* was given a more figurative interpretation. On a level of metaphysical and moral guilt, the man who destroyed the eye of his neighbor is deserving that his eye be removed in equivalent measure.<sup>7</sup> But humans are limited in their capacity to mete out such justice. Hence, the guilty party is required to give symbolic restitution, a monetary substitute. The money is the symbolic replacement of an eye.<sup>8</sup> This is done recognizing full well that money does not see and can never substitute for an eye.

This approach to *lex talionis*, that of metaphysical guilt and symbolic restitution, fails when we encounter the crime of murder. The inequity of an eye for an eye is no longer as apparent when we talk of a life for a life. All law, and Jewish law is no exception, recognizes that one cannot discriminate in value between the lives of various human beings. All life is equivalent before law.<sup>9</sup> Furthermore, the Bible takes a very strict view of monetary restitution for human life, for two reasons. First, the value of human life is beyond expression in monetary terms. Second, and most important, the crime of murder is too great to be expiated by any monetary payment. "Everyone who kills a soul in front of witnesses, the murder shall surely be slain . . . And you shall not take a monetary atonement for the life of the murderer who is condemned to die, for he shall surely die. And you shall not take a monetary atonement rather than flee to a city of refuge."<sup>10</sup> (The principle of *kofer*, a monetary payment for murder, is only applicable where one's animal murdered another person, not where he himself is the agent of the crime.<sup>11</sup>) Faced with this difficulty, some of the rabbis did in fact apply *lex talionis* literally to murder. Rabbi Shimon did not; he interpreted the phrase to refer to a payment of damage under limited circumstances where the death penalty is not applicable.<sup>12</sup>

However, even if we reject Rabbi Shimon and accept *lex talionis* as a factor in capital punishment, it is not the major factor. First, the earliest biblical statement of the punishments of murder by death, "He who spills the blood of man, through the hands of man shall his blood be spilt, for He did create man in the image of God,"<sup>13</sup> seems to appeal to a different logic than merely *lex talionis*. Second, the simple fact that the death penalty exists for thirty-five crimes other than murder, indicates that murder is only one of a series of serious crimes for which the death penalty is meant.

It will be useful at this point to discuss briefly the nature of Jewish law and the nature of punishment within Jewish jurisprudence. The major factor that determines nature of the law is that it expresses God's will. The law is the detailed expression of a divinely ordained morality. Whereas the law is justified by the simple fact of its divine origin, a specific law need not be justified by an appeal to a higher purpose. While this purpose may exist,<sup>14</sup> it does not enter the law, for the law is not governed by its purpose.<sup>15</sup> This situation is unique to a system where the justification lies in divine will, which justifies itself as the source of all value.<sup>16</sup> Within this context, an infraction of the law is a violation of divine law and a morally culpable act. The purpose of the law enters as a factor in determining the severity of the crime. For instance, the observance of the Sabbath is the testimony by the Jewish people to the creation of the world by God.<sup>17</sup> A violation of the Sabbath is a desecration of this symbolic testimony. It is for this reason that desecration of the Sabbath merits the death penalty. Similarly murder is a capital crime because "He did create man in the image of God." The details of the law are independent of its purpose. The punishment for an infraction of the law does reflect, however, the purpose of the law.

Punishment on its most basic biblical level is an expression of personal moral guilt in the eyes of God. The individual who is morally guilty is personally deserving of punishment and achieves *kapparah*, personal atonement, through the process of punishment.<sup>18</sup> Prior to punishment, the individual is classified

as a *rasha*, morally guilty person; subsequent to his punishment he is morally cleansed.<sup>19</sup> Punishment is neither deterrent nor rehabilitation. It is not even God's revenge. It is rather an expression of condemnation for a violation of God's law. Hence, punishment, be it flogging in simpler cases, or death in the most serious case, is accompanied by a confession. A man about to be executed said, "May my death be an atonement for all of my sins."<sup>20</sup> The human court becomes the agent for God's punishment.<sup>21</sup> The need for punishment is not society's, but, in a manner of speaking, God's and man's. From this point of view, biblical law cannot serve as a model for contemporary legal systems, as the concept of personal guilt and atonement are not functioning concepts in a secular legal system.

The death penalty is reserved for the highest level of personal guilt and expresses God's absolute condemnation of a human being. The value of human life is derived from God and high violations of His moral code destroy the value of human life.

Hence, punishment is encumbered by a significant requirement, that of *hatra'ah*,<sup>22</sup> warning. The death penalty presupposes that the crime be performed in full awareness of all the facts surrounding the act and of the severity of the crime. Furthermore, the requirement of *hatra'ah* demands that the death penalty be imposed only for a crime done in open defiance of the moral law. Only such a crime carries the level of personal moral guilt required for the implementation of the death penalty.

Generally, the divine system of reward and punishment is left to God. However, God has instructed the human courts to act as His agents in the dispensing of His justice. Thus the Talmud tells us, "After the destruction of the Temple (when the death penalty was discontinued), even though the Sanhedrin abolished the death penalty, it still continues. One who is deserving of death by stoning either falls from the roof or is torn by a wild animal (which is viewed as being the appropriate substitute for stoning)."<sup>23</sup> God's justice continues even in the absence of human agents. The Tosafists raise the

obvious and distressing question: Why is it that we see so many evil men who die peacefully in their beds? They give the obvious answer: God's justice is complex and multi-faceted. Sometimes it is direct and there is a direct relationship between crime and punishment. Generally, the equation is too complex for us to see direct causal relationships. When man, however, executes divine judgment, he can never establish a just means for evaluating the total human being, as God does. He is therefore enjoined to judge only the specific act, nothing more and noting less. Evaluation of one human being is a hopeless task for another and must therefore never be attempted.

This is not to say that judging the act, per se, is a simple task. The death penalty was rarely carried out because of excessive technical detail introduced to ascertain that the individual was in point of fact guilty. Furthermore, the Talmud tells us that forty years before the destruction of the Temple, when murder became rampant, the death penalty was abolished as punishment for murder on a regular basis.<sup>24</sup> The reason most often quoted by the commentators is that an overloaded judiciary can not dispense justice in an equitable manner. Faced with a choice between an unjust use of the death penalty and no use of the death of penalty at all, the Sanhedrin decided to abolish the death penalty as a regular part of the judicial process. They did reserve the right for themselves, and no other lower court, to reintroduce it when deemed necessary. One can speculate that there must have been other reasons for the suspension of capital punishment. Capital punishment in a violent society becomes a mere extension of the violence of that society. In a peaceful society, capital punishment is an impressive indication of the court's power.

To give a total evaluation of the judicial process for capital cases would take us too far afield. However, there are some details that need to be mentioned. In the American legal system, the state performs two functions: one arm of the state prosecutes, while another arm of the state judges. A jury evaluates the facts. In the Jewish legal system, there is no jury. The court, comprised of twenty-three judges, decides matters

of fact and law. Whereas circumstantial evidence is inadmissible in capital cases, there must be witnesses. The witnesses perform a dual role. First, they establish the validity of the accusation. Second, they in effect take the role of prosecutor, i.e., the court, though convinced of the truth of the accusation can only act upon a statement of witnesses. Hence, if a man murders another in front of a court, that court cannot sit on the case.<sup>25</sup> Even though its members recognize the facts beyond the shadow of a doubt, they would also be obliged to act in the capacity of prosecutor, and a prosecutor cannot be a judge.<sup>26</sup> Disqualification of witnesses sometimes occurs because their statement is unacceptable as a means of ascertaining truth. Very often, witnesses are disqualified because their role of prosecutor is questioned. If two witnesses view a crime from different vantage points, i.e., they do not see each other during their observance of the crime, (*edut meyuhedet*), their statement is considered to be a full ascertainment of the truth.<sup>27</sup> However, the court cannot convict based upon their testimony. Hence, their statements are acceptable in non-criminal cases<sup>28</sup> and in aspects of criminal cases concerned only with ascertainment of the truth.

Jewish jurisprudence differs radically from American judicial practice in yet another point. When, a court unanimously votes for conviction, the party is acquitted.<sup>29</sup> No case is so clear that not even one of twenty-three judges cannot be convinced of the merits of the defense. Any defendant whose case is presented in such a weak manner that not one judge can be convinced, has not had a proper defense. Furthermore, and halakhically more significant, it is important that during the court's own deliberation, one member of the court should argue in defense of the defendant. The defense is not only the concern of the defendant, but of the court as well. Maimonides rules, "If a court, even the great Sanhedrin, began and ruled unanimously guilty, the defendant is acquitted. [He cannot be convicted unless] there are some judges who acquit and who argue in his defense and finally the judges who convict outnumber the ones who acquit."<sup>30</sup> Maimonides

emphasizes the necessity of members of the court arguing in the defense. The contrast to the American legal system is clear. In the American legal system the state prosecutes and the state judges. The accused defends himself. The state may appoint someone to defend the accused; however, he is virtually never of the same quality as the prosecutor, nor is he provided with funding comparable to that of the prosecutor. One need only recall the case of Joanne Little to realize the funding necessary to defend and acquit an accused party even when the prosecution has only the most tenuous form of circumstantial evidence. There are many other procedural issues such as appointment of judges, plea-bargaining, confession, etc., that set apart the Jewish system from the one known in this country and thereby prevent many of the abuses of the death penalty so well-known in contemporary society.

The picture we have provided so far is that of divine justice handed over, at times, to human courts. In the context of God's reward and punishment, there are men who are deserving of death. A part of this justice has been given over to human courts to administer. The difficulties in administering this task greatly restrict its applicability.

The courts are given another task, however. A major function of theirs is to foster circumstances which ensure proper observance of the moral law. Every crime must be viewed on a dual level, first as a crime per se, and second, as an act which undermines the moral fabric of society and contributes to the violation of the moral code by others. Punishment by the court is directed at both aspects of the crime. Previously we have discussed punishment for the act itself. Now we will examine how punishment also serves to uphold the moral law in society.

Many crimes are listed in the Bible and rabbinic writings as deserving of death at the hands of God, but not at the hands of human courts. The court can at most flog such a criminal.<sup>31</sup> This does not apply to repeated offenders; however; upon a fourth conviction, the court has the right to put one to death.<sup>32</sup> In cases of repeated conviction for serious crimes, the death

penalty can be used as a deterrent. The method of execution is referred to by the word *kippah*.

The two crimes most destructive of the moral fabric of society are murder and adultery. Hence special procedural rules are adopted for those two crimes. In murder cases where the procedural rules for evidence are satisfied and the procedural rules for prosecution by the witnesses are not, the court itself becomes the prosecutor and the murderer is executed by *kippah*.<sup>33</sup> Maimonides comments, "One does not deal in such a manner with the capital crimes other than murder . . . for even though there are more serious crimes than murder, none destroys society as does murder."<sup>34</sup> The murderer has not only committed a heinous crime, but has also undermined society. The court in its role as guardian of the moral fabric of society has special powers in dealing with murder. Adultery is treated within a different structure and is beside the point of this presentation.<sup>35</sup>

Finally, there is an elastic clause in the application of the death penalty. "The court has the right to flog one who has not been convicted of a crime deserving flogging, and to kill one not convicted of a crime deserving death. This is not a violation of the law of the Torah, but is done to *protect* the Torah. When the court sees that the people have violated the law in a certain area, they can mend the fences and strengthen the matter as they see fit. This must be treated as an exception and cannot be made a permanent feature of the law. Once it happened that the court flogged a man who cohabited with his wife in public under a tree. Another time it happened that the court stoned someone who rode a horse on the Sabbath during the Hellenistic period. Shimon ben Shetaḥ hung eighty women (convicted of witchcraft) on one day in Ashkelon (even though the general procedural rules of the court were not followed)."<sup>36</sup>

When one acts in a way that undermines the moral fiber of society, the court must exercise its power to ensure proper observance of the law. Kant objected to capital punishment as a deterrent. He felt it unjust to punish A to prevent B from doing a crime. He neglected the fact that A is himself guilty of a se-

cond crime, the undermining of society's moral fabric. The above extraordinary power of the court, *hora'at sha'ah*, was instituted for this very reason. A is punished and society's moral fiber preserved.

When applied by the courts, the death penalty has a dual function. First, it is a moral condemnation of an individual's act. Second, it is society's extreme measure for guaranteeing its moral fiber. The deterrent power of the death penalty is taken for granted in Jewish thought.<sup>37</sup> However, the deterrent power is not simply fear of punishment. Rashi<sup>38</sup> sees its effect in a more subtle manner. A display of power by the court impresses the populace with the seriousness of the judicial process and to some degree it counters the undermining of respect for the law engendered by the crime itself. A show of strength in international politics accomplishes its goal even when there is no immediate fear of atomic attack. Needless to say the deterrent value of the death penalty varies radically with the judicial process and with the society. Gary Gilmore's execution made a mockery of the American judicial process, turning him into a perverse national counter-culture hero. Furthermore, in a violent society, the court must be sure that capital punishment does not become just an extension of the violence of the society itself, as is clearly the case in the type of justice that one sees in some western movies. To execute a condemned man on national prime time television, for instance, would certainly do this. I must at this point indicate my prejudice against, so called, scientific studies of the deterrent value of capital punishment. If nothing else, these studies are clearly not scientific. Since a controlled double-blind experiment is impossible, it would certainly be honest of investigators to drop the word scientific. Furthermore, the studies reflect only a superficial understanding of what a deterrent really accomplishes.

Murder is not only a moral crime, but a civil one as well. Hence, the civil authorities are also given authority in murder cases. Maimonides rules, "The king may execute murderers without witnesses testimony, without *hatra'ah*, even if there is only one witness, or an enemy who killed accidentally. He may



act to correct society as he sees the occasion merits. He may kill many people on one day (something the court is not generally allowed to do), he can hang them and leave them hanging for many days to instill awe (of the judicial structure) and to destroy the power of the evil men of the world."<sup>39</sup> There are detailed rules of evidence that the king must follow, but these rules are merely for the purpose of establishing truth. There are no elaborate procedural rules. However, the entire process is subject to the review of the Sanhedrin. The civil authorities and the courts are a check on each other's authority and its exercise.

Jewish law also described the proper system of justice for non-Jewish society. One of the seven Noahide laws is *dinim*.<sup>40</sup> Every society is required to establish a system of justice, including a system of societal control for the basic crimes of theft, murder, adultery, etc. The death penalty is an acceptable punishment within this system of justice. The exact rationale and context within which to interpret capital punishment revolves around the proper interpretation of a biblical story:

Shekhem, the son of king Hamor, kidnapped and raped Dinah, the daughter of Jacob. He continued to hold her captive and negotiated with the sons of Jacob to permit him to keep her. After an involved plot, the sons of Jacob entered the city of Shekhem and killed all of its males, including its king and prince. Jacob was upset by the actions of his sons and criticized them for their actions. First, he was afraid of reprisals by other neighboring tribes and cities. Second, he criticized his sons on moral grounds.<sup>41</sup> At the end of his life he told them,

"Shimon and Levi are brothers; instruments of violence are their means of acquisition . . . for in their anger they have killed men."<sup>42</sup>

How are we to understand the actions of the sons of Jacob and the reaction of Jacob? Maimonides adopts the following interpretation.<sup>43</sup> According to Jewish law, the legal system governing their crime was the "Noahide laws". Within the context of these laws, the kidnapping and rape of Jacob's daughter was a capital offense. Furthermore, every society is required to establish a system of justice to deal with such offenses. The

people of the city of Shekhem, by acquiescing to Shekhem's act and not demanding that he return Dinah to her family and bringing him to justice were guilty of complicity in his crime. A society that willfully does not bring a criminal to justice is guilty of complicity in his crime. As a result of this situation, the sons of Jacob felt justified in killing the male population of Shekhem (it is taken for granted that the female population would not acquiesce to a crime of kidnapping and rape). Jacob criticized his sons on a moral level. Justice demanded of non-Jewish courts, is not encumbered by the entire legal superstructure of Jewish courts. However, capital punishment in non-Jewish courts is only inflicted for the violation of a moral wrong, much as capital punishment in Jewish courts. It is not rooted in vengeance nor may it be meted out in response to society's outrage. Jacob told his sons that it may be true that the city of Shekhem, by complicity in the kidnapping and rape of his daughter, were worthy of being killed. However, the sons of Jacob executed them in a vengeful outrage. A vengeful outrage is not justice.

Nachmanides<sup>44</sup> takes a very different approach. Kidnapping and rape are capital crimes, whereas complicity in kidnap and rape are not. However he says, one must assume that such a society was guilty of many other crimes, unknown to us, but known to the sons of Jacob and described in many other places in the Bible. Despite this, Jacob chastised his sons for two reasons. First, they had no jurisdiction over the residents of Shekhem other than those directly involved in the crime. Second, the death penalty is reserved for persons who are in the eyes of the court hardened, incorrigible criminals. A criminal who gives evidence of his ability to be rehabilitated can not be executed.

According to Nachmanides, a criminal may be deserving of death, but he can only be executed when society cannot integrate him into its moral structure. Social need may dictate capital punishment, but execution for social need is only justified when the criminal is deserving of death and in the opinion of the court incapable of rehabilitation.

Let us summarize our discussion. Jewish law condones capital punishment for two reasons. A person who seriously violates the moral law is deserving of death, and part of the task of judging him has been given to the courts. This aspect of capital punishment is exercised with great caution; it is not easy for a human court to exercise divine judgment. Capital punishment also serves as a form of societal control which insures proper observance of the moral code and the safety of the law-abiding citizenry. The moral authorities utilize it to make sure other people do not murder, while the civil authorities use it to make sure that other people are not murdered.

NOTES

1. Maimonides, *Hilkhot Sanhedrin*, Chapter 15.
2. *Makkot* 7a.
3. *Ibid.*
4. Charles Black, *Capital Punishment: The Inevitability of Caprice and Mistake*, W.W. Norton and Co., N.Y., 1974.
5. Exodus 21:24, Leviticus 24:19, 20.
6. *Bava Kama* 83b; Ibn Ezra, *Commentary to the Torah*, Exodus 21:24; Nachmanides, *Commentary to the Torah*, Exodus 21:24.
7. Ibn Ezra, *op. cit.*; Nachmanides, *op. cit.*; Maimonides, *Hilkhot Hovel u'Mazzik*, 1:3.
8. See *Hiddushei Rabbeinu Hayyim Ha-Levi*, *Hilkhot To'en VeNit'an*, 5:2.
9. This is the famous statement of Rava, "Who says that your blood is redder than your friend's; maybe his blood is redder than yours," *Sanhedrin* 74a. See also Paul Freund, *Ethical Problems in Human Experimentation* 273 (N.Eng.J. Med. 687, 1965).
10. Numbers 35:30-32.
11. Exodus 21:29. The monetary restitution is not a payment for the life of the party who is killed. If the amount is calculated in terms of the victim, then it is simply a payment of damages to the family. The crime itself remains unpunished by the human court, even though the Bible says that the negligent party is deserving of death. The human court is not empowered to execute all of those deserving of death in a higher moral sense.
12. In this sense it is similar to *kofer* of the previous note.
13. Genesis 9:6.
14. For a full discussion of this see Moshe Meiselman, *Jewish Woman in Jewish Law*, KTAV, N.Y., 1977.

15. *Bava Mezia*, 115a.
16. Meiselman, *op. cit.*
17. *Sefer Ha-Hinukh* 32.
18. Maimonides, *Hilkhot Teshuvah* 1:1.
19. Maimonides, *Hilkhot Edut* 10:2, 12:4.
20. *Sanhedrin* 43b.
21. Deuteronomy 1:17, 18 and Nachmanides *ad locum*.
22. *Sanhedrin* 40b-41a.
23. *Sanhedrin* 37b.
24. *Sanhedrin* 41a.
25. *Rosh Hashanah* 25b.
26. This is the implication of Rashi in *Rosh Hashanah* *op. cit.* The commentaries interpret Rashi to say that the witnesses accomplish two things: 1) ascertainment of facts; 2) the court can only execute based upon the statement of witnesses. In *kiddush ha-ḥodesh*, only the first is necessary. Those commentaries who disagree only say that a court that also witnessed can also be a prosecutor. However, in other cases, all agree that the witnesses perform the role of prosecutor.
27. See *Sanhedrin* 81b; Maimonides, *Hilkhot Roze'ah u'Shemirat Nefesh* 4:8, and 6:5 in *Kesef Mishneh*.
28. Maimonides, *Hilkhot Edut* 4:1.
29. *Sanhedrin* 17a.
30. Maimonides, *Hilkhot Sanhedrin* 9:1.
31. *Makkot* 23a.
32. *Sanhedrin* 81b.
33. *Ibid.*
34. Maimonides, *Roze'ah u'Shemirat Nefesh* 4:9.
35. This is the process of the *Sotah* discussed in Numbers 5:11-31. It should be pointed out that the process of *Sotah* differs radically from trial by ordeal common in early America. In trial by ordeal, the victim is placed in danger and it is hoped that God will intervene if the victim is innocent. In the *Sotah* procedure, the woman undergoes a harmless procedure and if she is guilty God intervenes and puts to death both her and her male partner in crime.
36. Maimonides, *Hilkhot Sanhedrin* 24:4.
37. *Makkot* 7a.
38. *Ibid.*
39. Maimonides, *Hilkhot Melakhim* 3:10.
40. *Ibid.* 9:1.
41. Genesis 34:1-31.
42. Genesis 49:5-6.
43. Maimonides, *op. cit.* 9:14.
44. Nachmanides, *Commentary to Genesis* 34:13.

Dr. Martin L. Gordon, a *musmakh* of RIETS, was for many years a member of the faculty of Stern College. He presently resides and lectures in Jerusalem.

## NETILAT YADAYIM SHEL SHAHARIT: RITUAL OF CRISIS OR DEDICATION?

Among those mitzvot accentuating the conflict in perspective between the talmudic and kabbalistic traditions is *netilat yadayim shel shaharit*, washing the hands upon arising each morning. While both traditions require the ceremonial, they stand worlds apart in their perception of its rationale. This divergence of outlook has a determining effect not only on the theoretical basis of the mitzvah as viewed by each position, but on the very character of its implementation.

### Talmudic View

The principal talmudic source for the morning *netilah* is a passage in *Berakhot*,<sup>1</sup> where the blessing over washing the hands is prescribed as one of a series of early morning *berakhot*. Rosh, in immediate exposition of the rationale, depicts the mitzvah as an aesthetically-cleansing procedure preparatory to prayer:

Since the hands are active,<sup>2</sup> and it is not possible to have avoided contact during the night with soiled flesh, a blessing<sup>3</sup> was instituted prior to one's recitation of *Shema* and the act of prayer [*Amidah*].<sup>4</sup>

Rashba,<sup>5</sup> observing that the above rationale would not account for the popular requirement of a cup<sup>6</sup> — nor the insistence on water altogether (since the hands could be sufficiently cleaned for *tefillah*<sup>7</sup> with any abrasive material<sup>8</sup>) — suggests a symbolic interpretation. Through *netilat yadayim*

*shel shaharit*, one identifies with the *kohen* in Temple days, who would rinse himself daily from the *kiyyor*-vessel<sup>9</sup> in the courtyard of the Sanctuary before the morning service.<sup>10</sup> Consecration through water reflects the freshness of a man's commitment to the service of God (in our case, *tefillah*) as he awakens with a sense of rebirth each morning.<sup>11</sup>

According to neither of the above interpretations is *netilat yadayim* of immediate urgency in the morning. Since, according to both Rosh and Rashba, washing the hands is linked to prayer, the formal service of God — as an aesthetically-cleansing (Rosh) or symbolically-dedicatory (Rashba) gesture — one need not perform the mitzvah until actually ready for *tefillah*. In fact, the talmudic *sugyah*, by placing *berkat Netilat Yadayim* toward the close of the series of early-morning *berakhot*, would suggest, as Rosh observes, that these blessings (*Elohai Neshamah, Asher Natan la-Sekhvi Vinah, Poke'ah Ivrim*, etc.), as distinct from the principal sections of *tefillah* (*Shema* and *Amidah*), may be pronounced prior to washing — notwithstanding one's unclean hands.<sup>12</sup>

### Kabbalistic View

A totally different perspective emerges from the kabbalistic tradition. In contrast with the sober, forward halakhic thrust of Rosh and Rashba, viewing *netilat yadayim* as preparatory to *tefillah*, the *Zohar's* exposition is framed in ominous retrospective terms, focusing on the dire ramifications of a presumed state of spiritual contamination remaining residually on the hands from the previous night:

There is no man who does not experience the taste of death at night . . . For the holy soul leaves him, and an unclean spirit comes to rest on that body, contaminating it. When the soul returns to the body, that uncleanliness passes away. But it is taught that a man's hands retain the contaminating uncleanliness . . . until he washes them . . .<sup>13</sup>

While one is asleep at night,<sup>14</sup> maintains the *Zohar*, the soul departs,<sup>15</sup> producing a form of death in miniature (*ta'ama demota*), in which the soulless body comes under the influence of

an "unclean spirit" (*ruḥa mesa'ava*),<sup>16</sup> a form of *tum'at met*,<sup>17</sup> a state of ritual impurity contracted through contact with the dead. With the arrival of morning and the return of the soul, the deathly spirit takes leave of the body; however, a trace of its potency remains on the hands,<sup>18</sup> requiring *netilat yadayim*.<sup>19</sup>

The very perpetuation of this state of *tum'ah* is spiritually precarious. A statement attributed to the *Zohar*<sup>20</sup> in several sources<sup>21</sup> declares: "One who walks four cubits without washing his hands is deserving of death at the hands of Heaven."<sup>22</sup> Rooted in this urgent kabbalistic consideration, but unknown to the talmudic tradition, is the practice observed in certain religious circles of placing a cup of water and basin for *netilat yadayim* at the bedside before retiring, to assure that the cleansing be accomplished the next morning with greatest immediacy.<sup>23</sup> Similarly, the *Zohar's* remonstrance against the pronouncement of the Divine name prior to *netilat yadayim*.<sup>24</sup> The Talmud, as Rosh observes, has no such objection.<sup>25</sup>

The *tum'ah*-residue is not only spiritually perilous, according to the Kabbalah, but also physically threatening. One is warned by the *Zohar*, for example, to make certain that the waters of *netilat yadayim* are not spilled to the ground where any persons may tread: "For within these waters are gathered the forces of the [evil] side, and these unclean waters may cause him injury."<sup>26</sup> Physical hazard, for the Kabbalah, is implicit in states of *tum'ah*.<sup>27</sup>

Two fundamental points are novel to the kabbalistic position. First is the assumption of an automatic state of *tum'ah* devolving nightly<sup>28</sup> upon the sleeping body, by virtue of its "death-experience." For the halakhic tradition, in contrast, the nighttime experience does not invest the body with any state of *tum'ah*, except where occasioned by specific bodily discharges.<sup>29</sup> Though the Talmud draws a phenomenological analogy between sleep and death ("Sleep is one sixtieth of death"<sup>30</sup>), never was any ritual significance implied in the comparison. The immersion of the hands in water each morning is never viewed by the Talmud in ablutionary terms as divestive of *tum'at met*.<sup>31</sup>

Second, the kabbalistic position is unique in its ascription of an active, threatening potency to the state of *tum'ah*, capable of wreaking both spiritual and physical havoc.<sup>32</sup> The talmudic tradition, even where it recognizes a state of *tum'ah*, does not impute any demonic quality to this unredeemed condition.<sup>33</sup> In talmudic terms, *tum'at met* signifies the presence of a spiritual vacuum, resulting from contact with a deceased, whose soul has separated from his body. Association with such a lifeless condition diminishes one's own spiritual potential<sup>34</sup> — a circumstance reflected in the restricted religious activity of the *tame*, who may neither enter the Sanctuary nor consume sacrosanct foods. *Tum'ah* remains for the halakhic tradition a *diminution* of potency, rather than a diabolical perversion of potency as the Kabbalah would suggest. Halakhically, a Jew is under no obligation to purify himself of *tum'ah*,<sup>35</sup> unless planning contact with the Sanctuary or hallowed foods. Nor is he required to avoid contracting *tum'ah* initially.<sup>36</sup> Even a *kohen*, who is so interdicted prior to the fact with respect to *tum'at met*, may remain in a state of impurity until prepared to resume his priestly function.<sup>37</sup> Clearly, from the talmudic viewpoint, the state of *tum'ah*, while restrictive, is not destructive.<sup>38</sup>

#### A Critical Talmudic Passage: Physical Hygiene, Not Occult Ritual

It is true that the removal of an unclean spirit is mentioned in one talmudic passage as a function of rinsing the hands in the morning:

It was taught: R. Nathan said, "It is called *Bat Ḥorin* [the spirit resting upon the hands], and it insists [on remaining] until one washes his hands three times."<sup>39</sup>

However, the *Bat Ḥorin* spirit referred to in this context has nothing at all to do with any state of *tum'ah* or any of its associated demonic implications. Nor, in fact, is the subject of this *sugyah* the ritual of *netilat yadayim*. The focus of the *sugyah*, as its larger context confirms, is *physical hygiene* — cleansing soiled hands to combat possible infection. Samuel,

the second-third century physician and talmudic sage who had developed a widely-sought eye ointment, is quoted at the outset of the talmudic discussion recommending "a drop of cold water [to the eye] in the morning, and bathing the hands and feet in hot water in the evening" as the ultimate health measure.<sup>40</sup> R. Muna, cited in corroboration of Samuel's statement, offers an additional piece of medical insight with respect to the washing of the hands — linking a series of physical ailments to contact between an unclean hand and the openings of the body:

... The [unwashed] hand leads to blindness; the [unwashed] hand leads to deafness; the [unwashed] hand causes a polypus [a morbid growth in the nose] ...<sup>41</sup>

It is immediately following R. Muna's statement that R. Nathan's *Bat Horin* comment appears.<sup>42</sup>

In light of this sequence of passages, it is clear that the *Bat Horin* spirit, depicted as adhering to the hand, does not represent any source of *spiritual* contamination or *tum'ah*, reflecting any overnight death-experience, nor any of its malevolent ramifications. *Bat Horin* represents, rather, a source of *physical* contamination associated with the objective condition of soiled hands.<sup>43</sup> In the ancient world, infection and disease, only vaguely understood, were linked on the basis of a working hypothesis to injurious spirits (*ruhot ra'ot*)<sup>44</sup> considered present in unhygienic conditions<sup>45</sup> — agents of disease,<sup>46</sup> which we today, with greater sophistication, would identify with bacterial or viral microorganisms.<sup>47</sup> The various procedures for dealing with such pathological phenomena were empirically arrived at, and rinsing the hands<sup>48</sup> was one such procedure, wisely recommended, as R. Muna's observation indicates, as a deterrent against a host of physical ailments.<sup>49</sup> However fanciful the activity of injurious spirits may seem to our contemporary minds,<sup>50</sup> such depictions represent, in historical perspective, a serious effort to account for the imposing reality of physical illness. It should be clear, though, that there is no basis in the above talmudic discussion for the kabbalistic notion of *netilat yadayim* as an ablution purifying any state of

*tum'ah*, with its attendant demonic ramifications. The rinsing of the hands, as dealt with in the *sugyah*, is a prudent *health measure*,<sup>51</sup> applicable whenever unhygienic conditions may prevail,<sup>52</sup> be it the morning or otherwise.<sup>53</sup> As far as the morning *ritual* — or *mitzvah* — of *netilat yadayim* is concerned, the sole perspective remains that of Rosh and Rashba<sup>54</sup> — an aesthetic cleansing of the hands or a symbolic immersion of the hands as a sign of rebirth — in respectful anticipation of *tefillah*.

#### Kabbalistic Reinterpretation

The position of the Kabbalah radically alters the thrust of the above-cited talmudic *sugyah*. First, the Kabbalah, in effect, defines the *Bat Horin* consideration as the *ritual* objective of the morning washing. Thus the *mitzvah* of *netilat yadayim shel shaḥarit* becomes a procedure for countering a *ru'ah ra'ah*.<sup>55</sup> But even more critically, the Kabbalah transforms the very sense of the *ru'ah ra'ah* notion. The talmudic tradition, as we have seen, views *ru'ah ra'ah* as an essentially *non-theological* category, in this case a hypothetical agent of physical disease. The kabbalistic tradition, on the other hand, elevates *ru'ah ra'ah* to a critical theological function, as a manifestation of the realm of heavenly anti-forces (the satanic realm of *sitra aḥra*).<sup>56</sup> Thus, while the talmudic perspective deals with *ruhot ra'ot* through a simple hygienic rinsing procedure,<sup>57</sup> the kabbalistic position finds itself locked in battle with a metaphysically-charged agent of evil, against which *netilat yadayim* must be unleashed as a complex ritual weapon.<sup>58</sup> Rashba, true to the talmudic sense of *ru'ah ra'ah*, already notes that were our morning concern a harmful spirit (*Bat Horin* or *Shibbeta*<sup>58a</sup>), it could be dealt with simply through any mode of rinsing, even directly from the tap.<sup>59</sup> But the *Zohar's ru'ah mesa'ava* can be handled only through an intricate sequence of right-to-left<sup>60</sup> alternations of hand,<sup>61</sup> involving the vital use of a cup.<sup>62</sup> For at stake, according to the *Zohar*, are the delicate dynamics of control which the *sefirah* of *hesed* (represented by the right hand) must exercise over the *sefirah* of *din* (represented by the left),

if, considering the *tum'ah*-crisis, life-potency is to prevail over strict judgment and death.<sup>63</sup> Spilling the water from a *cup* is kabbalistically critical, representing the downward flow of purifying Divine influence from the upper *sefirah* vessel.<sup>64</sup>

### Talmudic Contrast

The talmudic perspective on the morning *ritual* of *netilat yadayim* is not concerned with *ru'ah ra'ah*, even as a hygienic notion. While a hygienic consideration may *additionally* motivate the *netel* each morning, his *ritual* motive is exclusively *tefillah*-oriented, rinsing his hands to assure their aesthetic state during prayer or immersing them as a symbolic sign of rebirth prior to prayer. According to neither of the latter themes is a three-fold washing necessary (three rinsings only measure the intensity of the hygienic procedure<sup>64a</sup>), not to mention the alternation of hands, which is only kabbalistically significant. While the Kabbalah considers the use of a cup to pour the water indispensable, Rosh, *Haggahot Mordecai* and Ran require no cup, and Rashba (permitting, in fact, the immersion of the hands *in* the cup) requires a vessel only if one is available.<sup>65</sup> In fact, the use of water altogether — vital for the Kabbalah as a representation of the flow of Divine purifying power — is not critical from a talmudic perspective. In the absence of water, any abrasive material is sufficient,<sup>66</sup> since our primary concern is pragmatic — a clean appearance during *tefillah*.<sup>67</sup> The Talmud knows of no death-crisis precipitated by the soul's alleged leave of the body overnight, nor does it know of the ramifications of a threatening state of *tum'ah*.

### The Nightly "Ascent" of the Soul in Talmudic Perspective

It is true that particular midrashic passages,<sup>68</sup> reflecting talmudic thought, refer to the soul's overnight "ascent." But the thrust of these passages is in sharp contrast to the kabbalistic conception. For the Kabbalah, as we have seen, the overnight period witnesses an ontological separation of soul from body — conceived in severe dualist terms<sup>69</sup> — precipitating a grave metaphysical crisis in which the body passes through a

death phase. Awakening in the morning to the thankful return of the soul, one must urgently see to the removal of the last foreboding traces of the malevolent spirit that had attached itself to the soulless body. The midrashic tradition, on the other hand, is thoroughly positive and organic in perspective. The soul does not abandon the body. Its nightly "ascent" is depicted in *physical* terms as an occasion for drawing upon sources of renewed vitality for the benefit of a weary body.<sup>70</sup> We are assured, in fact, that the soul, notwithstanding its "ascent," remains in vital connection with the sleeping body, "warming it so that it not chill and die."<sup>71</sup> Never is the *survival* of the corporate entity of body and soul at all in question, according to the Midrash. It is a physically fatigued organism, not an ontologically fractured one, that is the subject of concern.<sup>72</sup> Thus the implications of our nightly "trust"<sup>73</sup> in the Divine "restoration" of the soul. For the Kabbalah, one trusts in a metaphysically-charged Divine promise, guaranteeing the reunification by morning of soul and body. For the Midrash, on the other hand, oblivious to any such crisis, one trusts simply in the physical refreshment by morning of a weary organism:

Said R. Alexandri: A human being [a pawnbroker], given new [garments] as a pledge, returns them worn-out and tattered. But the Holy One Blessed Be He, given the worn-out and tattered, returns them new. Observe: A laborer, working all day, tires out and wearies his soul. When he retires [nightly], he consigns his soul to God as a pledge, and in the morning it returns to his body as a new creation.<sup>74</sup>

### Analogy: Daily Awakening and *Teḥiyyat ha-Metim*

True, there is a midrashic analogy, associating one's daily awakening with *teḥiyyat ha-metim*:

Since You renew us each morning, we know that Your trust is great to resurrect our dead.<sup>75</sup>

But the analogy does not in any way identify the *dynamics* of sleep with death. Sleep, a periodic loss of consciousness, has

represented for man from time immemorial an intriguing, *suggestive parallel* to death, so that arising each morning recalls, similarly, the promise of future resurrection.<sup>76</sup> But the talmudic-midrashic tradition does not overstate the analogy. Sleep may suggest death — it may be described, experientially, as “one sixtieth of death”<sup>77</sup> — but it is never taken substantively as a form of death,<sup>78</sup> with any of its metaphysical trappings. This is evidenced by *birkat Elohai Neshamah*, with which the sages of the Talmud began<sup>79</sup> each morning’s devotion.<sup>80</sup> Addressing itself to the ontology of the individual soul<sup>81</sup> — its initial introduction<sup>82</sup> into the body<sup>83</sup> and the future promise of its restoration following death<sup>84</sup> — the *berakhah* makes no reference to any *daily* return of the soul,<sup>85</sup> emphasizing, to the contrary, God’s ongoing “preservation of the soul within me.”<sup>86</sup> For the talmudic-midrashic tradition, there is, ontologically, no nightly crisis,<sup>87</sup> no precarious state of lifelessness. The experience of awakening each morning — the restoration each morning of consciousness — simply anticipates in psychologically suggestive terms the phenomenon of future resurrection.

### Conclusion

The opposition of the two perspectives is clear. For the kabbalistic view, sleep and awakening are perceived as processes of profound metaphysical tension. The daily sense of gratitude upon arising is charged with deep relief over the restoration of the soul and the survival of the body.<sup>87a</sup> Even following its apparent resolution by morning, the death-crisis persists in the immediacy with which the waters of *netilat yadayim* must be applied to remove the final traces of an ominous *ru'ah*.<sup>88</sup> For the talmudic-midrashic view, on the other hand, sleep is perceived in empirical physical terms as an opportunity for rest and rejuvenation. *Elohai Neshamah*, pronounced each morning, suggests no sense of crisis. Much like the entire array of *birkhot ha-shahar*, the gratitude expressed in *Elohai Neshamah* is a poised *hoda'ah* for the *uneventful continuity* of the life process. And in accord with this perception, *netilat yadayim*

thrusts the awakening personality forward toward his appreciative yet conventional experience of *tefillah*. Where the Kabbalah perceives *netilat yadayim shel shaharit* as a retrospective relief from crisis, the talmudic position views it as a confident stride toward daily renewal.

### NOTES

1. 60b.
2. This term is borrowed from the talmudic discussion in *Shabbat* 14a, where the context is *netilat yadayim* prior to handling *terumah*. As Rashi, *ad loc.*, explains, the hands were declared rabbinically *tame*, requiring a physically cleansing *netilah*, in order to make certain that *terumah* never becomes unsavory as a result of possible contact with soiled hands.
3. For Rosh, the *hiddush* of the enactment is not the washing per se, which, after all, is a normal, aesthetic-hygienic procedure each morning. The *hiddush* is the additional mitzvah-purpose lent the washing as a procedure preparatory to prayer, by virtue of which a *berakhah* was prescribed. In fact, for Rosh the mechanics of the procedure have no special requirement (i.e. a *k'li* is unnecessary — see n. 6). The mitzvah dimension of the procedure is reflected exclusively in the appended *berakhah*.
4. Rosh, *Berakhot*, 9:23. See also *Teshuvot ha-Rosh*, 4:1. This position actually appears earlier in the writings of R. Amram Gaon (see *Otzar ha-Geonim, Berakhot, Teshuvot*, pp. 133-34; *Seder Rav Amram ha-Shalem*, ed. Frumkin, II, pp. 217-18; *Teshuvot Maharam Rothenburg*, I [Jerusalem, 5717], #1; also, *Otzar ha-Geonim, Pesachim, Teshuvot*, p. 121). See also *Otzar ha-Geonim, Berakhot, Teshuvot*, pp. 135-36. Rambam also defines the role of *netilat yadayim shel shaharit* in terms of cleansing preparatory to prayer (*Hilkhot Tefillah* 4:3). See, as well, *Shibbolei ha-Leket*, 1. The talmudic association of *netilat yadayim* and *tefillah* is in *Berakhot* 14b-15a.
5. *Teshuvot Rashba*, I, 191.
6. In contrast, Rosh (*loc. cit.*, as understood by *Beit Yosef*, O.H. 4), *Haggahot Mordecai* (*Berakhot*, 192) and Ran (*Hullin* 105b) deny that a *k'li* — required for *netilah* prior to *se'udah* — is necessary during the morning ceremonial. (Amongst the later *posekim*, *Taz* supports Rosh on this point [see his comments to O.H. 4:1 (note *Levushei Serad, ad loc.*) and 7:1]; while *Magen Avraham* supports Rashba [4:1]. Both the *Mehab-*

ber and Rama prefer the use of a *k'li*, initially [4:7], in deference to Rashba for whom it is vital [*Beit Yosef's* interpretation of *teshuvat Rashba*], but deny its indispensability *be-di'avad*, on the basis of Rosh, *Haggahot Mordecai* and Ran. Rama, furthermore, apparently interprets *teshuvat Rashba*, unlike *Beit Yosef*, as requiring a *k'li* only *le'khatilah*; the *kiyyor* analogy, he would probably argue, is not critical for Rashba.) Rashba, at the outset of his *teshuvah*, is inclined to agree with the liberal position; however, taking note of the widespread insistence on a *k'li*, he suggests ("*yesh lomar*") a basis for such a requirement — identification with the *kohen* at the *kiyyor*. Abudarham explicitly requires a cup (*Seder Shaḥarit shel Ḥol*); yet in contrast with his position, Rashba permits a reversal of the procedure — the immersion of the hands in the cup.

7. An abrasive is acceptable (see following note) wherever the requirement is merely aesthetic — that one's hands appear clean for *tefillah*. When the consideration is, on the other hand, hygienic, water itself is critical. Thus the Talmud's insistence on water for the removal of *ru'ah ra'ah*, which we define as an agent of physical disease present in unhygienic conditions (see discussion below in text).
8. This point — the cleansing procedure required for *tefillah* at any time throughout the day — is a subject of dispute among the *rishonim*, revolving about two readings of a passage in *Berakhot* 15a. One school holds that, although an abrasive material is sufficient should no water be available, one must make a special effort to acquire water, even if travelling some distance is involved (Rif, Rambam, Rashba in name of R. Hai Gaon). A second school holds that any such effort is unnecessary, and, in fact, objectionable, since one might miss the required time of *tefillah* in the process. If water is immediately on hand, though, it is preferable (*Tosafot*, Mordecai, R. Jonah, Rosh). Rashba, while inclining toward R. Hai's position in his talmudic commentary (*ad loc.*), shifts to the second position in his *teshuvah* (see note 5). Water may be the preferred choice, but not to the point of insistence should it not be immediately available.  
The universal agreement that, as a second choice, any form of cleansing is acceptable in place of water is based upon the Talmud's analysis (*ad loc.*) of Psalm 26:6: "I will wash my hands cleanly" — understood to mean, "with a cleansing medium." The initial use of the term "wash" would indicate a preference for water. Yet the reference to a cleansing medium would suggest that the critical factor is a *clean state*, no matter how arrived at.
9. The use of a vessel, in which the water is collected for the purpose of cleaning the hands, reflects a conscientious initiative on the part of the *notel*, appropriate for the execution of the mitzvah. (See *Sefer ha-Hinukh's* depiction [*Ki Tissa*, #106] of pouring water from a *k'li* upon

the hands as a "respectful mode." Although the *Hinukh* distinguishes this mode from simply immersing the hands in the *k'li*, which is permitted, he maintains, prior to an ordinary [i.e. non-sacrosanct] meal [and which Rashba too explicitly permits in such a case, as well as in our non-priestly morning *netilah*, *Teshuvot*, I:191], nonetheless, there is an intimation of respect in the very use of a vessel ["since we find a vessel used in sacrosanct laving"].) Thus the term "*netilat yadayim*" ("taking the hands," literally), which actually connotes taking water in a vessel for the hands. See *Tosefot Yom Tov* and *Melekheth Shelomo*, *Berakhot* 8:2.

10. *Teshuvot Rashba*, I, 191. See text of R. Avraham ben Rambam, translated from Arabic by S. Eppenstein, *Sefer ha-Yovel le-Yisrael Levi* (Breslau, 5671), pp. 42-3, where the washing of the hands before *tefillah*, generally, is similarly depicted as an aspect of the larger parallel between *tefillah* and *korbanot*.
11. See Norman Lamm, *A Hedge of Roses*, pp. 82-86, where the theme of water as the medium of creation and symbolic rebirth is developed. See *Sefer ha-Hinukh*, *Metzora*, #173.
12. Rosh, *Berakhot*, 9:23. The talmudic passage calls for the pronouncement of each of the *berakhot* in association with the appropriate awakening gesture: "When he awakens let him say, *Elohai Neshamah . . .*; when he opens his eyes, let him say, *Barukh Poke'ah Ivrim*; when he straightens out and sits up, let him say, *Barukh Mattir Asurim . . .*" — all of which imply that one is first stirring in bed and not yet at the wash basin, when beginning the series of *berakhot*. (With regard to *birkat tefillin*, appearing, as well, in our talmudic text prior to *netilat yadayim*, see *Dikdukei Soferim*, *Berakhot*, p. 347, n. 80.)  
Rosh observes that this has been altered by contemporary custom, which requires *netilat yadayim* prior to the entire series of *berakhot* — all of which, he adds, are now recited in formal sequence, unrelated to the particular gesture. (See also *Sefer ha-Me'orot*, *Berakhot* [New York, 5724], p. 176; *Shitah le-R. Avraham Ishbili*, *Ginzei Rishonim* [Jerusalem, 1967], p. 496.) This pietistic departure from the talmudic norm is traced by *Sefer ha-Mikhtam* (*Ginzei Rishonim*, p. 120) to the period of the geonim. "R. Natronai Gaon, R. Amram Gaon and other geonim" are described by the *Mikhtam* as having "imposed a strict posture in this matter . . . in order that blessings be pronounced in a state of purity and cleanliness." (See also *Kol Bo*, *Din Me'ah Berakhot*, I; *Orhot Ḥayyim*, *Hilkhot Me'ah Berakhot*, 5.) In our text of *teshuvat R. Amram* (see n. 4 above), the restriction reads as a normative rule rather than an extra-legal stringency:

Once a man has slept, we assume that his hands have been active and have been in contact with his body. This being so, when he awakens he cannot pronounce a blessing until he



washes his hands, as it is written, 'Prepare to meet thy God, O Israel' (Amos 4:12). Therefore this washing was instituted, since one *cannot* pronounce a blessing nor utter the Divine name until he washes his hands . . . (Italics mine.)

Similarly, *Otzar ha-Geonim, Berakhot, Teshuvot*, pp. 135-36.

Several attempts are made in the literature of the *rishonim* to reconcile the apparently liberal talmudic text with a strict normative position. In the *Shitah le-R. Avraham Ishbili, ad loc.*, the suggestion is made that the talmudic text did not intend to list the *berakhot* in any definitive order. Rashba, on the other hand, granting the integrity of the talmudic sequence, argues that the pronouncement of these *berakhot* prior to washing is permitted talmudically only in circumstances where we may assume that one's hands have remained unsoiled — namely, where one has slept clothed (*teshuvah* cited by *Beit Yosef, O.H. 4. Talmidei R. Jonah*, agreeing with Rashba in principle, argue that the unique sanctity of their behavior permitted the sages of the Talmud the assumption that the night generally passes in cleanliness — an assumption not applicable in subsequent generations (*Commentary to Rif, Berakhot 60b*). (*Ma'adanei Yom Tov's* difficulty with the reference in *Talmidei R. Jonah* to "washing the hands and arising" may be resolved if we understand the washing as taking place at night prior to retiring. By virtue of their holiness, the sages would sustain the purity of the initial washing through the night. See *Commentary to Rosh, Berakhot, 9:6.*) Popular practice has replaced *Elohai Neshamah* with *Modeh Ani* (a formulation dating no earlier than the sixteenth century) as the morning's opening recitation, since the latter deliberately omits the Divine name. Immediately after its pronouncement the hands are washed. See end of n. 85, below; also *Eliyahu Rabbah, O.H. 1:4.*

Rambam, however, remaining true in practice to the plain sense of the talmudic passage (*Hilkhot Tefillah 7:4*), retains *netilat yadayim* in its position following several *berakhot*, insisting on the spontaneous pronouncement of each blessing at its appropriate moment (the plain sense of Rambam's view, as understood by *Kesef Mishneh* — a position disputed by *Sefer ha-Aggudah, Zera'im* [Jerusalem, 5729], p. 102 [see editor's note 83]). The Talmud, Rambam would argue, apparently values the virtue of capturing the moment and praising God in the immediacy of the various phases of the awakening experience over the normally vital concern for clean hands. (Note Hillel ha-Zaken's principle — *Barukh ha-Shem Yom Yom* [Betza 16a]: the merit of enjoying a delicacy and praising God at the very moment of acquisition, when the sense of thankfulness is most intense.) See Rambam, *Hilkhot Tefillah 4:3*, where *netilat yadayim shel shaharit* functions exclusively in preparation for formal prayer.

13. *Zohar, I, 184b* (Ashlag edition, *Parshat va-Yeshev, #114-15*).

14. Whether it is sleep per se — even by day — that precipitates the crisis, or nighttime slumber exclusively, is a debatable point amongst the kabbalists. See *Beit Yosef, O.H. 4*, and *Birkei Yosef, O.H. 4:6*.
15. On the experiences of the soul during the course of its heavenly ascent, according to various views in the *Zohar*, see I. Tishby, *Mishnat ha-Zohar, II* (Jerusalem, 5721), pp. 126-28.
16. According to a prominent strain of thought in the *Zohar*, the body — as distinct from the soul — is rooted in the negative realm of *sitra ahra*, the satanic domain of heavenly anti-forces — a notion reflecting a severe soul-body dualism (see *Zohar, II, 213b* [*va-Yakhel, #369-70*]). See Tishby's treatment of the position of the body in kabbalistic literature, *loc. cit.*, pp. 84-87.
17. See Tishby, *loc. cit.*, p. 125. Thus the parallel to the ceremonial of *parah adumah*, suggested by the *Zohar* (I, 184b [*va-Yeshev, #117*]): "And the pure shall sprinkle upon the impure" (Numbers 19:19), the biblical verse depicting the purification of the *tame met*, transferred by the *Zohar* to the cleansing of the hands in the morning. Also, the very term, *ruha mesa'ava* (unclean spirit), depicting the force of *tum'ah* which seeks out the soulless, sleeping body each night (see *Zohar sources, n. 19*) is the identical term used by the *Zohar* to describe the spirit contaminating an unburied corpse by night (thus the Kabbalah's severe attitude with respect to *issur halanat ha-met*). See *Zohar, III, 88b* (*Emor, #9*).
18. The extremities of the body — distant as they are from the controlling region of the brain, where holiness is considered to have its source — are particularly vulnerable to *tum'ah*. According to Ari, the fingernails function to protect the tips of the fingers from the forces of *tum'ah* seeking connection. Thus the popular Yiddish term, *negel vasser*, descriptive of *netilat yadayim shel shaharit*, when traces of *tum'ah* adhering tenuously to the body are washed away. See *Etz Hayyim* (Warsaw, 1890), II, 31:2, pp. 65-66. In the context of his larger treatment of the dynamics of *tum'ah*-penetration, Tishby briefly notes the protective function of the fingernails in his *Torat ha-Ra vaha-Kelipah be-Kabbalat ha-Ari* (Jerusalem, 5731), p. 78.
19. In addition to cited passage, n. 13, see also *Zohar, I, 10b* (*Hakdamat Sefer ha-Zohar, #171-72*); 53b (*Bereshit, 2, #321-22*); 169b (*va-Yishlah, #83*); 206b-207a (*va-Yigash, #34-39*); II, 213b (*va-Yakhel, #367-70*).
20. While incorporating in his *Shulhan Arukh* (O.H. 4) many of the kabbalistically-rooted considerations along with the strictly halakhic requirements, R. Yosef Karo clearly distinguishes between the two — observing in his *Beit Yosef* (*ad loc.*) that the *Zohar* material contains "hiddushim not found in the *posekim*."
21. See following note.
22. The initial citation of this *Zohar* passage is generally attributed in the

halakhic literature to R. Meir Ibn Gabbai (first half of sixteenth century), in his work *Tola'at Ya'akov*. Actually, the passage appears in this work (Constantinople, 1560, *Sod Birkat Netilat Yadayim*) without citation of source; however, its attribution to the *Zohar* on Ibn Gabbai's part may be assumed on the basis of his *Introduction*, where he describes his material as based primarily on "Midrasho shel Rashbi." No pronouncement of *hiyyuv mitah* appears in our text of the *Zohar*. The restriction itself may be intimated in a *Zohar* passage depicting the "early pietists" as preparing water at bedside before retiring (see earlier n. 12); however, the significance of the measure is linked in that passage to the pronouncement of *berakhot*, deemed forbidden prior to washing (*Zohar*, I, 10b [*Hakdamah*, #171]). An alternate reading of the immediately succeeding *Zohar* passage (#172), recorded by Avraham ben Mordecai Azulai (d. 1643) in *Or ha-Levanah* (see citation in *Hilufe'i Girs'a'ot*, *Zohar*, ed. Ashlag, Vol. 1, p. 171, n. 7), supports the position of *Tola'at Ya'akov* (confirming its source in a version of the *Zohar*) in all its severity, identifying the transgression involved in perpetuating the state of *tum'ah* on one's hands as a mystical form of idolatry. Since *tum'ah* is rooted in the heavenly anti-forces of *sitra aħra*, failure to immediately wash it away results in the retention of an alien god on one's hands. For this, one is "deserving of death at the hands of Heaven." *Birkei Yosef* (O.H. 1:1) sees in the *Or ha-Levanah* text a corroboration of *Tola'at Ya'akov's* position. Menahem de Lonzano (*Derekh Hayyim*, *Sh'tei Yadot* [Venice, 5378], p. 95a), however, unaware of the Zoharic basis of *Tola'at Ya'akov's* position, criticizes him directly, questioning both the idolatry theme and the "exaggerated" pronouncement of *hiyyuv mitah*. If at all required, he argues, the immediate rinsing of one's hands can be linked only to the recitation of the early morning *berakhot* (requiring clean hands, see above), which may be obligatory as soon as one awakens, as an immediate acknowledgment of God. R. Yosef Karo cites neither the condemnation nor the restriction in his *Beit Yosef* and *Shulhan Arukh*, to the astonishment of *Baħ* (O.H. 4), who subscribes to *Tola'at Ya'akov's* "Zohar citation." While *Baħ* refuses to reconcile himself with *Beit Yosef's* omission, except as a concession to popular laxity ("*mütav she-yiheyu shogegin . . .*"), *Shevut Ya'akov* (III [Lemberg, 1861], #1) makes the observation that it was omitted "because it is not mentioned at all in the Talmud or early *posekim*," and would appear, in fact, to be inconsistent with a talmudic passage (*Berakhot* 15a, requiring that one proceed immediately to the toilet [outside the house, as a rule] upon leaving bed, prior to washing the hands). The latter also notes that the four-*amot* notion is ignored in practice even by the most God-fearing devotees of the Torah. (See also *Eliyahu Rabbah* [O.H. 1:4].) *Magen Avraham* (O.H. 4:1) and *Eliyahu Rabbah* (*loc. cit.*) support *Tola'at*

*Ya'akov's* position (though *Eliyahu Rabbah* probes the possibility of its contemporary inapplication), but *Ĥatam Sofer* (O.H. 4), drawing support from de Lonzano, reacts sharply: "The early authorities already raised their voices [in criticism] over this."

Kabbalistic formulations of this sort — threatening death for ostensibly minor infractions — tend to create a climate of dread (see n. 88, below), reflected, for example, in the *she'elah* put to *Shevut Ya'akov* (*ad loc.*). Expressing incredulity at the widespread neglect of the four-*amot* rule, the questioner appeals not to the element of mitzvah that might be involved in the practice, but to the *danger* allegedly implicit in its violation, drawing, curiously, upon the talmudic principle, *ħamira sakanta me-issura* (*Hullin* 10a). In halakhic literature, *hiyyuv mitah* is not depicted as *sakanta*, for the weight of a Divine imperative is viewed in terms of its *injunctive* appeal (*issura*). *Sakanta* refers to practical, non-theological considerations, such as the restriction against drinking liquids that may have been exposed to poisonous creatures — a restriction distinguished from the religious demands of *issura* (see *Hullin*, *ad loc.*).

23. See latter note. In *Sefer Igra de-Pirka* ([Lemberg, 1858], p. 3a, #9), the immediacy notion is carried a step further. The author, R. Zvi Elimelekh Dinover (d. 1841), quotes a family tradition in the name of R. Moshe Zacuto, cautioning a man not even to stand before washing his hands in the morning, since this, in effect, intensifies the forces of evil — lending the *ru'ah mesa'ava* stature (*shi'ur komah*, the mystical term), the author himself adds.
24. See passage referred to in the beginning of n. 22. Also, *Zohar*, I, 184b (*va-Yeshev*, #117). The disputed reading of a particular *Zohar* passage intimates a link between the pronunciation of a *berakhah* with unpurified hands and the evil of idolatry, since defiled hands represent an idolatrous presence (see n. 22). According to one *Zohar* passage (III, 186a [*Balak*, #31]), a man is explicitly deserving of death for pronouncing a *berakhah* with soiled hands, since even a condition of physical contamination is rooted in *sitra aħra*. See also *Zohar*, 10b (*Hakdamah*, #172-73), with reference to *beit ha-kisse*.
25. See earlier note 12. In principle, even *Talmidei R. Jonah* agree that if one's hands have with certainty remained clean overnight, there could be no objection to pronouncing a *berakhah*. The *Zohar*, on the other hand, prohibits such by virtue of an objective state of *tum'ah* incurred overnight.
26. *Ibid.*, I, 184b (*va-Yeshev*, #116, 118). See below, note 49, where the talmudic reference in connection with *mayyim aħaronim* is shown to represent a totally different idea.
27. See n. 32, below.
28. See n. 14, above.

29. *Tum'ot ha-yotze'ot mi-gufo shel adam: zav, shikhvat zera, niddah, zavah* (Lev. 15:1-32).
30. *Berakhot* 57b. The contrast between the kabbalistic and talmudic perspectives is reflected in their interpretation of a talmudic passage depicting King David's caution not to sleep during the course of the night more than sixty breaths at a time (see *Berakhot* 3b, *Sukkah* 26b). In talmudic context, the significance of such restraint is pietistic, rendering the individual consistently available for *avodat ha-Shem*. But for the *Zohar* the implications are metaphysical. A sleep of 60 breaths imposes upon a man *ta'am mitah*, with its ramifications of loss of *neshamah* and subjection to the forces of the *sitra aħra* (see *Zohar*, I, 206b-207a [*va-Yigash*, #34-39]).
31. The entire notion of *tum'at yadayim*, even where it applies talmudically, is only a rabbinic injunction (see *Shabbat* 13b-15a; *Zavim* 5:12; *Hagigah* 2:5; *Hullin* 106a). The *Zohar's* ascription, therefore, of profound metaphysical implications to the state of *tum'ah* kabbalistically assigned the hands in the morning is inconsistent with the talmudic category. The substance of a rabbinic decree, as a human convention, cannot be traced to primal heavenly roots. It is only the authority of a *gezerah de-rabbanan* — not its specific content — that is biblically confirmed. This is the sense of the talmudic invocation (*Shabbat* 23a) of the biblical injunction, *lo tassur* (Deut. 17:11), with respect to *ner Hanukkah*, and the dictum (*Hullin* 106a), *mitzvah lishmo'a le-divrei hakhamim*, in support of *netilat yadayim le-hullin* (see Rambam, *Hilkhhot Berakhot* 6:2; *Sefer ha-Mitzvot*, *Shores* I; and implications of his position as understood by *Kiryat Sefer*, *Hakdamah*, Ch. 5; *Lehem Mishneh*, *Hilkhhot Mamrim*, 1:2; *Kinat Soferim*, *Sefer ha-Mitzvot*, *ad loc.*; *Meshekh Hokhmah*, *Parshat Shofetim* ["*lo tassur*"]). R. Eleazar ben Arakh's linkage of *netilat yadayim le-hullin* to a scriptural verse (*Hullin*, *ad loc.*) is only an *asmakhta* (see Rashi and *Tosafot*, *ad loc.*). Although the Talmud (*Shabbat* 14b; *Eruvin* 21b) finds support in a *bat kol* for Solomon's introduction of *netilat yadayim le-kodeshim*, it remains clear that Heaven's appreciation was extended not for the particular substance of the *gezerah* itself, but for the protection lent the *de-oraita* principle (see Rashi, *ad loc.*). It is true that particular talmudic passages threaten severe consequences for a failure to observe *netilat yadayim le-hullin* (*Eruvin* 21b, *Sotah* 4b). But such formulations are not depicted as inherent consequences of the *averah*. They represent, rather, severely-phrased rabbinic remonstrations, attempting to encourage submission to a decree which had met with resistance (see *Eduyyot* 5:6; *Berakhot* 19a). One is deserving of death not for violating the substance of the *gezerah*, but for disputing rabbinic authority in which the *gezerah* is rooted (see Rashi, *Sotah* 4b; similarly, *idem*, *Berakhot*, *ad loc.*, on basis for *niddui*).
32. *Tum'ah* for the Kabbalah is rooted in the realm of *sitra aħra*, a dynamic heavenly array of spiritually and physically destructive forces. (See I. Tishby's treatment of the kabbalistic conception of evil and its agencies through the period of the *Zohar*, in his *Mishnat ha-Zohar*, I, pp. 285-307.) While the talmudic view of *tum'ah* perceives it as a subjective state of alienation from the spirit, open to correction through a complementary spiritual initiative (*taharah*), the kabbalistic perspective sees the *tame* as having fallen into the clutches of objective agents of evil, who are "permitted to" and even "desirous of" exploiting the *tum'ah* situation through a dynamic extension of corruptive and destructive power surpassing the dimensions of the initial *tum'ah* breach. See, for example, *Zohar*, I, 53b (*Bereshit*, #319-20; also #317); III, 88b (*Emor*, #10). See following note.
33. With respect to both the biblical and talmudic concept, *tum'ah* is a subjective state, representing man's alienation from the realm of spirit. *Tum'ah* is not rooted, ontologically, in any objective source of evil, malicious and destructive, as the ancients, universally, had believed. See D.Z. Hoffmann, *Commentary to Sefer va-Yikra*, I, pp. 216-17, 221; Y. Kaufmann, *Toledot ha-Emunah ha-Yisre'elit*, Vol. 1, Bk. 2, pp. 403ff.
34. Whether *tum'at met* (or *tum'ah*, generally) is rooted in sin — as D.Z. Hoffmann, following S.R. Hirsch, assumes (*Commentary*, pp. 217-23) — is not critical in this context. The important factor is that the dynamic involved in *tum'ah* is a disruption of the living harmony of body and soul, the submission of body to the guidance of soul — a harmony which constitutes the essence of religious activity. (Thus the *tum'ah* involved in death, a death-like manifestation such as *tzara'at*, and the loss of potential life involved in *niddah* and *keri*.) See Lamm, pp. 81-84.
35. See following note.
36. See Rambam, *Hilkhhot Tum'at Okhelin* 16:8-9. Even on the assumption of a significant rabbinic position, during the Second Temple period and beyond, extending *tum'ah* and *taharah* outside the *mikdash ve-kodashav* and inclusive of the non-*kohen*, and even granting the pursuit of *taharah* as an end in itself, the underlying considerations were moral and spiritual — not in any way diabolical. See G. Allon, *Mehkarim be-Toledot Yisrael*, I, pp. 148-76.
37. The *mitzvat aseh*, *Kedoshim yiheyu l'Eloheihem* ([Lev. 21:6]; see Y. Perlow, *Sefer ha-Mitzvot le-Rasag*, I, p. 787), requiring that a *kohen* remain perpetually fit for the service of God, enjoining his contact with the dead (*Bava Metzia* 30a) — an obligation devolving even upon the *bet din* to compel his compliance (see *Sifra*, *ad loc.*; *Yevamot* 88b bases the community's obligation on the later verse, *ve-kidashto* [21:8] — see Rashi, *ad loc.*). Once having become *tame*, however, the *kohen* is under

no positive obligation, nor must the *bet din* compel him, to restore his purity. Only the *circumstance* of his anticipated return to the service of the *mikdash*, whenever he so chooses, would compel his purification. See *Sifrei* to Num. 19:12 ("Ve-im lo yithata . . ."). The relative claim of *mitzvat tevillah* (noted by Rambam, *Sefer ha-Mitzvot, Aseh* #109), *conditional* upon the expectation of the *tovel* to enter the *mikdash* (see also *Hilkhot Tum'at Okhelin* 16:10), would apply equally to any purifying measure involving the *kohen*. See previous note.

38. The reference in *Berakhot* 51a, advising that a man not have his hands washed in the morning by one who has not yet washed his, suggests — in terms of its context — a demonic interpretation. However, it is significant to note that this passage is not cited as a halakhic norm by the *rishonim*, generally (though *Piskei Rid* quotes the restriction in his compendium [*Berakhot* (Jerusalem, 5724), p. 152] and Maharam Rothenberg is quoted in several sources as lending it normative status (*Kol Bo, Hilkhot Netilat Yadayim*, 23; *Orhot Hayyim, Netilat Yadayim*, 19; *Tashbetz*, 277). The *rishonim*, as a rule, pass over it because it is not derivative of the halakhic method, emerging instead from subjective visionary encounters with the angelic world (R. Ishmael with *Suriel* and R. Joshua b. Levi with *Malakh ha-Mavet*; see R. Joshua b. Levi's elaborate such encounter in *Ketubbot* 77b). While incorporating the restriction in his *Shulhan Arukh* (O.H. 4:11), *Beit Yosef* (O.H. 4) acknowledges its tenuous halakhic character, when he classifies it among those "*hiddushim*" of the *Zohar* (I, 184b [*va-Yeshev*, #117]) "not found in the *posekim*." His citation of the talmudic passage in confirmation of the restriction in no way diminishes the fact that its primary source, in his eyes, is the *Zohar*, without which it would have remained an aggadic obscurity, together with the two other precautions mentioned with it. Thus *Be'er ha-Golah's* deliberate citation (unlike *Gera*) exclusively of the *Zohar* passage as the source of the rule incorporated in *Shulhan Arukh*.

(Note a parallel phenomenon in *Shulhan Arukh*, Y.D. 359:2, where, despite a possible link to our talmudic passage, *Be'er ha-Golah* limits his citation, once again, to the appropriate *Zohar* passage. This is consistent with *Beit Yosef*, who, in this case, makes no reference at all to any talmudic parallel. Thus, the citation in *Berakhot* 51a by *Ein Mishpat Ner Mitzvah* of the ostensibly correlative Y.D. passage is not accurate.)

Several *rishonic* works (with variations) call for the rinsing of the hands — at pain of loss of mind — following any of a series of activities, such as, in addition to arising in the morning, leaving the bathroom or bathing facility, engaging in sexual relations, paring one's nails, removing one's shoes, touching one's legs or any unclean or sweaty part of the body, washing one's hair, delousing one's clothes, touching the

penis, visiting or coming into contact with the dead (see *Siddur Rashi*, pp. 280-81; *Kol Bo*, 23; *Orhot Hayyim, Netilat Yadayim*, 10; see also *Shulhan Arukh*, O.H. 4:18). The threatened consequences suggest a demonic notion, mental derangement through an evil spirit, in clearly occult terms. Two points, however, are significant. First, this passage is not of talmudic origin. Second, it is cited in at least four works (*Kol Bo*, 23, *Orhot Hayyim*, *ad loc.*; Mordecai, *Berakhot*, end of 193, 194; *Tashbetz*, 276) as a "cleanliness" measure, and in four sources (*Kol Bo*, *ad loc.*; Mordecai, *ad loc.*; *Tashbetz*, *ad loc.*; Abudarham [citing *Tashbetz*], end of work) no mention is made of any ominous consequences.

39. *Shabbat* 109a.  
 40. *Ibid.* 108b.  
 41. *Ibid.* 109a. R. Muna's repeated reference to the "cutting off of such a hand" is understood as a hyperbole. R. Muna's intention is to severely rebuke the carelessness of such gestures with an unwashed hand.  
 42. *Rah* (*ad loc.*) disengages R. Nathan's statement from any connection with the rinsing of the hands, when he describes *Bat Horin* as located on the eye. (His reading of the talmudic text omits mention of the hands. Similarly, see *Dikdukei Soferim, Shabbat*, *ad loc.*) Several *rishonim* ignore R. Nathan's passage in their talmudic compendia. See *Sefer ha-Me'orot, Shabbat* (New York, 5724), p. 143; *Piskei Rid, Shabbat* (Jerusalem, 5724), p. 403; *Sefer ha-Aggudah, Mo'ed*, I (Jerusalem, 5726), p. 43; Rif, Standard editions of *Shas*. Rambam (*Hilkhot Tefillah* 4:3), too, obviously denying the normative weight of R. Nathan's statement, formulates the obligation of morning *netilah* with no mention of any three-fold procedure.  
 43. See *Tosafot, Yoma* 77b, *Hullin* 107b, equating *Bat Horin* (identified by *Tosafot* with *Bat Melekh*) with the "filth of mud and excrement," found on the hands before the morning *netilah* (see also *Shabbat* 67a, reference to *Bar Tit* and *Bar Tina*, demons of mud, noted below, n. 45). Similarly, *Shibbeta*, a *ru'ah ra'ah* distinguished from *Bat Horin* by R. Tam (unlike *Rashi*), but associated, as well, with unhygienic conditions anytime throughout the day — a cause of infant mortality in the wake of the feeding process (see *Tosafot*, *ad loc.*, and *Tosefot Yeshanim, Yoma* 77b). According to the *Arukh* ("*Shibbeta*"), the fatal effects of *Shibbeta* are a result of the mother imprudently nursing her child immediately upon her return from the toilet or river, without washing her hands. See also *Ta'anit* 20b, where rinsing the hands is a prudent precaution against *Shibbeta*.  
 Rambam altogether rejects the normative weight of R. Nathan's *Bat Horin* statement, omitting reference to any three-fold rinsing requirement in the morning (see n. 42). A one-step aesthetic washing in preparation for prayer is the sole consideration. He does, however,

codify the mother's obligation to wash her hand on Yom Kippur prior to feeding her child (*Hilkhot Shevitat he-Asor* 3:2), a rule attributed by Abbaye, in the talmudic discussion (*Yoma* 77b, *Hullin* 107b), to the spirit *Shibbeta*. Rambam, however, making no mention of *Shibbeta*, apparently accounts for the rule on the basis of the earlier part of the *sugyah*, which refers to a concern for "mud and excrement." Rambam's disparaging view of the occult is well known (see *Perush ha-Mishnah*, *Avodah Zarah* 4:7), and rather than lend the *Shibbeta* or *Bat Horin* passages a sympathetic interpretation, he simply discounts them. Note also his obliviousness to the *shed* discussion in *Yevamot* 122a and *Gittin* 66a. *Lehem Mishneh* (*Hilkhot Shevitat he-Asor*, *ad loc.*), therefore, operates on an unlikely premise, when he assumes that Rambam is necessarily committed to the normative weight of the *Shibbeta* and *Bat Horin* passages. See n. 49.

Rambam is more respectful of Mishnaic references to *ru'ah ra'ah*, to which he lends, in context, a psychological connotation (see n. 46).

44. See R. Hai's definition of *ruhot* as earthly phenomena, "contained within a material frame like air within a sac" (*Otzar ha-Geonim*, *Gittin*, *Perushim*, p. 238).
45. Thus injurious spirits are associated in talmudic literature with latrines, deserted ruins, etc. See, for example, *Gittin* 70a, *Kiddushin* 72a, *Berakhot* 3a-b. Note also, in *Shabbat* 67a, reference to *Bar Tit* and *Bar Tina* (sons of mud), demons of filth. See earlier n. 43.
46. *Ru'ah ra'ah* will, at times, identify a source of emotional disturbance (see *Mishnah Shabbat* 2:5, *Eruvin* 4:1, and commentary of Rambam [*ad loc.*], who understands the phenomenon as a subjective, internal condition; note Yosef Kafaḥ's corrected translation [*Mishnah*, *Seder Mo'ed* (Jerusalem, 5724), p. 75] of Rambam's comment on *Eruvin*, *ad loc.*, and his n. 1, where the misleading sense of the standard translation is exposed). Even those *rishonim*, who, unlike Rambam, would define psychologically disturbing spirits as objective entities, acting upon the human being *from without* (as in *Yevamot* 122a and *Gittin* 66a, passages ignored by Rambam — see n. 43), would nonetheless perceive them in terms of an empirical health hypothesis, denying that they are celestial figures requiring ritual counterattack. Associated with circumstances of isolation (such as fields, mountain-tops, etc., as noted by *Tosafot*, *Megillah* 3a, *Yevamot* 122a, *Gittin* 66a, *Sanhedrin* 44a), where a man is particularly vulnerable to attack (by beast, man, etc.), these spirits were understood as objective agents of derangement, assaulting a defenseless personality. Much like the hypothesis of *ru'ah ra'ah* as an objective agent of physical disease, impinging upon the body in unhygienic circumstances, this theory — the psychological counterpart of the first — held *ru'ah ra'ah* to function as an objective agent of emotional disease, penetrating the body in situations of insecurity. And

just as the remedy for physical illness is pragmatic — the maintenance of good hygiene — so too the remedy for emotional illness — avoiding situations of isolation and abandonment. Thus the position of *Tosafot* (see above) that no such spirits are present in urban areas, the security of the city protecting the personality against susceptibility to emotionally-debilitating "microorganisms" (our term).

Obviously, there are many aggadic passages depicting evil spirits in terms that clearly reflect the popular belief in the occult, replete with magical anti-measures. One could not legitimately lend such depictions either a hygienic or psychological interpretation. But the point is that such passages are never taken seriously enough by *Ḥazal* to be lent normative halakhic significance. These represent expressions of aggadic conjecture (see n. 50), and are never permitted to cross the line into the halakhic realm as bases for halakhic requirement. In the case of our *Bat Horin* passage, on the other hand, where a seriously recommended daily rinsing procedure is traced to a concern for a "spirit," the context is not at all occult. If not a ritual halakhic consideration, as we have shown, it is nonetheless a serious hygienic recommendation.

47. The question of the veracity of talmudic medical theory from our contemporary perspective in no way prejudices the integrity of *Ḥazal* as transmitters of an unimpeachable Divine tradition. The two areas are not to be confused. *Ḥazal* pursued medicine as men of broad interest, but they carefully separated such investigation — empirical by its very nature — from the realm of religious law, masoretically-based. Note the *teshuvah* of R. Sherira Gaon, addressed to this issue (*Otzar ha-Geonim*, *Gittin*, *Teshuvot*, p. 152):

We must tell you that our rabbis were not physicians. Their recommendations were ordinary cures based on their experience with the ill, and were not intended as religious law. Therefore, do not rely on these remedies; for there is no one who would make use of them except after investigating and establishing with certainty through expert physicians that the particular cure will not harm him. No one would wish to endanger his life . . .

An opposing view emerges in the writings of the early *aḥaronim*, who would attribute the inefficacy of a talmudic cure to our inability to "thoroughly understand" its operation (*Sefer Maharil* [B'nei Berak, 5719], *Likkutim*, p. 168; quoted by R. Akiva Eger, Y.D. 336:1) or to "changes" in circumstance of place or time (Maharshal, *Yam shel Shelomo*, *Hullin* 8:12), rather than to the inherent uselessness of the remedy. (Jakobowitz, *Jewish Medical Ethics*, Introduction, xxxix, fails to appreciate the critical conflict in principle dividing the geonic position of R. Sherira and that of the *aḥaronim*.) Both Maharil and

Maharshal make reference to an *injunction* against relying on talmudic cures (Maharshal claiming even an "early ban" [*herem kadmoni*] to this effect), since their inefficacy — explained unkindly — could bring the entire talmudic system to ridicule.

48. True, R. Nathan refers to a *three-fold* washing, a figure which could suggest an occult dimension (see J. Trachtenberg, *Jewish Magic and Superstition*, p. 119). But whatever the significance of the specific number of rinsings, the *function* of the procedure remains clearly hygienic, as the context of the *sugyah* confirms. Furthermore, the three-fold execution of a procedure is a general talmudic convention, representing emphasis, establishing tenure, and perhaps in this case the certainty of an effective cleansing. Note the observation of Rashba (referred to in text, below — see n. 59) to the effect that "*rehitzah* would suffice" for the removal of *Bat Ḥorin*, a statement which would suggest that the procedure, a practical measure, would have no formal requirements. Rashba's immediate point is to deny the necessity of a cup in removing *Bat Ḥorin*, but the intimation is that neither may a three-fold procedure be vital. See also the phraseology of the *rishonim* (Rashi, Meiri, *Hiddushei Ran*, *Shabbat* 109a), describing *Bat Ḥorin's* insistence on three rinsings as intended to insure a "good washing" (*le-notelan yafeh*) — a term which suggests the hygienic consideration, best served with a thorough cleansing.
49. Similarly, the talmudic reference (*Hullin* 105b) to *ru'ah ra'ah* as the basis for avoiding spillage of *mayyim aḥaronim* to the ground. In its fundamental rationale for *mayyim aḥaronim*, the Talmud distinguishes the procedure from *mayyim rishonim* as a health measure rather than a ritual gesture — geared toward removing from the fingers traces of Sodomite salt, a seasoning which could blind the eye upon contact (*ibid.*). Abbaye, in explanation of the *baraita's* restriction against spilling *mayyim aḥaronim* to the floor, initially attributes it to *zuhama* — an aesthetic concern for the unsavory condition of the water in which one's soiled fingers had been rinsed. His conversion subsequently to the *ru'ah ra'ah* notion need not presume anything more than a belief in the presence within the grimy water of some hypothetical, physically pollutive agent. (Note, for example, Abbaye's reference in the immediately following passage to *ru'ah tzereda*, which R. Gershom and Rashi understand as a pathological condition. See J. Preuss, *Biblical and Talmudic Medicine*, trns. and ed. by Fred Rosner [New York and London: Sanhedrin, 1978], p. 306, n. 99; also M. Jastrow, *Dictionary of the Talmud*, p. 1299.) There is no basis in this *sugyah* for fixing the source of *ru'ah ra'ah*, as the Kabbalah does, in some celestial realm of malevolent forces. (The closest the classic literature comes to a mystical *mayyim aḥaronim* notion is in the *She'iltot's* definition of *zuhama* as the state of one's hands following consumption of foods unworthy for

offering on the *mizbe'ah* [*Yitro*, *She'ilta* #54; see *Bah*, O.H. 181]. This concept, however, while mentioned by Ran [*Commentary* to *Rif*, *Hullin* 105b, in the name of "*aḥerim*"] and Rashba [*Torat ha-Bayit* 6:5, in the name of "*yesh meforeshim*"], is subordinated to the position of R. Hai, who interprets *zuhama* in a physical sense as a soilage of the hands associated with moist foods [see Ran, *ad loc.*; Rashba, *ad loc.*; Meiri, *Beit Yad*, p. 219, who comments on the position of the *She'iltot*, "*ve-eino nireh kelal'*"]. Ra'avad [*Hilkhot Berakhot* 6:2] and Rosh [*Commentary* to *Berakhot* 8:6], oblivious to the *She'iltot*, also support the physical-soilage position. According to *Netziv* [*Ha'amek She'alah* 54:13], the basis for the *She'iltot's* notion — distinguishing sacrificial from non-sacrificial foods at the table — is tenuous, in terms of our extant talmudic sources.)

However Abbaye's *ru'ah ra'ah* reference be understood — whether as an occult or as a pathological category — it is not a vital element in the *sugyah*, easily discounted as an aggadic component. R. Amram Gaon, in his treatment of *mayyim aḥaronim* (*Otzar ha-Geonim*, *Pesaḥim*, *Teshuvot*, pp. 121-22; *Seder R. Amram*, II, p. 218), ignores it (as he does *Bat Ḥorin* in relation to *netilat yadayim shel shaharit*; see n. 4). See also *teshuvat* R. Natronai Gaon, *Otzar ha-Geonim*, *Berakhot*, *Teshuvot*, pp. 134-35. Many *rishonim* omit reference to it, confining themselves, as do the geonim, either to the *melaḥ sedomit* or *zuhama* rationale (see Rashba, *Torat ha-Bayit* 6:5; *Shitat R. Avraham Ishbili*, *Berakhot*, p. 485; *Sefer ha-Ner* [Jerusalem, 5718], p. 114; *Piskei Riaz*, *Berakhot*, p. 84; *Perush Rashbatz*, *Berakhot* [B'nei Berak, 5731], p. 310; *Sefer ha-Mikhtam*, *Berakhot*, p. 111; Meiri, *Beit Yad*, p. 219, *Beit ha-Behirah*, *Berakhot* 53b; *Or Zaru'a*, pp. 31-2). Rambam, who, as we have noted (see n. 43), dismisses amoraic *ru'ah ra'ah* as a legitimate halakhic category, refers only to *melaḥ sedomit* and *zuhama* in his *Mishneh Torah* (*Hilkhot Berakhot* 6:3,16; see also Ra'avad 6:2,16), ignoring Abbaye's reference to *ru'ah ra'ah*, which he views, obviously, as an occult notion rather than, more kindly, as an admissible pathological category. The misleading citation by *Ein Mishpat Ner Mitzvah*, *Hullin* 105b, of a reference in Rambam (*loc. cit.*) to *ru'ah ra'ah* is based only on a conjecture of *Kesef Mishneh* (*ad loc.*).

50. R. Hai Gaon's reservations over the literalness of *ru'ah ra'ah* passages are intimated in several of his comments. Reflecting on the Asmodeus aggadah (*Gittin* 68a-b), where the activity of the king of the demons is portrayed in rich mythological terms, R. Hai makes cryptic allusion to "incorrect things" (*devarim she-einam nekhonim*) in the account (*Otzar ha-Geonim*, *Ḥagigah*, *Teshuvot*, p. 22). The "correctness" of aggadic content is measured, according to a *teshuvah* of R. Sherira Gaon, by the rule of reason: "Those amongst them [aggadic passages] which are correct [*nakhon*], namely those which reason and Scripture sup-

port, we accept . . ." (*Sefer ha-Eshkol*, ed. Auerbach, II, p. 47; *Otzar ha-Geonim*, *Hagigah*, *Perushim*, p. 60). See also *teshuvat* R. Hai (cited in immediate succession to R. Sherira's), where the directive to approach aggadah critically is established, so as to "remove error [*shibbush*]" through sound interpretation, and distinguish those passages which are "correct [*nakhon*] and appropriate" from those upon which "we do not rely." (See also *Otzar ha-Geonim*, *Berakhot*, *Perushim*, p. 91, n. 10.)

In a *teshuvah* interpreting the talmudic reference (*Eruvin* 18b) to Adam's having fathered "*ruhin ve-shedim ve-lilin*" while separated from Eve following the sin, R. Hai first cites the occult explanation, according to which demonic female spirits procreate through the semen discharged by men (in this case Adam) whom they possess. But he immediately reverts to a second explanation, in terms of which the spirit-progeny were produced by Eve, who inseminated herself artificially from Adam's discharge (*Teshuvot ha-Geonim*, ed. Musafia, #25). This interpretation, inconsistent with the plain sense of the talmudic passage, can only have been intended to put to question the literal ascription of a procreative function to demonic spirits (see *Hagigah* 16a) as independent beings.

See also Assaf, *Tekufat ha-Geonim ve-Sifrutah*, pp. 261ff.

51. Thus the use of the term *rehitzah* in the context of the *sugyah* in *Shabbat*, rather than the term *netilah*, which the Talmud reserves for ritual washing — a phenomenon recognized by Preuss, *Medicine*, p. 525.
52. Indicative of the empirical, hygienic perception of *ru'ah ra'ah* held by the talmudic tradition is the frank position of *Tosafot* (*Yoma* 77b, *Hullin* 107b; see also Maharshal, *Yam shel Shelomo*, *Hullin* 8:10) discounting the impact of such spirits (and, accordingly, the value of the various countermeasures) as no longer operative in our day. Apparently, the entire phenomenon of *ruhot ra'ot* was recognized as an empirical hypothesis and since the aforementioned authorities — given, perhaps, the improved hygienic conditions of their day (note the "change of place and time" referred to by Maharshal, *loc. cit.*, 8:12; see n. 47, above) — no longer observed any obvious link between unwashed hands and disease, the hypothesis lost its weight (see earlier n. 49, position of *posekim* on the *ru'ah ra'ah* of *mayyim aharonim*). Clearly, were *ru'ah ra'ah* viewed as a heavenly, spiritual phenomenon — a manifestation of the celestial anti-forces of *sitra ahra* — it could not have been ruled out of existence!

An analogous case is the pathology associated by the Talmud (*Pesahim* 76b) with a portion of fish roasted along with meat. Rosh extended the restriction to the consumption of successive courses of each, and is reported to have washed his hands and cleansed his mouth between dishes, in such cases (see *Tur*, Y.D. 116 and *Shulhan Arukh* 116:2, 3;

also *Tur*, O.H. 173 and *Shulhan Arukh* 173:2). Magen Avraham, however, recognizing the absence in his day of any such ill effects, suggests the possibility that no threat any longer exists. Firstly, he notes, the human constitution undergoes change from generation to generation, and, secondly, reactions to diet vary in different lands (O.H., *ad loc.*).

53. See n. 43.

54. Although the *rishonim* refer the concern of R. Muna for the unwashed hand — and in his wake, that of R. Nathan — to the morning setting, prior to *netilat yadayim shel shaḥarit*, this does not identify *ru'ah ra'ah* as the primary purpose of the morning *netilah*. Such is merely a secondary benefit of the mitzvah. Thus the recommendation of an abrasive material in the absence of water (see n. 8). Although an abrasive will not *hygienically* cleanse the hands (that is, eliminate *ru'ah ra'ah*), it will sufficiently prepare them, *aesthetically*, for the purposes of *tefillah* (see n. 7); and this is the primary purpose of the morning ceremonial. For the Kabbalah, however, water is indispersable, since the ceremonial is seen as an abluion purifying mystical *tum'ah*.

55. This is clearly the implication of the *Zohar's* position, which identifies a *ruha mesa'ava* (*ru'ah tum'ah*) as the focus of the morning *netilah* (see sources cited in notes 13, 19). Ari explicitly defines the talmudic *Bat Melekh* (identified with *Bat Horin* — see n. 43) as a kabbalistic *ru'ah ha-tum'ah* (see *Sha'ar ha-Kavvanot*, I [Tel Aviv, 5722], p. 6).

56. See Ari's identification of the terms *Shibbeta* and *Bat Melekh* (see n. 43), which we have shown to represent agents of *physical* pollution, with *ru'ah ha-tum'ah*, the celestially-rooted agent of *spiritual* pollution (*ibid.*). Ari even lends the activity of this *ru'ah* the trappings of conscious — even tactical — intention, by elaborating, literally, upon the talmudic reference (*Shabbat* 109a) to its "insistence" (see n. 48): "*Shibbeta* is a princess [*Bat Melekh*], and temperamentally resists, skipping and jumping [from hand to hand] until thoroughly removed" (*ibid.*). The elevation of demonology to a metaphysical level — with its severe dualist implications — is developed initially in the Gnostic Kabbalah of the thirteenth century. See G. Scholem, "Kabbalot R. Ya'akov ve-R. Yitzhak B'nei R. Ya'akov ha-Kohen," *Madda'ei ha-Yahadut*, 2 (1927), pp. 193-97, 244-64. The centrality of this idea in the *Zohar* is treated by Tishby, *Mishnat ha-Zohar*, I, pp. 287ff. In its most extreme form, the doctrine appears in the sixteenth century thought of Ari. See Tishby, *Torat ha-Ra v'eha-Kelipah*, pp. 62-90.

57. See earlier n. 48.

58. This posture is typical of the kabbalistic perspective on *ta'amei ha-mitzvot* generally. Rather than interpret the mitzvah-act as addressed to the immediate human context, with the purpose of infusing mundane activity with value, the Kabbalah defines the impact of the

mitzvah-act primarily in celestial terms — to coordinate the *sefirah*-powers of the Divine personality (such as *hesed* and *din*), and to contain, particularly, the heavenly forces of Satan, in consequence of which the corresponding earthly manifestation of these forces would also be righted. See Scholem, *Major Trends in Jewish Mysticism*, pp. 28-30, 230-33; and his *On the Kabbalah and its Symbolism*, pp. 98-100, 118-157; also Tishby, *Mishnat ha-Zohar*, II, pp. 429-442; I, pp. 290-92.

- 58a. See earlier note 43.
59. *She'elot u-Teshuvot Rashba*, I:191; also cited in *Beit Yosef*, O.H. 4.
60. See *Zohar*, I, 198b (*Miketz*, #118); II, 154b (*Terumah*, #520-21). *Beit Yosef* (O.H. 4) notes the apparent inconsistency of the two sources. The former passage indicates that the right hand be cleansed first, through a flow of water tendered by the left; while the latter passage suggests the reverse, the initial rinsing of the left hand by the right. He ultimately reconciles the sources, by accommodating the text of the second passage to the sense of the first. The cup is taken in the right hand, initially (*Shulhan Arukh*, O.H. 4:10) — establishing the prevalence of *hesed*, the immediate source of the purifying flow (see n. 64) — but the water is not poured. The cup is passed to the left hand, which pours its contents upon the right — a submissive gesture, symbolizing the subservience of *din* to *hesed*. Now the procedure is reversed, the right hand pouring water upon the left — a manifestation, by this time, of the dominance of *hesed* over *din*.
61. The kabbalists are divided on the question of the three-fold repetition of the right-to-left sequence (described in n. 60). According to *Seder ha-Yom* ([see below, end of n. 85], p. 3a), for example, the water, whenever it is poured, is to be poured three times *consecutively*, first on the right hand, then on the left. According to Ari (*Sha'ar ha-Kavvanot*, p. 6), on the other hand, the water must be poured over each hand three times *alternately*, the generally accepted practice. Ari links the requirement to the elusive character of this *ru'ah ra'ah* (see n. 56, above).
62. See *Zohar* sources cited in n. 60; also *Zohar*, I, 184b (*va-Yeshev*, #116, 118).
63. See sources cited, n. 60.
64. That is, *binah* (see Ashlag, *Perush ha-Sullam*, *va-Yeshev*, following #119). The "waters of *hesed*" (*meimei ha-hesed*) which prevail over *din* (see, for example, *Sha'ar ha-Kavvanot*, p. 6) originate themselves in *binah*. *Binah*, in fact, according to a dominant *Zohar* theme, is the source of *neshamah*. See Tishby, II, pp. 23-6.
- 64a. See earlier n. 48.
65. See earlier n. 6.
66. See earlier n. 8. See also previous note.

67. See earlier n. 7.
68. See below.
69. See earlier note 16. The Kabbalah, operating within a dualistic framework, views the overnight separation of soul and body as a return of the soul to its spiritual source, and thus a potentially fatal abandonment of the body to its source in the realm of deterioration and evil. The "trace" of association with the body, maintained overnight by the soul even according to the Kabbalah (see *Zohar*, I, 83a [*Lekh Lekha*, #146]; II, 215b [*va-Yakhel*, #404-405]), is a patronizing concession, certainly not in accord with the principal thrust of the soul's ascent. In fact, one *Zohar* passage (II, 215b [*va-Yakhel*, #404]) depicts a resistance on the part of the remaining trace of soul — the physical principle, *nefesh*, located in the blood and under the nighttime domination of *sitra aḥra* — to the return of the spiritual principle, *neshamah*. In another passage (I, 92a [*Lekh Lekha*, #362]), the corruption of soul at the hands of body, its repugnant partner, is intimated in the Heavenly judgment and condemnation to which the soul is subjected nightly. Josephus (*War*, VIII, 8:7) ascribes to Eleazar ben Jair at Masada a dualist position, depicting sleep as providing the soul a fulfilling release from the burden of its association with the body, a demonstration of the welcome prospect of death which "frees" the soul from the "miseries" of the body. But this view, notes Urbach (*Emunot ve-De'ot Hazal*, pp. 220-21), is rooted in a Hellenistic-Gnostic body-soul dualism, and stands in sharp contrast to the talmudic view. (See also W. Hirsch, *Rabbinic Psychology* [London, 1947], pp. 154-55.) While distinguishing the elements of body and soul, the talmudic perspective views them as constituting an organic unity. As we have observed in the body of our paper, sleep does not occasion the soul's welcome abandonment of the body. Rather, in the interest of the body, it "ascends" to draw renewed life, and remains, furthermore, in uninterrupted association with the body. See earlier notes, 15, 16.
70. See *Bereshit Rabbah* 14:9; *Yalkut Shimoni*, *Bereshit* 20, *Kohelet* 969; *Yalkut Meḥiri*, *Tehillim*, 150 (#18).
71. See *Bereshit Rabbah*, *ad loc.*; *Yalkut Shimoni*, *Kohelet*, *ad loc.* See Urbach, *Emunot ve-De'ot*, p. 220. Also, n. 86, below, comment of R. Benjamin in *Shibbolei ha-Leket*. As for a kabbalistic parallel to a continued association overnight of body and soul, see n. 69, above. The opposing views are reflected in contrasting definitions of the aspect of soul involved in our context. The Kabbalah views the overnight ascent of the soul as involving the spiritual dimension, ascending by virtue of its fundamental incompatibility with body — that is, the *neshamah*, distinguished from *nefesh*, as in *Zohar*, II, 215b, cited in earlier note 69. (Although the *Zohar* terminology may not be consistent



on this point — in I:83a, for example, it is the *nefesh* that ascends to its spiritual source, and in I:10b the *ru'ah* — nonetheless, the concept remains clear: it is the spiritual dimension that ascends.) The Midrash, on the other hand, views the ascent as involving a corporate aspect of soul — the principle of physical life animating the body — which “ascends” for the purpose of drawing renewed vitality to sustain the body. (Neither are the midrashic passages consistent in their terminology. R. Meir [citations in n. 70, above] refers both the immediate physical function of soul, as well as its rejuvenating ascent, to *neshamah*, while in passages preceding his statement the two functions are separated: the immediate animation of body is ascribed to *neshamah* [from *neshimah*, breath], the ascent to *ru'ah*. In the “weary-soul” midrashic passage [cited in n. 74], the rejuvenating ascent is ascribed to *nefesh*.)

72. The closest the talmudic-midrashic tradition comes to any overnight crisis notion is the following passage (*Bereshit Rabbah* 14:9; *Yalkut Shimoni, Kohelet*, 969):

Should God set His mind to taking a man's life, his spirit [*ru'ah*] is already in His hand [having ascended when sleep befell him], and his soul [*neshamah*, his breath] could be gathered up within his body [confining his breath to one point within the body, as a result of which the body as a whole would not be sustained — see M. Mirkin, *Midrash Rabbah* (Tel Aviv, 1968), I, pp. 106-07] . . .

Despite its ominous tone, this passage refers to no metaphysical crisis inherent in the dynamics of sleep. It is, rather, a moralistic warning, advising a man to take to heart that he is particularly vulnerable to Divine punishment during sleep, should he ever be adjudged unrighteous. In fact, the concluding segment of the passage reports God's considerate dismissal of the death-option and his ongoing maintenance of the *neshamah* within the body to warm it. Thus the “ascent” of the *ru'ah* is in no way a threatening abandonment. Similarly, *Devarim Rabbah* 5:15.

73. The notion of “trust” in God's overnight restoration of the soul is rooted, according to the midrashic tradition, in Psalm 31:6 (a reference adapted by the poet in the concluding segment of *Adon Olam*, which was recited originally before retiring — see talmudic basis for pronouncing this verse, *Berakhot* 5a). See *Midrash Tehillim* 25:2, cited in part in the body of our paper immediately below. The Kabbalah, too, subscribes to the overnight trust notion on the basis of the above verse. However, the issue for the Kabbalah is not trust in the reinvigoration of a weary soul, but in the very restoration of the soul intact. In fact, in several *Zohar* passages, it is not only the body that is endangered by the ontological prospect of an unrestored soul, but the soul itself that is

threatened with Heavenly judgment and destruction. See *Zohar*, III, 119a [*ba-Midbar*, #41-45]; I, 92a [*Lekh Lekha*, #362].

74. *Midrash Tehillim* 25:2; *Yalkut Shimoni, Tehillim* 702.  
 75. *Bereshit Rabbah* 78:1; see also *Midrash Tehillim* 25:2; *Eikhah Rabbah* 3:21; *Yalkut Shimoni, Tehillim* 702.  
 76. See W. Hirsch, *Rabbinic Psychology*, p. 147, n. 68, who quotes Tertullian and Athenagoras' citation of the argument for bodily resurrection based on sleep — a temporary suspension of animation followed by a return of greater strength.  
 77. See n. 30, earlier.  
 78. If anything, it is precisely the contrary that is true. Death was perceived by the ancient mind as a form of sleep, and thus, upon death, the soul was viewed as having only temporarily taken leave of the body, surely to return. So that rather than define overnight sleep ominously, in terms of a death-crisis, death was viewed hopefully and expectantly as a passing episode of sleep. See Hirsch, *Rabbinic Psychology*, p. 22.  
 79. *Berakhot* 60b. The pronouncement of this *berakhah* as the first utterance each morning raised a series of problems in the literature of the *rishonim*. First, the recitation of a *berakhah*, involving the *shem ha-Shem*, with soiled hands (see earlier note 12). Second, the formulation of a *berakhah* without the standard *Barukh-atah-ha-Shem* introduction, a phenomenon normally limited to a *berakhah* positioned in sequence following a previous blessing, where the *hatimah* of the earlier *berakhah* obviates the need for a *petihah* in the later one. *Elohah Neshamah*, as the opening morning *berakhah*, stands in no such sequence. Several solutions were suggested: a) The *berakhah* is, in fact, in sequence — following *birkat ha-Mappil*, recited upon retiring the previous evening (Ra'avad, *Teshuvot u-Fesakim* [Jerusalem, 1964], 44; Meiri, *Berakhot* 60b). b) As a *berakhah* lacking *keva*, fixed application (since it is contingent on prolonged sleep), it does not warrant the standard introduction (Ra'avad, *loc. cit.*). c) *Elohah Neshamah*, as a (particular type of) *birkat hoda'ah*, takes no *petihah* (*Tosafot, Berakhot* 14a, 46a, *Pesahim* 104b). The latter point is developed along two planes: 1) The very theme of a *birkat hoda'ah* implicitly expresses the content of the missing *petihah* — namely, that God reigns supreme (*Shibbolei ha-Leket*, 2, in the name of *yesh meforeshin*). 2) A *birkat hoda'ah* of this type addresses a delayed benefit — in this case, the ability, once again, to function physically, a development which will first become manifest as the awakening process progresses. As such, it must open with an immediate identification of the source of the benefit (*neshamah she-natata bi*), lest the *barukh-atah* formula, addressing an undefined referent, be deemed, at its outset, a *berakhah le-vatalah*. Similarly *birkat geshamim*, recited over the advent of rain following a drought. The benefit is not immediate, since only with the fruition of

the crop will the rain have demonstrated its function (Abudarham, *Seder Shaḥarit shel Ḥol*).

Several geonim and *rishonim*, in response to the *petiḥah* issue, actually place *Elohai Neshamah* in sequential position following one or another of the morning *berakhot*: *Asher Yatzar* (*Seder R. Amram*, I, p. 53; *Rosh*, *Teshuvot* 4:1; *Orḥot Ḥayyim*, *Hilkhot Me'ah Berakhot*); *ha-Ma'avir Shenah* (*Shibbolei ha-Leket*, 2, in his brother's name; see end of our n. 85, reference to a Palestinian text published by Mann, according to which a *ma'avir shenah* element and a *teḥiyat ha-metim* element [the latter identical in theme with the *ḥatimah* of *Elohai Neshamah*] constitute two components of a *single berakhah*); *Asher Natan la-Sekhvi Vinah* (*Sefer ha-Manhig*, 1; see also manuscript reading noted in *Seder R. Amram*, p. 53). See observation of R. Avraham Ishbili, cited earlier (n. 12), suggesting that the Talmud did not intend in its sequence of *berakhot* a definitive order; thus the basis for the variety of subsequent traditions.

80. Similarly, *birkat ha-Mappil*, prescribed by the Talmud (*Berakhot* 60b) for pronouncement prior to retiring. The *berakhah* appeals for sound, unperturbed sleep, and a healthy awakening in the morning, among other elements (see references in n. 85). No anticipation of any metaphysical crisis is implied.

In contrast, the *Zohar* views the nightly moment of retiring as preparatory to a death-experience: "At night let a man address himself [to the fact that] he is passing [*she-hu niftar*] from the world . . ." (II:213b). In line with this notion, the kabbalistic tradition developed, in fact, a series of nightly confessional devotions prior to sleep, normally prescribed for a man literally on his death bed. Such pronouncements were framed on both a popular pietistic level (*Seder ha-Yom*, pp. 35a-b; *Siddur ha-Geonim ve-ha-Mekubbalim*, IV [Jerusalem, 5731], pp. 100ff.), and on a sophisticated level of symbolic meditation. According to Ari, the soul's abandonment of the body and ascent to the upper worlds requires a man's profound confessional act, enabling it to divest itself of its contamination. In addition, one must submit himself to a meditative mystical passage through the ordeal of capital punishment (*arba mitot bet din*), following which the liberation of the soul is fully accomplished (*Sha'ar ha-Kavvanot*, *Derushei ha-Laylah*, *Derush* 5, p. 355).

But while this first phase of the nightly dynamic involves a renunciation of one's corporate self, the second phase is even more dramatic. Having shed his corporate identity, the individual, according to Ari, now identifies with his ascending soul, and enters upon a daring celestial mission — to arouse the disparate, alienated *sefirah* elements to reunion. Once successfully contributing to the consolidation of the Heavenly personality and thus activating its machinery, the *neshamah*

receives, reciprocally, a revitalized flow of life and is, in effect, reborn (*ibid.*, *Derush* 3, pp. 342-3). The complex dynamics of the above operation are read symbolically by Ari into *birkat ha-Mappil* and *Shema* (thus the esoteric connotation of terms such as *einai*, *ishon bat ayin*, etc., as well as phrases such as *ha-mappil hevlei shenah*, which now depict *sefirah* interplay — [*ibid.*, *Derush* 6, pp. 361-2]). And it is, in fact, on the wings of *birkat ha-Mappil* and *keri'at Shema*, with their specially potent words and Divine names, that one pursues his celestial task (*ibid.*, *Derush* 5, pp. 353-58; *Derush* 6, 358-62).

81. The restoration of the soul each morning in the sense of *physical refreshment* — a theme granted by the talmudic-midrashic tradition, as we have seen — is associated by the *rishonim* with another morning *berakhah*, namely, "*ha-Ma'avir Shenah me-Einai . . . Gomer Ḥasadim Tovim le-Amo Yisrael.*" See *Tosafot*, *Berakhot* 46a; Abudarham, *Seder Shaḥarit shel Ḥol*. See also *Orḥot Ḥayyim*, *Hilkhot Me'ah Berakhot*, 10, where the latter *berakhah* addresses the overnight digestion of one's food in addition to the refreshment theme (see *Yoma* 1:4, *va-Yikra Rabbah* 4:4, where sleep is seen as induced by food). *Tur* (O.H. 46), on the other hand, associates the refreshment theme with still another *berakhah*, *ha-Noten la-Ya'ef Ko'ah*, a *berakhah* unlisted in any talmudic text (though see *Bah*), but appearing in the Ashkenazic liturgy.

The kabbalists, though, tend to define the refreshment theme, contrary to its original midrashic sense, as identical with their theme of daily resurrection, depicting the "worn-out" and "tattered" soul as ontologically in crisis rather than simply fatigued — threatened with destruction because of its corrosion by sin. With morning, the soul is returned, *spiritually* cleansed and reborn. (See Ari's position, *Sha'ar ha-Kavvanot*, p. 11, where *birkat ha-Noten la-Ya'ef Ko'ah*, as well as *birkat Malbish Arumim*, are lent such a connotation, referring to the rebirth, respectively, of *spiritually weakened* [thus *la-ya'ef*] and *thoroughly corrupted* [thus *arumim*] souls. Thus Ari's vindication of *birkat ha-Noten la-Ya'ef Ko'ah*, unmentioned in the Talmud, against *Beit Yosef's* objections. See *Sha'ar ha-Kavvanot*, *ad loc.* ["*nakhon le-omerah . . . af al pi she-yesh megamgemin ba-davar'*"]; *Sha'arei Teshuvah*, O.H. 46:10; *Beit Yosef*, O.H. 46.)

82. On the precise moment of the soul's introduction into body, see L. Ginzberg, *The Legends of the Jews*, V, pp. 80-81 (n. 25).
83. The phrase, "*Elohai, neshamah she-natata bi . . .*," refers, of course, to the initial moment of the soul's introduction into the body (see previous note). In fact, the reading of many early texts including our talmudic text (see *Seder Rav Amram*, p. 53; *Kuzari* I:115; *Ibn Tibbon* translation; *Rambam*, *Hilkhot Tefillah* 7:3; *Piskei Rid*, *Berakhot*, p. 174; *Piskei Riaz*, *Berakhot*, p. 94) omits the word *hi* following the term

*tehorah*, thus making the "purity" of the soul descriptive of its original pristine state (see *Shabbat* 152b) rather than necessarily indicative of its present condition. Hence: "O Lord, the soul which You placed within me, in purity, was created by You . . ." (See especially the reading of the Munich manuscript, *Dikdukei Soferim, Berakhot*, p. 346: *be-taharah*.) The term *tehorah* functions in this context as an adverbial modifier of the verb *natata* rather than as a predicate adjective. One recent commentator, in fact, suggests, based on *Niddah* 30b, that the *berakhah* represents a statement of obligation — a promise on the part of the individual to preserve the original purity of his *neshamah* (see *Siddur Otzar ha-Tefillot, Perush Iyyun Tefillah* on this *berakhah*). See also the talmudic reference to the intrauterine adjuration of the fetus immediately prior to birth, in which the identical phraseology appears: "Know ye that the Holy One Blessed Be He is pure and His servants are pure and that the soul He has placed within you is pure." (In contrast, Levi Ginzberg [*Geonica*, II, p. 109], based on a geonic text [*ibid.*, p. 115], argues the case in favor of an early dating of the *hi*-element. The sense of the passage would accordingly be that despite the sins of the body with which it has been associated, the soul returns pure each morning.)

84. In terms of its structural consistency, *Elohahai Neshamah* represents a unique type of *berakhah*. Formally, every *berakhah arukhah* must maintain an integrity of theme, reflecting the identical concept in its *petihah* and *hatimah*, as well as in the penultimate line prior to the *hatimah*. *Elohahai Neshamah*, however, opens with a reference to the introduction of the soul into body, while closing with a reference to the restoration of soul following death — the latter theme appearing in position, as well, prior to the *hatimah* ("ule-hahazirah bi le-atid lavo"). If we recognize in *Elohahai Neshamah*, though, a progression — a depiction of the destiny of the soul from conception through ultimate resurrection — we have in this *berakhah* a consistent focus: the soul, albeit in its various stages of association with the body. A similar phenomenon is manifest in *birkat Asher Ge'alanu* (recited at the *Seder*), as understood by the Jerusalem Talmud (*Berakhot* 1:5). Opening with a thankful reference to *yetzi'at mitzrayim* ("asher ge'alanu . . ."), the *berakhah* shifts to a hopeful appeal for future redemption ("ken . . . yagi'enu le-mo'adim . . ."), closing with a statement of God's ongoing redemptive role ("Barukh atah . . . ga'al yisrael," or perhaps "go'el yisrael"), since the *Yerushalmi* takes the *hatimah*, unlike the *Bavli* (Rava's statement, *Pesaḥim* 117b), as a reference to the future. It is in this sense that *P'nei Moshe, ad loc.*, understands the *Yerushalmi*, as does *Tosafot, Berakhot* 14a, *Pesaḥim* 104b. (See D. Goldschmidt, *Haggadah shel Pesah ve-Toledotehah* [Jerusalem, 1960], pp. 58-59, where manuscript support is drawn for the *go'el* reading, as most consistent

with the clearly progressive, future thrust of the latter part of the *berakhah*. See also *hillufei nusha'ot* cited by M. Kasher, *Haggadah Shelemah* [Jerusalem, 5727], p. 69.)

85. The plain sense of the *hatimat ha-berakhah* — "*ha-mahazir neshamot li-fegarim metim*" — is future resurrection. (See *Sanhedrin* 108a, where the identical phrase appears in eschatological context.) Thus *Kuzari* I:115, where the entire thrust of the *berakhah* is understood in such terms. Abudarham (*Seder Shaḥarit shel Ḥol*), it is true, sees in *Elohahai Neshamah* an expression of appreciation for a daily restoration of soul. Thus his interpretation of the *hatimah* as a reference to the reactivation of a sleeping body. However, it is clear that even for Abudarham the daily "restoration" of soul does not suggest any nightly ontological rupture. Abudarham's analysis implies no metaphysical death-crisis, resolved by morning. The thrust of the *berakhah*, according to his view, is empirical — an acknowledgment of the daily return of one's physical capacities, dormant during the night. The critical ontological event referred to in the *berakhah*, according to Abudarham, is one's endowment with soul at conception, an event recalled with appreciation each morning when one begins another day of physical activity. Abudarham interprets the resurrective sense of the *hatimah* figuratively, for, as he puts it, "sleep is analogous to death." (See also *Sefer ha-Mikhtam, Berakhot*, p. 120.) The dimension of renewal is not in any objective restoration each day of a *disengaged* soul, but in the individual's *subjective* appreciation each morning of his *consistently-present* soul. Even for Abudarham, the only ontological "restoration of soul" referred to in the body of the *berakhah* is "*le-atid lavo*" — the era of resurrection subsequent to death. (Shelomo Tal's rendering [*Siddur Rinat Yisrael*] of the latter phrase as referring to "*tomorrow and each and every day*, as well as at *tehiyyat ha-metim*," is a blatant misinterpretation.) Halevi and Abudarham are agreed that it is one's consciousness of the daily return of physical function — an empirical phenomenon — that serves as the occasion for the *berakhah*. They differ only on the thrust of the *berakhah* formulated in response to the occasion. For Abudarham, the thrust is immediate — an expression of appreciation for the capacities restored. (This theme is to be distinguished from that of physical refreshment [see n. 81], which contrasts one's morning alacrity with the previous night's fatigue. Here in *birkat Elohahai Neshamah*, the theme is gratitude for the objective fact of physical function.) For Halevi, on the other hand, the focus is upon the ultimate return of one's life-powers in the era of resurrection following death — an ontological phenomenon suggested by the daily restoration of one's physical capacity. Halevi and Abudarham are in full agreement,

however, that the daily renewal of physical function, which serves as the occasion of the *berakhah*, represents no ontological restoration of a disengaged soul.

There is one geonic passage (*Geonica*, II, p. 115; *Otzar ha-Geonim*, *Berakhhot*, *Teshuvot*, p. 136), attributed to R. Natronai Gaon, which incorporates within the body of the *berakhah* a reference to the daily restoration of the soul alongside the eschatological: "You have taken it from me and You have restored it to me, You are destined to take it from me and You are destined to restore it to me in the Future to Come . . ." An even more elaborate reading appears in two talmudic manuscripts (see *Dikdukei Soferim*, *Berakhhot*, p. 346, n. 40; the Munich manuscript itself does not include the passage): "You take it from me and You restore it to me, You have taken it from me and You have restored it to me, You are destined to take it from me . . ." Neither the double or triple elaboration appears, however, in *Seder R. Amram* (pp. 53-4), nor in the texts of the *rishonim*, generally (though see *Piskei Rid*, *Berakhhot*, p. 174). One cannot escape the impression that this additional element represents a later interpolation into the original talmudic formulation. (We know, for example, of the license taken by various post-talmudic liturgical traditions with an associated *berakhah* [the nighttime counterpart of *Elohai Neshamah*], *birkat ha-Mappil*, *Berakhhot*, *ad loc.* See *Dikdukei Soferim*, *Berakhhot*, pp. 345-46, notes 6-30; and *Siddur Otzar ha-Tefillot*, I, *Perush Iyyun Tefillah*, *Birkat ha-Shenah*.) From the perspective of style, the monotonous overuse of the *natol-hahzer* element, in a composition otherwise rich in its variety of expression, is suspicious. Particularly awkward from a substantive point of view is the failure of this text to distinguish, through a variation in choice of terms, between the taking of the soul upon death and its daily taking — phenomena which (even if the death-crisis notion were to be granted) are clearly not identical. The assertion that "You have [already] taken my soul" makes the subsequent projection — "You are destined to take my soul" — anticlimactic.

Be that as it may, the additional passage does not necessarily intimate a death-crisis, certainly not in kabbalistic terms. In an earlier segment of the geonic text, for example, the morning *netilah* is accounted for in purely positive terms as preparatory to prayer ("Hikkon li-k'rat *Elohekha Yisrael*"), with no reference at all to any *ru'ah ra'ah* notion. Similarly, in *Siddur R. Solomon ben Samson mi-Garmaise* (Jerusalem, 5732), pp. 3-4, where the daily return of the soul is alluded to in the interpretation of the *berakhah* (if not attributable to the text itself — see n. 21, *ad loc.*), *netilat shaharit* is associated with the *hikkon* principle (pp. 1-2), with no reference to *ru'ah ra'ah*. Furthermore, the leave taken by the soul is interpreted in this work in the physical context of the midrashic tradition (p. 3), with emphasis on the maintenance of the

body during sleep. Significantly, *Piskei Rid* (see above), as well, though citing the daily-return passage in his text of the *berakhah*, is among those *rishonim* omitting the three-fold *Bat Horin* reference in their compendia (*Piskei Rid*, *Shabbat*, p. 403).

The opening devotion of the Palestinian tradition (see TJ, *Berakhot* 4:2; *Midrash Tehillim* 17:6) — "Barukh . . . *Mehayye ha-Metim*" — is to be understood in terms similar to *Elohai Neshamah*. It constitutes either a reference to future resurrection, suggested by one's daily awakening, or a figurative depiction of the empirical experience of daily awakening. (Thus the *maḥloket aḥaronim* as to whether one's pronouncement of *birkat Mehayye ha-Metim* in the *Amidah* — clearly a reference to future resurrection — fulfills the *hiyyuv* of the early-morning awakening theme. See *P'ri Hadash*, O.H. 46, 52; *Sha'arei Teshuvah*, O.H. 6:7.) No ontological disengagement or restoration of the soul is entertained by the Palestinian tradition, as is confirmed by a Palestinian *birkat ha-shahar* text published by Mann, HUCA, II (1925), p. 278, cited also by L. Ginzberg, *Perushim ve-Hiddushim ba-Yerushalmi*, III, pp. 226-27. In this formulation, *Barukh . . . mehayye ha-metim* serves as the *hatimah* of an elaborate *berakhah*, whose theme is a dual one: a) Praise for one's physical renewal by morning, the elimination of drowsiness. b) An appeal for one's physical and spiritual welfare during the coming day. Particularly significant is the statement immediately preceding the *hatimah*, that should one die, may his death serve as atonement for the future, so that he might be worthy of ultimate resurrection — a segment supporting the eschatological sense of the *hatimah*. (In these terms, *birkat Mehayye ha-Metim* reflects a future-oriented progression similar to *birkat Elohai Neshamah* [see n. 84].)

The popular pronouncement of *Modeh Ani* — which includes an expression of gratitude for a daily restoration of soul — is a relatively recent formulation, apparently of kabbalistic origin. It appears for the first time in *Seder ha-Yom* (Venice, 1599, 3a), an early sixteenth century commentary to *tefillah* by the kabbalist, R. Moses b. Makhir, who headed a yeshivah at Ein Zeitim, north of Safed. (The data recorded in the *Encyclopedia Judaica*, 1972, XII, 200, is inaccurate.) Its recitation is described by R. Moses as permissible even prior to *netilat yadayim* (despite soiled hands) since it includes no *shem ha-Shem* — a concern based, in R. Moses' eyes, on mystical more so than halakhic considerations (*ibid.*, 4a-b; see n. 24 earlier). Thus its preferability to *Elohai Neshamah* as an opening devotion (see n. 12).

86. Thus see comment of R. Benjamin, cited in *Shibbolei ha-Leket*, 2, who interprets the theme of the *berakhah* as addressed not to the phenomenon of awakening, but to the process of sleep itself — an expression of gratitude to God for having maintained the soul within me

during the course of the night, even while it had "ascended." See also *Niddah* 30b, where the suggestion that the soul might be "taken from you" describes death itself, not any daily dynamic.

87. Ari, on the other hand, reads into *birkat Elohai Neshamah* from the kabbalistic perspective a symbolic mystical connotation, depicting the soul's critical ascent each night to its activist role in the world of the *sefirot* and its consequent rebirth by morning (*Sha'ar ha-Kavvanot*, pp. 10, 342-3). See earlier, n. 80.
- 87a. See previous note.
88. The experiential implications of the death-crisis may be reflected in the account related of the daily awakening of R. Hayyim Tzanzer: "When he would arise from his sleep, he would utter, in great fear, a loud and prolonged cry through the house; whereupon he would wash his holy hands three times . . ." (*Otzar ha-Hayyim* [Jerusalem, 5723], pp. 34-6). Significantly, R. Hayyim was severely *mahmir* in his mode of fulfilling the morning *netilah*, rinsing his hands according to three distinct sequences — three times *alternately* (as required by Ari); three times *consecutively* (the view of *Seder ha-Yom*); and, finally, three times *simultaneously*, the two hands washed as one. The latter *humra* was otherwise unknown in mystical circles (*Otzar*, commentary to #23). See above, n. 61.

Lawrence Grossman is Assistant Professor of History at Stern College for Women.

## TRADITION UNDER FIRE: ISAAC LEESER AND REFORM

A major characteristic of modernity for the Jew is a consciousness of historical change in the formation of religious doctrine and practice. During the centuries of Jewish pre-modernity, a time span which varied greatly between countries, the process of religious development was unselfconscious. Alternatives in liturgy or ritual, some of major scope, occurred organically. The Jews thus affected, retained their stability and sense of continuity. This condition began to change in the eighteenth century as community after Jewish community became free to enjoy the benefits and bear the burdens of secularization and emancipation. While many Jews simply shifted their behavior to conform to the world around them, intellectuals sought to understand what was happening. Given access to a gentile environment partly dechristianized by the rationalistic atmosphere of the Enlightenment, thoughtful Jews scrutinized their own traditional way of life. They raised new questions: What is the authority of Jewish legal tradition? Who has authority to institute changes in it? How much of the corpus of Jewish law is divine and how much the product of human interpretation? Does each generation have the right to recast the tradition in consonance with "the spirit of the age?" Can one be Jewish without obeying the minutiae of the *Shulhan Arukh*? Is the Jew obliged to adhere to old proscriptions if they prevent him from enjoying the benefits of the modern world? Such questions, first posed in Germany two centuries ago, have been repeated since then in eastern Europe and in

Oriental communities as Jews the world over confronted modernity. These very issues lurk behind most religious controversies in the Jewish world today.

The first American Jew to face squarely the religious perplexities of modernity was Isaac Leeser. Though Leeser's wrestling with the polarities of tradition and change foreshadow and illuminate much current debate on the subject, historians tend to subordinate this facet of his personality while highlighting his communal and organizational work. Their stress, while misleading, is understandable. Leeser came to Richmond, Virginia from Germany in 1824 at the age of eighteen. Five years later he was *hazzan* of Philadelphia's Sephardic Mikveh Israel synagogue, a post he held until a quarrel with the lay management forced him out in 1850. Through the years of his ministry at Mikveh Israel and after, up to his death in 1868, Leeser was a dynamic force on the national Jewish scene and the most articulate champion of traditional religion against Reform inroads. All who write about Leeser laud his progressive approach to American Jewish life: he worked for the organizational union of all congregations; prepared English translations of the Bible and prayerbook, wrote texts for Jewish education, organized a rabbinical school, and proposed a host of other projects ignored by contemporaries but instituted by succeeding generations. In the words of Moshe Davis, Leeser was "one of the master builders of American Judaism."<sup>1</sup>

Despite this interest in Leeser's programs and activities, his religious ideas have rarely been treated seriously and have sometimes been misrepresented. Three interpretations of Leeser's thought have emerged. One shrugs the man off as "in no sense a creative scholar or a profound thinker." To be sure, the half-educated Leeser made no claim to be a Mendelssohn or a Geiger, but no other nineteenth-century American Jew could make that claim either. The historian, in any case, must not dismiss ideas for lack of profundity and creativity. Average minds grappling with religious dilemmas can be more illuminating

about their own time and more relevant for a later generation than the brilliance of geniuses. Indeed, even the propounder of this analysis of Leeser concedes that the man's "inner being" is a mystery worth investigation.<sup>2</sup> A second approach, taken by a Reform rabbi in 1918, treats Leeser's ideas at length, but in the condescending tone of a high-riding Reform movement toward a presumably obsolete and dying Orthodoxy. Thus Leeser is judged to be a gifted exponent of an outdated interpretation of Judaism who could have accomplished much had he been a Reformer. This interpretation, of course, is itself obsolete. In our day of resurgent Orthodoxy and more traditional Reform, it is less Leeser who seems old-fashioned than his nineteenth-century Reform antagonists.<sup>3</sup> A third assessment denies Leeser's Orthodoxy, stretching him instead into a Procrustean bed of the "historical school" from which modern Conservative Judaism allegedly developed. Explaining a man by reference to a movement he was not part of and which crystallized after his death, obscures the proper appreciation of Leeser within his historical context.<sup>4</sup>

In light of the inadequacies plaguing previous literature on the subject, a reappraisal of Leeser's religious thought is in order. Specifically, we must pin down his attitude toward the vexing question of innovation in doctrine and practice. Within the framework of his own age, this entails study of his views of the Reform movement which was growing in Europe and America. Available evidence about Leeser's childhood and education in Germany are of interest, as are his own writings: sermons and editorials published in his monthly magazine, *Occident* through 1848, by which time he had fully worked a distinctive position and was beginning to get enmeshed in organizational work on a national scale. The picture that emerges is one of a traditionalist emotionally attached to "the old-time religion" while aware of the need to make Orthodoxy palatable to the Jews of his time in order to stave off Reform. The use of formal ideological labels is rather misleading for the years of religious flux and confusion in which Leeser lived. Nevertheless, he seems close to the Neo-Orthodoxy emerging

in Germany in those years, and shows an affinity to what used to be called Modern Orthodoxy in twentieth-century America.

Leeser's roots were in the Rhineland region of Germany, and for all his later adaptation to American conditions, his religious views were molded by the European experience. Born in Neuenkirchen in 1806, he was brought to Munster, Westphalia, in 1814 after his mother's death. When he lost his father a few years later he was raised by a grandmother. Leeser received a traditionalist Jewish elementary education and studied secular subjects for over two years in the local gymnasium.<sup>5</sup> It is crucial to recall that the area where Leeser grew up was the very seedbed of Reform Judaism. The French Revolution's ideals of equal citizenship and individual rights, even for Jews, crossed the Rhine with Napoleon's armies. The French impact was strongest in the puppet German state of Westphalia, ruled by Napoleon's brother Jerome. Hopeful that aesthetic changes in Jewish worship might elicit even greater acceptance for Christians and thereby secure permanent equality, Israel Jacobsohn, a rich merchant who was the official head of Westphalia Jewry, initiated the first Reform service in 1810 complete with organ music, German sermon, and strict decorum. Jacobsohn had to leave Westphalia when Jerome's regime collapsed; he shifted his private "temple" to Berlin. Though soon banned by the Prussian government, the Reform movement spread through Germany. It also moved beyond aesthetics to theology, denying the divinity of the Bible, questioning the validity of rabbinic authority, and justifying radical departures from tradition in the name of reason or the "spirit of the age." Indicative of their intense desire for acceptance as authentic Germans, Reformers went so far as to deny the doctrine of a personal Messiah who, according to the rabbis, was to regather Jews into the Holy Land.<sup>6</sup>

While many Rhineland Jews of Leeser's generation took the Reform path, he did not. This commitment to traditionalism he attributed to two men: Rabbi Benjamin Cohen, his teacher in the Munster religious school, and Rabbi Abraham Sutro, chief rabbi of Munster, Mark, and Paderborn.

Though much of their impact might have stemmed from the orphaned Leeser's need for father figures, they must have been remarkable personalities to have implanted in him an enthusiasm for the old ways that could withstand the challenge of transport across the Atlantic and transplantation in distant America. Little is known of Cohen. He came from Amsterdam, studied under Rabbi Ezekiel Landau in Prague, and died before 1833.<sup>7</sup> Abraham Sutro was much more prominent. He was a disciple of Rabbi Wolf Hamburg of Furth, and served in the Jewish consistory of Westphalia under the Napoleonic regime. Leeser later recalled being enchanted by the first discourse he heard from Sutro in 1815, when Leeser was nine years old. Grateful for the rabbi's guidance and encouragement thereafter, Leeser dedicated his first book of sermons to this mentor, and described himself as Sutro's "devoted servant and obedient scholar."<sup>8</sup>

Since the mature Leeser, an opponent of Reform, considered Sutro a major influence, it is not surprising to find that this Munster rabbi was a fierce critic of the new movement. Sutro wrote an anti-Reform polemic in Hebrew entitled *The Book of the Wars of the Lord*, issued in 1834 with addenda published in 1862, 1863, and 1864. Perusal of the book shows that Sutro did not fit the Reformers' stereotype of the obscurantist, superstitious Orthodox rabbi. Like his Reform contemporaries, Sutro quotes thinkers from Plato and Aristotle to Mendelssohn and Wessely; he cites geologic theories such as the dispute between Vulcanists and Neptunians over the Earth's origins; he knows Cuvier's work in zoology.<sup>9</sup> Sutro thus has the credentials to deny Reform a monopoly on secular studies. He stresses, indeed, that scholars in Talmudic times and later rabbis among the Sephardim were not only steeped in worldly knowledge, but even had a concern for literary style. According to Sutro the Reform divergence from tradition lies in their assumption that the arts and sciences can replace, not merely complement, Torah studies.<sup>10</sup> Sutro agrees with Reform's positive attitude toward Jewish emancipation. He points out that before Napoleon's invasion, the Bishop of

Munster allowed no Jew to enter the city; now, even after the French defeat, there is freedom of religion under Prussian rule. Sutro believes that this sign of progress proves God's providence.<sup>11</sup> This Orthodox rabbi also shares with Reform a dislike of mysticism. The weakest parts of his book are devoted to interpreting rationally, various esoteric Talmudic legends. Apparently the eighteenth-century rabbinic reaction against kabbalistic excesses performed the same rationalizing function for many of the Orthodox that the secular Enlightenment performed for Reformers.<sup>12</sup>

Yet for all that he holds in common intellectually and culturally with Reform, Sutro denounces all change in the religious realm. He considers his opponents destroyers of Judaism because they deny that both the Written and Oral Laws are divine. Sutro claims that historical and geographical variations in ritual arose only in regard to customs and because of special local conditions.<sup>13</sup> He is especially adamant on the need for prayer in the Hebrew language as a bond unifying all Jews.<sup>14</sup> Sutro feels that the Reform attempt to construct a theological system independent of the practical commandments is not Jewish: he mocks those "who desecrate the Sabbath and eat forbidden foods but think themselves pious because they believe in the unity of God."<sup>15</sup> Reform denial of Jewish nationality is another object of his scorn. Despite progress toward German citizenship rights, Jews remain a people apart, imbued with the ultimate hope of returning to the Land of Israel.<sup>16</sup> Even a minimal Reform demand, decorum in the synagogue, is unacceptable to the rabbi of Munster, for religious fervor, the very essence of prayer, is expressible only through a loud voice and physical movement. "Sadness and silence" were Christian modes of worship. Those opposed to emotionalism in the synagogue were repeating the ancient error of Michal daughter of Saul who was punished for criticizing King David's lack of decorum in worship.<sup>17</sup>

The first part of Sutro's book appeared five years after Leeser left for America, and it is unclear whether the rabbi had fully developed the details of his anti-Reform stance before his

protégé's departure. Nevertheless several recurrent themes in Leeser's writings echo passages in *Wars of the Lord*, which suggests that the younger man carried his teacher's general approach to the issue of religious change across the ocean as part of his intellectual baggage. It is possible that the two maintained contact despite the geographical separation, and that Leeser received a copy of Sutro's book and his published responsa on Jewish law.<sup>18</sup> But the differences between the two men both in substance and emphasis are fascinating. Leeser does not just parrot Sutro. As part of a younger generation, Leeser is more ambivalent on some issues and more critical of certain aspects of traditionalism than Sutro. The gap dividing the Munster rabbi from the Philadelphia *hazzan* separates the relatively worldly exponent of pre-emancipation traditionalism on the one hand, from the post-emancipation advocate of modernized Neo-Orthodoxy on the other.

For a long time after his arrival in the United States, Leeser avoided the issue of Reform. He attained the position at Mikveh Israel in 1829 despite his lack of advanced Jewish learning on the strength of several newspaper articles he wrote defending Judaism from Christian attack, and there was no reason to bring up an intra-Jewish dispute in that context. Through his first decade in the pulpit and beyond he made no specific reference to Reform Judaism. The reason being, that while back in Munster the Jewish community was tightly organized on a traditionalist basis so that Reform was a unique and easily perceived threat, organized American Jewish life, shallowly rooted to begin with, was torn apart by outside forces even before Reform arrived. When Leeser would sermonize against religious laxity, therefore, he blamed materialism, mingling with gentiles, and sheer indifference. When he looked for villains, he found Deists and Christian missionaries, not Reform Jews. There was only one Reform temple in the country in the 1830's, in Charleston, South Carolina, which had installed an organ in contravention of Talmudic law. With so many more immediate influences to combat, Leeser had no reason to give such a weak movement free publicity.<sup>19</sup> When



the Orthodox faction in Charleston formed a separate congregation, Leeser accepted an invitation to give the inaugural sermon. Delivered in 1841, it consisted of platitudes without any denunciation of Reform.<sup>20</sup> Only with the emergence of a new Charleston schism two years later over the elimination of the second day of festivals does Leeser declare open war on Reform, recognizing it as a threat likely to grow in America as in Germany unless combatted. The decision to cease ignoring Reform was also influenced by the movement's initial appearance around the same time in London, the metropolis to which most American Jews looked for guidance.<sup>21</sup>

In accounting for the genesis of Reform, Leeser goes deeper than Sutro, who had described the movement simply as the latest and subtlest tactic of the outside world to undermine Judaism. Leeser, in contrast, considers long-term factors. The eighteenth century was a time of protest against all things old and established. Though Leeser acknowledges that there were many abuses in Western society that needed correction, the clamor for improvement went far beyond legitimate bounds in Jewish affairs. The anti-clericalism of the philosophes had merit when directed against a rich and powerful priesthood, but was absurd when turned at rabbis, who barely made a living and whose authority depended only upon scholarship and piety. Leeser considered this inappropriate critique of Jewish authorities as one example of a recent trend among rich and secularly educated Jews to ape gentile attitudes in the hope of achieving a religiously neutral society in which men of all faiths could participate equally. As Leeser saw it, the founders of Reform Judaism recognized the widespread Jewish inclination to conform, and simply added a degree of ideological consistency to what had been a confused and inarticulate yearning. Sometimes Leeser descends to personal charge against German Reform leaders: perhaps it was a desire for the notoriety of being the Luthers and Calvins of Judaism that impelled these men. To the Reform claim that modernizing religion staves off the baptism of the disaffected, Leeser replies to the contrary, that conversion to Christianity has increased wherever Reform

has taken root. He ignores the possibility that the flight from Judaism might have been far greater without the Reform alternative.<sup>22</sup>

In Leeser's view not only is Reform a mistaken application of the Enlightenment critique of religion, but the very core of Reform theology is Christian. The idea that inner faith in God is sufficient without outward observance of the commandments simply echoes New Testament doctrine. Reform, following the Christian path, denies both rabbinic law as embodied in the Talmudic literature and the ritual component of the Bible itself. The result, "to become as like to the generality of men as possible," would not bring Christian friendship. Leeser, despite approving emancipation, was as sure of the tenacity of anti-Semitism as Abraham Sutro had been. No matter how often Reformers paraded their loyalty to the German "fatherland," they would never erase prejudice against them. Leeser is sarcastic about the reinterpretation of the Messianic age to mean nineteenth-century Europe and he uses every manifestation of continuing anti-Jewish feeling to point up its falsity.<sup>23</sup> Leeser challenges Reform on specific religious innovations. Organs in the synagogue and the elimination of the second day of holidays are obvious targets. He is harsh toward the abandonment of Hebrew in the prayers which he adjudged, like his teacher Sutro, an undignified obeisance to gentile culture. Leeser saw nothing positive in shortening synagogue services either. A man unattuned to religion will feel as bored with a one-hour service as with three-hour prayer sessions. Leeser expressed some indecision about the Reform practice of Confirmation. Though finding in it nothing contrary to law or doctrine, he felt uncomfortable with a formal, Christianlike recital of a creed to mark the attainment of religious maturity.<sup>24</sup>

Alongside his polemics against the innovators, Leeser presents a critique of the traditionalists as well. While Abraham Sutro had advocated a secularly educated Orthodoxy, he did not face up to the problem of a huge obscurantist element in the Orthodox camp. Leeser confronts it directly. Like his European Neo-Orthodox contemporaries, he explicitly denounces

Kabbalism, of which he seems ignorant, as not authentically Jewish. He lumps it together with "bigoted superstition," magic, asceticism, and *Hasidism*. What irritates Leeser about these exotically unenlightened species of Judaism is that they play into Reform hands. If Orthodoxy were associated with the mystical and supernatural, if it were to be perceived as disdainful of secular knowledge, Reform would capture the allegiance of Jews wherever they were allowed to enter modern culture. The revamped Orthodoxy which Leeser favors would have to embrace to some degree "the spirit of the age." But surely this would concede the argument to Reform, which had justified its program on that very basis!

Leeser's way out of this dilemma is to claim that unenlightened Orthodoxy, meaning just about all of East European Jewry, constitutes an aberrant rather than a mainstream trend within the traditional camp. He must then explain how this illegitimate tendency attained such strength by reference to environmental pressures. Centuries of Christian anti-Semitism made Jews inward-looking, unworldly, and illiberal toward gentiles. Thus when Max Lilienthal, anxious to modernize Jewish education in Russia, denounces his rabbinical opponents as fanatics, Leeser cites environment: "We doubt greatly whether the learned and pious Doctor himself would have been anxious for the acquisition of the ancient languages and the liberal sciences, if he had been born in Vilna instead of Munich." This historical isolation made Jews overemphasize outward ritual and rote learning at the expense of inner piety and understanding. Leeser considered tragic the continuation of these traits in an emancipated age when they were clearly anachronistic. Traditionalism had been left without the conceptual tools to compete with novel intellectual and social alternatives. Yet Leeser has deep affection for even the obscurantists, and refuses to repudiate them entirely. For all their backwardness, Leeser admits their sincere devotion to Judaism. At times he claims to prefer their unsophisticated piety to the cold secularism of his own environment. After all, their asceticism and "useless practices" never hurt anyone. Leeser

speculates that had Reform not given all change a bad name, the old-school traditionalists themselves would have slowly shed their medieval vestiges and accepted modernity because nothing in science or philosophy conflicts with Judaism.<sup>25</sup>

If, despite his affection for the old ways, Leeser wants Orthodoxy to adjust to the nineteenth century, he is advocating religious reform though not Reform. As so many after him, Leeser must face the problem of finding the demarcation between legitimate and illegitimate innovation. Leeser has some appreciation of the organic historical continuity of Judaism. The Bible is the word of God. The Talmud which interprets it, which Leeser admits not to have studied much, contains both human and divine elements but, as the expression of an ongoing development of the tradition, it and the later commentaries and codes have a total claim upon Jewish loyalty. He sounds like a Jewish Edmund Burke in discussing the rabbinical enactments: "Whether the ordinances are traditional or instituted for safety's sake, they have become so intimately interwoven with the life of our nation, that they cannot be disrupted without a severe and useless shock to our national existence."<sup>26</sup> In pondering the possibility of inaugurating changes in modern times, Leeser occasionally shows pessimism: amid a frenzy of Reform, even the slightest legal alteration must be fought since it might lead to more radical breakthroughs. He wrote that "so much has been done already without authority, that I verily believe that it would be safer to retrench, than to extend reform."<sup>27</sup> But his usual stance is more flexible. There is provision in Judaism for changing accepted practice if three criteria are met. The reform must be lawful, that is within *halakhic* bounds, it must be gradual rather than sudden, and it should be effected through the general consent of rabbinic authority rather than by fiat of fringe elements of dubious piety.<sup>28</sup> To the objection that such limitations make development impossible, Leeser replies that Jewish practice is constantly evolving. Many pointless customs had already fallen into disuse among the Orthodox through the slow organic process of general consent without anyone consciously altering anything.<sup>29</sup> Leeser, like

nineteenth-century Neo-Orthodoxy as a whole, ignores a more radical Reform challenge that the *halakhic* process itself and its most basic principles are the product of historical development.

Leeser's favorite example of a valid change is his own introduction of the regular English sermon to America. Back home in Munster, Chief Rabbi Sutro, like all traditionalists, did not sermonize in the modern way, but only gave occasional discourses on Jewish law. In his book against Reform, Sutro mentions that his own teacher trained him to avoid the study of legends and sermonic material, and Sutro claims never to have read and not even to own any Jewish books of a non-legalistic nature. Nevertheless there was a man in Munster who read to the congregation every Sabbath afternoon from the seventeenth and eighteenth-century Hebrew sermon books, adding explanation and elaboration in Yiddish. Though the young Leeser enjoyed this "*Sheeur*, or lesson," the mature Leeser felt that its pilpulistic and abstruse methodology would not appeal to a culturally sophisticated laity. The new type of Jew could be reached only through a formal "moral discourse" in the vernacular, something nonexistent in America. A regular sermon teaching spiritual lessons would also go far toward answering the Reform complaint that traditionalists cared only about outward behavior to the exclusion of "inwardness." Despite lay opposition, Leeser instituted the weekly sermon at Mikveh Israel.<sup>30</sup> He was unembarrassed by the fact that this innovation was taken from Reform practice which in turn was copying the Christian service. For Leeser it was enough to show that in Talmudic times vernacular sermons were quite Orthodox.<sup>31</sup> In this practical response to what he saw as the spiritual needs of his congregants, Leeser takes a step toward the transformation of Abraham Sutro's eighteenth-century traditionalism into a more self-conscious Neo-Orthodoxy willing to use the weapons of modernity in its own cause. It is no accident that the founders of German Neo-Orthodoxy, Isaac Bernays and Samson Raphael Hirsch, and their British counterpart, Nathan Adler, also introduced the modern vernacular sermon.

A second area of synagogue life that Leeser wants to transform is the conduct of worship. Contrary to the common notion that eastern European Jews brought raucousness to American synagogues, the old Sephardic congregations faced this problem in Leeser's time. He could not understand why people during services behaved as if they were in a place of amusement. He hoped to prohibit loud chanting by congregants and tried to get all worshippers to sing in unison. Leeser told his flocks not to come late to services; not to wander around and walk out; not to chant during prayer; and certainly not to bring little children. Nothing helped.<sup>32</sup> Allied with the decorum issue was the problem of commercialism. In the nineteenth century, honors were openly sold to members in the synagogue. Leeser found this both disruptive and unspiritual, but most congregations were financially dependent on these sales. Leeser and his New York colleague, S.M. Isaacs gave much thought to finding alternate means of funding synagogues, but had little success.<sup>33</sup> As in the case of the sermon, Leeser's demand for decorum and an end to a marketplace atmosphere was an implicit acceptance of the Reform critique. Again, Leeser defends his approach on the ground that the "synagogue abuses" he deplores really go against Jewish law. One wonders whether he had forgotten his mentor's preference for indecorum and denunciation of dignified services as Christian, or whether Leeser was rejecting outright that traditional view. In any case, he is again in line with the European Neo-Orthodoxy of Hirsch and Adler, who insisted on strict rules of decorum.<sup>34</sup>

For all that Leeser shares with the trans-Atlantic modernized Orthodox program, he is also self-consciously American. He tells his readers that the uniqueness of the United States — total freedom of religion — makes it "the country where we can be Israelites in truth." Despite anti-Semitism, there are no legal difficulties facing the observant Jew in America. Therefore the motive force of European Reform — a craving to attain civic equality by reshaping Judaism in a Christian image — does not apply here. Also, the Reformers professed to oppose the

powers of a supposedly entrenched rabbinic establishment. Leeser notes that not only was such a clerical hierarchy unknown to the United States, but there were not even any ordained rabbis in the country, *hazzanim* being mere laymen who conducted services. As for Reform's complaint about Orthodoxy's irrational and fanatical practices, Lesser sarcastically replies that he knows of not one *Hasid* in America.<sup>35</sup> Leeser even fought Reform with flag waving: this new movement, "wafted over the sea," is typically German, foreign, un-American. Though it is well-known that Leeser worked to establish an American school for higher Jewish learning, few are aware that his explicit motive was the training of indigenous Orthodox rabbis who would keep the German Reformer, "the wolf who will devour the flock," from occupying any American pulpit.<sup>36</sup>

Leeser's approach to Judaism was not necessarily proven invalid by the temporary ascendancy of Classical Reform after his death, an ascendancy that lasted into the twentieth century. His appreciation of Jewish tradition, love of Hebrew language, concern for ritual observance, sense of Jewish nationhood, and recognition of anti-Semitism's tenacity, have stood the test of time and now seem more meaningful for all branches of American Judaism than the superficial pragmatism of Isaac Mayer Wise or the naive universalism of the Reformers' 1885 Pittsburgh Platform.<sup>37</sup> Ironically, Leeser appears most out of date today in regard to just those issues on which he accepted the Reform critique and diverged from previous traditionalism. In much of the Orthodox community, for example, a secular education is no longer advantageous for a spiritual leader. Talmudic scholarship is the measure of rabbinic prestige among the faithful; the age of the "Rabbi Doctor" is over. In our time the standard Sabbath morning sermon has become uninspiring, trite, and banal, especially in the eyes of the young. In its place the informal study group, perhaps similar to the Sabbath afternoon "*Sheeur*" in old Munster, is becoming popular. The wheel has turned full circle with respect to decorum as well. As third and fourth generation American Jews no

longer feel wedded to bourgeois mores and even rebel against them, "dignity" in the synagogue is perceived as a mere euphemism for icy coldness. The new search for spiritual ecstasy in its *Hasidic* form, with emphasis on personal religious experience regardless of the cost in lost decorum would surprise Leeser, as would our revived interest in the study of Jewish mystical texts. Surely, the greater tolerance of gambling in the synagogue would disturb that foe of commercialism in the house of God. Yet perhaps he would recognize that history works in strange ways, and that his own criticism of Reform innovations which he disliked applies equally to the alternatives he favored: a change "considered ample reform today becomes tomorrow a perservering in antiquated notions, and being behind the age."<sup>38</sup>

## NOTES

1. Moshe Davis, *The Emergence of Conservative Judaism: The Historical School in Nineteenth Century America* (Philadelphia, 1963), p. 349.
2. Bertram Wallace Korn, "Isaac Leeser: Centennial Reflections," *American Jewish Archives*, XIX (November, 1967), 127, 137.
3. Henry Englander, "Isaac Leeser, 1806-1868," *CCAR Yearbook*, XX-VIII (1968), 213-252.
4. Davis, *Emergence of Conservative Judaism*, *passim*. See the review of this book by Charles S. Leibman entitled "Orthodoxy in Nineteenth Century America," *Tradition*, VI (Spring-Summer, 1964), 132-140.
5. Davis, *Emergence of Conservative Judaism*, p. 347.
6. The standard history of Reform remains David Philipson, *The Reform Movement in Judaism* (New York, 1931). The special importance of Westphalia is treated in Mordecai Eliav, *Jewish Education in Germany in the Period of Enlightenment and Emancipation* [Hebrew] (Jerusalem, 1961), pp. 119-129, and Michael Meyer, *The Origins of the Modern Jew: Jewish Identity and European Culture in Germany, 1749-1824* (Detroit, 1967), pp. 132-134.
7. Davis, *Emergence of Conservative Judaism*, p. 347. Leeser's *Jews and the Mosaic Law* (Philadelphia, 1833), p. iii, mentions Cohen's death.
8. Isaac Leeser, *Discourses on the Jewish Religion* (Philadelphia, 1837), p. iii-iv. There is a short biography of Sutro in *Encyclopedia Judaica*, XV, 536-537.

9. The Hebrew title is *Sefer Milhamot Adonai* (Hanover, 1834). The three supplements were published in Frankfurt, Hanover, and Halberstadt. Sutro's knowledge of the secular literature is evident in I, 6, 16, 18; II, 5-13, 27.
10. *Ibid.*, I, 11-12.
11. *Ibid.*, I, 7-8.
12. *Ibid.*, I, 112-140; III, 38-39 (dealing with demons and the significance of Mezuza).
13. *Ibid.*, I, 11, 14, 18-36.
14. *Ibid.*, I, 10-11, 107-108.
15. *Ibid.*, II, 1-3.
16. *Ibid.*, II, 37-38.
17. *Ibid.*, II, 19-20.
18. The impression from Leeser's dedication of his *Discourses on the Jewish Religion* to Sutro is that they remained in communication. Sutro's responsa were published periodically in *Shomer Zion ha-Ne'eman* edited by Rabbi Jacob Ettlinger in Germany.
19. Leeser's earliest written efforts were *The Jews and the Mosaic Law* and the first two volumes of *Discourses on the Jewish Religion*. Typical sermons denouncing lax religious standards without reference to Reform are *Discourses*, I, 139-160, and II, 232-253. These were delivered in 1831 and 1836 respectively.
20. "The Dangers of Israel," in *Discourses*, IV, 1-12. In his preface to *Discourses*, III, viii, written in 1841, Leeser does mention "certain persons calling themselves reformers."
21. *Occident*, I (August, 1843), 254-61. Reform in England receives mention in *ibid.*, II (May, 1844), 94.
22. *Ibid.*, I (March, 1844), 565-573; II (August, 1844), 230, 235-236; III (May, 1845), 61-63; IV (February, 1847), 517-525.
23. *Ibid.*, III (May, November, December, 1845, January, 1846), 64, 402, 472, 490; IV (February, 1847), 517; VI (September, 1848), 275-278.
24. Organ: *Ibid.*, I (July, 1843), 204-205; Second day of festivals: *Ibid.*, I (August, 1843), 254-261; Hebrew: *Ibid.*, I (September, 1843), 270; Liturgical changes: *Ibid.*, II (August, 1844), 232-233; III (May, 1845), 68; Confirmation: *Ibid.*, IV (October, 1846), 345-360.
25. *Ibid.*, I (March, 1844), 570; II (April, August, September, 1844), 5, 226-231, 267-270; III (May, 1845), 64-65; IV (July, August, 1846), 189-191, 220; VI (July, 1848), 161; "Religious Education," in *Discourses*, III, 281-327. The statement about Lilienthal is in *Occident*, I (June, 1843), 142.
26. *Occident*, I (February, 1844), 559; IV (August, December, 1846), 220-222, 444; *Jews and the Mosaic Law*, p. 198. The quotation is from *Occident*, II (August, 1844), 234.
27. *Occident*, I (July, 1843), 260-261.

28. *Ibid.*, III (January, 1846), 483; IV (August, 1846), 220-221.
29. *Ibid.*, III (January, 1846), 486.
30. Sutro's attitude is expressed in *Sefer Milhamot Adonai*, I, 3. Leeser reminisces about Munster in *Occident*, IV (July, 1846), 189-190, and recalls his innovation of the sermon in *Discourses*, I, 2.
31. *Occident*, IV (July, 1846), 189.
32. *Ibid.*, VI (June, 1848), 109-117.
33. *Ibid.*, III (May, 1845), 92-93; V (November, 1847), 376-381.
34. *Ibid.*, II (August, 1844), 231. Leeser applauded Rabbi Adler's rules of decorum for British Jewry. *Ibid.*, V (May, 1847), 62-63.
35. *Ibid.*, I (February, 1844), 535; III (May, 1845), 67.
36. *Ibid.*, IV (April, 1846, January, 1847), 52, 474.
37. There is a concise treatment of American Reform ideology in this period in David Rudarsky, *Modern Jewish Religious Movements* (New York, 1967), pp. 285-302.
38. *Occident*, VI (July, 1848), 158.

Dr. Ehrenpreis received his Ph.D. from Columbia University. He is currently a Professor of Mathematics of Yeshiva University, and has been a Professor of Mathematics at Harvard, Princeton, the Einstein Institute for Advanced Study, and Courant Institute. He received his סמיכה from Rabbi Moshe Feinstein.

ספק ספיקא and ספק:

## THEIR RELATION TO SCIENTIFIC OBSERVATION

### Introduction

There are many difficulties in the *gemara* which are centered about the concept of ספק. In the early part of the twentieth century, the pioneering work by Einstein led scientists to a new approach to uncertainties in the physical world. It is the purpose of this article to explain the interrelationship between the resolution of these scientific problems and some passages in the *gemara* involving ספק and ספיקא.

My impetus to study the question of ספק ספיקא (double doubt) came from the *heter* given by Rema regarding חדש. The Torah prohibits eating from the new crop of grain (חדש) until the *Omer* offering is brought on the second day of Passover.<sup>1</sup> Grain which took root after the second day of Passover may not be eaten until the next year. Rema declares that if one wants to eat any grain, there is a ספק (doubt) as to whether the grain was harvested before Passover, and even if it is admitted that the grain was harvested after Passover there is a second ספק as to whether it took root before פסח. Since either harvesting or taking root before Passover allows the grain to be eaten, we can eat the flour on the basis of this double doubt, that is, ספק ספיקא.

Most commentators find it difficult to understand this

statement. Ostensibly, there is only one ספק, namely, whether the grain took root before Passover or not. If it took root after Passover, it was certainly harvested after Passover, and may not be eaten until the next year. Thus the two ספיקות of the Rema are *not* independent of each other; the harvest time depends on the time of the grain taking root. This is not a ספק ספיקא מתהפכה.<sup>2</sup>

In order to find the rationale behind Rema, we shall delve into the general question of what constitutes a ספק and when two ספיקות form a ספק ספיקא.

\* \* \*

There are several different types of ספק in *halakhah*. We shall deal with those ספיקות that can be described in terms of the mathematical concept of set theory.<sup>3</sup> A set is a collection of objects; these objects have certain things in common and, perhaps, certain distinctions. In the case of חדש we form the set of all samples of wheat, or all samples of objects made from wheat. The property common to the objects in the set is wheat. The distinguishing features are the times of harvesting of the wheat and the times of rooting of the plant from which the wheat came.

Sometimes a set can be naturally divided into parts; these parts are called subsets. In our example of the set of samples of wheat products, there are the subsets corresponding to those wheat products coming from wheat harvested after Passover, those harvested before Passover, those for which the plant was rooted after Passover, and those for which the rooting was before Passover.

Notice that it is the question to which of the above subsets a given loaf of bread belongs that determines whether or not it is חדש. We have a ספק because we have no practical means of verifying to which subset it belongs.<sup>4</sup> Since one might argue that the important subsets are the subsets of those wheat articles which are חדש and those which are ישן ("old" wheat, which took root in the previous-year), we must try to understand what makes a collection of objects into a set which is of *halakhic* significance and, similarly, what subcollections of this set are

*halakhically* significant subsets. For example, the collection of all bread owned by someone whose first name is Chaim is certainly not a *halakhically* significant subset. Once we clarify this point, we shall be able to analyze the question of ספק ספיקא more deeply.

\* \* \*

Objects, animals and people have their individualities; set theory deals with group functions in which individuality is subservient to the group. The main thrust of our work is in the direction of clarifying the dichotomy between the individual and the group. An analysis of the *halakhic* treatment of other cases of ספק will shed light on the principles involved.

In *Zevahim* 74a we find the following case reported in the name of Rav: A ring belonging to or used for *Avodah Zarah* (idol worship), from which it is prohibited to derive any benefit, gets mixed up with one hundred other rings and is not distinguishable from the others. The *halakhah* is that all the rings are forbidden. However, if one of the 101 rings falls into the sea, then one is permitted to use any of the remaining 100 because it was (may have been) the original ring that was used for *Avodah Zarah* which fell into the sea.

Rava disagrees with Rav's ruling. For the mishnah in *Zevahim* 70b states that if a שור הנסקל (a dangerous ox sentenced to be stoned, derivation of benefit from which is also forbidden) gets mixed up with a multitude of oxen (and we can no longer identify it), then all are to be put to death. Rava asks: According to your [Rav's] view in the case of the rings, after one of this set of oxen dies, let us say that it was (may have been) the original ox which died and allow all the other oxen to be used. How does Rav distinguish between the case of the שור הנסקל and the case of the ring of *Avodah Zarah*?

Another case requiring examination is found in *Hullin* 95a.<sup>5</sup> In a town where nine butchers sell kosher meat and one sells non-Kosher meat, the *Kashrut* of some meat is in doubt. If the meat was purchased by someone who forgot from which butcher it was purchased, it is forbidden, while if it was found in the street, it is kosher.

This law illustrates the crucial role played by *observation*. In the first case an observation was made of the butcher shop from which the meat came; in the second case the observation was of the meat in the street. Why should the *halakhah* be different in the two cases?

\* \* \*

Let me digress to discuss certain scientific ideas which have been clarified in the twentieth century. In the nineteenth century the attitude of scientists was that objects were in a specific condition; for example, an object is in a certain place, an object went through a certain hole, etc. Such statements were meaningful even if no observation was made. Of course, in order to know what the condition was, or which hole the object went through, one had to make observations.

In modern physics the meaning of physical statements is more closely tied to observations. Thus one makes observations of an object, say an electron, and on the basis of these observations one determines the condition of the electron as well as possible. If we do not observe which of two slits (say slit A or slit B) an electron passed through, then we assign a certain probability that the electron passed through slit A and the converse probability that it passed through slit B. This is the best we can do. We do *not* say that the electron actually passed through one of the slits; we only assign probabilities to the various possibilities. Thus the idea of the definite nature of the condition of an electron which was the nineteenth century way of thinking has given way to the probabilistic nature of the twentieth century.<sup>6</sup> The probabilities are assigned in accordance with our observations.

Probabilistic truth is a necessary outgrowth of observational truth; for our observations are limited. Their lack must be filled by probability.

One of the most startling revelations of quantum mechanics is Heisenberg's uncertainty relation, which provides an explicit limit to the knowledge we can obtain from observation;<sup>7</sup> beyond the limit, probability *must* take over. Of course, if we observe something definitively, such as which slit

the electron went through, then we are back to the method of description of nineteenth century thought. We refer to the two ways of description as classical mechanics and quantum mechanics.<sup>8</sup>

We can interpret the case of ten butchers in this framework. When a person goes into a butcher shop, he observes whether it sells Kosher or non-Kosher meat. The fact that he later forgets is insignificant. The meat is in a definitive condition; this is the meaning of קבוע, the term used in the *gemara* to describe the situation. One might argue that the meat found in the street also came from a specific butcher and is thus קבוע. It, however, cannot be designated as such since קבוע refers to the observer, the person asking the question about the *Kashrut* of the meat. In the case of the meat found in the street, no definite observation has ever been made by this person regarding the status of this meat, he knows only that it comes from one of the butchers in town. Thus we may say it is 9/10ths likely to be kosher. In the case where he bought it in a butcher shop, the meat is designated as קבוע, since it had been observed by him at one time to come from a definite butcher shop.

One might object to this method of classification on two grounds:

(a) Even though one can assign a probability of 9/10ths to the *kashrut* of the meat in the case of meat found in the street, this piece of meat is *still*, either Kosher or non-Kosher. How can one be permitted to eat this piece of meat if one doesn't definitely know it is kosher?

(b) Conversely, even if the meat was observed to come from a specific butcher, and that butcher might have sold un-kosher meat, there are 10 specific butchers and 9 of them are kosher. Thus, this meat, even though it is קבוע, is still 9/10ths likely to be kosher and should be permissible.

In order to answer these objections we must carefully analyze the two verses that bear upon this subject. One, אחרי ארבים להטות (to go after the majority), is written in reference to following the majority of judges in cases involving capital

punishment.<sup>10</sup> The other, וארב לו וקם עליו<sup>11</sup> (and he plots against and rises up against him), is invoked by R. Shimon in *Sanhedrin* 79a for the following case: a person throws a stone into a group of people consisting of one non-Jew and many Jews, killing one of the Jews. R. Shimon maintains that the court cannot put the killer to death, since the verse's usage of עליו . . . implies that the court must be certain that he intended to kill a Jew. The non-Jew's presence in the group precludes such certainty, even though there is a majority of Jews in the group. The Talmud also uses this verse to determine that meat bought in the unknown butcher shop (the case mentioned above) is forbidden.

These two verses thus work in opposite directions: אחרי ארבים להטות teaches us to follow the majority, whereas וארב לו וקם עליו teaches us that these are cases (קבוע) in which we do not follow the majority. In these cases individuality dominates. How are we to resolve these contradictory verses?

The cases which are called קבוע, such as the butcher shop referred to above or the case mentioned in *Sanhedrin* 79a, or the שור הנסקל in *Zevahim* are characterized by two properties:

(a) The individual termed קבוע has *definitely* been observed to belong to the set we are concerned with.

(b) the קבוע object is very significant.<sup>12</sup>

Exactly what makes something "significant" is the basis of the question of למנוח או שדרכו למנוח in *Zevahim* 75a. Without delving into the details of the discussion, let us only comment that there are natural (intrinsic) significances to certain objects whereas other objects gain their significance because people consider them as such. Thus butcher shops and valuable rings are significant. According to the *Tosafot* the question of significance may also depend on the severity of the prohibition so that even junk belonging to *Avodah Zarah* is significant.

In order to distinguish between the two types of sets, we shall refer to those collections of objects in which the group idea dominates as *sets*, and those in which the individual idea dominates as *classes*. In this way we will be able to discern the



distinction between the two verses. *אחרי רבים להטות* refers, according to the Talmud, to deciding court cases in accordance with the majority opinion. In a court which has a divided opinion, it must be the case that a *definitive* observation by the court of the guilt or innocence of the accused has not been made. Thus the verse teaches us, that where *probability* enters (no definitive observation has been made) — as in the case of judgements in court — a group action must be based on majority. Majority rules in sets.

Conversely, in the case of *וארב לו וקם עליו*, the repetition of *עליו . . . לו* indicates that knowledge of the intention of the murderer — at least his intention to kill a Jew — must be definitive. Thus an observation of a significant impediment to our knowledge of his intention, such as our observing a non-Jew in the group in which he throws a stone, is enough to make the thrower innocent in court. From this case we learn that direct observations of significant individuals in a collection cannot be ignored, so the collection becomes a class rather than a set.

The case of the ten butchers can now be understood. At the moment the observer bought meat in a store, he *observed* the store; the collection of stores is thus a class. The fact that he forgot his observation is of no consequence because, just as in the case of modern physics, the relation of the observer to the observed object is basically physical so forgetting is not enough to break the bond between the meat and the butcher shop. This bond, which was formed by the observation, allows us to consider the meat as part of the butcher shop; the shop being significant as we noted above makes it *קבוע*. When meat is found in the street, then we consider it part of the set of pieces of meat in the town; hence it is kosher because of the majority rule in sets.

We can regard the verses of *אחרי רבים להטות* and *וארב לו וקם עליו* in a somewhat different light: Because of the imperfection of our powers of observation we are often unable to reach certainty. If we did not rely on probabilistic judgements, then we would often be unable to act. The verse *לא בשמים היא* (the

Torah] is not in the heavens), teaches us that man must work within his limited human capabilities. However one cannot act in opposition to a definitively observed significant impediment; i.e., *קבוע*.<sup>14</sup>

\* \* \*

A central problem of the application of set theory to the halakhic principles of *ספק ספיקא* and *ספק* is in determining exactly which objects belong to the set or class under consideration.

One way that sets and classes are formed is through observation. Observation helps to determine whether objects belong to a given class or set. There are many cases where it is not completely clear which objects belong to a class or set. An example of this is in the case of *ליטרא קציעות*. Forbidden figs (e.g., *terumah*) were pressed on top of a barrel of figs; this barrel was one of many such barrels. The person who pressed the figs could not remember into which barrel they were pressed. The question is whether only figs on the tops of the barrels or all figs in all barrels are to form the set to which the forbidden figs belong.<sup>15</sup>

Another example is the statement of Rav on *Hullin* 95a that one should not eat *בשר שנחעלם מן העין* (meat which was unobserved for a period of time) on which Rosh comments: Because ravens may interchange it with other [non-kosher] meat. We see, therefore, that once a person ceases to *observe* the meat, then, because ravens may move it from town to town, the meat is considered as belonging to the set of meat of the world which is mostly non-kosher.

The dictum of Rav has a twofold application. First it shows us the difficulty of determining the exact sets in which a given object is considered to be. Second it shows that once we are not observing an object, the definitive status which we attributed to it because of our observation can be changed if there is a way in which the actual status could have changed. Thus when we cease to observe the meat, its definitive observed status of Kosher is changed because the meat may have been changed when we were not looking. The explicit set or individuality which our observation assigned the meat is changed

in accordance with all the possible changes the meat may have undergone.

The dictum of Rav concerning meat is in conformity with his dictum on the ring of *Avodah Zarah* which we discussed above. The falling of one ring into the sea constitutes a break in the definitive observation that one ring of *Avodah Zarah* is amongst the rings in the class before us. We have already remarked that it takes a definitive observation to form a class instead of a set. Once a ring falls into the sea, the class becomes a set. As such *אחרי רבים להטות* applies, so we follow the majority and can use the rings.

We can now answer the above mentioned objection by Rava to Rav's dictum on rings. The death of one ox in the herd containing a *שור הנסקל* does not break the observation that the *שור הנסקל* is in the herd. Dead or alive it is still forbidden. (Rava has an entirely different way of understanding how set theory works in Halakhah. I shall discuss them in detail in another article dealing with the basic ideas of Rava and Abaya.)

According to the *gemara* there is something one can do to the herd containing a *שור הנסקל* to save the herd, which is the analog of the falling of one ring into the sea. The *gemara* says *ונכבשינהו דנייידן*, which means: Disperse the herd. *Tosafot* explains that this dispersal must occur when the observer is not observing. Why is this better than when one ox dies?

The case of dispersal of the herd (class) has some similarities and some dissimilarities with the above dictae of Rav. The *gemara* first tries to break the class by saying that we should take one ox out of the class and use the principle *כל דפריש מרובא פריש* (assume that the ox which left the class belonged to the majority of permitted oxen). It rejects this idea because the *שור הנסקל* is considered *קבוע על* and *כל קבוע כמחצה על*, i.e., the concepts of majority and minority do not apply to objects which are *קבוע*.

How does this discussion fit with our ideas on sets and classes? The *שור הנסקל* is *קבוע* because it is significant and was definitively observed to be in the class. By taking one ox out of the class, we have not "broken" the observation that formed

the class; we have just divided it into two parts. (Nevertheless, this division in two parts has some effect, as we shall see below).

The *gemara* then suggests dispersing the herd. Even Rava, who does not accept the changing of the class of rings containing one of *Avodah Zarah* into a set by the dropping of one ring into the sea, does accept the efficacy of the dispersal of the herd (although he objects to this method for other reasons).

It is not difficult to understand the distinctions between dispersal of the herd and the falling of the ring into the sea.

1. When the ring falls into the sea, it is *נאבד מן העולם*; it is "no longer in the world." No further observation of it is possible. Hence the original observation of the class of 101 rings is partially broken (we now observe only 100 of them).

2. When the herd is dispersed, it is removed from the category of observation.

Now, (2) constitutes both a stronger and a weaker break of the class than does (1). (2) is a stronger break because the whole class is out of the category of observation, but (2) is weaker because the class could be reconstituted. The *gemara* accepts the principle that if the herd were reconstituted, it would return to its status of a class. Thus Rava objects (as a preventive measure) to the permissibility of using the animals of the dispersed herd on the grounds that, somehow, the herd might be reconstituted (reconstituting a majority is enough). Thus any significant function of the herd as a herd makes for a reconstitution of the herd. According to Rava the group property that the oxen obtained when the *שור הנסקל* entered the class is never totally broken.

A case similar to (1) is given in the *mishnah* on *Zevahim* 77b in which R. Eliezer states that if one part of a forbidden sacrifice (e.g., a head) got mixed with permitted heads and if one of the heads in this class had been sacrificed and thus was *נאבד מן העולם*, then one could bring each of the other heads as a sacrifice. It should be pointed out that here, it is required by R. Eliezer that the heads be brought to the altar two at a time (R. Eliezer also requires such pairing in the case of rings of *Avodah*

*Zarah*). For that breaks the set of remaining heads into two parts (subsets) and sets up a ספק ספיקא (actually a triple ספק) when we bring the actual sacrifice. The two doubts are: Perhaps the original forbidden head (even if it were not the one originally sacrificed) is in the other subset (that is, all the heads except the two at hand), and, even if it is in this subset of two, perhaps it is the other one.

We mentioned above that taking one ox from the herd containing a שור הנסקל was of no value because the herd is a class. Nevertheless, the splitting of the set of heads after the sacrifice of one is of some value according to R. Eliezer.

We have, so far, discussed two types of breaking of a class, namely, one object becoming מן העולם, or the whole class being scattered out of observation. On *Zevahim* 74a, a third possibility is introduced in the name of Rav. Suppose that the class of 101 rings described above got separated, say 61 in one place and 40 in another. If some (or even all) of the 40 fell into a majority of permitted rings, then each ring in this new mixture is permitted on the grounds of ספק ספיקא. For we can say that it is a ספק whether the ring of *Avodah Zarah* is in the 61, and even admitting that it is amongst the 40, when we remove one from the final mixture, we can say that it is unlikely that it is that one.

On the other hand, the collection of 61 is still considered a class, and if a majority of it fell into a great number of rings, the new mixture would still be a class.

We shall refer to this situation as (3). Note that it is only the minority of 40 that becomes a set, because we can say that our original definitive observation of the ring of *Avodah Zarah* in the class of 101 rings does not force us to say that there is definitely a ring of *Avodah Zarah* amongst the 40. (3) has some strength over (1) and (2) because of ספק ספיקא. However, it is weaker than (1) because of the possibility of reconstituting the original class of 101 rings, and it is weaker than (2) because in (2) the whole class is dispersed and, presumably, mixed with a large multitude.<sup>16</sup>

Of course, one could inquire as to why the שור הנסקל is not

now considered as part of all the oxen in the world so that all oxen should now be prohibited. We can give two possibilities:

(A) The law that שור הנסקל אינו בטל refers to an "ordinary-sized" mixture. But all the oxen in the world is like a case of רובא דרובא (a huge majority), as described by the Rosh on *Hullin* 3b, referring to the statement that רוב מצויין אצל שחיטה מומחים הן, i.e., the majority of ritual slaughterers are competent. Another instance of רובא דרובא is that if one dropped a can of beer into a reservoir on פסח, it would not prohibit drinking all the water, although in general even the smallest amount of *hamez* in a mixture is enough to prohibit the mixture.

(B) The collection of dispersed oxen is out of the category of observation, and they were never definitively observed to disperse. Thus there is now no observation of their being in the world. The collection of all the oxen in the world does not constitute a set from the point of view of observation (since we can never observe this collection in totality); however, it may constitute a set from the point of view of *halakhah*. (See our discussion of חדש below.)

A case discussed on *Yoma* 89b helps to shed more light on our subject. The *gemara* there deals with the violation of *Shabbat* to save a life, which is permitted if the person in danger is a Jew; the question is, can we violate the Sabbath if he is part of a group consisting of nine non-Jews and one Jew? The answer given is that we violate *Shabbat* for him unless there exists a case of פרש מקצחיהו literally "a minority leaves the group." There are several ways to interpret this passage. According to Rambam,<sup>17</sup> if there is one Jew living amongst nine Gentiles in a town or courtyard, then the Jew is considered קבוע regarding violating *Shabbat* to save the life of one of the ten. Thus the ten form a class. If one of the ten leaves town or goes to another courtyard, then we still violate *Shabbat* to save him. However, if all ten leave the original courtyard and, while they are going, one leaves to go on his own to another courtyard (to which the other nine do not go), then we do *not* violate *Shabbat* to save that individual.

Ramban and Ra'avad hold that in the last case we still

violate *Shabbat*. It is only when 4 (or fewer) of the ten travel and, while they are travelling, one of them goes on his own to another courtyard that we do not violate *Shabbat* for him.

Let us fit these cases into our framework. While the group is moving, it is *not being observed*. Thus it changes from a class to a set just as the dispersed herd does. In a set we can apply *אחרי רבים להטות*, so if one person leaves the set, we presume that he is a non-Jew, and we do not violate *Shabbat* for him.

According to Rambam the "breaking" of the class into a set here is stronger than the breaking in the case mentioned above where the 101 rings were separated into groups of 61 and 40. For we needed a *ס"ס* for the 40, e.g., some of them falling into a majority of permitted rings to permit their use; the principle *כל דפריש מרובא פריש* (an assumption that whatever was removed from the group came from the majority) does not apply to the 40 as it does to the 10 men while they are travelling.

Ramban and Ra'avad on the other hand, perhaps because of the statement of Shemuel that, *אין הלכים בפקוח נפש אחרי הרוב*, (we do not follow a majority where a life is at stake), require a stronger break than does Rambam. For they require the break of a minority (like the 40 rings) travelling, hence breaking both the set and the observation, and *then* the additional (strong) break of *כל דפריש מרובא פריש* from this minority while they are not observed.

The case of one individual who leaves his group of ten travellers and goes to another town is either (Rambam, who says the man may not be saved) like the 40 rings after they have been mixed with many good rings and therefore are completely out of the original class of 101 rings, or is (Ramban, Ra'avad, who say the man may be saved) like the ox that has been taken out of the herd containing a *שור הנסקל* but is still considered part of the herd.

\* \* \*

Thus far we have discussed the breaking of classes and the formation of sets and classes by observation. There is a second method of formation, namely, by *halakhah*. The fact that there

are *halakhot* which are relevant to a certain collection of objects makes that collection into a set or class, *even* in situations where those particular laws do not apply. For example, there are many laws regarding the planting of grain (e.g., *כלאים*, the prohibition of mixed seeds) and its harvest (e.g., *לקט*, allowing the poor to glean). Thus the samples of grain harvested before or after Passover constitute sets from the point of view of *ביטול*, the laws of nullification. These sets can be used in our analysis of whether or not our grain sample is *חדש*, even though *חדש* has nothing to do with the harvest laws such as *לקט*. The mere existence of *any* laws affecting grain in its harvested state enables us to form halakhically significant subsets out of such grain. Similarly grain which took root either before or after Passover also forms its own subset, since the *halakhot* of *חדש* involve the time of taking root.

We can now explain the *ספק ספיקא* of *חדש* in our framework. The collection of all grain is a set. It can be divided into the subset of grain harvested before Passover (A) and that of grain harvested afterwards (B).<sup>18</sup> In addition, the set of all grain can be divided into the subsets (C) and (D) according to whether rooting took place before or after Passover. If we take a sample of grain, we have a *ספק* as to whether it belongs to (A). A second *ספק* arises in a similar fashion regarding its belonging to (C). Thus we have a *ספק ספיקא* in a set which certainly makes the set permissible.

We must still understand the original objection to this *ס"ס* in which we look at things in another way. Instead of starting with the subdivision into (A) and (B), we begin by asking the question as to whether it belongs to (C) or (D); a "bad" answer, namely, that it belongs to (D), already obviates any possibility of belonging to (A). Thus one bad answer makes it definitely bad, so there is only one *ספק*. Why start with the division into (A) and (B) rather than the division into (C) and (D)?

To understand this, let us go back to case (3). Call the set into which some of the 40 rings fell (E). We might say that the one ring of *Avodah Zarah* is definitely in the set consisting of the original 101 rings and the new ones in (E). Nevertheless, we

do not say this. We look at the set consisting of (E) and the rings that fell into it as a *new entity* (F) for which an entirely new ספק exists. Thus the observation of (F) as a set makes it a set in its own right independent of the other 61 rings.

The situation as regards חדש is similar. The laws concerning the planting and harvesting of grain make all the four sets (A), (B), (C), and (D) into entities in their own rights. Thus *halakhah* allows two questions: Is the sample from (A) or (B)? Is the sample from (C) or (D)? The fact that (A) is contained in (C) is of no importance, just as the fact that the original ring of *Avodah Zarah* is in the collection consisting of the 101 rings and the rings in (E) and is of no importance.<sup>19</sup>

#### Summary

When we have a collection of objects some of which are forbidden and some of which are permitted (we do not know which is which), then there are two conflicting verses regarding the possibility of using the objects: אחר רבים להטוח which indicates that if the majority is permitted, we can use them, and וארב לו וקם עליו which indicates that one forbidden object makes all forbidden. The latter verse applies only when a definitively forbidden object is observed to belong to the collection and that object is very important. Such a collection is called a *class*, and the forbidden object is said to be קבוע. Other collections are called *sets*.

Formation of classes and sets often depends on observation. As such these concepts are similar to modern ideas of physics called quantum mechanics in which observation plays a great role in the determination of truth. Truth is, in fact, only probabilistic truth in conformity with אחר רבים להטוח.

Once a class is formed, there are various ways to "break" the class so as to yield the possibility of usage of the elements of the class:

- (1) Destruction (inadvertant) of as many elements in the class as the number of elements known to be prohibited.
- (2) Complete dispersion of the class.
- (3) Breaking (inadvertant) of the class into two parts and

then having some (or all) of the smaller part mix with a majority of new objects which are known to be permitted.

Sometimes sets of objects can also be formed based upon specific *halakhot* which apply to them. An understanding of this fact can help us resolve certain troublesome halakhic problems such as the lenient ruling regarding grain which might be חדש.

#### FOOTNOTES

1. *Yoreh De'ah* 293:3.
2. A reversible ספק ספיקא, i.e., in this case the two doubts are not independent of each other. See *Shah* in *Yoreh De'ah* 110:9.
3. Such ספיקות involve the impossibility of distinguishing between several objects of איסור and היתר rather than that of determining the status of a single known object due to unclear circumstances. This distinction is pointed out by *Tosafot, Niddah 2a, s.v. וכלל*.
4. Actually, there might exist extremely complicated chemical tests which could be used, but because of their difficulty in application they are not of the status of אפשר לברר and are of no halakhic importance.
5. Also *Pesahim 9b, Niddah 15a, and Ketubot 15a*.
6. This change in outlook was forced by a number of startling discoveries in the early part of the 20th century. It would take us too far afield to describe these discoveries in detail — the interested reader should consult *Physics and Philosophy, The Revolution in Modern Science*, by Werner Heisenberg (New York, Harper, 1958).

An examination of one of the experiments which led to the new idea will give us a brief insight into the subject: One first shoots 100 electrons through a barrier containing two slits and examines where the electrons land on a screen placed a little beyond the barrier. Next one sends 50 electrons through the barrier with one slit closed and 50 with the other slit closed and observes the pattern formed by these 100 electrons on the same screen. The two patterns formed by these two groups of 100 electrons are different. One tries the first experiment again but this time observes, by some means, which slit each of the electrons passed through. One gets a third, different, pattern on the screen.

The inescapable conclusion of these experiments is that the observation of an event alters it. The explanation for this phenomenon is that the observation requires a relation between the observer and the object observed (e.g., shining light on the object to see it) and this relation

alters the object. Another, and more subtle conclusion of these experiments is that, without observing the slit through which the electron went, we can not say that it definitely went through one of the slits but rather that it went through each slit with 50% probability. Thus the definitive nature of truth has given way to the probabilistic nature.

7. The Uncertainty Principle states that it is impossible to know both the position and the momentum of an object at any given time with an accuracy greater than Planck's constant. For objects with as little mass as electrons this can be a significant amount. This is an ontological impossibility, i.e., it can not be changed by improved technology (viz. op. cit.).
8. The ideas of quantum mechanics and probabilistic truth help explain why one can eat a mixture consisting of two pieces of Kosher meat and one of non-Kosher meat (which are indistinguishable). For, when we remove a piece of meat from the mixture, that piece is two-thirds likely to be Kosher. Since truth is probabilistic, this means that the chosen piece is Kosher. Hence we can eat each of the three pieces one by one even though the result of our actions is to eat one piece which is certainly non-Kosher according to classical mechanics. Of course, we cannot eat all three pieces together, for then we are definitely eating something forbidden; there is no probabilistic justification for such an act.

The case of שני שבילין in *Pesahim* 10a, can be analyzed in a similar manner. Two men went on two paths; one path was known to be מטמא (defiling) but it was not known which path that was. If the two men later ask simultaneously whether they are טהורים (ritually pure) then the answer is "no" because the simultaneity of their question constitutes a function of the set (consisting of the two men) as a set and so is certainly טמא (impure). On the other hand, if the two men do not ask simultaneously, then the answer is "yes" because each man has a probability of 1/2 of being טהור, and this suffices to keep him טהור because he has a חוקה כשרות (presumed status of purity).

The halakhic principle of חוקה is very much in the spirit of quantum mechanics. Something is given a חוקה (presumed legal status) of being in the condition it was in at the last observation, or, if no observation of it was made, it has a חוקה of being in the condition that it probably was in when it was formed.

When two observations are made which differ as to their conclusions about the status of the object, then it is important to know what the halakhic status of the object is between the two observations. Do we say it was in the state of the first observation or the second observation? Various aspects of this question appear in many places in the Talmud, e.g., *Niddah* 2a, and the dispute between Abaye and Rava on the question of יאוש שלא מדעת in *Bava Mezia* 22b.

9. Exodus 23:2.  
 10. *Sanhedrin* 2a.  
 11. Deuteronomy 19:11.  
 12. Viz. *Tosafot, Zevahim* 72a, s.v. אלא.  
 13. Deuteronomy 30:12.  
 14. It should be noted that R. Meir was reluctant to use probabilistic truth and searched for absolute truth whenever possible (*Hullin* 6a). Although it is not part of our present work, we point out in passing that this is part of the general philosophy of R. Meir in emphasizing individualism. This can also be seen from the mishnah on *Sanhedrin* 23a. The situation regarding קבוע is reminiscent of the midrash on the creation of the world. G-d asked four angels their opinion as to whether man should be created. They voted two for and two against. One of those opposed was the Angel of Truth who declared that man would surely be a liar. G-d then threw the Angel of Truth out of Heaven, so the vote was in favor of creation of man. He threw the Angel of Truth out because of the principle: In אמת there is no majority. Even if G-d had joined with the two angels favoring creation of man, the majority could not overrule a minority containing אמת, since קבוע is אמת. Thus G-d threw אמת (absolute or classical truth) out of Heaven and established probabilistic truth and majority rule.  
 The *mishnah* in *Terumah* 28a states: כל האסורין לגבי מזבח אוסרין בכל שהן. This means that there is no law of ביטול with regard to sacrifices. If we regard the altar as representing the relation between G-d and people, then, even though people must act according to probability because of the lack of perfection of their powers of observation, in dealing with G-d we must deal in terms of His powers of observation which are perfect. Looking at things this way, that is, from His point of view, leads to the lack of ביטול on the altar.
15. The bottom figs could never become forbidden, as no question of their kashrut ever arose. The only question about the bottom figs is whether we can use them to be מבטל the forbidden figs. Thus, if, e.g., ten forbidden figs were pressed in one barrel then the total number of figs on the tops of all barrels might not be enough to מבטל the ten forbidden ones, but all figs in all the barrels might be enough. Thus we see the possibility that the halakhah is weighted in favor of leniency rather than prohibition.
16. One might object to ונכבשינהו דניידין on the grounds that it constitutes מבטל איסור לחחילה. For, wherein does mixing the oxen of the class with the oxen of the world differ from adding a permitted object to a mixture containing a forbidden one?
17. Maimonides, *Hilkhot Shabbat*, 2:20-21.  
 18. Presumably, (A) and (B) are of about equal size, in any case, there is not enough permissible grain to nullify the forbidden grain.

19. The principle of ס"ס leads to the following paradoxical situation: Suppose an apple of תרומה (which is בטל in 100) falls into 2 apples of חולין. Then an apple of this mixture falls into two other apples of חולין. In such a case, one can eat the latter three apples (one by one) because of ס"ס even though, if we think of all things together, we have only 4 good apples and one bad one.

Elazar R. Muskin

Elazar Muskin is Rabbi of Mt. Sinai Jewish Center in Manhattan, New York. He was ordained at RIETS and received an M.S. degree in Jewish Philosophy from Bernard Revel Graduate School. He holds a masters degree in educational administration from Columbia University and is a graduate of Yeshiva College.

### REINFORCING FAITH: THE MESSIANIC CHAPTER OF ABRAVANEL'S ROSH AMANAH

The terrible persecutions inflicted upon Spanish Jewry in the fifteenth century not only decimated the community through wholesale conversions, but even undermined belief among those who remained Jews. The concept of Messianism and final redemption, once a pillar of Jewish thought, was eroded by bitter Christian attacks, and despair replaced hope in the hearts of the people.<sup>1</sup> In this atmosphere, Don Isaac Abravanel,<sup>2</sup> the Spanish statesman and Jewish philosopher, felt compelled to undertake the two-fold task of refuting Christian polemics and restoring faith in Jewish Messianic beliefs.<sup>3</sup> He felt that he had both the responsibility and the talent to reaffirm Judaism in its entirety.<sup>4</sup> To bolster faltering faith, Don Isaac refuted Christian attacks in a systematic fashion. He not only wrote three treatises on Messianic beliefs in which he analyzed and classified all Biblical and Talmudic Messianic literature, but also simplified complex, esoteric ideas in a philosophic work on the principles of Jewish faith, *Rosh Amanah*.<sup>5</sup>

In Chapter Fourteen of *Rosh Amanah*, Abravanel defends Maimonides against the criticism of Albo which centered on an interpretation of *Sanhedrin* 99a. The chapter reflects some of his major arguments on the doctrine of the Messiah. Though Abravanel presents his arguments lucidly, his approach raises a

number of problems for the careful reader. For example, we must wonder why in *Rosh Amanah*, Abravanel's explanation of the Talmudic passage differs from the interpretations given by his predecessors and contemporaries. We must also question how this particular explanation can be harmonized with his own alternative interpretation presented in one of his Messianic treatises, *Yeshu'ot Meshiho*. Finally, we must ask why Abravanel defended the doctrine of Messianism, or indeed, any of Maimonides' other principles of faith, when, in the final two chapters of *Rosh Amanah*, he personally rejected the idea of creedal formulation in Judaism.

Abravanel wrote *Rosh Amanah* to defend Maimonides' thirteen principles of faith and to encourage popular adherence to them.<sup>6</sup> He noted in his introduction that he had undertaken the work in response to the terrible effect which suffering and despair had inflicted upon his people.<sup>7</sup> Abravanel believed Maimonides had formulated the thirteen principles for ordinary people who were not well versed in philosophic theories and required a simple presentation of the fundamentals of Judaism.<sup>8</sup> Though Jewish philosophers such as Albo and Crescas had criticized Maimonides' principles, Abravanel felt that the times required a response to their criticism. His preoccupation with the plight of his brethren can best be seen in his treatment of the doctrine of the Messiah in Chapter Fourteen of *Rosh Amanah*.

The Jewish doctrine of the Messiah provided a target for Christian attacks and therefore required the strongest defense. Whereas in Judaism belief in the Messiah was not considered cardinal, the doctrine of the Messiah formed the basis of Christianity. As a result, the Church naturally attempted to disprove Jewish interpretation and thereby win converts. One rabbinic response to such missionary activity relegated belief in the Messiah to minor importance.<sup>9</sup> But Abravanel correctly recognized that the doctrine of Messianism offered hope and moral stamina to a persecuted people.<sup>10</sup> He therefore defended Maimonides' doctrine of Messiah against Albo's criticism.

In the first chapter of *Sefer ha-Ikkarim*, Albo questioned

the inclusion of belief in Messiah among those fundamental principles which, if denied, would involve heresy. Albo used the comment of the third-century Amora, R. Hillel, in *Sanhedrin* 99a as his proof. Hillel said, "There shall be no Messiah for Israel because they already consumed him in the days of Hezekiah."<sup>11</sup> Albo argued that such a statement by a Talmudic sage, rejecting a future Messiah, indicated that Messianism could not be a fundamental Jewish principle. Albo agreed that R. Hillel's statement involved a sin because the Talmud adds R. Joseph's remark, "May God forgive Rabbi Hillel." He insisted, however, that Hillel's comment could not be classified as heresy, since the sage is referred to in the Talmud as "Rabbi," and not as an infidel.<sup>12</sup>

In providing a different interpretation of the Talmudic passage, Abravanel refuted Albo's contention that Hillel undermined Maimonides' principle of Messianism. Abravanel argued that R. Hillel's comment does not reject the coming of the Messiah, as Albo proposed.<sup>13</sup> Instead, Abravanel believed, Hillel implies that the Messiah's arrival does not depend upon Israel's merits but upon God's ordained plan. Abravanel considered R. Hillel's comment in the light of the idea that the Messiah can arrive during two possible periods. In the first period, which included Hezekiah's lifetime, the Messiah can come as a result of Israel's good deeds and repentance. If, however, this does not occur, then the Messiah must arrive at the end of days, which Abravanel computed to be the year 1503. Abravanel proposed that Hillel's comment refers to the second possibility. He felt Hillel ruled out the possibility of the Messiah's early arrival because the great miracles God performed for Hezekiah exhausted the merits of the Jews. As a result, in R. Hillel's view, the Messiah could only come at the end of days.<sup>13a</sup> Abravanel therefore explained, unlike Albo, that R. Joseph's comment, "May God forgive Hillel," actually referred to R. Joseph's worry that Hillel's idea might cause Israel to disregard the role of good deeds and repentance in bringing the Messiah.<sup>14</sup>

Although Abravanel disagreed with Albo's interpretation



of this passage, he did agree with Albo that its explanation by Simon Duran (1361-1444), the prolific Spanish rabbinic scholar and philosopher, was not acceptable.<sup>15</sup> Duran had claimed that Messianic concepts are derived from tradition rather than Scripture. Since Duran argued that the Messianic prophecies of Isaiah refer to Hezekiah, he deduced that Hillel was not denying belief in the Messiah, but rather merely affirming accepted tradition about Hezekiah as the subject of Isaiah's prophecies. However, Abravanel's concurrence with Albo on this point possibly did not stem from similar reasoning. Albo suggested Duran was mistaken because R. Joseph's comment about Hillel would never have been made had Hillel denied only that Scripture rather than tradition was the foundation of Messianic belief. Abravanel may have rejected Duran's explanation because it conflicted with the former's attempt to unify the Messianic prophecies in the Bible with the Messianic comments in the Talmud. Throughout his life, Abravanel insisted that the prophecies of the Bible foretold the coming of a future Messiah, a position he had to maintain in order to refute Christian claims that the Messiah had already come.<sup>16</sup>

Though Abravanel rejected outright only Albo's and Duran's explanations of the passage in *Sanhedrin*, it does not seem that he incorporated the interpretations of any other contemporary or earlier scholar either. While we can never know for certain which works Abravanel actually consulted, because he rarely noted his sources, we can determine that his interpretation of the Talmudic passage in *Rosh Amanah* differed from explanations offered by other *Rishonim*. Rashi, for example, proposed that R. Hillel did not deny the concept of a Messianic age, but rather only rejected the idea of a human Messiah. Instead, according to Rashi, Hillel implied that the Almighty, rather than a human being, would be Israel's redeemer. Perhaps Abravanel did not utilize Rashi's interpretation because a human Messiah played an indispensable part in Abravanel's Messianic scheme.<sup>17</sup>

Abravanel also did not include the interpretation offered

by Rabbi Nissim Ben Reuben Gerondi, a famous fourteenth-century Spanish Talmudist and teacher of Crescas, also known as Ran. Ran remarked that Hillel could not possibly have meant that Israel would never be redeemed. Instead, he assumed Hillel meant that since during Hezekiah's rule the material aspects of the Messianic age had already occurred, Israel would in the future immediately experience its spiritual aspects without Messianic battles having to be fought.<sup>18</sup> This explication might not have appealed to Abravanel because the suggestion that even part of the Messianic age had occurred provided Christian polemicists with an argument from the Talmud that the Messiah had come. In addition, Abravanel emphasized that battles would occur in the future Messianic times. In order to disprove the Christian contention that the Messiah had come, he had compiled a long list of signs which would indicate the Messianic age. These included Messianic battle and the terrible vengeance God would wreak upon Israel's enemies.<sup>19</sup>

Abravanel's interpretation also differed from that of his contemporary, the Spanish Biblical commentator and physician, Rabbi Hayyim Ibn Musa, author of *Magen vaRomah* (a work written to prove the Messiah had not yet come). In a special essay on the topic of Hillel's comment, Rabbi Hayyim interpreted him literally. Rabbi Hayyim claimed that Hillel represented the minority view concerning Messiah and was mentioned in the Talmud only to teach that his statement was not accepted as correct.<sup>20</sup> He suggested that Hillel, unlike most sages, was not well-versed in Biblical passages, and thereby mistakenly claimed that the Messiah had appeared in the time of Hezekiah. Hillel's comment thus ignores the historic fact that after Hezekiah's death Zehariah prophesied that a Messiah would appear. Rabbi Hayyim believed that Hillel's mistake evoked R. Joseph's comment, and no other sage added further comments because everyone realized Hillel's deficiency.<sup>21</sup>

Such an outright rejection of a comment made by a Talmudic sage would probably not have appealed to Abravanel because he viewed the ancient rabbis with reverence. In his in-

roduction to *Yeshu'ot Meshiho*, he mentioned that he specifically sought Talmudic comments on the Messianic era because "the great sages of Israel commanded all the treasures of knowledge and had correct judgment which never failed." Believing that the sages received "all the truths from the prophets themselves," Abravanel maintained that even when their words "are cloaked in mystic legends and parables," it is possible "to uncover their true meaning."<sup>22</sup> In addition, Abravanel might have realized that any attack on the accuracy of a Talmudic sage would provide ammunition for the Christian polemicists, and would undermine the faith of the Jewish community. Such an approach would confuse the average Jew, since he could not know which Talmudic passages he must accept and which he could reject, a condition Abravanel labeled in *Yeshu'ot Meshiho* as dangerous.<sup>23</sup> He argued that those scholars who asserted that Talmudic legends could be believed or rejected according to one's inclination were incorrect.<sup>24</sup> Abravanel likewise realized that such an attitude might be used by Christian polemicists who would feel free to reject any Talmudic passage that challenged their faith. He therefore insisted that all Talmudic legends possessed unquestionable credibility and alluded to the end of time.<sup>25</sup>

Abravanel thus can be seen to have had good reason both to offer his own interpretation of the passage in *Sanhedrin* and to avoid the alternative explanations of his contemporaries and predecessors. It is, however, difficult to understand why his explanation of Hillel in *Rosh Amanah* contains elements which differ in particulars from similar ideas expressed in *Yeshu'ot Meshiho*. For instance, in *Rosh Amanah* Abravanel developed the idea of two time periods in which the Messiah could arrive, but in *Yeshu'ot Meshiho* he suggested a three-part time division: 1) The time when the Messiah cannot come; 2) the time when the Messiah can come due to a deserving generation; and 3) the time in which the Messiah must come.<sup>26</sup> The first period, the time when the Messiah cannot come, was not mentioned in *Rosh Amanah*. This period encompassed the years from creation until four centuries after the destruction of the Second

Temple.<sup>27</sup> However, this is when Hezekiah lived. If it were impossible for the Messiah to appear during this period, how could Abravanel suggest that Hillel considered the possibility of the Messiah's arrival in Hezekiah's day? Perhaps in *Rosh Amanah* Abravanel simply interpreted Rav Hillel's remarks without injecting his own ideas. Possibly Hillel held a minority view which did not include a three-fold Messianic scheme. In that case, Abravanel would not consider it necessary to mention his own belief in the three-fold scheme which he introduced in *Yeshu'ot Meshiho*.<sup>28</sup>

Another instance of discrepancies between *Rosh Amanah* and *Yeshu'ot Meshiho* involves Rashi's interpretation of Hillel's statement. In *Rosh Amanah*, Abravanel avoided Rashi's suggestion of the Almighty as the redeemer. Since he wrote *Rosh Amanah* to strengthen his people's faith and that faith incorporated belief in a human Messiah, Abravanel probably felt he could not discount such belief. In addition, the idea of a human Messiah existed as far back as the time of the *Tannaim* and formed an inseparable part of Messianic expectations.<sup>29</sup> This fact, however, did not deter Abravanel from utilizing Rashi for an alternative explanation of Hillel's statement in *Yeshu'ot Meshiho*.<sup>30</sup> Perhaps, though, Abravanel did not really contradict himself. For *Yeshu'ot Meshiho*, unlike *Rosh Amanah*, possessed a dual purpose. It was written both to reaffirm faith and to answer Christian polemicists. In answering the polemicists, Abravanel tried to prove that the Talmudic legends suggest not that the Messiah has already come, but that the redemption will take place in the future and will include all of his prerequisites for the Messianic era. Though Abravanel personally thought that the Messiah would be human, he considered it to be inconsequential whether a human Messiah or the Almighty heralded the Messianic era, so long as his other qualifications were met. In addition, he had to admit that the literal meaning of the prophets indicated that a human Messiah was not necessary.<sup>31</sup> Consequently, Abravanel could afford in this instance to include Rashi's comments.

The final problem in *Rosh Amanah* involves not merely

the question of Messianism, but rather the overall direction of the work. In the first twenty-two of twenty-four chapters, Abravanel attempted to prove that Maimonides' thirteen principles of faith could withstand the attacks mustered by Albo and Crescas. He considered the Rambam's list to be the most comprehensive creedal formulation available, and his defense helped eliminate any further proliferation of such lists.<sup>32</sup> In the final chapters of *Rosh Amanah*, however, Abravanel questioned the necessity of this kind of listing and offered his own opinions about *ikkarim*. He opposed any compilation of dogmas or principles, believing that every mitzvah in the Torah forms a creed unto itself, and every word of God constitutes absolute truth.<sup>33</sup> This appears to undermine the previous chapters and causes the reader to wonder how Abravanel could compose such a work.

The contradiction, however, can be resolved through a brief review of Abravanel's specific attitude regarding Maimonides' principles as indicated in the last two chapters of *Rosh Amanah*. Though he opposed dogmas, Abravanel actually considered Maimonides' articles as a pedagogical book rather than a statement of Jewish creed. He noted that Maimonides listed his principles in a popular work, *Perush ha-Mishnayot* rather than in his philosophical treatise, *The Guide for the Perplexed*. This indicated that Maimonides desired to provide the average Jew with a simple though proper understanding of Judaism.<sup>34</sup> Abravanel, therefore, felt justified in defending the articles, since they served the important purpose of reinforcing faith rather than the dubious one of formulating creed.<sup>35</sup>

Reinforcing faith thus proved to be the underlying *raison d'être* of the entire *Rosh Amanah* as well as the probable motivation behind Abravanel's Talmudic exegesis in the fourteenth chapter. What at first glance might appear to be singular or inconsistent behavior, upon close examination proves to be part of Abravanel's overriding desire to sustain the hope of his suffering brethren. By carefully avoiding any interpretation which could have casted doubt on the Jewish doctrine of the Messiah or aided Christian opponents,

Abravanel kept the issue clear and simple for the benefit of the average Jew. Thus we can see that while in his role as statesman and spiritual leader Abravanel had hearkened to his people's cry, as literary artist he created a Messianic program which could both protect his brethren from the ravages of conversion and provide a new dream in a soon to be realized redemption.

NOTES

1. Ben Zion Netanyahu, *Don Isaac Abravanel* (Philadelphia: Jewish Publication Society, 1968), pp. 200-01.
2. See Netanyahu, pp. 261-63, for a discussion of the spelling of the name "Abravanel." This paper follows the spelling preferred by Netanyahu.
3. *Ibid.*, p. 205. See also Paul Goodman, "Introduction", in *Isaac Abravanel: Six Lectures*, ed. J.B. Trend and H. Loewe (Cambridge: University Press, 1937), p. 3.
4. Eugene Mihaly, "Isaac Abravanel on the Principles of Faith," in *HUCA*, 26 (1955), 482.
5. The three Messianic works are: *Ma'aynei ha-Yeshu'ah*, *Mashmi'a Yeshu'ah*, and *Yeshu'ot Meshiho*. Abravanel's Messianic date, 1503, is found in *Ma'aynei ha-Yeshu'ah*. See Goodman, p. 14. and Netanyahu, pp. 225-26.
6. Netanyahu, p. 73.
7. Don Isaac Abravanel, *Rosh Amanah* (Tel Aviv: Sifriyati Press, 1958), p. 8.
8. *Ibid.*, p. 139. Arthur Hyman, "Maimonides' 'Thirteen Principles'," in Alexander Altmann, ed., *Jewish Medieval and Renaissance Studies* (Cambridge, Mass., 1967), pp. 138-44, suggests Maimonides wrote the *ikkarim* and made their acceptance a condition for immortality because immortality required a perfected intellect. To gain immortality, the masses needed to know some basic philosophic truths such as incorporeality. The *ikkarim* presented these truths in the simplest form. See also Julius Guttmann, *Philosophies of Judaism*, trans. David Silverman (New York: Schocken Books, 1976), pp. 202-203.
9. See, for example, Joseph Albo, *Sefer ha-Ikkarim*, trans: Isaac Husik (Philadelphia: Jewish Publication Society, 1946), I, 47. IV, 413. See also Netanyahu, p. 201, on why both Crescas and Albo "eliminated the Messianic doctrine from the list of basic principles of Judaism." Husik, "Introduction," *Sefer ha-Ikkarim*, pp. XV-XX, notes that Albo was affected by the Christian disputes such as the Tortosa debate, 1413, in

- which he participated. Crescas and Albo here are following the Ramban: See Ramban, "Book of Redemption," in *Ramban Writings and Discourses*, trans. Charles B. Chavel (New York: Shilo Publishing House, 1978), pp. 606-607.
10. Netanyahu, pp. 199-202. Netanyahu believes that the 15th century was the poorest in Jewish Messianic literature because the Messianic concept was shaken by Christian ideological attacks. See Ahad Ha-Am, "Past and Future," in *Selected Essays by Ahad Ha-Am*, trans. Leon Simon (Philadelphia: Jewish Publication Society, 1912), p. 87. See also, Ahad Ha-Am, "The Supremacy of Reason," in *Ten Essays on Zionism and Judaism*, trans. Leon Simon (New York: Arno Press, 1973), pp. 215-216. Dr. David Berger has brought to my attention that Ahad Ha-Am thought Maimonides emphasized a non-rational belief in the Messiah because it provided the national hope necessary for the continuance of Judaism.
  11. See, S. Mendelsohn, "Hillel Ben Gamaliel III," *The Jewish Encyclopedia*, 1904. Mendelsohn claims that Hillel was consulted by Origen, the 3rd century Christian polemicist, about certain difficult Biblical passages. Mendelsohn believes Hillel's remark may have been in response to "Origen's professed discovery in the Old Testament of Messianic passages referring to the founder of Christianity."
  12. Albo, I, 43-48.
  13. Ibid., p. 47, "אלא שבלי ספק רבי הלל לא היה מאמין בביאת המשיח כלל"
  - 13a. See *Shabbat* 32a and *Bereshit Rabbah* 44 for the source of this tradition, that a miracle performed on one's behalf reduces one's merits.
  14. *Rosh Amanah*, pp. 86-88. Abravanel believed that when R. Joseph utilized quotations from Zechariah to refute Rav Hillel, it indicated that he believed that repentance could hasten the Messiah's arrival.
  15. Husik, *Ikkarim*, p. 45, identifies Simon Duran's *Magen Abot* as the source for Albo's statement, "Others explain . . . this dogma does not rest on any Biblical text." Husik, p. XXII, notes that Albo never gave Duran credit, "and yet he seems to have borrowed from *Magen Abot* . . . even more perhaps than from Crescas." Abravanel, *Rosh Amanah*, does not name Duran, but says, "וכמו שפירשו, 'אברבנאל מעולם לא הזכיר את דוראן, אבל הוא כנראה לקח את דבריו מן המגן אבות.'" . . . אחרים. Mihaly, p. 483, note 5, remarks, "Abravanel never mentions Duran in any of his writings, which is indeed strange when we consider his thorough familiarity with the entire literature of the period." Why Mihaly finds Abravanel's silence concerning Duran as strange is difficult to understand when Mihaly also notes, p. 502 note 62, that Abravanel did not give credit to Abraham Bibago's *Derekh Emunah* "although it is undeniable that he used the book, at times, taking entire passages verbatim." What one must conclude is that Abravanel often did not quote his sources. See Jacob Minkin, *Abravanel*, (New York: Berhman's Publishers, 1938), p. 203.

16. See Isaac Abravanel, *Mashmi'a Yeshu'ah*, which attempts to demonstrate that the Messiah did not come during the Second Commonwealth. See also Ramban's *Sefer ha-Ge'ulah* for the possible origin of this tradition.
17. Joseph Sarachek, *Don Isaac Abravanel* (New York: Block Publishing Co, 1938), p. 190.
18. Rabbenu Nissim, *Hiddushei ha-Ran*, (New York: Ozar ha-Sefarim, 1965), p. 29b. Leon A. Feldman, "Nissim Ben Reuben Gerondi," *Encyclopedia Judaica*, 1973 states that two Spanish Talmudists bore the name Ran, and that the commentary on *Sanhedrin* most likely was written by Ran who lived a generation before Rabbenu Nissim. See Menachem Kasher, *ha-Tekufah ha-Gedolah* (Jerusalem: Makhon Torah Shelemah, 1968), p. 133. Kasher claims the correct author was David Bonveyar, a student of Nachmanides.
19. Don Isaac Abravanel, *Mashmi'a Yeshu'ah* (Saloniki, 1526), 32c, 34b, 41a, 52b. Netanyahu, pp. 206-07, points out that David Kimchi only listed 5 symptoms for the Messianic age, while Abravanel developed a list of 22.
20. Hayyim Ibn Musa, "Mikhtav," in *Beit ha-Talmud*, 2, (1882), 118.
21. Ibid., pp. 122-23. see *Bava Kama* 54b which discusses such a deficiency on the part of some Talmudic sages.
22. Netanyahu, pp. 220-221.
23. *Yeshu'ot Meshiho*, p. 17a.
24. Ibid., p. 5a, b.
25. *Yeshu'ot Meshiho*, p. 17a, b. Netanyahu, p. 223, points out that "by interpreting them successfully so as to agree with the Jewish Messianic views, Abravanel eliminated a vulnerable spot from the otherwise strong Jewish defense line."
26. Don Isaac Abravanel, *Yeshu'ot Meshiho* (Koenigsberg: 1861), pp. 11b, 18b. Netanyahu, p. 321, note 109, mentions that this idea did not originate with Abravanel but had been used by Albo in the Tortosa debate. Abravanel, however, developed the idea differently than Albo.
27. Ibid., 19a, 20a, 21a, 30b.
28. See Netanyahu, pp. 247-48, and L. Strauss, "On Abravanel's Philosophical Tendency and Political Teaching," in *Isaac Abravanel: Six Lectures*, p. 104.
29. Joseph Klausner, *The Messianic Age in Israel* (New York: Macmillan, 1955), pp. 458-60. Klausner, p. 9, states, "It is impossible to find in the Talmud any saying of a *Tanna* that will prove that the *Tannaim* believed in the possibility of future redemption without the mediation of a human redeemer." He also suggests, pp. 404-405, that Rashi's interpretation of Hillel is correct because the *Amoraim* lived at a time when it seemed desirable to dilute the Messianic idea to avoid angering non-Jewish neighbors.

30. *Yeshu'ot Meshiho*, p. 28a.  
 „וּבְדָק רֶשֶׁי בְּמָה שֶׁכָּתַב בְּפִירוּשׁוֹ הוּא אֵי אִפְשֵׁר לְפָרְשָׁה אֵלָא עַל מֶלֶךְ הַמְּשִׁיחַ וְלִכְּן עָשָׂה מֵהֶם דְּבַ יוֹסֵף הַכֹּרֵחַ גְּדוֹל כְּנַגְדֵּי דְּבַ הַלֵּל.”
31. James Drummond, *The Jewish Messiah* (London: Longmans, Green, 1877), pp. 226-73. Drummond's use of the conversation between Rabbi Yohanan and Rabbi Akiba to prove that Talmudic scholars believed in a non-human Messiah is not accurate. Klausner, p. 459, similarly faults Drummond, but agrees with him that the idea of a human Messiah often is absent from the Old Testament, Apocrypha, and Pseudepigrapha.
32. Menachem Kellner, "Rabbi Isaac Abravanel on Principles of Judaism," in *Journal of the American Academy of Religion*, 45 (1977), p. 1187.
33. *Rosh Amanah*, pp. 137-38.
34. Strauss, pp. 103-04, shows that Abravanel contradicts himself in suggesting that the thirteen *ikkarim* were written as a pedagogical tool because they appeared in a popular rather than a philosophical work. The contradiction occurs in chapter 19 of *Rosh Amanah* where Abravanel points out that the *ikkarim* are mentioned in Maimonides' philosophic and *halakhic* work, *Hilkhhot Yesodei ha-Torah*. Similarly in his commentary on the *Guide*, Abravanel claims that the *ikkarim* decisively influenced the *Guide*. Though Strauss does not resolve this problem, except by asserting Abravanel is not always a consistent thinker, he does propose that Abravanel "undermines the whole structure of the philosophy of Jewish Law which was built up by Maimonides."
35. Mihaly, p. 502, states that Abravanel could not accept Crescas or Albo because "they considered the essential principles as comparable to the hierarchy of postulates in philosophy and other branches of wisdom."

WORKS CITED

- Abravanel, Don Isaac. *Maaynei ha-Yeshuah*. Ferrara: 1556.  
*Mashmia Yeshuah*. Saloniki: 1526.  
*Rosh Amanah*. Tel Aviv: Sifriyati Press, 1958.  
*Yeshu'ot Meshiho*. Koenigsberg: 1861.
- Albo, Joseph. *Sefer ha-Ikkarim*. Trans. Isaac Husik. Philadelphia: Jewish Publication Society, 1946.
- Drummond, James. *The Jewish Messiah*. London: Longmans, Green, 1877.
- Feldman, Leon A. "Nissim Ben Reuben Gerondi." *Encyclopedia Judaica*. 1973.
- Goodman, Paul. "Introduction." *Isaac Abravanel: Six Lectures*. Ed. J.B. Trend and H. Loewe. Cambridge: University Press, 1937.

- Hyman, Arthur. "Maimonides' 'Thirteen Principles'." *Jewish Medieval and Renaissance Studies*. Ed. Alexander Altmann. Cambridge, Mass: 1967.
- Kellner, Menachem. "Rabbi Isaac Abravanel on Principles of Judaism." *Journal of the American Academy of Religion*, 45 (1977), 1183-1200.
- Klausner, Joseph. *The Messianic Age in Israel*. New York: Macmillan, 1955.
- Mendelsohn, S. "Hillel Ben Gamaliel III." *The Jewish Encyclopedia*. 1904.
- Mihaly, Eugene. "Isaac Abravanel on the Principles of Faith." *HUCA*, 26 (1955), 481-502.
- Musa, Hayyim Ibn. "Mikhtav." *Beit ha-Talmud*, 2, (1882), 110-125.
- Netanyahu, Benzion. *Don Isaac Abravanel*. Philadelphia: Jewish Publication Society, 1968.
- Nissim, Rabbenu. *Hidushei ha-Ran*. New York: Ozar ha-Sefarim, 1965.
- Sarachek, Joseph. *Don Isaac Abravanel*. New York: Block Publishing, 1938.
- Strauss, L. "On Abravanel's Philosophical Tendency and Political Teaching." *Isaac Abravanel: Six Lectures*. Ed. J.B. Trend and H. Loewe. Cambridge: University Press, 1937.

Isaac Mann, a doctoral student in Talmudic literature at Bernard Revel Graduate School, holds an M.A. degree in Medieval Jewish History from Harvard University. Ordained at Yeshiva University, he is presently teaching at D'risha Institute.

## THE PROHIBITION OF TEACHING NON-JEWS TORAH: ITS HISTORICAL DEVELOPMENT

### Introduction

The proliferation of Jewish studies programs at colleges and universities across the country, in which Jewish faculty predominate, calls for an examination of an interesting, but not widely known, matter within Jewish law, namely the law forbidding Jews to teach Gentiles Torah. While the law itself has recently been discussed in several rabbinic journals and has been the subject of a few responsa to which we shall refer later, they have generally not treated the issue systematically. The only serious work that appeared in English on this problem was a recent article by Rabbi David Bleich, who thoroughly reviewed the halakhic literature on this subject.<sup>1</sup> What remains, however, and this is the purpose of the present article, is to examine the halakhic material in the proper historical context and to glean, if possible, from the welter of confusing legal opinions, some sense of halakhic evolution.

### Talmud and Midrash

The prohibition forbidding the imparting of Torah<sup>2</sup> to a Gentile is first encountered in the Talmud in two separate passages. In one source the prohibition is directed to the non-Jew and is one of a series of laws pertaining to a *Ben Noah*. The Talmud states:

### The Prohibition of Teaching Non-Jews Torah

R. Yoḥanan said: 'A heathen<sup>3</sup> who studies the Torah (*osek ba-Torah*) is to be executed (some interpret: deserves death<sup>4</sup>), for it is written, "Moses commanded us a law for an inheritance (*morasha*)" (Deut. 33:4); it is our inheritance, not theirs.'<sup>5</sup>

Sanhedrin 59a

This statement is followed by the question why this proscription does not warrant separate mention among the (seven) Noahide laws, to which the answer given is that it is already included: a Gentile studying the Torah is guilty either of theft (read: *morasha*) — using and deriving benefit from something to which he is not entitled — or adultery (read: *me'orasah*), violating the betrothed maiden of the Jewish people, namely the Torah; these are two of the seven Noahide offenses.<sup>6</sup>

A contradiction is then raised between R. Yoḥanan's law and a dictum of the *Tanna*, R. Meir, which reads as follows:

How do we know that even a heathen who studies the Torah is considered as worthy as a High Priest? From the verse, "[Ye shall therefore keep my statutes, and my judgements:] which, if man do, he shall live by them" (Lev. 18:5). Priests, Levites, and Israelites are not mentioned, but "man"; from here you learn that even a heathen who studies the Torah is as worthy as a High Priest.<sup>7</sup>

The apparent contradiction is resolved in the Gemara by circumscribing R. Meir's lofty comment and limiting it to the seven Noahide laws. Only when a non-Jew confines his forays into the Torah to the few prescriptions that apply to him is he worthy of R. Meir's accolade. Otherwise, he violates the law and incurs the death penalty.

R. Meir, a second-century *Tanna*, appears to have had a high regard for non-Jews who immerse themselves in Torah study. His statement, acclaiming such study, made no distinction between the seven Noahide laws and other commandments and was qualified by the Gemara only in order to reconcile it with R. Yoḥanan's comment. The *Tanna's* favorable attitude may have been influenced by his close friendship with Oenomaus of Gadara.<sup>8</sup> This highly-regarded Gentile

philosopher recognized, according to the Midrash, the value of the Torah as the guarantor of Israel's security, and judging by a conversation he had with R. Meir,<sup>9</sup> he was himself well-versed in Scriptures.

R. Meir's approval of Torah study for non-Jews was apparently shared by the other rabbis of that period although, perhaps, not with the same enthusiasm. R. Yehuda Ha-Nasi's celebrated friendship with Antoninus (a Roman emperor who has not been positively identified by historians) was not limited to social intercourse. The sources imply that their frequent meetings involved philosophical and religious discussions on a fairly deep level and that R. Yehuda actually taught Antoninus Torah.<sup>10</sup>

R. Meir's broad embrace of Torah learning for non-Jews as well as R. Judah Ha-Nasi's systematic instruction of a Gentile colleague indicate a positive view in the second century to dissemination of Torah knowledge among those who were not Jewish. To be sure, this attitude was not universally shared by the rabbinic authorities. Even before R. Yoḥanan we find expression of the idea that the Torah belongs to the Jewish people and is off limits to anyone else. Already the *Sifre*, a Tannaitic collection of *midrashim*, declared, based on Deut. 33:4, that the Torah is the bride of the Jewish people and is like a married woman vis-a-vis the nations of the world.<sup>11</sup> Although expressed in an Aggadic vein and with no mention of a specific prohibition, this early Midrashic statement reveals a particularistic strain within rabbinic circles. According to this doctrine, the Torah was the exclusive domain of the Chosen People, and its wisdom and truths were not to be revealed to the heathen nations.

It was R. Yoḥanan, the ranking authority in Palestine in the third century, who built upon the Midrashic kernel and expanded it to the degree that he forbade a Gentile at the pain of death (or threat of death) to engage in Torah study.<sup>12</sup> His was not an isolated opinion. In the next generation, R. Ammi shared his teacher's rejection of Torah learning for non-Jews. In a declaration directed not to the Gentile (as was R. Yoḥa-

nan's) but to the Jew who teaches him, we have a second Talmudic source for our prohibition:

R. Ammi further said: 'The teachings of the Torah are not to be transmitted (*ein mosrin divrei Torah*) to a heathen, for it is said: "[He declareth . . . His statutes and His ordinances unto Israel.] He hath not dealt so with any nation; and as for His ordinances, they have not known them (Ps. 147:19-20)."' <sup>13</sup>

*Ḥagigah* 13a

While there seems to be no later Amoraic discussion of these rulings, the Talmudic text attests to their general acceptance by the Rabbis: R. Ammi's statement is not questioned and R. Yoḥanan's pronouncement, while challenged, is upheld. By limiting R. Meir's formula to the seven Noahide laws, the Gemara, as it were, confers full halakhic sanction upon R. Yoḥanan's order.<sup>14</sup>

Thus, what was in the second century only an undercurrent of opposition to the non-Jews learning the Torah, in the third century became part of normative halakhah superseding the earlier, more tolerant attitude. What brought about this change? What forces were at work undermining the universalism of R. Meir in favor of the particularism of R. Yoḥanan? Judaism was hardly a secret sect whose rules and proscriptions were of an esoteric quality revealed only to the initiates. Moreover, the Scriptures themselves encourage dissemination of Torah teachings to all peoples so that the Torah can serve as a "light to the nations" (Is. 42:6).

If we treat the ban on Gentile Torah study independently of a similar prohibition forbidding Gentile Sabbath observance,<sup>15</sup> then explanations for the former readily suggest themselves. One possibility is that widespread acquaintance with the Torah, especially the Oral Law, increased the danger of repression and anti-Semitic attack by the Roman government. By the third century, the Oral Law was no longer in a fluid state — it had become fixed in the form of the Mishnah. Many statements and several laws contained therein were not complimentary to Gentiles and in some cases smacked of pre-

judice and bias. It was, therefore, in the best interest of the Jews not to reveal their teachings to their enemies and provide them with a pretext to use against them. As a minority dependent upon the goodwill of their Roman overlords, the Jews, long singled out for their standoffishness and feelings of superiority, could hardly afford to confirm such a view.

That they were sensitive to this danger is evident from a Talmudic passage (*B.K. 38a*), in which we are told of two Roman officials sent by their government to the Rabbis to learn the Torah. Upon mastering the subject they informed their teachers that they had come to the conclusion that the entire Torah is "true" save one matter: the law that demands compensation if an ox belonging to a heathen gores a Jewish-owned ox, while absolving the Jewish owner if *his* ox gores that of a non-Jew. Despite their reservations, the officials reassured their hosts that they would not report this particular point. We can conclude from this account that the Rabbis were aware that certain laws would not be viewed favorably by the government and could serve to increase enmity and ill-will.<sup>15</sup> To avoid such unpleasant results the Talmudic scholars discouraged the Jews from teaching their Gentile neighbors Jewish law and barred the Gentiles under their control from actively studying the Torah, especially the legal teachings of the Oral Law.<sup>16</sup>

A second, perhaps better, explanation posits that the underlying reason for our ban was not the physical threat from the Roman government but the religious menace of a usurping Christian Church. Early in its history the Church claimed to be the new Israel. It adopted the Bible as its own and proceeded to explain Christologically many passages in the Jewish Scriptures. The Church Fathers, who created the new interpretations, generally relied on the Septuagint version(s), but some were familiar with Hebrew or had contact with Jewish scholars and could utilize the Hebrew text to further their exegetical claims. Indeed, the two outstanding Church Fathers, Origen and Jerome, refer frequently to rabbis who taught them rabbinic traditions.<sup>17</sup> No doubt the Rabbis were distressed by the mistranslations and distortions of meaning that the Bible was

subjected to by the clerics of the new faith as well as by their accusations of rabbinic conspiracy to pervert the "true meaning" of the Bible and even falsify its text in order to mislead the Christians.<sup>18</sup> Many of the Rabbis probably began to oppose Christian attempts to study the Scriptures hoping thereby to preserve the Jewish hold on them or at least to prevent further encroachment and profanation of the prophetic pronouncements. The imparting of Jewish scriptural interpretations was probably seen as playing into the hands of the Christian exegetes. Biblical sanction was sought for the right, and even obligation, to withhold instruction in the Holy Writings from those who did not profess allegiance to Jewish tradition.<sup>19</sup>

But such a new direction for a people who had always delighted in sharing its eternal truths and moral teachings with its neighbors and who, according to historians,<sup>20</sup> eagerly sought converts throughout that period, was not an easy one to accept. Indeed, R. Meir's noble praise of a non-Jew who studies the Torah might have been voiced in reaction to those who cautioned against imparting the Torah to the non-Jews. Perhaps he, and others as well, felt that by teaching them the true meaning of Scriptures, the false interpretations of the Christian polemicists would be dispelled. In any case, by the beginning of the third century, with the increasing success and sophistication of the Church, the school of thought that forbade such teaching became the more dominant one.

Support for this explanation can be found in a prominent and frequently repeated Midrashic passage that addresses itself to the question why the Oral Law was not handed down at Sinai in written form. The *Tanhuma* and parallel sources, in an homiletical interpretation of Hosea 8:12, assert that the Oral Law was not given in writing so that it not suffer the same consequences as the written Torah, which was translated into Greek and usurped by the Gentiles. As a result, the nations of the world arrogated unto themselves the title "Israel." To refute their claim, the Mishnah, containing the "secrets" of the



Torah, was entrusted to the Jews as an oral tradition proving that they are the real chosen of God.<sup>21</sup>

This Midrash indicates to us that the Rabbis perceived the Christian interpretation of Scriptures as a threat to the very sanctity of the Bible and its special relationship to the Jews. To contain the damage already wrought (or if speaking ahistorically, the damage that was foreseen), the Oral Law, known only to the Jews, took the place of the written Scriptures as the guarantor of the Jewish spiritual heritage. This Oral Law, embodied in the Mishnah, would now have to be confined exclusively to the Jewish people, for if not, the Midrash implies, it too would meet the same fate as the Written Law.

The two explanations that we have discussed are both in accord with the fact that the two *Amoraim* who expressed opposition to Torah study for Gentiles were from Palestine. In Babylonia neither the Roman government nor the Christian Church were major forces to reckon with at that time.

A few general remarks about the extent of adherence to the prohibition during the Talmudic period are in order. Despite the intense rabbinic displeasure at imparting the Torah, there is ample evidence that theological intercourse did not cease and that knowledge of Torah and Tradition was not completely withheld from inquiring non-Jews. We have already mentioned two prominent Church Fathers who maintain that they had Jewish teachers. Even if the claims of Origen and Jerome were exaggerated in order to impress their audience with their erudition, they must have had some formal contact with rabbis, especially Jerome, whose knowledge of Jewish sources is unassailable.<sup>22</sup> In the Talmud and Midrash, as well, we have many examples of Gentiles seeking clarification of Jewish laws and beliefs and of rabbis responding to them. Although it could be argued that the responses were generally brief and limited to specific questions and that the rabbis made no attempt to teach any part of the Torah systematically, with the one exception already cited, this line of reasoning itself suggests that R. Yoḥanan's and R. Ammi's dicta were not understood in the broadest sense during the Talmudic period. Only

much later, as we shall see, were these brief Jewish-Gentile exchanges viewed as possible violations of the ban against teaching non-Jews Torah.<sup>23</sup>

#### Rabbinic Authorities — *Rishonim* and Early *Aḥaronim*

The Talmudic ban against teaching Gentiles did not receive elaborate treatment in the halakhic works of the early rabbinical authorities. In his Code, Maimonides cites the prohibition forbidding a Gentile to study the Torah,<sup>24</sup> as stated by R. Yoḥanan, but he omits any mention of a Jew being enjoined from teaching a Gentile Torah, as R. Ammi had formulated it. Neither *Tur*, *Shulḥan Arukh* nor their codificatory predecessors make any mention at all of this prohibition, a lacuna which did not go unnoticed on the part of the early *Aḥaronim*.<sup>25</sup>

It may have been felt that R. Ammi's proscription was more a product of the Aggadah than the Halakhah and, therefore, carried less weight. The context in which R. Ammi expresses his dictum is certainly an Aggadic one, and the biblical verse upon which he bases his ban is non-Pentateuchal, also an indication of its Aggadic character.<sup>26</sup> While R. Yoḥanan's statement, on the other hand, is found in an halakhic context — in a discussion of the seven Noahide laws — it is not widely cited in the early halakhic works. This is not unexpected since the dictum as stated is directed to Gentiles with only an indirect effect on Jews.<sup>27</sup>

Assuming the halakhic character of the prohibition, a significant question arose early in its halakhic history: does the ban apply to all Gentiles? Indeed the first to deal with this question directly was Maimonides, who responded to a query concerning the nature of this law. Apparently the questioner was not sure whether it was binding or not. Affirming the halakhic status of the ban, Maimonides then proceeded to distinguish between Christians and Moslems favoring the former over the latter regarding this issue.<sup>28</sup>

Maimonides limited the dictum against teaching Gentiles Torah to those whose exposure to Torah would be counter-

productive. According to this authority, the purpose of the prohibition was apparently to prevent the distortion and perversion of the biblical text and its meaning, especially where this might lead to Jewish apostasy. When such fears were unfounded, he permitted and even encouraged the dissemination of Torah.

The leniency of Maimonides is matched by that of R. Menahem Ha-Meiri, a thirteenth-century rabbinic authority in Provence. He generally adopted a more tolerant view towards the Christians than his contemporaries; in his opinion, the Christians were considered on a higher level than the "heathens" of the Talmud since they were bound by civil and moral law.<sup>29</sup> In his commentary on *Hagigah* he limits R. Ammi's ban by narrowing the range of "Gentile" to include only the idolators, who completely deny God's existence, and by confining the forbidden study of "Torah" only to the esoteric parts.<sup>30</sup> In his work on *Sanhedrin*, however, Meiri does not restrict R. Yoḥanan's statement in the same way.<sup>31</sup> Rather, he suggests that what is decisive is the motivation of the non-Jew who wishes to undertake Torah learning. If his desire is what might be called "intellectual curiosity," then the ban applies to him.<sup>32</sup> If, however, his motivation is a religious one — to learn in order to fulfill the commandments of the Torah or to prepare himself for possible conversion — then he may be taught.<sup>33</sup> Meiri's unique interpretation of R. Yoḥanan is based on the novel explanation he proposed for this prohibition. He held that Jews were enjoined from teaching Gentiles Torah for fear that once familiar with Jewish laws and customs, they might pose as members of the Jewish faith, ensnare unsuspecting Jews, and lead them away from genuine Jewish practice. The possibility of deception also militated against allowing non-Jews to observe the Sabbath, according to Meiri, presumably since one of the most telling and distinctive features of the Jews is their adherence to the Sabbath laws.

While Maimonides and Meiri, two of the foremost halakhic authorities among the *Rishonim*, adopted rather lenient positions, a somewhat less lenient opinion was expressed

by an Italian rabbi of that period. R. Isaiah de Trani the Younger (Riaz), whose decisions are often cited in *Shiltei ha-Gibborim*, acknowledges R. Yoḥanan's ban on a Gentile studying Torah and warns that a Jew who teaches him violates the biblical commandment of *lifnei iver* (Lev. 19:14). Riaz then limits the prohibition to the Pentateuch and the commandments and asserts that the rest of Scripture may be imparted to the non-Jew, for "he will see in it the consolations held out to the Jews, and the refutations of the heretics will become known to him, leading him, perhaps, to the proper path."<sup>34</sup> The historical context in which these remarks were made and which give them added meaning will be examined shortly.

While the *Rishonim* whose views we have just mentioned opt for a lenient interpretation, the Ashkenazi school, represented by the Tosafists, seem to have adopted a stringent position.<sup>35</sup> The Tosafists, in particular R. Elhanan, were the first to relate the two statements of R. Yoḥanan and R. Ammi to each other and to question the need for the latter.<sup>36</sup> Since R. Yoḥanan prohibits a Gentile from studying Torah, a Jew is automatically forbidden to teach him since he violates *lifnei iver* (as Riaz pointed out). Therefore, R. Elhanan claimed, there should be no need for R. Ammi's dictum prohibiting a Jew from imparting the Torah to non-Jews. *Tosafot* resolved the problem by positing the case in which *lifnei iver* would not apply, such as when another teacher (Gentile) who could also impart the Torah is available. In such a situation R. Ammi's declaration is necessary in order to "plug the gap" and prohibit the Jew directly from teaching his Gentile neighbor.<sup>37</sup>

*Tosafot* apparently viewed the two statements of R. Yoḥanan and R. Ammi as halakhically binding. Their dicta, especially R. Ammi's, were not consigned to the less serious domain of *Aggadah*<sup>38</sup> nor were they qualified in any way, in contradistinction to the way they were understood by Riaz. Indeed, the seriousness with which *Tosafot* took the prohibition is further attested to in his comments on an event related in the Talmud and previously cited in this article. We are told of some Roman officials who were taught the entire Torah by the Rab-

bis. Were not the Rabbis, *Tosafot* asks, acting in violation of R. Ammi's by teaching the Law to the non-Jewish emissaries. He solves the problem by suggesting that the religious authorities were either coerced or deceived,<sup>39</sup> but again the implication is that this prohibition is fully binding and that nothing short of personal danger can waive it.

While the comments in *Tosafot* were dictated by the need to reconcile two Talmudic statements, one of which appeared to be redundant, and were not designed as explicit halakhic rulings, later *Posekim* did not hesitate to utilize *Tosafot* in rendering practical decisions, often basing their views not only on what was said but also on inferences and conclusions drawn from what was omitted or could have been said by *Tosafot*.<sup>40</sup>

#### Christian Hebraism in Medieval Europe

Before we proceed with the next stage of halakhic development, it would be instructive to examine briefly the historical context in which our halakhah operated and the extent to which it limited (or did not limit) Christian efforts to learn the Jewish traditions.

During the High Middle Ages, Christian scholarship waxed. A renewed interest in Bible study developed in western Europe on the part of the Christians, and this was accompanied by a desire to study the Scripture in its original tongue. Not having a living Hebraic tradition, clerics often turned to the Jews for assistance. There is evidence that some of the outstanding Christian monks and theologians relied on Jewish scholars for instruction in Hebraic writings.<sup>41</sup> Their interest was not limited to the Hebrew language of the Bible but extended to the classical commentaries, such as Rashi and Rashbam, and even to the Midrashic interpretations.<sup>42</sup>

While the teachers were often apostates or Christian disciples of apostates,<sup>43</sup> this was not always the case. Learned Jews and even rabbis were sometimes employed as instructors, especially by those Christians who sought to learn the Truth from reliable and unbiased sources.<sup>44</sup>

Despite the evidence of some Jewish — and even rabbinic —

involvement in the spreading of Scriptural knowledge among the medieval Christian clerics and the dearth of sources condemning it, it is hardly likely that this activity met with the full-fledged approval of the majority of rabbis at that time, notwithstanding the lenient halakhic opinions of Maimonides and Meiri. The problems and even dangers involved in imparting the Torah to the clergy were too great to allow for the rabbis to sanction it. They were certainly aware of the distortions and misrepresentations to which the Bible was subjected. In most cases Christians used the Jewish learning for their own ends, with the thought of converting the Jews never far from their minds.<sup>45</sup> Biblical commentaries, especially Midrashim, when revealed to the clergy, were given Christological interpretations. This treatment of Hebrew religious writing was so ingrained that later in Italy and Germany when the Christians were exposed to the *Zohar*, it too was garnered for its presumed trinitarian references.<sup>46</sup>

Thus, we would probably be correct in assuming that Isaiah de Trani's words of caution and adherence to the Talmudic ban<sup>47</sup> were typical of rabbinic sentiment in Europe of the Middle Ages. While he makes definite reference to contemporary Jews teaching Christians Torah (including the Pentateuch), de Trani deplors this practice and considers it contrary to halakhah. But, as we have indicated, his opposition is not total, for he allows the sharing of the historical and ethical teachings of the Bible (contained in the Prophets and Writings) with the Gentiles. Apparently, the Jews of that period who became the teachers and consultants of the Christian clerics either limited the range of their instruction or else they found some other basis for skirting the ban, much as did the rabbis of the Renaissance, as we shall soon see.<sup>48</sup>

Attention should be drawn to one major segment of medieval Jewry among whom opposition to teaching Gentiles Torah was accepted in its most extreme interpretation: the Hasidim of twelfth and thirteenth-century Germany. In their major ethical-halakhic work, they are enjoined from disclosing even the Hebrew alphabet to a priest. While this harsh view

was adopted later by many *Posekim* under the influence of Kabbalah, as we shall see, it did not represent normative halakhic opinion in medieval Europe.<sup>49</sup>

### Renaissance

While the extent to which individual Jews were the teachers of monks and theologians during the Middle Ages is noteworthy, it hardly compares to the level during the Renaissance in Italy and the Reformation in Germany. Whereas in the previous centuries much, if not most, of the Hebraic activity was fueled by polemical and apologetical motives or by plain missionary zeal, in this new era this was not true, especially not in Italy. To be sure, these forces were still operative but so too was a new factor — humanism. This new spirit pervaded all human pursuits sweeping up Jews as well as Christians, lay as well as clergy. The result was a common appreciation of the classics and classical languages, including Hebrew. With a ravenous thirst for knowledge, Christians employed Jews to teach them the oldest of languages as well as the Jewish classics, including the works of Kabbalah, or commissioned them to copy and translate Hebrew religious and philosophical writings. Some Jews, such as the grammarian Elijah Bahur (also called Elias Levita), became known for their active promotion of Christian Hebrew scholarship. Many other famous Jewish personalities, including rabbis, favored Christian Hebraic learning.<sup>50</sup> Even as prominent a scholar as R. Ovadiah Seforno was engaged in this activity. He tutored the famous humanist Johann Reuchlin, who later played a key role in defending the Talmud against its anti-Semitic detractors in Germany, especially Pfefferkorn.<sup>51</sup>

While the Jews who taught their Gentile neighbors were most likely admirers and participants in the new cultural and scientific spirit, they were often motivated by more prosaic and material concerns. The financial inducements were no small matter in encouraging them in this occupation and indeed justifying their unorthodox calling.<sup>52</sup>

While some rabbis in Italy countenanced and actually par-

ticipated in the instruction of non-Jews to an unprecedented degree, as we have indicated, others, perhaps even the majority, were opposed to it, particularly to its excesses. Aside from the halakhic reasons, they must have feared the practical consequences of an unfettered disclosure of Jewish teachings. There was still cause for suspicion of Christian motives, which, as we pointed out, were often self-serving and far from ideal. It is also likely that the events of previous generations or of other lands where Hebrew works, especially the Talmud, were being consigned to flames, were not lost on the rabbinical authorities.<sup>53</sup> Evidence of such rabbinic sentiment within Italy is scanty since few Italian responsa of that period dealing with this subject have come down to us, but it can be inferred by making judicious use of the limited number of sources that are available.

We know, for example, that Elijah Bahur, as he himself poignantly writes, was criticized by the rabbinic authorities for his activities on behalf of Christian Hebraism.<sup>54</sup> R. Jonathan Treves, known for the editing of an Italian prayer-book, opposed the imparting of Talmudic discussions to the Christians.<sup>55</sup> Even Elijah Halfan, a sixteenth-century Italian rabbi and physician, whose rather lenient responsum on this issue has been preserved, did not give blanket permission to Gentile instruction.<sup>56</sup> While he allowed and even encouraged the Jews to teach their non-Jewish patrons the Hebrew language and Scriptures (including the biblical commentaries), he strictly forbade the same for Kabbalah. He considered it a "profanation of God's Name" (based on *Hag.* 13a) to reveal the esoteric truths to the Gentiles.<sup>57</sup>

A favorite argument used by those who approved, or at least were not opposed to, Jewish instruction of Gentiles was that of historical precedent. Elijah Bahur appealed to the example of recent predecessors including prominent rabbis, whose anonymity he preserves, who engaged in teaching more Gentiles than he had.<sup>58</sup> R. Halfan cited examples from the Talmud — Judah Ha-Nasi with Antoninus, Rav with Artaban, Samuel with Ablat, etc., as well as the *Bei Avedan* — to show that the

Rabbis did not shy away from the religious instruction of their non-Jewish colleagues.<sup>59</sup> No argument, however, was as cogent as R. Halfan's assertion that the Jews should teach the Christians in order that they may not have to depend on the apostates, who distorted the true meaning of the Torah for the sake of personal aggrandizement.<sup>60</sup>

#### Attitude of Luria and the Kabbalah

While the Italian rabbis were apparently ambivalent about the proliferation of Jewish teachers of Christians, those in eastern Europe were not.<sup>61</sup> The strongest of attacks came from one of the leading sixteenth-century Polish rabbis — R. Solomon Luria. In a stinging remark, which is found in his *Yam shel Shelomo* (to B.K.), Luria, singling out Jews in Italy, among other lands,<sup>62</sup> rebuked those who teach non-Jews, especially for pecuniary reasons. He considered them instrumental in causing persecutions of Jews and forced conversions. Not even the maintenance of good relations can take precedence over the ban, he argued; only consideration of personal safety could set it aside.<sup>63</sup> He was undoubtedly concerned about the damage wrought by Christian polemicists who used the knowledge of Hebrew and Hebrew texts they gained from their Jewish sources to undermine the Jewish religion. His outspoken view greatly influenced later authorities.

Strong, uncompromising opposition to this activity was not based solely on the element of persecution and fear. A new, mystical dimension was introduced into our prohibition with the appearance of the *Zohar*. According to this Kabbalistic work, imparting even the slightest teaching of the Torah was considered an affront to the Creator. "He who teaches them even a tiny letter of the Torah is considered as if he destroyed the world and falsified the Name of the Holy One Blessed be He."<sup>64</sup> For the Kabbalists, study of the Torah signified entry into the innermost Divine sanctum and communion with God. This privilege was granted only to the Jews, who, by virtue of their covenant with God, became identified with Him.<sup>65</sup> According to mystical doctrine, when a Jew studied Torah, the

upper and lower worlds were joined together in a cosmic union whereby all existence was sustained. But if a non-Jew engaged in the study of Torah, it represented an intrusion and interruption of this process causing the link between the supernal and earthly worlds to be severed.

The pronouncements of the *Zohar* were given halakhic primacy by many *Posekim*. As a result, new issues arose which had previously not been raised. Teaching Gentiles the seven Noahide laws, unequivocally permitted by the Talmud, became a matter of discussion and dispute.<sup>66</sup> The statements of the *Zohar* gave rise to deliberation over the Hebrew language and its grammar — whether they were also within the category of "Torah" and off-limits to the non-Jew or not. In this connection, *Sefer Hasidim*, the greatest ethical work of thirteenth-century *Hasidism*, was often cited, wherein the author, as we have mentioned above, prohibits the *Hasid* from teaching the Hebrew letters to a Christian priest.<sup>67</sup>

Those rabbinic works that were greatly influenced by Kabbalah expressed vigorous opposition to any form of Torah instruction for non-Jews. R. Eleazar Azkari in *Sefer Haredim* expressly forbade teaching non-Jews even one letter of the Torah.<sup>68</sup> The *Shelah*, a widely circulated seventeenth-century halakhic-Kabbalistic work of R. Isaiah Horowitz, combined the normative halakhic opposition to teaching Gentiles Torah of R. Solomon Luria, with that of the mystical, Kabbalistic school.<sup>69</sup> For the latter he relied upon the strictures of R. Eleazar Azkari and R. Meir ibn Gabbai, a sixteenth-century Kabbalist, who also inveighed against teaching the *aleph bet* to the "uncircumcised" and warned that "whoever teaches them Torah is in effect testifying that it is not true, God forbid."<sup>70</sup>

#### Early Rabbinic Responsa — 17th and 18th Centuries

The first full-fledged discussion of this ban by an Ashkenazi authority, and one which remained a point of departure for many subsequent discussions, is found in R. Issaachar Baer Eyleburg's *Be'er Sheva*.<sup>71</sup> This late sixteenth and early seventeenth-century, Polish-born rabbi, who served in

northern Italy for many years, noted in his responsum that some rabbis were teaching the Torah to Gentiles. Relying on the absence of this ban in "both the early and late" halakhic codes,<sup>72</sup> and interpreting R. Ammi's dictum to refer only to the underlying explanations and esoteric reasons for the commandments,<sup>73</sup> he practically concluded that the Talmudic ban was not halakhically binding. Only fear of his colleagues, he states, prevented him from declaring it totally inapplicable. By interpreting R. Ammi in the manner he did, he was able to justify the teaching activities of the rabbis although he concluded at the end, perhaps more with an eye to his colleagues than out of pure conviction, that "a cautious soul will refrain from teaching them since God assented to Moses' action in breaking the Tablets (and Gentiles are no better than Jewish renegades, from whom the Torah was withheld at Sinai)."<sup>74</sup>

While R. Eylenburg's major points were already anticipated by earlier authorities, including Maharsha,<sup>75</sup> his bold language favoring a lenient view called forth a spate of opinions intent on refuting his proofs and underscoring the importance of the ban. The most prominent of the early authorities who opposed R. Eylenburg was the seventeenth-century Venetian rabbi — Samuel Aboab. Relying on the strictures of Luria and the Kabbalists, he adopted an uncompromising position against teaching Christians Torah. His major concern was the Christian distortion of Scripture for its own "idolatrous" ends. In poignant terms he bemoaned the degradation of the Torah in Gentile hands and warned Jews not to facilitate their acquaintance thereof for pecuniary advantage. He singled out his generation during which printed books became widely available and easily disseminated false teachings of the Torah.<sup>76</sup>

Subsequent writers on this issue generally repeated the opinions of Luria, Aboab and the Kabbalists and thus leaned to a strict interpretation.<sup>77</sup> More lenient views, such as those of Maimonides, Meiri, Maharsha, Elijah Halfan, etc., were either unknown or were considered of lesser import than the former.

Among the more innovative writers of the eighteenth-century on this subject was R. Aryeh Loeb, author of the famed

*Sha'agat Aryeh*. In his novellae to *Hagigah*, he proposed that if a Jew teaches a Gentile Torah, it cannot be said of the latter that he is "stealing" the Torah. Therefore, R. Yoḥanan's prohibition, which most likely categorized a non-Jew's study of Torah as theft (rather than adultery), is limited only to the case of a Gentile studying Torah on his own. Thus, armed with a restrictive interpretation of R. Yoḥanan, R. Aryeh Loeb explicitly allowed the imparting of Torah in an offhand manner especially to promote peaceful relations with non-Jews. In this way he also justified the rabbis of the Talmud who, in numerous examples, explained Jewish laws in response to questions from Gentiles.<sup>78</sup>

Many later authorities disputed R. Aryeh Loeb's reasoning and disagreed with his lenient conclusions. Even those who did reach a similar ruling did so without maintaining that the problem of "stealing" is precluded when a Jew teaches, i.e., hands over, the Torah to the non-Jew. The Torah, they maintained, does not belong to any one Jew such that he can give it to an outsider even if he does not thereby diminish the portion of the other Jews.<sup>79</sup>

#### Sephardic Responsa

Sephardic rabbis were no less concerned with the issue than their Ashkenazi counterparts,<sup>80</sup> but their main focus was often instruction for Karaites rather than for Gentiles. Since the former also perverted the meaning of Scripture by refusing to accept standard rabbinic interpretations, and since they were considered by many rabbis as non-Jews, the issue of teaching them Torah was related to our problem. The first authority to deal at length with this question was R. Elijah Mizrahi (16th century), who adopted a lenient view opposing the communal leaders who had banded together to place a *herem* on any teacher who taught Karaite children, be it secular or sacred studies. He vigorously defended the right of the *melamdim* to continue in their vocation and expressly sanctioned teaching the Karaites even the Oral Law citing precedent from earlier rabbinical authorities. Although admitting that R. Moses Kap-

sali opposed the imparting of the Oral Law to Karaites, Mizrahi stressed the need to foster closer relations with the Karaites — those who were not antagonistic to the Rabbis — and to draw them closer to authentic tradition.<sup>81</sup>

Other authorities, who lived at a time when relations between the Rabbanites and Karaites were more strained, were less kindly disposed to imparting sacred teachings to them. Thus, R. Solomon Kimḥi prohibits teaching them the Oral Law because they use it to "heap scorn upon Israel."<sup>82</sup> He writes that even R. Elijah Mizrahi would have been more stringent towards the Karaites who "abuse the Rabbis and treat the holidays (perhaps *Hol ha-Moed*) lightly."<sup>83</sup> In similar fashion R. Judah Diwan of Constantinople forbade instruction to the Karaites — including perhaps the Written Law — since they use the Torah they learn to mock the Rabbis.<sup>84</sup> Thus, it seems, as we shall show in the case of Jewish-Gentile relations, that there was a correlation between harmonious relations with the Karaites and a positive attitude towards teaching them Torah.

The Karaite issue continued to be an important concern for Sephardic rabbis. In the eighteenth-century a controversy arose over the selling of an invalid *Sefer Torah* to the Karaite community in Jerusalem. The propriety and halakhic sanction of this act was widely discussed and did not go unnoticed even in the Ashkenazi community.<sup>85</sup>

Many prominent Sephardic rabbis dealt directly with the issue of teaching Torah to Christians and other non-Jews. Such rabbis as Hayyim Joseph David Azulai (Hida), Hayyim Palaggi, and others who wrote on this subject tended to be very strict and literal in their halakhic decisions.<sup>86</sup> The approach that several of these authorities followed as they did with other issues, was encyclopedic — citing what every writer had to say on each aspect. In our very day, R. Ovadiah Yosef has followed the same technique in his copious responsum on our topic.<sup>87</sup>

### *Haskalah*

Jewish-Gentile relations began to change dramatically in the latter half of the nineteenth century, especially in Germany.

As the barriers to political and social integration fell with the Emancipation and the portals to intellectual inquiry opened wide during the *Haskalah*, Jews faced a myriad of problems that they had never encountered before. Hardly a facet of life did not undergo some change during that time. Thus, it is not surprising that the responsa of that period reflect the altered circumstances under which the Jews began to live.

Rabbinic consideration of the ban against teaching Gentiles Torah naturally became a more important concern as contact between Jew and Christian became freer. It began to appear as an issue in contexts that were not likely to have arisen during the Medieval period. In the following paragraphs we shall discuss these spin-off areas, including the major controversies, in which the ban on Torah instruction played a role. Then we shall revert to our major concern — direct teaching of non-Jews.

### Conversion

With the advent of the Modern Age and the recognition of religious liberties, conversion to Judaism, which had been strictly forbidden by the Church, became more common, and in turn the rabbinic literature on this subject grew. Our prohibition figured in connection with the process of conversion — at what point may an aspiring convert be taught Torah?

This question turned into a controversial issue in the early part of the nineteenth century, when R. Akiva Eger forbade the imparting of Jewish Law to potential converts. In his responsum he took issue with R. Samuel Edels' (Maharsha) interpretation of a Talmudic passage in *Shabbat* and concluded that in accordance with the Halakhah a proselyte cannot be taught Torah until he has actually converted. The passage in question is the celebrated account of Hillel's converting a heathen who insisted as a prior condition on becoming a high priest. Since Hillel would not have inducted into the Jewish fold an individual motivated by the expectation of an impossible honor, Maharsha concluded that the sage must have taught him about Judaism before conversion (including the fact that a high priest can only be one who is a descendant of Aaron) and

convinced him to forego his condition. This proved to R. Edels that one may teach a Gentile Torah if he intends to convert, an opinion identical to that of Meiri. R. Akiva Eger, on the other hand, countered on the basis of a statement in *Tosafot* that Hillel could have accepted the heathen as a Jew before teaching him because he was certain he could persuade him later to adopt Judaism "for the sake of Heaven." Since the plain sense of the Talmudic text supports this sequence, R. Akiva Eger inferred that one may not teach a potential convert Jewish law and ritual.<sup>88\*</sup>

This question was subsequently discussed by a number of rabbinic authorities and has been a topic of halakhic concern to this very day. Some of the rabbis adopted an intermediary position permitting limited instruction, especially such basics as reading the *Siddur*, while prohibiting more advanced study.<sup>89</sup> Many, however, favored the position of Maharsha.<sup>90</sup> Especially outspoken was R. Hayyim Sofer, who argued that only by teaching the potential converts Torah can we attract them to the Jewish religion.<sup>91</sup> In a recent treatment of this subject, R. Gedalia Felder, adopting a rather strict view, maintained that circumcision was a necessary condition for being allowed to study the Torah.<sup>92</sup> He based this requirement on the Midrashic story about Aquilas' conversion to Judaism. When his uncle, Titus, asked him why, if he were interested in the Jewish people, he did not simply study the Torah without undergoing circumcision, the famous proselyte replied that one may not study the Torah in an uncircumcised state.<sup>93</sup>

#### Translation

One of the activities that the rabbinic authorities frequently opposed partly as a result of our prohibition was the translation by Jews of sacred works into a vernacular tongue, an activity which began in earnest with the onset of the *Haskalah*. Indeed the very catalyst, as well as by-product, of the *Haskalah* in its early stages was Moses Mendelssohn's *Biur*. This Bible

\*See note at end of footnote section.

translation and commentary, written in elegant German, served as a vehicle for introducing Jews, including Jewish children, to the beauty of the German language. Many rabbis attacked this work for enticing children away from Torah studies and leading them to the study of the German language and literature. Among these opponents was R. Ezekiel Landau, author of *Noda bi-Yehudah* and a widely respected rabbinic leader.<sup>94</sup> Referring to this work in his Talmudic commentary, *Ziyyun le-Nefesh Hayyah* (also known as the *Zlah*), he compared it to the Septuagint translation, which according to rabbinic tradition, caused a three-day period of darkness to descend upon the earth even though it was sanctioned by the rabbis and written in a language that they highly regarded.<sup>95</sup> How much more so, R. Landau argued, is the new German translation, which was neither solicited by a ruling power nor approved by the rabbis, to be condemned.<sup>96</sup> R. Landau was in conflict only with Mendelssohn's translation, and, therefore, to counter its effect he gave his blessing to a new and much simpler German translation of the Bible which did not require an extensive knowledge of the German language.<sup>97</sup>

Translations of the Talmud also evoked great controversy. The best example is the contention created by Ephraim Pinner's attempt in the nineteenth century to translate the Talmud into German. While he obtained the support of many authorities, he also had some formidable opposition.<sup>98</sup> It is known that R. Moses Sofer (the *Hatam Sofer*) originally endorsed the project but was later swayed by the arguments against it and withdrew his support.<sup>99</sup> As it turned out, Pinner had only the translation of *Berakhot* published in 1842.<sup>100</sup>

Opposition to the translation of the Talmud was primarily centered on the *Aggadah*. Those unschooled in Rabbinic *derash*, especially non-Jews, could easily misunderstand and misinterpret the comments of the Rabbis and their exegetical methods, resulting in their being mocked and derided. This was the motivating factor in R. Judah Aszod's negative response to a proposed translation of the Talmud although he based his opposition on pure halakhic grounds. This prominent nineteenth-



century rabbi (of Hungary) blamed the new rabbis of Germany for creating the problem by disseminating the teachings of the Talmud through preaching in German and then having their *derashot* printed.<sup>101</sup> R. Moshe Grunwald in his *Aruggat ha-Bosem* expressed disapproval of a translation of the Aggadah, but he was concerned more with the unlettered Jew reading and misunderstanding it than with a Gentile doing so.<sup>102</sup>

While translation efforts of some works aroused opposition, it appears that most rabbis sanctioned this activity since it made available religious tracts to Jews who could not understand them otherwise. In those cases, of course, when the translations were directed to non-Jews, opposition was more vigorous. Thus, R. Aaron Walkin, as late as the 1930's, expressed his disapproval of a project to translate the Mishnah in order to familiarize non-Jews with it.<sup>103</sup>

#### Transfer of *Sifrei Torah* to non-Jewish courts

As Jews began to appear regularly in civil courts — a situation that arose after Emancipation — the problem was raised of transferring possession of a *Sefer Torah* (or any other sacred Jewish work) to such courts with which to administer oaths to Jewish witnesses. While we know that even in the Middle Ages, Jews took the *more judaico* while grasping a *Sefer Torah*, the frequency with which they appeared in non-Jewish tribunals at that time probably did not warrant the court's own possession of a Torah scroll.<sup>104</sup>

Our prohibition figured in the deliberation of this issue for two reasons. First, the physical possession of a Torah scroll by a non-Jewish body allowed — at least theoretically — for the study of that text by the Gentiles. This being the case, the authorities who wrote on this problem usually connected it with the more general issue of *lifnei iver*. Second, the actual language used by R. Ammi in the formulation of his ban (*ein mosrin . . .*) suggested the prohibition of a physical as well as a verbal transfer of the Torah.<sup>105</sup>

The most prominent rabbi to write at length on this particular concern was R. Zevi Hirsch Chajes. Asked by the

leaders of the Jewish community of Lvov if they might comply with the civil authorities and supply Torah scrolls to the secular courts, he responded in the affirmative (assuming that they belong to individuals). He dismissed the problem of *lifnei iver* in this case, for in the remote situation that a Gentile does learn from such a Torah scroll, it is sufficiently indirect so as not to be considered a violation of the law.<sup>106</sup>

#### Torah Instruction

The *Haskalah* also had an effect on the question of Torah instruction for Gentiles. With Jews and non-Jews intermingling more freely than in the past and with opportunities for religious and social intercourse more readily available, there were undoubtedly more instances of Jews teaching their Gentile friends the laws and traditions of Judaism. To be sure, Liberal rabbis and apologists for Judaism, of whom there was no shortage, were in the forefront of this effort. They accepted positions in the universities in Judaica, wrote on this subject in the vernacular (usually German) for a wide audience, and occasionally developed ongoing dialogues with Gentile colleagues on religious matters. The more traditional rabbis generally recoiled from such activities although there were a few prominent exceptions upon whom we shall soon focus. We will also examine the responsa of the *Posekim* in the eighteenth and nineteenth centuries to see how they responded to the new situation in a more formal manner.

While formal halakhic canons outlawed Torah instruction for Gentiles, history records the involvement of individual rabbis in this endeavor whose allegiance to the Tradition was beyond question. We have already called attention to the existence of this phenomenon during the Renaissance in Italy. This was also the case during the *Haskalah* and even pre-*Haskalah* period, particularly in Germany. No less a figure than R. Yonathan Eybeschuetz (d. 1764) voluntarily debated religious topics and matters of faith with his many contacts among the priests and the intellegentsia, especially Cardinal

Hassebauer. R. Jacob Emden, as well, reportedly maintained a religious dialogue with a "certain prince" and "intellectual."<sup>107</sup>

Even more unusual and especially surprising were the individual efforts in the following century of R. Israel Salanter (né Lipkin). The founder of the *Musar* movement was a most liberal advocate of teaching Torah to Gentiles, including the Talmud. Despite his antagonism to the *Haskalah* movement in Lithuania, he mounted a campaign in Germany, where he lived for a short while, to have the Talmud taught in the *gymnasias* and universities. Enamored by the wisdom and beauty of its teachings, he felt it could only gain in stature — even for the Jews — when revealed in full to the non-Jewish world. It would certainly be no less valued, he argued, than the ancient classics of Greece and Rome. To facilitate Gentile study of the Talmud he even made attempts to have it translated into a vernacular language. In advancing his ideas his only fear was that the rabbis — not the government — would oppose him on the basis of traditional halakhic arguments, but he pressed ahead claiming that he had "what to respond to them."<sup>108</sup>

Individuals aside, the main body of halakhic authorities continued to uphold the validity and applicability of the ban on teaching non-Jews Torah. Perhaps the only responsum on our subject in the early *Haskalah* period that seemed to acknowledge the changes resulting from this new era was that of the *Besamim Rosh*. In this work suggestions were made that it may be permissible henceforth to teach Gentiles Torah since there is no dearth of knowledgeable Gentiles who could anyway serve as teachers (thus avoiding the problem of *lifnei iver*) nor are the contemporary non-Jews considered as heathens but rather as Noahides. While the author rejected these tantalizing arguments and reverted to a very stringent position arguing against teaching them even the grammar of Hebrew and accusing the learned Christians of using their knowledge to mock and scorn our Tradition, he, nevertheless, broadly allowed Jews employed as teachers to continue their profession in order to avoid enmity.<sup>109</sup> The ambiguity of the response — both very liberal and yet very conservative — un-

derscores the problematic nature of this work. The responsa of *Besamim Rosh*, published in 1793 by Saul Berlin, who served as rabbi of Frankfort-on-Oder, were attributed by him to R. Asher b. Yeḥiel (Rosh). Although accepted and quoted by many authorities to this day, they are considered by historians to be a forgery.<sup>110</sup> In our case, it is hard to know whether Berlin in fact favored a hard-line position or whether his reformist leanings were simply cloaked in sanctimonious garb.<sup>111</sup>

Other writers on our subject were less ambivalent. While some still advocated total exclusion of non-Jews from Torah in its widest sense (including the Hebrew language), they were in the minority.<sup>112</sup> Most *Posekim* adopted intermediate positions such that they allowed some form of instruction. The most common distinction was between the Written Law and the Oral Law; the "Torah" barred from Gentiles referred only to the Oral Law. As early as the sixteenth century, R. Ḥalfan distinguished between the two in connection with our prohibition.<sup>113</sup> R. Jacob Emden as well as R. Yonathan Eybeschutz recognized it.<sup>114</sup> It was given the most prominence by R. Zevi Hirsch Chajes, who devoted considerable attention to our topic both in his responsa and his glosses to the Talmud.<sup>115</sup> Jewish participation in the Gentile study of *Tenakh* was thus widely accepted, although limitations were often imposed. R. Chajes himself allowed it — if taught in its original Hebrew — only when other non-Jewish teachers were available (to avoid the problem of *lifnei iver*).<sup>116</sup> Study of Mishnah, on the other hand, was not acceptable. R. Ezekiel Landau expressly forbade its transfer since he considered it generally inaccessible to those who could not read Hebrew (in contrast to the Bible) and therefore in the category of the *mistarim* (secrets) — the unwritten part of the Torah vouchsafed to the Jews at the time of Revelation and the guarantor of their special claim to the Scriptures.<sup>117</sup>

Another approach that allowed even for Gentile study of the Oral Law was one espoused by Neziḥ.<sup>118</sup> R. Naftali Zevi Yehuda Berlin sanctioned the teaching of non-Jews if the instruction was not done systematically in a manner of deep

study (*be-yyun*). He permitted the informal imparting of Jewish teachings on the basis of R. Yoḥanan's use of *osek* (intensive study) in his prohibition rather than the more common *lomed* (study).<sup>119</sup> However, it should be noted that his remarks are somewhat ambiguous, and, as a commentary rather than a responsum, they are more in the form of explication rather than direct halakhic ruling.

#### Contemporary Period

Early in the twentieth century the issue of teaching Gentiles Torah was still being deliberated. Those who favored a more tolerant approach relied on the rulings of R. Chajes and Neziv and resorted to the time-honored elastic clause of *mipnei eivah* (to avoid enmity) or *mipnei darkhei shalom* (for the sake of peace). Their discussion of the issue often centered around the question of *lifnei iver* and the various situations in which one will not violate it.<sup>120</sup> On the other hand, there were still advocates of strict adherence to the age-old ban who compromised little with respect to our topic.<sup>121</sup>

Of particular interest is the responsum of R. Aaron Walkin, a Lithuanian rabbi and disciple of Neziv, who wrote on our subject in the 1930's.<sup>122</sup> Besides its erudition and innovative solutions, the responsum also contains a few historical references. R. Walkin's remarks about the anti-Semitic outbreaks in Russia and Poland during the twentieth century indicate how closely related the issue of teaching non-Jews Torah is to the general social and religious status of the Jew in an alien world. Citing the contemporary examples of Father Pranaitis, the vicious anti-Semite who was instrumental in the Beiless case,<sup>123</sup> and Trzeciak, the priest who advocated a ban on *sheḥitah* in Poland,<sup>124</sup> R. Walkin underscored the inherent dangers in teaching Gentiles Torah. These men had some knowledge of Jewish sources; unfortunately, their limited familiarity with Judaism was enough to convince a sympathetic audience that they were experts on Jews and their religion. A little knowledge, R. Walkin maintained, caused a great deal of harm. No doubt his halakhic views with regard to our prohibi-

tion were thus influenced by the deterioration of the Jewish status in eastern Europe in the early twentieth century and the increased role of semi-learned anti-Semites.

While R. Walkin's views reflected the influence of a hostile environment in which Jews were falsely accused and Jewish rituals were on trial, the decision of a contemporary of his bespoke a totally different environment. This was the great German and Swiss halakhist, R. Jehiel Weinberg, who wrote two long responsa on our subject, in which a sense of respect and even admiration for Judaism on the part of non-Jews resonates from the words and arguments he uses. The very questions themselves — may one give Torah lectures to a group among which are included non-Jews and is one permitted to lecture on Talmud in a secular university — reveal a more positive and optimistic attitude towards intellectual contact with non-Jews.<sup>125</sup>

With an innovative spirit typical of many of R. Weinberg's responsa, he advocated a position based on pure halakhic arguments, far beyond what anyone had dared to do in writing — at least since the time of R. Eylonburg. He allowed the teaching of Talmud in a secular school even if no Jewish students are present. This decision was based on a number of considerations some of which have already been discussed, but the most important one was his unique interpretation of Maimonides. According to R. Weinberg, Maimonides prohibited a Gentile from studying the Torah only if it was undertaken as a religious act. This novel qualification was arrived at by comparing the law forbidding a Gentile from learning Torah to the one outlawing his observance of the Sabbath, both of which are found together in the Talmud as well as in Maimonides' Code.<sup>126</sup> Concerning the latter prohibition, Maimonides maintained that if a Gentile abstained from work for the sake of rest, he did not violate the prohibition unless he attached religious significance to it, thus adding in a sense to the seven Noahide laws. The same, R. Weinberg asserted, can be said with respect to Torah study. Indeed, Maimonides himself, after mentioning each law separately, grouped the two

offenses together and concluded that the Jewish authorities are bidden not to allow Gentiles under their control to create new religious practices for themselves. Thus, if a non-Jew undertakes to study Jewish religious works solely for intellectual reasons or out of curiosity about the Jews, he does not violate the law. Consequently, a Jew may teach him in such a case. Thus R. Weinberg with one bold stroke provided the halakhic breakthrough to allow the unhindered teaching of Judaism to all who wish to learn, including non-Jews. Only in rare situations (including the teaching of the esoteric elements of Judaism, which are hardly known, much less taught) does the ban still apply.

The most recent discussions of our prohibition have centered around situations where one teaches Jews but is overheard by non-Jews. Thus, R. Moshe Feinstein allowed a Yeshiva *baḥur* to explain the *Haggadah* at a Seder in the presence of a Gentile guest.<sup>127</sup> Similarly, R. Pinchas Teitz argued in favor of his weekly radio broadcast of the *Daf ha-Shavua* in English despite the possibility of non-Jewish listeners.<sup>128</sup> R. Menashe Klein permitted the airing of programs with Torah content on television even though Gentile viewers were likely.<sup>129</sup> In all these cases the essential argument was that Torah must not be withheld from Jews for the sake of preventing Gentiles from learning as well.<sup>130</sup>

Interestingly, even though these rulings were of limited scope and often seemed to express the obvious, they were not — at least in the case of the English radio broadcasts — without their detractors. In some Hasidic and ultra-Orthodox circles the prohibition is still widely applied and instruction of non-Jews, where allowed, is strictly limited.<sup>131</sup>

There is one final area that must be touched upon. Indeed the most important contemporary concern with regard to the ban on teaching non-Jews is not with adults but rather with children. In an age of rampant assimilation it is not unusual to find a child, only one of whose parents is Jewish, enrolled in a Yeshiva or Talmud Torah. Torah instruction for a Gentile child first arose as a practical issue in a responsum of R. David Zevi

Hoffmann in the 19th century. Asked by a local rabbi if he may allow the uncircumcised child of one of his congregants who married a Gentile woman to receive instruction in the school, R. Hoffmann suggested, if the father insists on keeping his son in the school, that the curriculum be divided into parts: one in which the ethical and historical aspects of Judaism are studied and the other in which the ritual and ceremonial predominate. The child may attend the former since the subject matter can be categorized as part of the universal Noahide religion, but he is to be excluded from the latter. His main objection to the Gentile boy's study of Torah was the incongruity of study without deed. Attendance in a religious school implies commitment to that religion.<sup>132</sup>

While R. Hoffmann did not mention the serious problem of identity which can arise from allowing a non-Jewish child to attend a Jewish school, other writers did. Thus, R. Abraham Zevi Klein in *Be'erot Avraham* wrote of the possibility that such a child might be considered Jewish by himself (or others) and seek to wed a Jewish woman or be buried in a Jewish cemetery. Nevertheless, he also concurred with R. Hoffmann and did not demand that the child be excluded from the school, only that the religious studies he takes be restricted.<sup>133</sup> R. Ovadiah Yosef made no restrictions on the *rebbe* since he directs his teaching to the Jewish students.<sup>134</sup> Both authorities, motivated by the sake of peace or concerned with the child's future conversion, cautioned against automatically barring him from attending the school.\*

### Conclusion

We have tried to give an intellectual history of the prohibition forbidding a Jew to teach a Gentile Torah by showing how this prohibition was treated in different historical periods. As with most halakhic issues, both the internal dialectic process of halakhic reasoning as well as the external historical and intellectual developments play a role in the decisions that rabbinic

\*See note at end of footnote section.

authorities reach. The former is more explicit while the latter is more subtle.

We have also been concerned with the extent to which our prohibition was adhered to during the course of history. This engaged our attention not out of sociological interest or for pure historical reasons, but rather as a means to gauge the influence of the times on how people (including rabbis) dealt with this law. We showed that the law in question was rarely universally observed. There were always Jews, even rabbis, who for pecuniary or idealistic reasons instructed non-Jews in the teachings of the Torah. We found a correlation between the general state of Jewish-Christian relations and the extent to which Jews imparted the Torah to their Christian neighbors. Where humanism flourished and where anti-Semitism was not rampant, Jews were more kindly disposed to sharing their Torah heritage with their neighbors and did not fear the consequences of outside scrutiny. When the intellectual achievements of the populace and their cultural level were such as to permit a more open attitude, prominent rabbis, such as R. Israel Salanter, were most lenient. They hoped to attract the non-Jew to the truth and wisdom within the Jewish Tradition. However, when relations were very poor and pogroms and other forms of persecution, especially disputations and burnings of the Talmud, were common, then intellectual exchange waned and few advocates of open teaching could be found. These factors, combined with the influence of the Kabbalah, set the tone of the medieval responsa on our subject.

It was not until the nineteenth and twentieth centuries that a more lenient attitude could be discerned. But the major intellectual breakthrough had to wait until R. Jehiel Weinberg, who sensed that in his time the religious passions, which had dictated and sustained the original Talmudic ban, no longer existed. In addition, the exclusive hold of the Jewish people on their heritage could no longer be maintained. In similar fashion other contemporary scholars, responding to specific situations in which our law played a role, issued lenient decisions.

It has become evident that in our age it is both practically

impossible and philosophically undesirable to restrict the teachings of the Torah from non-Jews who wish to study it. At a time when books and other printed material have proliferated, translations have grown by leaps and bounds, and communication media have transmitted learning and knowledge without discrimination among viewers and listeners, it is nigh impossible to withhold our sacred teachings from others without at the same time depriving Jews. Moreover, even if we could hide our teachings, it would be undesirable in an age of openness and tolerance. It would serve to antagonize the non-Jews making them suspicious of our heritage and resentful of our secretiveness.

On a more positive level, our task, as R. Israel Salanter pointed out 100 years ago, is to promote the beauty and truth that lies imbedded in our teachings. Indeed, the Jews were sent into Exile to spread the teachings of the Almighty. Unfortunately, our position in the world was such that for thousands of years we could not fulfill this goal. But now that we have the physical and legal power coupled with an interested audience, we may not refrain from fulfilling our special mission. By teaching and instructing all those who seek to learn from us, we glorify the Name of God and His holy teachings. Then we can truly be a light to the nations.

## NOTES

My thanks to Profs. Sid Leiman and David Berger for leading me to several useful sources. I would also like to thank the librarians at the Gottesman Library for their efficient service and cooperative spirit.

1. *Tradition* 18 (1980), no. 2, pp. 192-211.
2. In this article I have not attempted to use the term "Torah" in a strictly consistent manner, relying instead on context to convey the correct meaning. Indeed one of the problems faced by the halakhic authorities is the clarification of its meaning as used in connection with our prohibition, especially whether it refers to the Oral Law and/or the Written Law (about which we shall have more to say below). No doubt

- that in early Talmudic times the distinction between the Written Law — if we equate that with *peshat* — and the Oral Law, assuming that that is *derash* in a broad sense, was not as sharply drawn as it was in subsequent literature, although it was certainly known and acknowledged by the Rabbis, as Israel Frankel has shown in his *PESHAT in Talmudic and Midrashic Literature* (Toronto, 1956).
3. Most mss. of the Talmud read *oved kokhavim* or *akum*. Cf. Raphael Rabinovicz's *Dikdukei Soferim*, *ad loc.* Although the term *akum* literally refers to idolaters, and not to non-Jews in general, it is often a censor's term that replaced the broader-meaning words *goy* or *nokhri*, and was generally understood by Jews to refer to all non-Jews. In our case, context leaves no doubt that the subject is any Gentile, including the *Ben Noah*.
  4. Meiri, *Beit ha-Behirah* to *Sanh.* 58b; *Maharsha* to *Sanh.* 58b; Maimonides, *Mishneh Torah*, *Hilkhot Melakhim* 10:9 and *Teshuvot ha-Rambam*, trans. Joshua Blau (Jerusalem, 1957), vol. I, pp. 284-5 (no. 149). In his responsum, Maimonides explains the reason for his interpretation. Since R. Yoḥanan says *חייב מיתה* rather than *נחרג*, he infers that the death penalty is not actually exacted. Cf. *Kesef Mishneh* and *Lehem Mishneh*, *ad loc.* Cf. also Reuven Margalioṭ, *Margalioṭ ha-Yam* (Jerusalem, 1958) to *Sanh.* 59a (vol. II, p. 28, no. 1, italicized portion), who supports Maimonides' interpretation by showing that elsewhere in the Talmud, when R. Yoḥanan uses the expression *חייב מיתה*, it means only that the offender deserves death. Abraham Weiss in "Shevitat Akum," *Annual of the University of Bar Ilan for the Study of Judaism and the Spirit* (Hebrew) 1 (1963), p. 144, as well, lists Talmudic passages in which this is a stock phrase used to express strong outrage to objectionable behavior (I am indebted to Prof. Slomovitz of UCLA for referring me to this article).
  5. The translations of the Talmudic passages are for the most part from Isidore Epstein, ed., *The Babylonian Talmud* (London: Soncino Press, 1935-48).
  6. From R. Yoḥanan's own deduction: "it is our inheritance (*morasha*) not theirs," it appears that he is inclined towards accepting the plain *peshat* of the verse, according to which *morasha* is understood as "inheritance." It might not be out of place to speculate that the two readings of *morasha* represent two schools of thought on the relation of Torah to Israel or its "non-relationship" with the Gentile nations. Such a conclusion would explain why there is need at all for a Midrashic contortion of *morasha* into *me'orasah*, when using the plain sense of the word would lead to the same teaching. The two opposing views reflected in the respective renderings of *morasha* might revolve around the question whether it is sufficient to designate the Torah merely an inheritance of the Jewish people with the implication that it could be

- shared with others on a temporary basis or with approval (see our discussion below of R. Aryeh Loeb) or whether the nexus between the Torah and Israel is more like a woman indissolubly wedded to her husband and unqualifiedly forbidden to others.
7. R. Meir's principle is also cited in *B.K.* 38a and *A.Z.* 3a in almost identical language. However, in the Midrash, it is cited with some variation. Cf. *Sifra*, *Aḥarei Mot* to Lev. 18:5 (ed. Weiss, p. 86b), which ascribes it to R. Jeremiah. The *Sifra* also adduces other verses to repeat and reinforce his humanistic principle. Cf. also *Bamidbar Rabbah* to Num. 7:18ff (13,16), which quotes the ruling anonymously and limits it to converts — "... from here we learn that even a Gentile who converts (*hamitgayer*) and engages in the study of Torah is considered as worthy as a High Priest." *Hamitgayer* was probably interpolated to accommodate later rabbinic opinion which was opposed to Gentile study of Torah. Cf. *Tanḥuma*, *VaYak'hel* to Ex. 37:1 (sect. 8) and Midrash *Shoher Tov* to Ps. 1:2 (Midrash ed., p. 6), which are concerned with showing that converts have as much access to Torah as native Jews. R. Meir's principle is paraphrased there to fit the context.
  8. For a brief account of Oenomaus see the entry in the *Oxford Classical Dictionary*, 2nd ed. He was known as a Cynic philosopher who mocked belief in oracles.
  9. *Bereishit Rabbah* to Gen. 27:22 (ed. Theodor-Albeck, p. 734). This same passage has Oenomaus acknowledging the Torah as the guarantor of the Jewish people when they study it. His friendship with R. Meir and their mutual regard for each other can be inferred from *Ḥag.* 15b, *Shemot Rabbah* to Ex. 10:1 (according to its recension in *Midrash ha-Gadol*, *Bereishit* — ed. Margulies, p. 20), and *Ruth Rabbah* to Ruth 1:8, esp. from the latter, which informs us that R. Meir went to condole with Oenomaus when his mother died and again when his father passed away — a sure indication of close association.
  10. Their friendship is evident from many Talmudic and Midrashic sources. That R. Yehuda Ha-Nasi actually taught Antoninus Torah is maintained by Rashi (*A.Z.* 10b, s.v. *le-vaisai de-Rebbi*).
  11. *Sifre* to Deut. 33:4, sect. 345 (ed. Finkelstein, p. 402). Although no halakhic conclusions are drawn in the *Sifre*, the implication from the supporting verse in Proverbs is that a Gentile should not study the Torah and if he does, he will be punished.
  12. Whether the Noahide laws were ever enforced by the Jews or not is irrelevant. Even if they served historically only as an ideal system for the non-Jew, formulated during a time when Gentiles were not under the authority of a Jewish government and, thus, unaffected by rabbinic pronouncements, they served as a vehicle whereby the rabbinic views on non-Jews could be delineated. In this case, moreover, as we shall point out, the law incumbent upon a Gentile had practical import for

the Jew, for the latter was enjoined from helping the non-Jew violate his law on the basis of the *lifnei iver* dictum. Thus, if the Gentile was not permitted to study the Torah, his Jewish neighbor was, by the same token, forbidden to teach him.

13. There are a few important variant readings of this text. The Munich ms. ascribes the prohibition to R. Assi, a colleague of R. Yoḥanan, instead of to R. Ammi, but Rabbinovicz in *Dikdukei Soferim*, ad loc., n. 1, prefers the latter reading over the former. He also favors our text over variants that read: "The secrets of the Torah are not to be revealed (*ein megalin sitrei Torah*)."<sup>13</sup> Meiri (to *Ḥag.*, ad loc.) appears to have the reading: "The secrets of the Torah are not to be transmitted to a non-Jew (*ein mosrin sitrei Torah . . .*)."<sup>14</sup> See below, in our discussion of Meiri. According to R. Zevi Hirsch Chajes (in his gloss to *Ḥag.* 13a) and Neziv (*Meromei Sadeh* to *Ḥag.* 13a) the reading of *Tosafot* (in B.K. 38a) is: "Whoever teaches a non-Jew Torah violates a positive commandment (*over be-aseh*)," although as R. Jehiel Weinberg has pointed out (*Seridei Esh*, vol. II, nos. 90 and 92), *Tosafot* might have been paraphrasing the Talmud rather than quoting it verbatim. For the significance of this matter see below, n. 73.
14. Further evidence that the ban against Gentile study of the Torah was accepted by the Rabbis can be found in the Midrashic tradition concerning Aquilas' conversion, about which we shall have more to say below. According to the account found in various homiletical Midrashim, but whose origin is no later than the Amoraic period, the proselyte Aquilas informs his uncle, the Emperor Hadrian, that he could not have learned the Torah without first undergoing circumcision. The implication is that the Jews would not have imparted their teachings to him without his prior conversion. To prove the nexus between conversion (or circumcision) and Torah study, the Midrash has Aquilas citing the same verse of Psalms that R. Ammi used to support his dictum. The earliest source for this tradition is *Tanḥuma*, *Mishpatim* to Ex. 21:1 (sect. 5) and its parallel in *Tanḥuma Buber*, *ibid.* (sect. 3), pp. 81-82. In a somewhat different form the story is also recounted in *Shemot Rabbah* to Ex. 21:1 (30, 12).
15. See *Sanh.* 58b — "Resh Lakish said: 'A heathen who rests on the Sabbath is to be executed (some read: deserves death), for it is written . . .'"
16. The story is also recounted in the Jerusalem Talmud (*B.K.* 4:3)(4b) with a few interesting variants. There we are told that the teacher of these Romans was Rabban Gamliel and the subject matter included the whole range of Jewish learning. In the Palestinian version, they expressed disapproval of two laws, both of them different from the one mentioned in the Babylonian text. Although they reassured the rabbis that they would not reveal these laws to their officers, the Palestinian

account notes that before reaching Rome they forgot all that they learned (presumably by Heavenly intervention — *Penai Moshe*, ad loc.). Cf. also the accounts in *Sifre* to Deut. 33:3, sect. 344 (ed. Finkelstein, pp. 400-1) and in *Midrash ha-Gadol* to the same verse (ed. Fisch, p. 756).

Later authorities asked why the offensive parts of the Oral Law were not simply withheld or even consciously adapted for Gentile consumption. R. Solomon Luria in his *Yam shel Shelomo* to B.K. 38a concluded on the basis of this episode that if one is forced to impart certain teachings to a non-Jew, he may not alter them in any way even at pain of death, and to do so is considered a *hillul Ha-Shem*.

17. For a full account of the influence of Jewish teachers on these and other early Church Fathers, see Louis Newman, *Jewish Influence on Christian Reform Movements* (New York, 1925), pp. 27-31. Cf. also James Parkes, *The Conflict of the Church and the Synagogue* (London, 1934), p. 117 and the articles by S. Krauss in *JQR* which Parkes cites on p. 118, n. 1.
18. S. Krauss in "The Jews in the Works of the Church Fathers," *JQR*, o.s., 5 (Oct. 1892), p. 129, gives examples of such charges levelled by Justin Martyr in his "Dialogue with Trypho the Jew."
19. Cf. S. Krauss, *ibid.*, pp. 128-9. The rabbinic ban was indeed understood centuries later to apply even to Jews who did not accept the traditional interpretation of Scripture, such as the Karaites. See below. Concerning another group that rejected rabbinic teachings, the Sadducees, we have no early evidence that the Rabbis forbade the people to teach these sectarians the Torah. Indeed, as we have postulated, the very ban itself was not promulgated until the third century, well after the Sadducees vanished from the scene. However, Rashbam, in his commentary on a dispute between R. Yoḥanan b. Zakkai and a Sadducee concerning a question of inheritance, explained that the sage originally defended his position with an evasive and half-serious proof because it is forbidden to reveal to the Sadducees the reasons of the commandments (Rashbam to *B.B.* 116a, s.v. *lo*).
20. Typical is Salo Baron, *A Social and Religious History of the Jews*, 2nd ed. (New York, 1957- ), vol. I, pp. 171-9, esp. p. 177.
21. *Tanḥuma*, *Ki Tisa* to Ex. 34:27 (sect. 34). The same Midrash is quoted in *Tanḥuma*, *Vayera* to Gen. 18:17 (sect. 5); *Tanḥuma Buber*, *ibid.* (sect. 6); and *Pesikta Rabbati*, chap. 5 (beg.) with more elaboration. In these sources the statement is attributed to R. Judah (Ha-Levi) b. Shalom. We also find a slightly different and anonymous version of this homily in *Tanḥuma Buber*, *Ki Tisa* to Ex. 34:27 (sect. 17); *Shemot Rabbah* to Ex. 34:27 (47,1); and *Yalkut Shimoni*, par. 405. In this version (cited in *Tosafot* to *Git.* 60b, s.v. *itmohi*) there is no reference to a Greek translation of the Scriptures, but the Gentiles are spoken of as

usurping the Torah. In a third version of the same Midrash, also anonymous, in *Bamidbar Rabbah* to Num. 7:72ff (14, 10 or 22), the same point is made even more strongly: the Gentile nations are accused of falsifying the Torah and arrogating unto themselves the title of Israel.

Cf. also J. *Peah* 2:4 (or 6), 17a and *Hag.* chap. 1 (end), 76d, where R. Avin states that the Jews were given an Oral Law because all nations possess (the same) books and scrolls. Concerning the attitude of the Rabbis to the Greek translation of the Torah (the Septuagint), see below, n. 95.

22. While Jerome's familiarity with rabbinic traditions is virtually established, Origen's is not. See Sidney Jellicoe, *The Septuagint and Modern Study* (Ann Arbor, 1978), pp. 104-5.
23. See, e.g., *Turei Even* to *Hag.* 13a.
24. *Yad, Hilkhhot Melakhim* 10:9 — "A heathen who engaged in the study of Torah deserves death, for he may only engage in the study of the seven Noahide laws . . . The principle is that we don't allow them to create new religious tenets or to perform *mizvot* on their own." For further analysis of this statement of Maimonides see our adumbration of R. Jehiel Weinberg's views below. Cf. *Hilkhhot Melakhim* 8:10.
25. See below, the discussion of R. Isaachar B. Eylenburg, esp. n. 72, where I list a number of authorities who try to account for the omission of our prohibition in the early halakhic works. See also R. Eleazar Fleckeles, *Teshuvot me-Ahavah*, Part III, no. 376. Only the absence of R. Ammi's ban is noteworthy since we would hardly expect to find R. Yoḥanan's dictum in halakhic works that do not contain systematic codification of laws incumbent upon Gentiles.

Not all rabbis, however, detected this presumed omission. R. Samuel Aboab in his *Devar Shemuel* (Venice, 1702), no. 75, listed five 17th or pre-17th century rabbinic works that refer to our ban. In fact his tally does more to underscore the problem than to resolve it, for no work he lists falls into the category of a pure halakhic code. With the exception of R. Alexander Suslin ha-Kohen's *Sefer ha-Agudah* (which is the only work of a Rishon R. Aboab cites), his list consists either of responsa or of halakhic writings heavily influenced by Kabbalah, of which we shall deal below.

A frequent suggestion is that the codifiers had no need to include R. Ammi's ban since it could be inferred from one of the other explicitly stated prohibitions against imparting the Torah to certain classes of people. Candidates for these groups include women, slaves, and morally-unfit students. Maimonides, for example, forbids one from teaching women Torah (*Hilkhhot Talmud Torah* 1:13) and slaves (*Hilkhhot Avadim* 8:18), as well as one he calls *aino hagun* (*Hilkhhot Talmud Torah* 4:1). The argument would then be that a Gentile is no

- better or no different from one of these and, therefore, may also not be taught Torah. Authorities who adopt such reasoning include R. Samuel Aboab (*Devar Shemuel*, no. 75), R. Meyuhos b. Samuel (*Pri ha-Adamah* to *Hilkhhot Talmud Torah* 1:13), R. Elijah b. Samuel of Lublin (*Yad Eliyahu*, no. 48), R. Zevi Hirsch Chajes (*Responsa*, no. 32), and others. Such a solution naturally leads to the conclusion that only those areas of Torah knowledge that are withheld from these respective groups need be withheld from non-Jews. Thus, e.g., Maimonides and the *Tur*, who distinguish between the Oral Law and the Written Law with regard to women, should so distinguish with respect to Gentiles. See R. Chajes (*Responsa*, no. 32), who actually argues in this manner and who also cites the *Shitah Mekubezet* to *Ket.* 28a, s.v., *velo*, to show that the same distinction applies to slaves. Cf. R. Jehiel Weinberg, *Seridei Esh*, no. 90.
26. R. Ammi's ban is treated with less seriousness by many *Posekim* who consider it of rabbinic origin and *asmakhta be'alma*. These include R. Aryeh Loeb (*Turei Even* to *Hag.* 13a), R. Hayyim Sofer (*Mahaneh Hayyim*, vol. I, no. 7), and others. R. Yoḥanan's dictum, on the other hand, is generally considered to be *d'oraitha*. Thus, in situations where the prohibition as formulated by R. Yoḥanan does not apply, but only that of R. Ammi, the rabbis tend to be lenient. If in such a case, for example, there is an element of *mipnei darkhei shalom* or *mipnei eivah*, they are quick to allow the teaching of Gentiles. Typical in this approach are R. Elijah b. Samuel (*Yad Eliyahu*, no. 48) and, more recently, R. Shelomo Levine (*Ha-Pardes*, vol. 24, issue 3 [Dec., 1949], pp. 7-9).
  27. See above, n. 12.
  28. *Teshuvot ha-Rambam*, trans. Joshua Blau (Jerusalem, 1957), vol. I, pp. 284-5 (responsum no. 149); ed. Freimann (Jerusalem, 1934), pp. 331-2 (responsum no. 364). In the ed. of Maimonides' responsa entitled *Pe'er ha-Dor* (Amsterdam, 1765), which is referred to by many authorities, this responsum (no. 50) appears in abbreviated form — without the negative references to the Ishmaelites.
  29. See Jacob Katz, *Exclusiveness and Tolerance* (London, 1961), chap. X.
  30. *Beit ha-Behirah* to *Hag.* 13a. The Meiri has *ein mosrim sitrei Torah le-goy* for R. Ammi's ban, but it is not clear whether this is his reading of the Amora's prohibition or his interpretation thereof (see above, n. 13). For a fuller treatment of the view that R. Ammi is concerned only with the mysteries of the Torah see below in our discussion of R. Eylenburg.
  31. *Beit ha-Behirah* to *Sanh.* 58b.
  32. Even in this case Meiri permits and even encourages the imparting of the seven Noahide laws — "even if they include most of the basic laws of the Torah" — since with this limited knowledge, he maintains, the Gentile could not pass for a Jew. Meiri's remark that the seven Noahide



laws can include most of the Torah was echoed by R. Elijah Halfan in the 16th century. See below.

33. Actually the reverse seems to be a more logical distinction, one which R. Jehiel Weinberg ascribes, as we shall see, to Maimonides, namely, the sanction of a Gentile's intellectual pursuit of Torah while the denial of his right to learn the Torah as a religious exercise.
34. Riaz's decision is found in *Shiltei ha-Gibborim* to A.Z. 10a. For an attempt to justify Riaz's distinction between the Pentateuch and the rest of Scripture on the basis of the word "Torah," see Reuven Margalit, *Nefesh Hayyah* (Lemberg, 1932), p. 88 in his comment on the *Magen Avraham, Orah Hayyim*, no. 334.
35. An even stricter position was staked out by the *Hasidei Ashkenaz*, some of whom were themselves *Tosafists*. On the *Hasidei Ashkenaz* see below.
36. *Tosafot* to *Hag*. 13a, s.v. *ein mosrin*. Actually the first source that relates the two statements and puts them into juxtaposition is *Midrash Tanhuma, Vayelekh* to Deut. 31:1 (sect. 2). But the Midrash, in contradistinction to *Tosafot*, finds no problem of redundancy with R. Ammi's dictum.

The need for R. Ammi's declaration is questioned and not that of R. Yoḥanan because the latter's prohibition is derived from a Pentateuchal source and is, therefore, preferred over a dictum whose basis is *divrei Kabbalah* (Cf. R. Aaron Walkin, *Zekan Aaron*, vol. II, no. 71). Chronologically, as well, the question of *Tosafot* does not in this case violate historical sensibilities since R. Yoḥanan preceded R. Ammi, who was his disciple, and thus his statement should have been known to the latter.

37. This is the only answer that we find in the standard version of *Tosafot* appearing alongside the Talmud text. However, in the text of *Tosafot* printed in *Ein Ya'akov* we have two resolutions given to the question of why R. Ammi's statement is needed, the first of which does not appear in the former. See below, n. 66, where we refer to this answer.

The question that *Tosafot* raised was taken up by many Talmudic authorities with no dearth of solutions. They range from the early and simple suggestion found in the *Tosafot Rosh* (to *Sanh.* 59a) to the later and more pilpulistic ones, such as that of R. Eliezer Zusman Schreiber (Sofer) in his *Sefer ha-Mikneh* (vol. I, *kelal 8, perat 7*). Among the more rational suggestions is that of Neziv, who limited R. Yoḥanan's prohibition to intensive and systematic inquiry for the purpose of *hid-dush* while R. Ammi's ban included even the imparting of plain halakhot. See below in our discussion of Neziv.

38. The measure to which *Tosafot* took R. Ammi's statement as halakhically binding and on a par with that of R. Yoḥanan can also be seen from their reading of R. Ammi, or more likely their paraphrase — "He who

teaches a heathen Torah violates the positive commandment of 'He declareth His words unto Jacob . . .'" See next note and n. 13.

39. *Tosafot* to B.K. 38a, s.v. *kar'u*. See the *Shitah Mekubezet* (who cites Re'ah), *ad loc.*, who similarly states that the officials misled the Jews. This view is supported by the *Sifre* (see n. 16 above), according to which the Romans were sent to the Rabbis under false pretenses. However, the Palestinian Talmud's report suggests that the Roman officials did not deceive their Jewish teacher(s). See R. Jehiel Weinberg, *Seridei Esh*, no. 90. See also the responsum of R. Elijah Halfan referred to below.
40. Typical is the inference that according to *Tosafot* there is no halakhic difference between the Written Law and the Oral Law with regard to teaching a Gentile, for if the former were permitted, then *Tosafot* should have distinguished between R. Yoḥanan and R. Ammi in this manner. Thus argues R. Isaacar B. Graubart (*Divrei Yisaachar, Yoreh Deah*, no. 96). Cf. R. Hayyim Sofer, *Maḥaneh Hayyim*, pt. I, no. 7 and pt. II (*Orah Hayyim*), no. 11, letter 9.
41. Newman, *Jewish Influence*, pp. 59-69; Herman Hailperin, *Rashi and the Christian Scholars* (Pittsburgh, 1963), pp. 9, 112-5.
42. The impact of Rashi and other medieval exegetes on such clerics as Nicholas of Lyra is a major theme of Hailperin. See Newman, pp. 144-5.
43. The importance of apostates in the history of Christian Hebraism as well as their pivotal role in the development of anti-Jewish polemic can hardly be overstated. From the first Hebrew instructor of Jerome, who was a baptized Jew, to the Jewish renegades of the Middle Ages, apostates turned on their former coreligionists often with more venom and sinister design than the Christians themselves. See Newman, *passim*.
44. Apostates were often considered less reliable as scholars although they were more useful theologically. An illustration of this feeling can be found in the words of a learned Apostolic secretary, who in 1414 described his baptized Jewish instructor as "stupid, peevish, and ignorant, like most Jewish converts" (Cecil Roth, *The Jews in the Renaissance* [Philadelphia, 1959], p. 139). This is not to say, of course, that there were no great scholars among those who converted, but they were more often the exception than the rule.
45. *Ibid.*, pp. 137-8. In the case of the Dominicans in fourteenth-century Spain, the conversionary motive was the sole purpose of their study of Hebrew, according to Roth, *The Jews in the Renaissance*, p. 137.
46. Typical is Pico della Mirandola, one of the greatest Christian Hebraists of the Renaissance, who wrote that "there is no science that can more firmly convince us of the divinity of Christ than magic and the Kab-

- balah." Another time he wrote, "In the Kabbalah I find what I find in Paul" (*ibid.* p. 117).
47. See above, n. 34.
48. Thus we find numerous examples of Jews assisting Christians in understanding the Pentateuch, including the legal sections. Also Jewish philosophical works were taught and translated. See Newman, *passim*. But Jewish involvement in Christian Hebraism at that time did not apparently go beyond biblical and philosophical studies. We have no evidence of bonafide Jews assisting Christians on a significant scale in understanding the Talmud. Whatever clerics knew of the Talmud they derived from coaching by Jewish apostates and from Latin translations achieved with the help of baptized Jews. See Newman, pp. 54, 58, 61.
49. *Sefer Hasidim*, ed. Reuven Margaliot (Jerusalem, 1957), p. 211, no. 238 (ed. Wistinetzki, p. 106, no. 348). But another statement in *Sefer Hasidim* (ed. Wistinetzki, p. 256, no. 1021) adopts a more positive attitude, citing R. Meir's pronouncement (attributed to R. Jeremiah) and offering several Scriptural proofs thereto. To be sure, the author of the work limits the acclaim of Gentile Torah study to the seven Noahide laws, as did the Talmud. Still, the tone of the statement, if not the substance, runs counter to that of the earlier one. It is conceivable that the Hasidim were opposed to non-Jews studying the Hebrew language but not the Scriptures when translated into the vernacular (see Margaliot, p. 211, no. 238, n. 3). Indeed the concern with "safeguarding" the Hebrew language is indicated from the context, for the ban on imparting the Hebrew letters is followed by a prohibition forbidding the singing of a sweet melody in the presence of a priest lest he use it to laud his own deity. This fits into the pietistic emphasis on the purity and sanctity and exclusivity of the Hebrew language and the praises of God expressed through it. Songs dedicated to the Almighty cannot be sung, according to *Sefer Hasidim*, even to lull a baby to sleep (ed. Margaliot, p. 211, no. 238; ed. Wistinetzki, p. 106, no. 347).
50. Roth, *Jews in the Renaissance*, pp. 137-164, esp. p. 148.
51. *Ibid.*, pp. 128, 155. R. Ovadiah's celebrated instruction of Reuchlin is either unknown to later rabbinic authorities or passed over in silence. An exception is R. David Zevi Hoffmann, who in his *Melammed Leho'il*, vol. II, no. 77, mentions both Seforno's and Levita's involvement in teaching Gentiles Torah. Although R. Hoffmann vouches for their good intentions (to benefit the Jewish people), he maintains that the leading rabbinical authorities were nevertheless strongly opposed to their activity.
52. Thus we find Elijah Bahur using the economic argument to defend his teaching Christians (see n. 54 below). See also the language used by the inquirer of R. Halfan concerning Jews teaching Christians (the responsum is referred to below, n. 56). Cecil Roth writes in his *History of*

- the Jews of Italy* (Philadelphia, 1946), p. 148, that the Jewish humanists "did not fit into any class in Jewish society, and they were perpetually plagued by economic instability. See also his *Jews in the Renaissance*, p. 128.
53. History unfortunately confirmed some of their worst fears. It was not long before in Italy itself, that an auto-da-fé took place in which the Talmud and other Jewish works which were stigmatized as blasphemous were consumed in flames. This occurred in 1553 marking the end of the Renaissance and the onset of the Catholic Reaction. See Roth, *Jews in the Renaissance*, p. 187.
54. Elijah Bahur himself in the introduction to his *Masoret ha-Masoret* informs his readers of the rabbinic opposition to his efforts. With a touch of bitterness he notes that some rabbis would not even greet him.
55. Roth, *Jews in the Renaissance*, p. 143.
56. D. Kaufmann, "Elia Menachem Chalfan on Jews Teaching Hebrew to Non-Jews," *JQR*, o.s., 9 (1897), pp. 500-8. The full text of the responsum appears there with a brief introduction and summary.
57. R. Halfan's position on Talmud seems to be ambivalent. While he explicitly bars only the transmission of the secret lore (but does not actually use the term "Kabbalah"), he does not expressly allow for the teaching of anything beyond the Hebrew language and the plain sense of the Scriptures. Yet his argument that the seven Noahide laws involve practically the entire Torah — Written and Oral — points to an acceptance of teaching the Talmud.
58. See his introduction to the *Masoret ha-Masoret*.
59. D. Kaufmann, "Chalfan," p. 505. On Rabbi and Antoninus, see above. We know little about the relationship of Rav with Artaban (or Adarkhan) although the Talmud (*A.Z.* 10b) apparently equates it with that of Rabbi and Antoninus. On Samuel and Ablat see Solomon Rapaport, *Arekh Milin* (Warsaw, 1914), vol. I, p. 8, s.v. *ablat*. R. Halfan also refers to the friendship of Huna b. Nathan with Izgador (*Zev.* 19a). In all of these cases, with the exception of the first, there is no evidence that the sage actually taught his Gentile colleague Torah; the relationship could have been merely social. On the *Bei Avedan* see *Shab.* 116a. Much ink has been spilled on the meaning of this term and it has by no means been fully established.
60. *Ibid.* pp. 507-8.
61. The reputation of Italy as a center of Christian Hebraism was known far and wide. See letter published in *Kovez al Yad* 4 (1888), pp. 30-31, in which the writer expresses doubt about the wisdom of sending certain Hebrew messianic writings to Italy (from a Moslem country) since they might fall into the hands of Christians schooled in the holy tongue.
62. Luria also referred to the lands of "Sepharad, Loaz, and Erez Ishmael"

as areas where Jews taught Christians Torah. "Loaz" in medieval rabbinic writings usually designated Italy (my thanks to David Strauss and Dr. Sid Leiman for pointing this out to me). "Erez Ishmael" refers most likely to Turkey. "Sepharad" is problematic since there were no Jews in Spain in the 16th century. Perhaps Luria was referring to an earlier period, namely, the 15th century.

63. *Yam shel Shelomo* to B.K. 38a.
64. *Zohar* 3:73a (*Parshat Aharei Mot*). See also 3:73b. Similar expressions of Divine betrayal caused by transmitting the Torah to the "uncircumcised" are found throughout the *Zohar*. See, e.g., 1:89a, 1:202a, 3:91b, a.e.
65. To Kabbalistic doctrine the covenant was of paramount importance. See, e.g., Meir b. Ezekiel ibn Gabbai, *Tola'at Ya'akov* (Warsaw, 1876), p. 90.
66. Thus, *Sefer Haredim* (see n. 68 below) refers to the Talmudic tradition that a Gentile may be taught the Noahide laws but then adds that the *Zohar* adopts a very stringent view and does not make any distinctions. Actually the opinion that Gentiles are not to be taught even the seven Noahide laws need not be necessarily considered as contradicting the Talmud. Indeed, even before the *Zohar*, *Tosafot*, in the version printed in *Ein Ya'akov* (see above, n. 37) suggested — in their attempt to explain the need for R. Ammi's dictum — that the Talmudic approbation with regard to the Gentile study of the Noahide laws only applied to the period before the Sinaitic Revelation, but after the Israelites received the Law and the other nations rejected it, they were barred from studying even those universal laws, as R. Ammi deduced from the verse in Psalms. But this solution is forced and not in accordance with the plain meaning of the Talmud. It is discussed by Solomon Algazi in his *Ahavat Olam* pp. 35b-d. Cf. Isaachar B. Graubart, *Divrei Yisaachar, Y.D.*, nos. 96-97.
67. See n. 49 above.
68. *Sefer Haredim, mizvot de-rabbanan*, chap. 4, par. 37 (ed. *Be'er Yehuda*, p. 144).
69. In some editions (Amsterdam, 1698; Frankfort, 1717), p. 185a, and in others, pp. 33c-d or 51b-c of the section entitled *Mesekhet Shevuot*.
70. See above, n. 65.
71. *Be'er Sheva* (Frankfort a.M., 1709), *Kuntres Be'er Mayim Hayyim*, no. 14.
72. R. Eylonburg was the first to raise the question about the absence of the prohibition in the early halakhic works (see above, n. 25). Subsequent authorities who also responded to this question include Elijah b. Samuel of Lublin (*Yad Eliyahu*, no. 48), R. Saul Alyashar (*Ma'aseh Ish*, no. 7), R. Aaron Walkin (*Zekan Aaron*, vol. II, no. 71) and R. Isaachar Baer Graubart (*Divrei Yisaachar, Yoreh Deah*, no. 96).

73. He assumed this interpretation on the basis of the context, which is concerned with the esoteric elements of the Torah. Thus, the statement immediately preceding the one in question, also of R. Ammi, is: "The secrets of the Torah (*sitrei Torah*) may only be transmitted to one who possesses the following five characteristics..." The difference between *sitrei Torah* and *divrei Torah* (which is the term used by R. Ammi for the prohibition of teaching non-Jews Torah) may not be significant, for Rabbenu Hannel reads in the previous statement "*divrei Torah*" in identical fashion to our statement although the former certainly refers only to the mystical doctrines and not ordinary *divrei Torah*. Similarly, the discussion in the Gemara that follows our halakha is about *Ma'aseh Merkabah*, which is also an esoteric subject. In addition to this evidence, R. Eylonburg found support for confining R. Ammi's pronouncement to the secrets of the Torah from his use of *ein mosrin* rather than *ein lomdin*.

R. Eylonburg's interpretation was not new. As we pointed out in the text, Meiri (to *Hag.* 13a) understood it that way as a matter of course either because of his version of R. Ammi's ban (see above, nn. 13 and 30) or by comparison with R. Ammi's previous statement. The distinction between "*mosrin*" and "*lomdin*" was already noticed by R. Elijah Halfan in the 16th century (see above, nn. 56 and 57). This interpretation was also advanced by R. Samuel Edels (Maharsha) in his *Hid-dushei Aggadot* to *Hag.*, *ad loc.* Several later authorities also restricted R. Ammi's ban to esoteric lore. Of special interest are the remarks of R. Chajes (*Responsa*, no. 32) who maintains that *Tosafot* did not interpret R. Ammi in this manner because of his particular reading of his ban (see above, n. 38). For a different interpretation of *ein mosrin* see our discussion below of Neziv.

In connection with this interpretation of R. Ammi, frequent mention is made of Rashi to *Ket.* 111a, s.v. *ve-shelo yigalu*. There the Talmud says that one of the oaths taken by the Jews upon going into Exile was that they will not reveal the "mystery" to the Gentiles, which Rashi interprets (he also gives an alternate explanation) as referring to the mysteries of the Torah, implying that only the secret elements were not to be disclosed.

Although this interpretation limits R. Ammi's ban to the esoteric realm of Torah, R. Yoḥanan's dictum still applies to the revealed parts of the Torah through *lifnei iver*. However, this allows for situations in which neither pronouncement prohibits. And indeed some authorities relied on such analysis for promoting lenient decisions.

74. See his proof from *B.B.* 21a. Later authorities generally rejected his interpretation of that passage.
75. See n. 73 above.
76. *Devar Shemuel* (Venice, 1702), no. 75. See also above, n. 25.

77. See, for example, R. Elijah b. Samuel of Lublin, *Yad Eliyahu*, no. 48 and Hida (R. Hayyim Joseph David Azulai), *Shiurei Berakha to Birkhei Yosef*, Y.D., no. 246, letters 3-5, as well as several later authorities including R. Eleazar Horowitz, *Yad Eleazar* no. 76 and R. Jacob Saul Alyashar, *Ma'aseh Ish*, Y.D., no. 7.
78. *Turei Even* to *Hag*. 13a. The author of the *Iyun Ya'akov* (commentary found in standard versions of the *Ein Ya'akov*) also makes the same distinction between designating the Torah an "inheritance" and referring to it as "a betrothen woman" (*Iyun Ya'akov* to *Sanh.* 59a). Cf. R. Aaron Walkin, *Zekan Aaron* (2nd ed.), vol. II, Y.D., no. 71.
79. R. Judah Aryeh Loeb Alter, *Sefat Emet*, to *Hag*. 13a; Neziv, *Meromei Sadeh* to *Hag*. 13a; and R. Jehiel Weinberg, *Seridei Esh*, nos. 90 and 92. Some, however, agreed with R. Aryeh Leob. See, e.g., R. Judah Aszod, *Mahariyah*, O.H., vol I, no. 4.
80. I am using the term "Sephardic" in its popular sense as a general reference to all non-Ashkenazim. Technically "Sephardim" refers only to the Jews of Spain and Portugal, as well as their descendants, and not to the native Jews of the Islamic states, whom we have, however, included in our broad usage of the term.
81. *Teshuvot R. Elijah Mizrahi*, no. 57. The following are the rabbis he mentions who taught the Oral Law "without hesitation": R. Elijah Ha-Levi, R. Eliezer Kapsali, and R. Hanokh Zippporta (of Catalonia). The Mizrahi marshalls other arguments against the *herem*, among which is the observation that when the Karaite children are excluded from Torah study even the children of the Rabbanites suffer, for they are no longer motivated by rivalry (*Kinat Soferim*) to excel in their studies.
82. *Melekheth Shelomo*, Y.D., no. 4. Similarly R. Meyuhos b. Samuel of Salonica (18th century) in his *Peri ha-Adamah* (to *Hilkhot Talmud Torah*, chap. 1) prohibits teaching Karaite children the Oral Law but allows instruction in the Written Law. He adds, though, that it is permitted only when Jewish children are in attendance for the benefit of the latter (see previous note).
83. *Ibid.* On the halakhic differences between the "new" and "old" Karaites, see *Shakh* to *Yoreh Deah*, chap. 2, no. 24 and other works cited by R. Kimhi.
84. *Hut ha-Meshulash*, resp. no. 6.
85. See Neziv, *Meshiv Davar*, pt. II, no. 77. He opposed the decision of the "rabbis of Jerusalem," who allowed the sale of the *Sefer Torah pasul*. Cf. Hida, *Shiurei Berakha* (cited above in n. 77).
86. Hida, *Shiurei Berakha* to *Birkhei Yosef*, Y.D., no. 246, letters 3-5; Hayyim Palaggi, *Ruah Hayyim*, Y.D., no. 246, par. 2; Judah Diwan, *Hut ha-Meshulash*, responsa section, no. 6. Isaac Ben-Walid, *Vayomer Yizhak*, O.H., no. 21; Raḥamim Nissim Palaggi, *Yafeh la-Lev*, vol. III, no. 246, par. 21; and others. Of particular interest are the remarks of

- Judah Diwan (18th century), who relates his strict halakhic decision to the antagonistic and polemical relationship between Jews and Gentiles schooled in Jewish learning. Whether these rabbis, most of whom lived in Islamic states, were referring to the teaching of Moslems rather than Christians is not known although not likely. Christians were always more interested in the Scriptures and the Jewish interpretation thereof than were the Moslems, who rejected the traditional text (see above, n. 28).
87. *Yabia Omer*, Y.D., no. 17.
88. *Responsa of R. Akiva Eger*, no. 41. The Talmudic passage under discussion is *Shab.* 31a. See *Tosafot* to *Yev.* 24b, s.v. *lo bimay Dovid*.
89. See, e.g., Hayyim Spira, *Minḥat Eleazar*, pt. IV, no. 63, and Ben Zion Blum, *Tel Talpiyot* 37 (5690), p. 67.
90. These include Eliezer Zusman Sofer, *Sefer ha-Mikneh*, pt. I, *kelal 1*, *perat 7*, and Netanel Fried, *Penai Mevin*, Y.D., pt. II, no. 127, among others. See next note. Moses Galante in his *Berakh Moshe*, no. 246, glosses, no. 19, adopts a strict view but then writes that he has second thoughts after having seen Maharsha's comments. Cf. Abraham Rosenbaum, *Ben Yehudah*, no. 50, who approves of Maharsha's opinion but only qualifiedly.
91. *Mahaneh Hayyim*, pt. I, no. 7. See also pt. II, no. 45.
92. *Tanya Rabbati* (New York, 1976), vol. I, pp. 135-7 (cf. also pp. 165-7). The pre-condition of circumcision was already put forth by R. Menachem Mendel Schneersohn in his *Zemah Zedek*, Y.D., no. 200.
93. See above, n. 14.
94. On R. Ezekiel Landau's opposition to the *Biur* see his biographers: Jekuthiel Kamelhar, *Mofet ha-Dor*, 2nd ed. (Pietrekow, 1934), pp. 62-63 and Leon Gellman, *ha-Noda bi-Yehudah u-Mishnato*, 3rd ed. (Jerusalem, 1970), pp. 87-89. Other rabbis who spoke out against this German translation include R. Zevi Hirsch of Pozen, R. Raphael Ha-Kohen of Altona, and R. Pinḥas Ha-Levi Horowitz of Frankfort (Gellman, p. 88).
95. The tradition of a three-day mourning period in the wake of the Septuagint translation comes from *Soferim* 1:8 and what is usually called *Megillat Ta'anit Batra*. It is cited by many authorities as proof of rabbinic displeasure at imparting the Torah to the Gentiles, especially in the form of translation. Actually, though, a tradition of rabbinic sanction of the Septuagint is also found in the Talmud. Indeed, according to the Talmudic version of its origin, the Septuagint embodied several miraculous features (*Meg.* 9a). For an analysis of these diverging traditions see Sidney Jellicoe, *The Septuagint and Modern Study* (Oxford, 1968), pp. 75-76. However we might resolve the contradiction, those authorities who adopt a more stringent view with regard to our prohibition are not fazed by the apparent pro-Septuagint passage in

*Megillah*. Even if the Greek translation was directed to the Greek-speaking Gentiles, as some claim, it is considered by these rabbis an exceptional case dictated by heavenly decree. Thus, e.g., R. Solomon Luria in his *Yam shel Shelomo* to B.K. 38a.

96. Introduction of *Zlah* to *Ber*. In some eds. (e.g., David Wachs' ed. of 1856, publ. in Slowitta), which are apparently censored, the veiled reference to Mendelssohn's work is missing. In recent eds. of *Zlah* it can be found in the paragraph beginning with the word *mesekekhet*. Cf. also Landau's remarks to *Ber*. 28b, s.v. *minu benaikhem*.
97. Ben Zion Katz, *Rabbanut, Hasidut, Haskalah* (in Hebrew) (Tel Aviv, 1956), vol. I, pt. II, pp. 198-9. According to R. Landau, the *Biur* turned the Torah into "the handmaiden of the German language" (*ibid.*, p. 199, n. 147).
98. For an impressive list of supporters one need look only at the list of *haskamot* in the front of Pinner's work. The rabbis and scholars who lent their names are listed in Raphael Rabinovicz, *Ma'amar al Haddfasat ha-Talmud* (Jerusalem, 1965), p. 246.
99. The arguments against the proposed translation were set forth in a letter to the Hatam Sofer by a prominent member of the Amsterdam community, R. Zevi Hirsch Lehrin, dated 10 *Tevet* 5595 (1835). This epistle is published in *Igrot Soferim*, ed. Shelomo Sofer (Schreiber) (Vienna and Budapest, 1929), pt. II, pp. 73-78. The writer compares Pinner's intended work to Mendelssohn's *Biur*, concluding that if the rabbis opposed the latter despite its being a translation of the Written Law in the Hebrew script, certainly Pinner's translation of the Oral Law, written fully in German, should be contravened. He also drew upon his experience with the *Maskilim*, who derided what they considered the irrelevant trivialities of the Halakhah and its undue preoccupation with marital and sexual matters; in this manner, Lehrin assumed, the Gentiles would also react to the newly-translated Talmud. Pinner's critic did not even allow for the success of the translation should it overcome these difficulties and present the Talmud in a favorable light; in such a case, he declared, the work would arouse the envy of the Christian clerics who would brand it a conversionary tract with the goal of tempting Christians away from their faith; this will lead, he argued, to suppression of the Talmud. Pinner's response to his critics is contained in the introduction to his work and is quoted in Rabinovicz, pp. 248-9. On the Hatam Sofer's retraction, see Rabinovicz, p. 246.

The fears of Gentile scorn and contempt were not unfounded. The Talmud, as the cornerstone of Rabbinic Judaism, was often the object of vicious anti-Semitic attacks. While the Jews no longer feared the public burnings that were characteristic of the Middle Ages, they were certainly cognizant of the malicious and even obscene accusations that were often hurled against the Talmud well into the Modern Age. See,

- e.g. Leon Poliakov, *The History of Anti-Semitism*, trans. Miriam Kochan (New York, 1975), vol. III, p. 155.
100. Although Pinner's venture failed, a later attempt by L. Goldschmidt in the beginning of this century to translate the Talmud into German succeeded. There is little record, to my knowledge, of opposition to this later enterprise. The only rumble of discontent that I found in print was sounded by R. Shelomo Sofer, who in a note appended to Lehrin's letter (*Igrot Soferim*, p. 78) cautioned against the renewed efforts to translate the Talmud into German as being ill-advised in light of the arguments presented in the epistle (see previous note). This was hardly a vigorous statement of contraposition.
  101. *Responsa of the Mahariya* (also called *Yehuda Ya'aleh*), O.H., vol. I, no. 4.
  102. *Arugat ha-Bosem*, O.H., nos. 213 and 214.
  103. *Zekan Aaron* (2nd ed.), vol. II, Y.D., no. 71. On the halakhic status of translations — as *kitvei kodesh* — see *Magen Avraham to Orah Hayyim*, chap. 334, no. 17.
  104. Before the *Haskalah* period a Jew might have brought his own *Sefer Torah* whenever he had to appear in court. This was suggested to me by Dr. David Berger. On the *more judaico* see Salo Baron, *A Social and Religious History of the Jews*, vol. III, 2nd ed., pp. 194-5, and Jacob Marcus, *The Jew in the Medieval World* (Cincinnati, 1938), pp. 49-50.
  105. See authorities cited in the next note.
  106. *The Complete Writings of Rabbi Zevi Hirsch Chajes* (Hebrew), 2 vols. (Jerusalem, 1958), vol. II, no. 32. Other authorities who were asked if one may provide Torah scrolls for use in civil courts or for other Gentile use include R. Elijah of Lublin, *Yad Eliyahu*, no. 48; R. Hayyim Palaggi, *Lev Hayyim*, pt. III, no. 44; and R. Eleazar Horowitz, *Yad Eleazar*, no. 76.  
On selling Hebrew books to non-Jews, see R. Elijah of Lublin (d. 1735), *Yad Eliyahu*, no. 48, who prohibits such activity because of *lifnei iver* unless the work deals with or contains the seven Noahide laws, even in part. There would also be no problem, he states, if non-Jewish bookdealers sold Hebrew works. R. Chajes, who refers to R. Elijah of Lublin, notes parenthetically that there aren't any in Lvov (Lemberg) and that, in contrast to Germany, there are no Jewish merchants who sell Torah scrolls (or Hebrew books) to Gentiles. In all of these responsa the presumption is made that the scrolls will not be subject to abuse.
  107. *EJ*, s.v. *Eybeschuetz*; Azriel Shochot, *Im Hilufe Tekufot* (Jerusalem, 1960), p. 279, n. 8.
  108. Samuel Rosenfeld, *R. Israel Salanter: His Life, His Work, and His Disciples* (Hebrew) (Warsaw, 1911), pp. 40-41.
  109. *Besamim Rosh* (Berlin, 1783), no. 327.

110. For a brief account of the publication of the *Besamim Rosh* and examples of its Reformist tendency see Louis Jacobs, *Theology in the Responsa* (London and Boston, 1975), Appendix I, pp. 347-52. A limited but useful bibliography is included.
111. See Jacobs, p. 352. Interestingly R. Chajes (*Responsa*, no. 32) assumes that Berlin adopted a lenient view that a Jew may teach Gentiles in our day and age due to the ample availability of knowledgeable clerics who know Hebrew and who could serve as teachers if the Jew did not. Berlin actually rejects this notion and maintains that there is no guarantee that the Gentile will go to a cleric or learn successfully from him. Nevertheless, R. Chajes ascribes to Berlin the original lenient hypothesis and attempts to refute it.
112. See Jacob Saul Alyashar, *Ma'aseh Ish*, Y.D., no. 7 and the authorities he cites. R. Alyashar himself allows one to teach the non-Jew Hebrew, especially if he already has some familiarity with the Hebrew alphabet in light of the fact that the *Tenakh* had already been translated into all languages. See also Isaac Ben-Walid, *Vayomer Yizhak*, O.H., no. 21.
113. Kaufmann, "Chalfan," p. 504.
114. See *Hagahot Ya'avetz* to *Sanh.* 59a; and *Ahavat Yehonatan*, *haphtorah* to *Beshalah* (Judg. 5:4).

Others who maintained that a Gentile may study the Written Law include R. Judah Aryeh Loeb Alter (of Ger) in the *Sefat Emet*, to *Hag.* 13a, as well as the son of R. Judah Aszod (in his appended remarks to *Teshuvot Mahariya*, O.H. vol. I, no. 4). R. Yosef Saul Nathanson, in his *haskamah* to the *Mahariya*, took issue with the son's remarks and relied on earlier authorities to prove that the Written Law was also barred from the Gentiles. See *Sefer ha-Mezaref* of Moshe Kunitz, no. 97, who has a long discussion on the distinction between the Oral and Written Law with respect to our prohibition. See also the recent responsum of R. David Ha-Kohen Sakli, *Kiryat Hannah Dovid*, no. 13, on this issue.

115. *The Complete Writings of Rabbi Zevi Hirsch Chajes*, vol. II, no. 32. The pertinent novellae are to *Hag.* 13a, *Sot.* 35b, and *B.M.* 119a.

Among the sources that he offers to support this distinction is the Gemara of *Sot.* 35b, which claims that Moses (or Joshua) had the entire Torah translated into the 70 languages of the world so that all nations could study its contents. This text has been frequently cited to support the view that the Written Law may be (or should be) imparted to the Gentiles. However, R. Chajes suggests that the proof is inconclusive, for the translation served only to divest the Gentiles of their claim that the Torah was never offered to them. It was indeed revealed to them that once in their respective languages, and it can be argued that once they rejected it, the Torah was not to be imparted to them again. In somewhat different fashion, R. Isaachar B. Graubert, *Divrei Yisaachar*,

Y.D., no. 9, dismisses the proof from *Sot.* by interpreting the passage to refer to the seven Noahide laws and not the entire Torah.

Another pertinent source which points to the distinction between the Oral and Written Law is Rabbenu Gershom to *B.B.* 21a, cited by R. Jehiel Weinberg, no. 92. The eleventh-century rabbi interprets a Talmudic passage to the effect that Gentile children may study *Mikra*. This indicates, according to R. Weinberg, that the difference between the Oral and Written Law with regard to teaching a Gentile was recognized as far back as the time of Rabbenu Gershom. See also n. 25 above.

116. *Responsa*, no. 32. According to this view even the seven Noahide laws would then only be taught in the vernacular (if non-Jewish teachers were not available) and not in the original Hebrew. On *lifnei iver* see above in our discussion of *Tosafot*.
117. See n. 96 above.
118. His responsum on the subject is in *Meshiv Davar*, no. 77. The issue is also discussed in his commentary on the Talmud, *Meromei Sadeh*, to *Hag.* 13a. See as well his Torah commentary *Ha'amek Davar*, to *Deut.* 33:4.
119. *Meromei Sadeh* to *Hag.* 13a. The difference between "osek" and "lomed" is usually given as one of intensity. Thus, the *Taz* (O.H., chap. 47, no. 1) equates "oskim" with learning that involves mental exertion and toil while he refers "lomdim" to a type of leisurely study. But in this very passage he also implies that there is a difference in the subject matter: "osek" is to engage in the *pilpul* and "give-and-take" of the Torah.
- Neziv does not clarify how he interprets R. Ammi's statement. While he says that R. Ammi's ban refers to plain halakhot, he allows, in the same novellum, the imparting of the halakhah if it is not done in a systematic fashion. So too R. Judah Aryeh Loeb Alter (of Ger) in *Sefat Emet*, to *Hag.* 13a.
120. Typical is R. Shelomo Levine, "If it is Permissible to Teach a non-Jew Torah," (Hebrew), *Ha-Pardes* 24 (1949-50), pp. 7-9
121. See, e.g., the responsa of R. Isaachar B. Graubart, *Divrei Yisaachar*, nos. 96 and 97, a late 18th and early 19th-century rav in eastern Europe; and R. David Ha-Kohen Sakli, *Kiryat Hannah Dovid*, no. 13.
122. *Zekan Aaron* (2nd ed.), vol. II, Y.D., no. 71. R. Aaron Walkin died in 1942.
123. For a brief description of Pranaitis and his role in the Beiliss case, see Maurice Samuel, *Blood Accusation* (New York, 1966), pp. 87-88, 162, and 212-8.
124. Trzeciak wrote a vicious anti-Semitic publication entitled *Ritual Slaughtering in the Light of the Bible and Talmud* (Polish), which was published in Warsaw in 1935. This work was instrumental in the Anti-

*Shehitah* movement of Poland during the pre-Nazi period (from 1936). On Trzeciak and the history of the anti-*shehitah* legislation in Poland, see Isaac Lewin, et. al., *Religious Freedom: The Right to Practice Shehitah* (New York, 1946), pp. 85-90.

R. Walkin also has a third historical reference, an event occurring in the Polish town of Pryztyk. He refers to the savage pogrom that took place in March of 1936 and the anti-Semitic reaction of the Polish government, which prosecuted the victims — some of whom defended themselves with arms — instead of their attackers. See *London Jewish Chronicle*, July 3, 1936, pp. 9-10 for a brief review of the incident.

125. *Seridei Esh*, vol. II, nos. 90 and 92.
126. See above, n. 15, and Maimonides, *Yad, Hilkhoh Melakhim* 10:9.
127. *Igrot Moshe*, Y.D., pt. II, no. 132.
128. *Ha-Pardes* 28 (1953-54), no. 10. His article is reprinted in *Ha-Maor* 28 (1975-76), no. 6 with a few additions.
129. *Mishneh Halakhoh*, vol. V, no. 172.
130. See also work of Isaiah Even Sapir, whose article appeared in *Noam* 10 (1966-67).
131. See, e.g., the responses of R. Schneur Reiz and R. Shelomo Kahana in *Ha-Maor* 29 (1976-77), no. 1 and no. 2, respectively, as well as the earlier opinion of R. Israel Weltatz in *Ha-Maor* 8 (1956-57), issue 71. See also the uncompromising position of R. Zev D. Slonim in his recent compendium, *Sha'arei Halakhah* (Jerusalem, 1978), pp. 36-37.
132. *Melammed Leho'il*, 2nd ed., vol. II, no. 77.  
R. Hoffmann's ruling was accepted by R. Jehiel Weinberg (*Seridei Esh*, vol. II, no. 91), who went even further and maintained that if the Gentile child intends to convert upon reaching adolescence, then he may be fully enrolled in a religious school and taught Torah although he is still a non-Jew. Thus, R. Weinberg went beyond the one-on-one relationship — in which a potential proselyte is taught individually by a rabbi — sanctioned by Maharsha; R. Weinberg permitted the neophyte to study Torah even in a school setting, where all his fellow schoolmates are Jewish.
133. *Be'erot Avraham*, O.H., no. 12.
134. *Or ha-Torah* 9 (5737), pp. 359-361.

\*After this article was set into type, a new volume of R. Moses Feinstein's *Teshuvot (Igrot Moshe)*, vol. 5 [Bnei Brak, 1981] was published, in which three responsa are addressed to our issue (Y.D., pt. III, nos. 77, 89, 90). Since the new material could not be incorporated into the body of the text or the footnotes, I shall briefly summarize the conclusions reached by this prominent halakhic authority and relate them to what I wrote above.

On the issue of Torah instruction for a child whose father is Jewish but

whose mother is not, R. Feinstein categorically refuses to sanction his admittance into a *yeshiva* until the parents agree to the child's conversion. This is a less compromising ruling than those discussed in the article and reflect Rav Moshe's strict approach to matters of Jewish status.

In responsa 89 and 90, the noted halakhist deals with several problems already discussed by earlier authorities: the absence of our prohibition in the early codes; the determination of *Tosafot's* reading of R. Ammi's dictum (see nn. 13 and 73); and the acceptability of R. Aryeh Loeb's reasoning (see n. 78). In an extensive treatment of the *lifnei iver* dictum, R. Feinstein confirms what he had written earlier (see n. 127), namely, that a Jew may teach other Jews Torah even though Gentiles will learn at the same time.

His most important ruling is that potential proselytes may be exposed to Jewish law beyond what is necessary for their immediate knowledge upon conversion. (See our discussion of the Maharasha — R. Akiva Eger controversy). Converts must be fully aware of what they are about to undertake. So sure is he of this axiom that he finds R. Akiva Eger's decision impossible under ordinary circumstances. He maintains, in what amounts to a novel interpretation, that R. Eger's limitations applied only to a Gentile whose decision to convert entailed great hardships (such as emigrating to another country) and was, thus, likely to be reversed.

Eliyho Matzozky received his M.A. in Jewish History from the Bernard Revel Graduate School of Yeshiva University. He is currently pursuing his studies toward a Ph.D. at C.U.N.Y. in the area of the American Jewish leadership during the time of the Holocaust.

### AN ANALYSIS OF A PRESSURE GROUP: THE ACTIVITIES OF THE BERGSON GROUP IN THE YEAR 1943

This study will attempt to examine the activities of the Bergson group between November 1942 and January 1944, during which time this group, unlike all the other Jewish organizations directed its efforts toward effecting the establishment of a United States Government agency to rescue Jews. Events took a peculiar turn, the result of which was the realization of their goal, when in January 1944 President Roosevelt established the War Refugee Board (WRB).

In the summer of 1940, a small group of Palestinian Jews, supporters of the New Zionist Organization<sup>1</sup> established by Vladimir Jabotinsky in 1935, landed on Ellis Island. Headed by Irgun member Peter H. Bergson, they had come to the United States because, as Bergson later explained, "it had become clear to these men [the Bergson group] that if the 'terrible mess' in Europe was to be cleaned up, the assistance of America must be secured. As Mr. Bergson later stated, long before Pearl Harbor his comrades had realized that this war was a moral war in which the United States would eventually have to take part.<sup>2</sup> According to Bergson, the man who initiated their visit to the U.S. was Vladimir Jabotinsky, who believed that the group should come in order ". . . to try to secure the aid of American public opinion for the 'Hebrew Nation.'"<sup>3</sup> A devoted member

of the Irgun, Bergson had left Palestine for Europe in 1936, and there headed the illegal entry of European refugees into Palestine.<sup>4</sup> Other members of his group were Samuel Merlin, Eri Jabotinsky (the son of Vladimir), Jeremiah Halperin (the Bergsons' representative in London), Alexander Hadani, Aryeh Ben-Eliezer, and Isaac Ben-Ami.<sup>5</sup>

While in the United States, the Bergson group initiated the following five organizations:

1) The American Friends of a Jewish Palestine (1939-1941), which collected money for the rescue of Jews from Europe, especially for illegal immigration to Palestine.

2) The Committee for a Jewish Army of Stateless and Palestinian Jews (1941-1943), whose purpose was to promote the idea of establishing a Jewish Army that would take part in the fighting against Germany and hopefully would come to the aid of persecuted Jews. Its intent was not necessarily to have American citizens participate in this army, but rather to involve Palestinian and other Stateless Jews in a way similar to the participation of the Jewish Brigade in World War I.

3) The Emergency Committee to Save the Jewish People of Europe (1943-1945), whose activities will be discussed later on in this work.

4) The American League for a Free Palestine (1944-1948), which worked to secure the establishment of a Jewish State.<sup>6</sup>

5) The Hebrew Committee of National Liberation, which put forth a program for the establishment of a State, and lobbied for it in Washington D.C., and elsewhere.

\* \* \* \*

Several reports about systematic mass killing of Jews in Nazi-occupied Europe began leaking out to the United States and England in the spring and summer of 1942. Early in September 1942, the Jewish leadership in the United States became aware of the extermination reports. Following several months of clarifications to confirm the validity of the massacre information, the State Department agreed to release reports of mass killing to the public.<sup>7</sup> On November 25, 1942, major



newspapers in the United States carried the announcement in news items, but only in their back pages.<sup>8</sup>

Like the others of his group, Peter Bergson spent his time in Washington working to gain support for the idea of creating a Jewish Army. It was not until November 25, 1942, when he read the announcement in the *Washington Post* of Jewish mass killing in Europe, that Bergson suddenly became aware of the drastic nature of the situation under Hitler. As he read this announcement, Bergson decided that he must discuss a change in tactics with his group. While not suggesting the abandonment of their principal aims of establishing a Jewish Army and working to create a Hebrew State, Bergson believed that his group should, for the time being, undertake as its chief goal the immediate rescue of Jews in Europe.<sup>9</sup>

As members of the Irgun, all of Bergson's group had previously worked in directing illegal immigration to Palestine. The group was familiar with and experienced in refugee problems, especially those related to the escape of Jews from Nazi-occupied Europe. From the middle of the 1930's to 1939, Bergson had worked in Europe, after having been sent there by the Irgun to direct illegal immigration. Although the British Government and the Jewish Agency did not regard these illegal immigration activities as proper, the Irgun nonetheless continued to direct and bring refugees to Palestine.<sup>10</sup> Their actions aroused enmity and interference on the part of leading Zionist organizations, which were opposed to their efforts. The basis of this opposition lay in the accusation expressed by a prominent Zionist leader in the United States who alleged that "... many who have been brought into Palestine by the Revisionists, on this purely money basis, have been prostitutes and criminals, certainly an element which cannot contribute to the rebuilding of a Jewish National Home in which Jews everywhere might take pride."<sup>11</sup> Despite the inevitable difficulties they knew lay ahead, Bergson's group agreed to make *rescue* its urgent and immediate goal. It soon gained the backing of such political leaders as Congressman Will Rogers, Jr. (D-California), Senator Edwin Johnson (D-Colorado), jour-

nalist Pierre van Paassen, and writer Ben Hecht, to name just a few. These people, apparently moved by humanitarian sentiments, helped the Bergson group in its attempt to initiate some kind of rescue in response to the events in Nazi-occupied Europe.<sup>12</sup>

The European Jewish crisis led the Bergson group to believe that if a Jewish volunteer army of 200,000 Palestinian and other Stateless Jews was to be created, then this Jewish unit might assist the Allies in their plan to defeat the Germans and thereby serve the further purpose of helping to rescue Jews.<sup>13</sup> Led on by the urgency for rescue and by the need to create a Jewish Army, Bergson wrote a letter to Judge Louis Levinthal (President of the Zionist Organization of America), in an attempt to formulate a rapprochement with his organization that would clear the way for a united effort to bring about the establishment of a Jewish Army, and to secure the rescue of European Jewry.<sup>14</sup> The President of the ZOA declined an immediate answer. Indeed, the Jewish Agency pursued its own plan to establish a Jewish Brigade throughout the War, but only in August 1944 did this organization vaguely succeed in joining the fight with the Allies.<sup>15</sup>

In his eventual response dated January 16, 1943; Judge Levinthal wrote: "It was decided by our Executive Committee to defer final action on the recommendations of our subcommittee until the next meeting and that in the meantime the matter will be considered further in consultation with the representatives of the Jewish Agency for Palestine and also with the Emergency Committee."<sup>16</sup> Nonetheless, exactly what the ZOA was thinking with regard to the Bergson group is found in a letter sent from Arthur Lourie (ZOA) to Mrs. Joseph Cohen (New Orleans) dated December 11, 1942: "We have good reason, however, to know who are the people who initiated the [Bergson] Committee and continue to be the driving force behind it, and to regard them with distrust..."<sup>17</sup> He then proceeded to say that the information which he was giving her was confidential and should be kept secret. He continued:

The Zionist leadership was in a difficult position in dealing with the Com-

mittee for a Jewish Army in that it would have been difficult to expose them without doing harm to the Jewish army cause itself [i.e., the Jewish Agency sponsored project], which the Zionist Executive regards as a principal part of its platform . . ."

Under the cover of the army idea the Committee [Bergson's] is creating an organization, unhappily with considerable success, the aim of whose real founders it is, if possible, to damage the organized Zionist movement as it exists in this country.<sup>18</sup>

On December 10, 1942, without waiting for an answer from the ZOA, the Committee for a Jewish Army sent a comprehensive memorandum to the U.S. War Department with a specific suggestion for the creation of a Jewish Army of 200,000 people to be based in North Africa. The Office of the Chief of Staff staged a quick investigation through Eisenhower headquarters in Europe, which was involved at the time with the invasion of North Africa, and as a result of the information it received, the Office suggested that the Committee's idea would be impractical.<sup>19</sup> In a letter to Peter Bergson dated January 17, 1943, Robert P. Patterson, Undersecretary of War, wrote, "I regret to advise you that it is our conclusion that the proposals which you make are not practical from a military standpoint."<sup>20</sup>

The set-back of Patterson's letter coincided with a general resurgence of feeling among the Bergsonites that the primary focus of their efforts should be rescue. Thus, with the ultimate intent of rallying the public behind this all-important directive, Ben Hecht sent a telegram to the major Jewish organizations in New York on January 26, 1943, in which he extended the following offer:

I am inviting a select group of representatives of Jewish organizations to cooperate in the organization of an all-Jewish mass demonstration at Madison Square Garden featuring a pageant dramatizing the German war of extermination against the Jews. I cordially invite you to attend this meeting on Friday, January 29th at 3 p.m. in my suite at Algonquin Hotel . . .<sup>21</sup>

Hecht's meeting took place as planned. The measure of co-

operation that Hecht received is summed up in a memorandum submitted to the American Jewish Committee by Frank Trager, the Committee's representative at the meeting:

Ben Hecht did two things: he presented a plan for an historical pageant which he and an unnamed group of writers and artists who would contribute their services would stage. The pageant would depict the history of the Jews, their contribution to civilization, but emphasize more than everything else a "Kaddish" for the Jews who are now being slaughtered in Nazi-dominated Europe and a plea or a demand for an aroused Christian conscience. His second point was that he got into this partly through the collaboration of the Committee for a Jewish Army.

Whereupon Bergson, one of the revisionist leaders of the Committee for a Jewish Army, spoke up and declared that although he and his group had investigated and would give it every cooperation, in the interests of harmony, he would be glad to withdraw the sponsorship of his organization if that would elicit the sponsorship of a united Jewry . . .

I indicated for the AJC "no comment but would transmit the results of the meeting".

When the people who were leaving the meeting pressed for more positive answers from the Labor Committee, the Congress and myself, Dennen and I indicated that you could not very easily and very suddenly build a united front which would involve all these organizations, . . . and that we personally were skeptical that it could be done . . .

The meeting obviously was initiated by the Committee for a Jewish Army who apparently have taken in Ben Hecht in the way they had taken in the recently resigned Pierre van Paassen. They may in fact produce a pageant and have Hecht and some of his friends do it. It may even have literary merit (his article in the current issue of the *American Mercury* is excellent). Obviously, we as a Committee should have nothing to do with this venture.<sup>22</sup>

The fact that none of the other Jewish organizations participated in organizing the pageant did not discourage Bergson's group from carrying out the project.\* The pageant,

\*Because of the Bergson group's decision to stage a mass meeting, the AJ

which bore the name "We Will Never Die," was presented in Madison Square Garden on March 9, 1943. The purpose of the pageant was to publicize the facts of the Jewish exterminations.<sup>23</sup> Ben Hecht was the script-writer, Moss Hart the director, Kurt Weill the musical composer, and Paul Muni and E.G. Robinson its stars. The performance was immediately acclaimed as a great success. According to the *New York Times*, the pageant attracted a crowd of 40,000 people in two performances.<sup>24</sup> The *New York Herald Tribune* proclaimed: "... the purpose of a memorial planned thus on an epic scale is not only to honor the dead . . . it is also from that consecrating will come such strengthening of will as can recognize no defeat . . ."<sup>25</sup> *The Jewish Exponent* (Philadelphia) declared, "But 'We Will Never Die' demonstrated for all to see that in order to reach the conscience of the Christian as well as to arouse the Jew himself, popular psychology must be understood and utilized. The 'old reliable' organizations, musty with the mothballs of their sanctimoniousness, would do well to emulate the example set."<sup>26</sup> The dynamism emitted by this unconventional type of Jewish protest touched all groups. Following a Washington protest meeting sponsored by Dr. S. Wise and the AJ Committee against the atrocities, Dr. Samuel Margoshes, editor of *The Day* and a traditionally conservative Zionist leader, published a commentary "Protesting the Protest Meetings." "In other words," he wrote, "it was the usual well attended, well behaved, and well spoken protest . . . including the American Jewish Committee, which hitherto had no use for protest."<sup>27</sup> In his commentary, Dr. Margoshes acknowledged apparent agreement that protests of the conservative type are useful to awaken the public, but he added that he thought that the public had already become weary of these. Margoshes' comments suggested that the Bergsonites' pageant could teach the other

---

Congress, having already once considered a similar demonstration of its own, revived its decision to organize such a demonstration after being privately informed of the Bergson group's intended pageant (WJC Archives, U-182-2, Minutes, December 29, 1942).

organizations that in order "... to get the interest of the average American and to arouse his emotions, you have got to drop the ordinary protest meeting technique and try some other method . . . more dynamic, more dramatic."<sup>28</sup> With the specific reference understood, Margoshes indicated his approval of the approach taken by the Bergson group.

Aside from the pageant, which they brought to a number of cities around the nation, the Bergson group sought other ways to convey their message to the American people, who they feared continued to be "asleep" and passive in the face of the Nazi atrocities. Hence, the group stepped up its newspaper campaign, which had been initiated earlier through the special efforts of Ben Hecht and Samuel Merlin. Through the use of full-page advertisements, they set out to inform the American people in general, and American Jews in particular, of the cruel events in Europe, and to arouse and motivate them to make an effective response. They hoped, through this effort, to achieve their ultimate aim of rescuing Jews. Their advertisements appeared in major newspapers nationwide, including the *New York Times* and *Washington Post*. By examining the evolution of the ads, one can trace the historical development of the attitude of the Bergson group towards rescue.

December 5, 1942 — *New York Times*: "To the Conscience of America" is the address which headed this advertisement signed by Pierre van Paassen. Van Paassen commenced by recounting the horror of the Nazi massacres, saying, "Men, women and children are pressed into air-tight chambers where they are choked to death en masse with poison gas . . ." He asked people to speak out, for the sake of humanity, against the exterminations: "America is not to have the blood-guilt of these millions on its conscience!" Van Paassen inserted an appeal to Americans to exercise their power to subvert Hitler's aim. He proposed that "... an American Commission of military and governmental experts . . . find a way to stop this wholesale murder!" The ad concluded with a call for the organization of a Jewish army to fight back against Hitler.

December 7, 1942 — *New York Times*: The Bergson

group submitted a full two-page advertisement presenting "A Proclamation On the Moral Rights of the Stateless and Palestinian Jews." The group claimed the right to establish a Jewish Army to fight alongside the Allies against Hitler. Their concern for a Jewish Army still remained the Bergsonites' primary focus.

February 8, 1943 — *New York Times*: "Action, Not Pity" is what the Bergson group demanded as the way to save European Jewry. They recounted in this article the story of the annihilation of the Jews and proposed some measures toward halting the Nazi extermination process. Their first suggestion was for the United Nations\* to "consider the cessation of atrocities against the Jews as an immediate aim of their military and political operations," and only *secondly* did they call for official approval for establishing a Jewish Army of Stateless and Palestinian Jews.

February 16, 1943 — *New York Times*: In its response to a news report published in the *New York Times* on February 12, 1943 (p. 5), which discussed the possible ransom of Rumanian Jewry, the Bergson group produced an eye-catching advertisement captioned, "For Sale to Humanity — 70,000 Jews, Guaranteed Human Beings at \$50 a Piece." Bordering the left side of the ad was a column article which explained the proposal to ransom Rumanian Jews. The ad was constructed as a collage of material pertinent to this issue. To the right of the page beneath the caption was the following letter written by Ben Hecht:

To The FOUR FREEDOMS:

Care United Nations' Leaders.

My Dear Noble States of Mind:

I know you are very busy, too busy perhaps to read the story on the left hand side of this page.

For that reason I am writing an ad. Ads

\*The "United Nations" of this period were those Allied Nations united against the Axis countries.

are easier and quicker to read than stories.

Your admirer,  
Ben Hecht.

The advertisement presented an appeal to the American people to support the rescue of 70,000 Rumanian Jews by sending money to the Bergson Committee to be used to help raise the consciousness of the American people and their leaders, and to help spread the news of the new possibility for rescue.

March 10, 1943 — *New York Times*: Another full-page ad appeared with a letter by Senator Johnson. The headline read: "Save the 4,000,000 remaining Jews of Europe by Action — Not Pity!" Johnson cited the strong response to the Committee's March 9 pageant in Madison Square Garden as proof that "the conspiracy of silence" which surrounded the Jewish disaster in Europe had definitely been "broken now." He advocated three proposed measures:

- 1) to establish an intergovernmental commission to stop the exterminations,
- 2) to establish a Jewish Army,
- 3) to transfer Jews to Palestine.

These three demands make apparent what the priorities of the Bergson group were, and it becomes evident from this point on, through the subsequent actions and statements of the Committee, that its primary task was to work toward the creation of a governmental agency to rescue Jews.

March 15, 1943 — *New York Journal American* and *New York Post*: When Britain's Foreign Minister, Anthony Eden, visited Washington in March 1943, the Bergson group published a full-page advertisement headlined with the plea, "Mr. Hull-Mr. Eden — Allies for Humanity, Can You Not Hear the Message of Your Peoples? Action — Not Pity, Can Save Millions Now!" The *New York Journal American* included a picture from the Madison Square Garden demonstration of March 9, 1943. The ad reiterated the primary demand for an intergovernmental commission of military experts to start work on the rescue of Jews. In this piece, the group also

proposed that suicide squads be used to save Jews, and that a Jewish Army be established.

April 5, 1943 — *Washington Post*: In this advertisement, the Bergson group again restated its claim that the establishment of a United Nations Agency to rescue Jews was its primary concern. The same demand appeared in the *New York Times* on April 13, 1943. In addition, the group interjected two further motions, to transfer Jews to Palestine, and to create a Jewish Army.

May 4, 1943 — *New York Times*; May 6, 1943 — *New York Post*: The conviction that the United Nations should establish an agency to rescue Jews and strive to halt the annihilation process blossomed to its fullest potential in an ad published after the Bermuda Conference. The advertisement asserted, "To 5,000,000 Jews in the Nazi Death-Trap, Bermuda was a 'Cruel Mockery'." The sub-title reflected the group's top concern: "When Will the United Nations Establish An Agency To Deal With The Problem of Hitler's Extermination of a Whole People?"<sup>29</sup>

From the early months of 1943 onward, the Bergson group worked desperately and tirelessly to gain the support of the American people. It produced many advertisements and continued to perform its pageant in major cities around the United States, including Washington, Boston, Philadelphia, Los Angeles, and Chicago. In each city they attracted large crowds. Inspired by their successes, the Committee for a Jewish Army made the following resolution in an executive meeting on April 25, 1943: "Be it resolved by the Executive Committee that our Committee should intensify its campaign to save European Jewry by action, not pity."<sup>30</sup> The group sharpened its campaign and called for the cancellation of the Administration-created slogan that winning the War represented the only way to rescue Jews.

\* \* \* \*

\*The Bermuda Conference was set-up by the U.S. and Britain to investigate the possibility of rescuing refugees from Europe.

Following the failure of the Bermuda Conference of April 1943 to produce a positive response to the challenge of rescue, the major Jewish organizations in the United States decided, "... that even full Jewish unity is unable to enforce on reluctant Governments any decisive action for Jews..."<sup>31</sup> Thus, subsequent to the Bermuda Conference, the members of the major Jewish groups gave up in their determination to work together in a rescue effort.<sup>32</sup> But the Bergson group acted to change this "reluctant" U.S. policy with regard to rescue. The group maintained its belief that without immediate and vigorous action, the Jews in Europe would be doomed to extinction.

In an attempt to crystallize public pressure against the United States Government, the Bergson group called together an Emergency Conference to Save the Jewish People of Europe. The Conference, which opened in New York City on July 20, 1943, and lasted five days, included the participation of 125 experts on American military, economic, and diplomatic issues.<sup>33</sup> Its chief purpose was to explore and recommend new suggestions relating to the rescue of European Jewry and to present them to the United States Government.

The Conference listed seven questions in its program, for the participants to consider in an attempt to clarify the real possibilities for rescue, and challenge the officially stated U.S. position, that winning the War was a necessary precondition for saving Jews. The questions were presented as follows:

1. Does the Jewish disaster — the millions of Jewish dead and the millions more doomed — constitute a specific problem which requires the urgent moral, military and diplomatic attention of the United Nations?
2. Is the "wait-until-the-war-is-over" attitude of the United Nations toward the Jewish disaster warranted? Or should something be attempted *now* in order to save countless lives threatened with total extermination?
3. What part in the campaign to save the Jewish People of Europe should be played by the Church, International Labor

Unions, the international associations of authors and artists, and, above all, by the governments of the leading United Nations?

4. Can European Jews be saved *now* by evacuation from Europe? What are the realistic possibilities of securing the agreement of Hitler's satellite governments to release the European Jews, provided that the United Nations governments will agree to accept them?

5. Where can these people go? What countries from the standpoint of their geographical location, transportation, shipping and their economic possibilities are the most practical points of destination for them?

6. What measures can be taken to force the Nazis to stop the mass murder of European Jews?

7. What can be done, apart from practical relief and evacuation, to give hope and strength to the agonized Jewish people of Europe; to restore their dignity and honor as a people, to make them feel that they are partners in the global struggle for a better world, not merely helpless victims?<sup>34</sup>

As the speeches, addresses, and deliberations of the various panels of the Emergency Conference progressed, it soon became clear that the conferees would be able to prove that, contrary to the U.S. Government claims, there did exist a strong possibility to rescue Jews, without first having to win the War. The Conference participants explored the options for rescue, especially from central and eastern Europe.<sup>35</sup> On the basis of the information available to them, the conferees reached the ultimate conclusion that the United Nations "... could easily induce the Satellite governments [Hungary, Rumania, and Slovakia] to release Jews."<sup>36</sup> The Emergency Conference dealt also with the practical possibilities of transporting Jews. The panel on Transportation suggested that there was a good chance to transfer people out of the Balkans and into the Mediterranean arena, and proposed that two Swedish boats could be rented for this purpose.<sup>37</sup>

After several days of deliberations and discussions, the

Emergency Conference finally succeeded in drawing up a blueprint of specifically agreed-upon aims to guide forthcoming rescue action. The most important of these was the recommendation that the only way to achieve the immediate rescue of Jews would be through the establishment of a governmental agency set up for this purpose.<sup>38</sup>

While the Emergency Conference was in session, Representative Will Rogers Jr. went to England at the request of Peter Bergson, to explore possible ways of rescuing Jews from German-occupied territory; he returned empty-handed. As a result of his deliberations with British officials, Rogers became convinced that only a U.S.-sponsored team could successfully deal with the ongoing extermination of Jews.<sup>39</sup>

As part of their effort to save Jews, the Bergson group arranged for a meeting with Secretary of State Cordell Hull. On August 12, 1943, a delegation headed by Peter Bergson assembled before Hull and demanded that he consider the following three proposals:

1) the creation of a United States Government agency to deal with rescue,

2) the establishment of temporary refugee camps in North Africa,

3) the immediate dispatch of a delegate to Turkey.

Hull did not commit himself to the first two demands, but he did promise to explore the third.<sup>40</sup> State Department documents reveal that on September 4, 1943, Cordell Hull sent a cable to Ambassador Steinhardt in Ankara, in which he explained the Bergson group's request to send a delegate to Turkey, who would explore the possibilities of rescuing Jews from the Balkan countries.<sup>41</sup> Steinhardt replied that he had no objections to such a mission.<sup>42</sup> Consequently, in October, the Bergson group received permission to send Ira Hirschmann to Turkey in order to research the viability of such a rescue effort.<sup>43</sup>

Upon hearing of an upcoming meeting between Churchill and Roosevelt, reportedly scheduled to take place in Quebec on August 19, 1943, the Bergson group was determined to send a delegation there to protest the Allies' inaction with regard to

the rescue of Jews. However, Presidential Secretary Stephen T. Early aborted that idea. Early asked that this delegation not come to Quebec and promised that instead, as soon as the President returned to Washington following his talks in Quebec, the delegation would be granted a meeting with him.<sup>44</sup> Prompted by Early's promise, the Bergson group organized a dramatic scene never before seen in Washington. On October 6, 1943, close to 350 orthodox rabbis, from all over the United States, assembled in Washington to protest the German atrocities, and demanded in a petition the establishment of a U.S.-sponsored rescue operation.<sup>45</sup> They had come to meet with Roosevelt, in accordance with Early's promise, but no such meeting was forthcoming for reasons that are not clear. In place of the expected meeting with Roosevelt, the rabbis went to the Capitol, where they met with Vice President H.A. Wallace, as well as with various senators and congressmen, to whom the group delivered its petition.<sup>46</sup>

The facts surrounding this Bergson-inspired protest of rabbis in Washington were initially unapparent to outsiders. Immediately following the breakdown of the intended meeting between the rabbis and Roosevelt, the *American Hebrew* published an attack against the Bergson group, criticizing what they saw as their inept planning of the rabbis' protest and alleging that the Bergson group had failed to make prior arrangements for the meeting.<sup>47</sup> However, the facts were soon cleared up, and on December 24, 1943, the *American Hebrew* published an apology to the Bergson group, stating, "We have been informed by Mr. S. Merlin, Executive Director of the Emergency Conference to Save the Jewish People of Europe, and we have been shown copies of the documents the Committee holds which prove that Mr. Frank [*American Hebrew* reporter] was mistaken . . ." <sup>48</sup> in his earlier criticism of the Bergson group. This apology could only serve to strengthen the earlier expression of support published by *The Day* editor, Dr. Samuel Margoshes, who had gone to Washington with the rabbis to gain a first-hand account of the protest. He voiced high respect for this venture of the rabbis, and sadly noted that,

"The only disappointing aspect of the Rabbinical Pilgrimage was the failure of the Rabbis to hand their petition to the President."<sup>49</sup> Again, a direct and original approach toward gaining support for a rescue effort had resulted in failure.

\* \* \* \*

With their friends in the House of Representatives and in the Senate, the Bergson group pushed forward to pursue its objective of securing the establishment of a United States rescue team to save European Jewry. Through discussions with officials in the State Department, it became clear to the Bergsonites that this Department viewed the proposed rescue agency as competition to the Intergovernmental Committee on Refugees (ICR).<sup>50</sup> Nonetheless, without consultation of State Department officials, a resolution was introduced on November 9, 1943, in both Houses of Congress, recommending "... the creation by the President of a commission of diplomatic, economic, and military experts to formulate and effectuate a plan of immediate action designed to save the surviving Jewish people of Europe from extinction at the hands of Nazi Germany."<sup>51</sup>

It is interesting to note that the proponents of this resolution in the two Houses were neither Jews, nor legislators who were dependent upon a specific Jewish vote; rather, they were people whose support stemmed purely from humanitarian considerations.<sup>52</sup> Guy M. Gillette (D-Iowa) introduced the resolution in the Senate, where it was approved on December 20 by the Senate Committee on Foreign Relations;<sup>53</sup> Will Rogers introduced it in the House of Representatives, where it was then brought before a hearing in the House Foreign Affairs Committee.

The hearings on the resolution opened in the House Foreign Affairs Committee on November 19,<sup>54</sup> and continued on through December 2.<sup>55</sup> The *American Hebrew* credited the Bergson group and its associates for having had the persistence and determination necessary to make this early hearing possible,<sup>56</sup> thereby suggesting that otherwise the process might

likely have been unduly delayed. However, Chairman of the House Committee Sol Bloom (D.-N.Y., and a Jew) insisted upon embarrassing witness Peter Bergson, by asking him personal questions relating to his status in the United States, rather than questions relevant to rescue; nonetheless, the Committee did hear pertinent testimonies from New York Mayor Fiorello LaGuardia, American Labor Party Gubernatorial candidate Dean Alfange, and others.<sup>57</sup> Dr. Wise, President of the American Jewish Congress, also appeared before the hearing, in an effort to obstruct the Bergson proposals. He proposed that their resolution be altered to include a clause calling for the opening of the doors of Palestine to European Jews.<sup>58</sup> This suggestion was exactly what the Bergson group wanted to avoid in an effort to avert another confrontation with the British, who had consistently opposed any proposal recommending Palestine as a haven for Jews.

From the outset of the hearings, Chairman Bloom did all in his power to kill the resolution.<sup>59</sup> His attitude is examined in a set of minutes that appear in Morgenthau's Diary: "Bloom has only these two things in mind, apparently: one, that he was in on the Bermuda Conference, he was the delegate — the case reflects on that; and secondly, he probably feels that it will be a blow to the Administration to have this thing thrown out into the Floor of the House and debated on the basis that it will be debated."<sup>60</sup> Intending to demonstrate the Government's action on behalf of the Jews, Bloom invited Breckinridge Long, Assistant Secretary of State, to appear before a secret hearing with testimony that, Bloom believed, would refute all the Bergson group's arguments demonstrating that the United States Government had not, in fact, been working toward the rescue of Jews.<sup>61</sup> In his testimony at this secret hearing, Long confidently assured the House Committee, that, "We have taken into this country since the beginning of the Hitler regime and the persecution of Jews, until today, approximately 580,000 refugees."<sup>62</sup> Furthermore, Long told the House Committee that the Intergovernmental Committee on Refugees had been operating to save Jews since after the Bermuda Conference, and

he tried to convince the Representatives present that a new body to save Jews would only overlap its activities. Representative Will Rogers immediately challenged Long's statement regarding the operation of the ICR, pointing out, "There is no regular Intergovernmental Committee with an office . . ." <sup>63</sup> in Europe to save Jews.

Dissatisfied over the whole matter of the secret hearing, and interested in publicizing the work done by the State Department with regard to the rescue of refugees, Bloom convinced Long to make the hearing public. Long consented, and on December 11, 1943, the *New York Times* published a front-page article which quoted Long's contention that about 580,000 refugees had entered the United States since Hitler's rise. Long was quoted as claiming, "The point is that the historic attitude of the United States as a haven for the oppressed has not changed . . . The Department of State has kept the door open." <sup>64</sup> Unfortunately, what Long presented as facts were simply not true. Representative Emanuel Celler (D-New York) disputed Long's claim regarding the 580,000 refugees. He claimed that this figure represented the total *possible* number allowed entry under the quota system, but that it in no way reflected the much smaller number of Jewish refugees actually admitted to the United States during the period cited. Celler further commented that, "Frankly, Breckinridge Long is the least sympathetic to refugees in the State Department. I attribute to him the tragic bottleneck in the granting of visas."<sup>65</sup> Even the most conservative among the Jewish leadership could not abide by Long's blatant lies, as evidenced in the stronger response to Long from Joseph M. Proskauer, President of the American Jewish Committee. In a letter sent to Long, Proskauer disputed the former's figures, and stated, "Many people have gathered from this statement the erroneous impression that this number of Jewish refugees has been admitted to America;" <sup>66</sup> he asserted that the records of the AJC indicated much smaller figures. Proskauer went on to challenge the role of the ICR and stated that this Agency lacked the power to deal with the impending catastrophe.<sup>67</sup>



Amidst the growing protest over Long's testimony, Secretary of the Treasury Henry Morgenthau, Jr., with the help of other Treasury Department members, compiled a dossier indicating that the State Department was not only guilty of not doing anything, but indeed of obstructing rescue efforts.<sup>68</sup> Treasury Department member John W. Pehle later declared:

It is, I believe, fair to state that the Emergency Committee has been a singularly forceful "propaganda" group in calling the attention of a large number of American people to the plight of the Jews in Europe. Through various techniques they have not only inspired a general emotional interest, but they have stimulated many energetic and important people to push vigorously for various types of action in behalf of the Jews in Europe.<sup>69</sup>

The Treasury Department's ultimate statement, inspired by and identical to that drawn up by the Bergson group, bore a strong protest against the obstruction of rescue activities carried out by the State Department, and made a specific demand for the establishment of a United States rescue agency. This statement was written up and delivered personally to FDR by Henry Morgenthau on January 16, 1944. Later in January 1944, FDR issued an executive order establishing the War Refugee Board, which would deal specifically with the rescue of European Jewry.<sup>70</sup> This action was the direct result of the Bergsonite-sponsored resolution brought to the House and Senate, as well as of the action of Henry Morgenthau.

\* \* \* \*

It is apparent from the evidence presented that during this period the United States finally took action to rescue European Jews only because of a combination of pressures, to which the Bergson group was a major contributor. It is clear that Dr. Wise and other heads of Jewish organizations failed to generate measures necessary to ensure an immediate rescue response. In fact, the regular Jewish leadership in the United States reacted very hesitantly in the matter of publicizing reports on the mass killing; many times leaders appealed to the Bergson group to

cease its publication of full-page advertisements which were intended to make the public fully aware of the Nazi extermination process.<sup>71</sup>

One reason for the Jewish leadership's inaction was its serious misperception of the emergency. As exemplified in a debate in the World Jewish Congress which dealt with the crisis, Dr. Nahum Goldmann, a close associate of Wise, did not think that there was any emergency at all!<sup>72</sup>

Fearing for the reputation of American Jewry, the American Jewish Committee, World Jewish Congress, and American Jewish Congress, as well as other American Jewish groups, responded with restraint in order not to appear too aggressive. Wise and his colleagues did what they could to limit the expressions of Jewish protest, especially those of the Bergson group, whose members did not comply with the ir-resolute methods of Wise and the majority of American Jewish organizations. In March 1943, Wise submitted a special request to New York Governor Dewey, asking him to cancel his Day of Mourning proclamation in the State of New York, which had been formulated with the backing of the Bergson group. Evidently, Wise feared that the Bergson group's March 9 demonstration would fail to be dignified and well-behaved.<sup>73</sup> Nahum Goldmann went even further in 1944 when he tried to convince the State Department to deport Bergson. According to Goldmann, Wise "... regarded Bergson as equally an enemy of the Jews as Hitler, for the reason that his activities could only lead to increased anti-Semitism."<sup>74</sup>

Another major factor that contributed to the failure of an immediate rescue was a conference that took place in August 1943. On January 10, 1943, the President of B'nai B'rith invited representatives of major Jewish organizations to participate in an American Jewish Conference on Unity. The participants of this August Conference were acting in response to the announcement of mass killing. The purpose behind this call for unity was, however, aimed toward reaching agreement within the American Jewish community over post-War issues, dealing with the status of Jews and the building of a Jewish state.<sup>75</sup>

Thus, the goals formulated at the Conference were intended to serve purposes that reached far beyond the crisis, even though the driving force behind the establishment of the Conference was the ongoing Nazi annihilation of Jews. "However, feelings of helplessness, and fear that Jewish unity would be considered damaging to the war effort, channeled most of the Conference's energy to the postwar period."<sup>76</sup>

Had the Jewish organizations worked together to achieve the goals that the Bergson group pursued, or had they employed the same tactics chosen by the Bergson group, then a rescue policy would have been formulated earlier and might have significantly altered the course of rescue operations. Unfortunately, this did not happen, and the extermination of six million Jews proceeded unchecked.

Notes

1. A Zionist Revisionist group headed by Vladimir Jabotinsky split from the Zionist Organization in 1935. For further information, see Walter Laqueur, *A History of Zionism* (Tel Aviv: Schocken Publishing House, 1975), pp. 280-287.
2. Isaac Ben-Ami, Private Collection, Memorandum for the Files, March 8, 1944, Department of Justice Papers, pp. 2-3; made available to Ben-Ami through the Freedom of Information Act.
3. Ibid.
4. Isaac Ben-Ami, Private Collection, Memorandum on Peter H. Bergson, December 15, 1944, Department of Justice Papers.
5. Ibid.
6. *The Answer* (February 1946), p. 4.
7. Arthur D. Morse, *While Six Million Died: A Chronicle of American Apathy* (New York: Random House, 1968), pp. 3-36.
8. *Atlanta Constitution*, November 25, 1943, p. 20.  
*New York Herald Tribune*, November 25, 1942, p. 1. (An Exception)  
*New York Post*, November 25, 1942, p. 3.  
*New York Times*, November 25, 1942, p. 10.  
*Washington Post*, November 25, 1942, p. 6.
9. Interview with Hillel Kook (Peter Bergson) in New York City, Fall 1978.
10. The story of this illegal immigration effort is described in Hayyim Lazar Litai's *AF-AL-PI Sefer Alia B* (Tel Aviv: Jabotinsky Institute, 1957).

11. Henry Montor to Rabbi Baruch E. Rabinowitz, February 1, 1940; courtesy of Samuel Merlin.
12. Interview with Samuel Merlin in New York City, Fall 1978.
13. Samuel Merlin, Manuscript, pt. I, chap. 8 "The Jewish Army Committee," pp. 83-120.
14. Peter Bergson to Judge Louis Levinthal, December 7, 1942; document quoted through the courtesy of Samuel Merlin.
15. Yehuda Bauer, *From Diplomacy to Resistance: A History of Jewish Palestine 1939-1945* (New York: Atheneum, 1973), pp. 348-349.
16. Judge Levinthal to Peter Bergson, January 16, 1943; document quoted through the courtesy of Samuel Merlin.
17. Arthur Lourie to Mrs. Joseph Cohen, December 11, 1942, from the personal collection of Samuel Merlin.
18. Lourie to Cohen, December 11, 1942.
19. Assistant Chief of Staff Major General Thomas T. Handy to Undersecretary of War Robert P. Patterson, Memorandum, December 13, 1942, Roosevelt Library P.S.F. 104-War Dept. Hyde Park, New York.
20. Robert P. Patterson to Peter Bergson, Palestine Statehood Committee Collection #1, Folder 7, Yale University Archives, New Haven, Ct.
21. Ben Hecht to Morris Waldman, Telegram, File: Mr. Proskauer, Emergency Committee 43-44, American Jewish Committee Archives, New York.
22. Frank N. Trager to David Rosenblum, Memorandum, February 1, 1943, File: Mr. Proskauer, Emergency Committee 43-44, American Jewish Committee Archives, New York.
23. Interview with Samuel Merlin in New York City, Fall 1968.
24. *New York Times*, March 10, 1943.
25. *New York Herald Tribune*, Editorial, March 10, 1943.
26. *The Jewish Exponent* (Philadelphia), Editorial, March 19, 1943.
27. *The Day*, April 3, 1943.
28. Ibid.
29. The ad led to a heated debate on the Senate floor on May 6 and May 10, 1943; Senator H. Truman (D-Missouri) reacted vigorously against the Bergson group's inclusion of his name in the ad against the Bermuda Conference, and Senator Lucas (D-Illinois) defended the U.S. role and his own at the Conference (Congressional Record, May 6, 1943, pp. 4044-4047; and May 10, 1943, pp. 4139-4141).
30. Minutes, April 25, 1943, Committee for a Jewish Army of Stateless and Palestinian Jews; from the personal collection of Samuel Merlin.
31. Fourth Confidential Report to the Chawerim Nichbodim, p. 5, Tress. Box #15, Agudath Israel Archives, New York.
32. On January 10, 1943, the president of B'nai B'rith invited representatives of major Jewish organizations to participate in an American

- Jewish Conference on unity. The participants were acting in response to the announcement of mass killing. The purpose behind this call for unity was, however, aimed toward reaching agreement within the American Jewish community over post-War issues dealing with the status of Jews and the building of a Jewish Palestine. See JTA, January 11, 1943. Note: According to a letter sent by Wise to A.L. Easterman (BSWJC), it was the Zionist leadership in the United States that pushed Monsky to announce the establishment of this conference (Wise to Easterman, January 25, 1943, U-142/19, World Jewish Congress Archives, New York) see also Samuel Halperin, *The Political World of American Zionism*, Detroit: Wayne State University Press, 1961, p. 223, especially Footnote 16, p. 382.
33. Samuel Merlin, Manuscript, p. 138; see also *The Answer* (August 1943). Among the Conference's eighteen Honorary Chairmen were former President Herbert Hoover, William Randolph Hearst, and Secretary of the Interior Harold L. Ickes.
  34. Emergency Conference to Save the Jewish People of Europe: Questions Before the Conference (program), p. 2; courtesy of Samuel Merlin.
  35. "Realistic Possibilities to Rescue the Jews from the Satellite Countries of Europe" (pamphlet), prepared by the Committee for a Jewish Army of Stateless and Palestinian Jews, 1943, p. 1; courtesy of Samuel Merlin.
  36. "Memorandum on the Finding of the Emergency Conference to Save the Jewish People of Europe, July 20th-25th, 1943" (pamphlet), Prepared by the Emergency Conference to Save the Jewish People of Europe, 1943, p. 6; courtesy of Samuel Merlin.
  37. *Ibid.*, p. 9.
  38. *Ibid.*, p. 20. From the beginning of 1943 onward, the Bergson group believed that *only* a U.S. Government sponsored agency could deal effectively with Jewish mass extermination. Interview with Hillel Kook and Samuel Merlin in New York City, Fall 1978.
  39. Samuel Merlin Manuscript, p. 145. See also "A Year in the Service of Humanity: A Survey of the Activities of the Emergency Committee to Save the Jewish People of Europe, July 1943-August 1943" (pamphlet), prepared by the Emergency Committee to Save the Jewish People of Europe, 1944, p. 3.
  40. "A Year in the Service of Humanity," p. 5.
  41. Hull to Steinhardt, September 4, 1943; courtesy of Samuel Merlin.
  42. Steinhardt to Hull, September 7, 1943; courtesy of Samuel Merlin.
  43. Feingold, p. 221.
  44. Samuel Merlin, Manuscript, p. 147. See also "A Year in the Service of Humanity," p. 8.
  45. "A Year in the Service of Humanity," p. 15. See also *The Answer* February 16, 1946, p. 18.

46. *Hadoar*, vol. XXIII, no. 39 (1094) (October 8, 1943), pp. 697-698.
47. *American Hebrew* (November 26, 1943), p. 9.
48. *American Hebrew* (December 24, 1943), p. 2.
49. *The Day*, October 10, 1943, p. 1.
50. Samuel Merlin, Manuscript, p. 151. The ICR was established as a result of the Evian Conference. In its nine-year existence, it accomplished practically nothing. (See David S. Wyman, *Paper Walls: America and the Refugee Crisis 1938-1941*, Massachusetts: University of Massachusetts Press, 1968, pp. 43-63.)
51. Senate Resolution 203, 78th Congress; House of Representatives Resolution 352, 78th Congress; quoted through the courtesy of Samuel Merlin.
52. Interview with Samuel Merlin in New York City, Fall 1978. David S. Wyman also gives attention to this fact in his forthcoming book on the U.S. Government and the Holocaust; my thanks to Wyman for providing me with this insight.
53. *New York Times*, December 21, 1943, p. 10.
54. *American Hebrew* (December 24, 1943), p. 8.
55. It is difficult to discern the exact days in which the debates on the resolution were held, because there was only incomplete coverage of the hearing, including by the JTA. The dates listed above reflect information from data compiled by David S. Wyman, and will appear in his forthcoming book. My thanks to Wyman for providing me with this information. Note: The available data indicate that the dates of November 10 and 11, as cited by Feingold as dates on which hearings were held, are incorrect (see Feingold, p. 230).
56. *American Hebrew* (December 24, 1943), p. 8.
57. JTA, November 19, 1943.
58. JTA, December 3, 1943.
59. Morgenthau Diaries, Book 693, January 13, 1944, p. 198.
60. *Ibid.*
61. "The Purpose and Achievement of the Emergency Conference to Save the Jewish People of Europe" (pamphlet), prepared by the Emergency Conference to Save the Jewish People of Europe, 1944, p. 12.
62. Confidential Print-Rescue of Jewish and Other Peoples in Nazi-Occupied Territory, Extract from Hearings, Committee on Foreign Affairs, House of Representatives, 78th Congress, p. 23; interview with Samuel Merlin in New York City, Winter 1979.
63. *Ibid.*, p. 49
64. *New York Times*, December 11, 1943, p. 6.
65. *New York Times*, December 12, 1943, p. 8.
66. Proskauer to Long, December 28, 1943, File: Proskauer Emergency Committee 1943, AJ Committee Archives, New York.
67. *Ibid.* See also Feingold, p. 236.

68. Feingold, p. 236. See also Michael Mashberg, "Document Concerning the American State Department and the Stateless European Jews, 1942-1944," *Jewish Social Studies*, vol. XXXIX (1977), pp. 163-182.
69. John W. Pehle to James Brunot, Executive Director, The President's War Relief Control Board, August 9, 1944; quoted through the courtesy of Samuel Merlin.
70. Nahum Goldmann remarked in May 1944 that John W. Pehle, Executive Director of the War Refugee Board, "... had taken the position that Bergson's Emergency Committee to Save the Jewish People of Europe had inspired the introduction of the Gillette-Rogers Resolution, which in turn had led to the creation of the War Refugee Board" (Memorandum of Conversation with Nahum Goldmann, May 1944, 867N.01/2347 PS/LC, pp. 3-4, National Archives, Washington, D.C.; quoted through the courtesy of Samuel Merlin.
71. Interview with Samuel Merlin in New York City, Winter 1979.
72. WJC Archives, U-185/3, Minutes, Decemer 14, 1942.
73. Ben Hecht, *A Child of the Century* (New York: Simon and Schuster, 1954), pp. 575-576; Robert Silverberg, "If I Forget Thee O Jerusalem" — *The Dramatic Story of How American Jews and the United States Helped Create Israel* (New York: William Morrow and Co., 1970), p. 215.
74. Memorandum of Conversation with Nahum Goldmann, May 1944, 867N.01/2347 PS/LC, p. 4, National Archives, Washington, D.C.; quoted through the courtesy of Samuel Merlin. F.B.I. files also reveal that members of the Zionist Organization and the Department of Justice asked the F.B.I. to investigate the activities of the Bergson group, with the intention of deporting them; courtesy of Isaac Ben-Ami (papers made available through the Freedom of Information Act).
75. See Footnote 51.
76. Isaac Neustadt-Noy, "The Unending Task: Efforts to Unite American Jewry from the American Jewish Congress to the American Jewish Conference" (Ph.D. Dissertaion, Brandeis University, 1976) (Michigan: University Microfilms International, 1978), p. 358. Note: Abba Hillel Silver, a chief organizer of and speaker in this Conference, already in December 1942 revealed the direction of his Holocaust efforts when he said that Jews could answer the Nazis' extermination of European Jewry "... by settling a dunam of land (a quarter acre) in Palestine for every Jew murdered" (Aaron Berman, "Abba Hillel Silver, Zionism and the Rescue of the European Jews" (Master's Essay, Columbia University, 1976), p. 20, as taken from the *New York Times*, December 28, 1942, p. 15.

Avie Walfish received a B.A. in Philosophy from Yeshiva University. He now resides in Jerusalem and teaches Talmud and תורה at Pardes Yeshiva.

## MAHARAL'S SYMBOLIC SYSTEM: NETIV GEMILUT HASADIM

### I.

Man's heightened self-awareness in the present century has sparked a vigorous interest in the role of symbolism in human experience and thought. The work of such men as Freud, Cassirer, T.S. Eliot, Mircea Eliade, and Paul Tillich has demonstrated the pervasive impact of man's symbolizing capacity. Interest in the role of symbolism in Jewish life and thought warrants careful study of Maharal, whose work comprises a systematic interpretation of Jewish symbolism. This article will discuss some aspects of this symbolic system, focusing in particular on how Maharal's system assigns religious/theological value to the ethical commands of *gemilut hasadim*.

Maharal (1512-1609)<sup>1</sup> was a thinker whose thought, like that of Ramban (13th cent.), issued from the confluence of the rational and Kabbalistic traditions of Jewish thought. Like Ramban, Maharal exercised considerable influence in all fields of Jewish thought; in halakhah, Biblical commentary, philosophy, and Kabbalah, as well as in communal leadership. And, like Ramban, Maharal contributed significantly to the study of Jewish symbolism. Although many interpretations of Torah prior to Maharal — e.g., Midrash, Zohar, R. Bahya b. Asher, Abravanel — made extensive use of symbolic interpretation, he was the first to attempt a systematic study of such symbolism: in ethical and ritual commandments (*Netivot Olam*, *Tiferet Yisra'el*, *Derashot*), in Jewish history (*Gevurot*

Hashem, Nezah Yisra'el), and in Talmudic *aggad'tah* (*Hid-dushei Aggadot, Derekh Hayyim*). He was unique in employing a highly sophisticated and intricate method of phenomenological analysis in dealing with religious symbols. Indeed, it is this last point that makes Maharal particularly relevant to modern thought.

At this point, I should sound a cautionary note. The expositor of a philosophical system from another epoch, especially one as radically different from ours as Maharal's, needs to beware of too facile an identification of the ideas under discussion with their modern counterparts. The same terms, and even the same ideas, may have very different nuances and associations from one epoch to another. Since neither the reader nor the author can avoid reacting to the ideas discussed with associations conditioned by his milieu, let me cool the fires of the intellectual melting pot by noting some significant differences between Maharal's perspective on the structure of the religious symbol and our own.

Maharal lived in a pre-Kantian world in which epistemology had not yet displaced metaphysics. This is to say that Maharal believed that Greek science and Platonic metaphysics were true, i.e., literally true, of the objective world, external to the human mind. *Homer* ("pure" matter),<sup>2</sup> *sekhel* (spirit), *zura* (form), *yesod ha-esh* (ideal primal fire), have real existence and are present in real objects in much the same way as wood is present in a chair. This metaphysical bias is confirmed, indeed augmented, by Maharal's Kabbalistic leanings. Thus when Maharal writes that *homer* (matter) is characterized by *mahloket* (individuation), is inherently evil, and has no *kiyyum azmi* (self-sustaining existence), he does not mean a Hobbesian allegory or a parable of the need to infuse the material world with spiritual significance; he literally means what he says. (This view of reality is largely responsible for the abstruseness that makes Maharal's ideas so difficult for the modern reader to grasp).

If Maharal's symbolic system is founded on an objective ontological base, then something in the nature of reality must

lend itself to a symbolic structure. The key is in the very starting-point of Maharal's system: *sikhli* (spiritual/rational) equals Torah. Maharal explains in the first chapter of the first *netiv* (Path) of *Netivot Olam*, the "Netiv Ha-Torah," that Torah, representing the pure *sikhli*, constitutes the world-order.

The world has been created on the order of a perfectly rational model. This ensures: (a) that structures in the world correspond to Torah's rational constructs; (b) that structures in the world correspond rationally to each other. Symbolism means, by definition, using one thing to represent another. Since structures in the world, according to Maharal, correspond both to other structures in the world and to structures in Torah, one can then say that reality for Maharal has a symbolic structure — items in the world may represent other items in the world or items of Torah that present a similar structure.<sup>3</sup> Thus, for Maharal, the centrality of symbolism lies in the fact that the rational Creator fashioned the world according to patterns that are repeated on various levels of reality: Torah, the cosmos, society, the individual, all share certain structural features. Likewise, historical and natural time-cycles conform to certain guidelines and to each other. Some of these generalities should become clearer in the course of the article. In the meantime, the reader might find useful the analogy of a symphony: a few basic motifs recur throughout the symphony in several variations, all structurally similar to the original motifs.<sup>4</sup>

Whereas for Maharal symbols stem from the structure of the external world, for contemporary thought, symbols grow out of the structure of the human mind. In fact, contemporary thought attacks the whole notion of an ontological world-order inherent in the character of reality per se; "Science has become description of our observation of nature rather than description of nature itself," declares Werner Heisenberg in no uncertain terms.<sup>5</sup> In the contemporary view, man's symbols are determinative of, rather than conditioned by, the rational structure of reality. In accordance with this view, the study of symbolism moves from the realm of metaphysics to the realm of

philosophical and historical anthropology, to psychology, cultural history, aesthetics, and language theory. For Maharal, the phenomenological study of symbolism means determining what the symbol structurally corresponds to in the natural and theological realms; for the modern mind, it means analysis of the roots and impact of the symbol upon the human psyche.<sup>6</sup>

One significant expression of opposition between these two approaches is the tendency of the modern view, as opposed to Maharal's, to stress the emotional aspect of symbolism.<sup>7</sup> Most modern analysts stress the emotional impact of the symbol or view the symbol as a nexus in which emotion and intellect are united: the idea takes on flesh, presenting itself for emotional reaction while the emotion clothes itself with form, subjecting itself to intellectual interpretation and manipulation. For Maharal, on the other hand, the symbol's meaning seems to exhaust itself in the intellectual perception of its structural partners; its hold on the emotions, the depths of the psyche, is ignored or at least not dealt with. Since Torah, for Maharal, is the World Order, each *mizvah* is seen in a metaphysical light as the embodiment of a metaphysical truth.

At this point the reader may well ask: if all the symbol does is point to a metaphysical truth, a rational principle, can't the symbol be done away with? Simply translate the idea from its symbolic representation to its clearest conceptual formulation and discard the symbol as a stepping-stone that has served its function!<sup>8</sup>

There are two answers. First of all, the idea represented by the religious symbol eludes *precise, definitive* formulation. Language too, is a symbolic system, which often succeeds in representing the ideas metaphorically, i.e., symbolically, pointing toward them rather than "saying" them (for instance, try defining love, thought, life, idea, or feeling in precise terms). If an idea cannot be expressed precisely, then representation of the idea with a palpable symbol may contribute to one's grasp and appreciation of the idea. (So, it may be added, may *interpretation* of the symbol — and this is what Maharal primarily does — deepen one's appreciation of the symbol, as

well as its referent.) To express this idea in Maharal's language: the *sikhli* is too *dak* (fine) to be grasped in its pristine form by the human intellect, since the latter is involved with *homer*, i.e., dwells in a material body and is therefore subject to material influences. Therefore, the *Torah Sikhlit* can be grasped by man only when it adopts material form, namely *mizvot*-symbols. Thus the spiritual/material matrix of human thought can grasp spiritually only when the latter blends organically with the material in the form of tangible symbols.<sup>9</sup> The reader is reminded that the last few sentences are not (as was my introduction to them) merely a statement of the limitations of human intelligence or the transcendental nature of theological categories. Maharal intended them to express that and more: a metaphysical statement of the relation obtaining between spiritual and material reality.

Secondly, for Maharal, symbolism is not merely transference conditioned by human consciousness, but an *organic feature* of the structure of reality. Hence the symbol need not justify its existence by reference to other realities; it simply exists, just like any other reality. Maharal does recognize a hierarchy of being; some things are "better" (*tov*) or more real (*kiyyum*) than others. But creation (Torah, World Order) is an organic unity; the Great Chain of Being is only as strong as its weakest link. The object which, taken by itself, has the least good and reality, can nonetheless fulfill a vital, if secondary, role in the scheme of creation.

The two answers I have suggested to justify Maharal's need for symbols point to an important duality in Maharal's conception of religious symbols, particularly in the form of *Torah u'mizvot*. The latter are important on two levels: (1) insofar as their structure parallels that of God's creation, they can guide the religious personality towards knowledge and awareness of God; (2) they are, metaphysically speaking, the very substance of God's creation, the building blocks for all of creation. Put differently, they are important both as they impinge upon religious consciousness and as independent realities in their own right. This dual focus is one that recurs

throughout Maharal's thought and that we shall have cause to note again later on.

## II.

Maharal's major systematic ethical work, *Netivot Olam*, is divided into sections called "Netivot", each dealing with a particular ethical attribute or ideal. A measure of Maharal's sophistication is that he does not set up one of these principles as fundamental and interpret the others in light of the first, but maintains each of the *Netivot* as self-contained elements. Yet there is a clear organizational pattern at work in the book as a whole, recognizable both in internal parallels between one *netiv* and another, and in the hierarchical structure of the work. Maharal's hierarchy is based on relative importance rather than logical dependence; in Maharal's symbolic system, higher and lower realities are related by similarity of structure rather than by cause and effect. Our discussion will deal with the third *netiv*, *Netiv Gemilut Hasadim* (Acts of Kindness). Quotations will be identified by name of *netiv*, followed by the number of the chapter within the *netiv*.

*Netiv Gemilut Hasadim's* position, following *Netiv Torah* and *Netiv Avodah* is of obvious significance: Torah, *avodah*, and *gemilut hasadim* is the fundamental triad upon which the world stands, according to the familiar *mishnah* of *Avot*, 1:2. According to Maharal's view (found in *Derekh Hayyim ad loc.* as well as in *Netivot*), these three principles are significant from both a metaphysical and an anthropological standpoint. Torah is the World Order, the purest representative of the spiritual/rational reality which gives form and character to all objects in the world. It is also the vehicle for man's self-perfection, the medium by which man is able to transcend his material state and approach — though not attain — spiritual perfection.<sup>10</sup> *Avodah* represents the metaphysical truth that all things belong to, indeed are contained in God; for man, *avodah* serves as the expression of total subjugation and self-abnegation before God. *Gemilut hasadim* focuses squarely on man. In fact, *gemilut hasadim* is the principle by means of which

anthropology and metaphysics are united: man becomes a metaphysical principle and attains *kiyyum* (self-sustaining existence).<sup>11</sup> Thus Torah, *avodah* and *gemilut hasadim* represent the three poles of world/spirituality, God and man respectively, both on a metaphysical plane and on the plane of human consciousness. Following these structural remarks, let us now turn to *Netiv Gemilut Hasadim* proper.

Maharal begins this *netiv*, as is his custom, with a citation from Proverbs, 16:6: "Be'hesed ve'emet yekhuppar avon." He then interprets this verse on various levels, the first two based on the common equation of *hasidut* with activity *lifnim mishurat ha-din*:<sup>12</sup> (1a) Acting *lifnim mishurat ha-din* calls forth a response in kind from God, Who then grants *kapparah*;<sup>13</sup> (1b) Since transgression and *hesed* are actions on the bad and good side of the *shurat ha-din*, respectively, they are opposites, so that the latter can be a cancellation of, ergo *kapparah* for, the former.<sup>14</sup> Note that the second explanation is based on a system of spiritual causality, while the first depends upon God's responding to a human action *middah k'negged middah*. Maharal frequently makes concurrent use of these two levels of spiritual cause and effect, especially in *Netiv Torah*.

The third explanation marks a radical departure from the first two and serves as a starting point for the radical thesis that Maharal develops in this *netiv*: (2) "But *hazal* explain this verse to mean that one who performs acts of *gemilut hasadim* is deserving of *kapparah* for transgressions, for such a man embodies the *tov ha-gamur* (wholly good) since he does good to others; such a man has purity and refinement of the material and is not wholly material, for matter cannot influence, but only receive, i.e., be influenced, continually." The first significant departure here from the first two explanations is the introduction of *hazal*. Since Maharal's expositions are based mainly on aggadic sources, the introduction of *hazal* at this point marks the beginning of the main body of his discussion. Secondly, we are no longer interpreting *hesed* as *lifnim mishurat ha-din*, per se, but as *ha-tov ha-gamur*. *Hesed* represents an abundance of *tov* in the individual, such that it

overflows and affects other people. Maharal will later connect this principle with *lifnim mishurat ha-din*, but in the meantime the focus of our understanding has shifted. Thirdly, we are no longer dealing with *kapparah* as neutralizing the transgression, whether through divine grace or through laws of spiritual nature, but rather with *kapparah* as transcending the realm of *het*. Man attains *kapparah* through *gemilut hasadim*, because by performing *gemilut hasadim* he elevates himself to spiritual heights where *het* has no dominion. Once man becomes the embodiment of *ha-tov ha-gamur*, the indiscretions of his past fall away and can leave no mark on his personality. Maharal, in this interpretation, has moved into the realm of metaphysical symbolism, in which *gemilut hasadim* is no longer a human act impinging upon God and the spiritual world, but a symbolic act representing the metaphysical principle of *ha-tov ha-gamur*.

Maharal returns to his original verse for a closer examination of *emet* and *yekhuppar avon*, which suggest to him Torah and *Avodah* respectively. Torah, the embodiment of *emet*,<sup>15</sup> is said by the verse to serve as a vehicle of atonement. Maharal explains that through Torah, man achieves the highest form of spiritual elevation and thereby transcends the realm of *het*. This *kapparah* by way of transcending *het* is, of course, similar to the sort of *kapparah* achieved through *gemilut hasadim*. However, a slight change in wording reflects a significant difference between the two: Torah confers spiritual elevation upon man; *gemilut hasadim* confers spiritual elevation upon *adam azmo* (man in and of himself). We will return to this distinction shortly.

*Kapparah* is normally regarded as the province of sacrifices. *Yekhuppar avon* therefore suggests to Maharal a comparison with *Avodah*:

"Ki *hesed hafazti velo zevah*" (Hosea 6:6). God said, "Dearer to me is the *hesed* that you perform for each other than all the sacrifices that Solomon offered before me: 'a thousand burnt offerings did Solomon offer' (I Kings. 3:4). One time R. Yoḥanan b. Zakkai was walking in Jerusalem and R. Joshua followed him, saying, "Woe to us that the Temple is

destroyed, the place where our iniquities are atoned." R. Yoḥanan b. Zakkai responded, "My son, be not distressed for we have a *kapparah* similar to it. What is it? It is *gemilut hasadim*, for as it is said, "Ki *hesed hafazti velo zevah*" and further, "Ki *amarti olam hesed yibbaneh*."

Yalkut Shimoni, Hosea #522.

Man's subjugation to God through sacrifices and the Temple service wins for him atonement. In rendering up his possessions to God, man gains God's favor both by symbolically acknowledging His dominion and by psychologically purging his sin by identifying himself with the sacrifice: . . . [Through *avodah*] man renders up his soul to God; even though he doesn't literally give up his soul, but only his property . . . , nevertheless, it is also called rendering himself unto God when he offers his property to Him."<sup>16</sup>

Putting the last few points in perspective: in *avodah*, approach to God cleanses man of his sin through the psychological/symbolic expression of God's dominion; in Torah and *gemilut hasadim*, man attains a certain spiritual level on his own, and his transgressions automatically lose their hold on him. This leads Maharal to compare *emet* (Torah) and *hesed*: "*Emet* and *hesed* both operate through the same cause, for the man of *gemilut hasadim* by virtue of having purity of matter, attains purification from *het*, as we have explained; and *emet* has purity of the *sikhli* . . . and this is purification of the *het* that he had in his *sikhli* forces."<sup>17</sup> Man comprises both *sikhli* and *homri* (material) components. Torah, the perfectly *sikhli* entity, represents for man the opportunity to perfect and refine his *sikhli* faculty. *Gemilut hasadim*, bringing good into the temporal world, enables man to imbue his material faculties with *tov*, thus refining them from a spiritual perspective.

In order to appreciate the significance of these statements, we need to understand some of the categories of Maharal's metaphysics, which are based on and similar to the metaphysics of the ancient Greeks and medieval Scholastics. *Sikhli*, the spiritual/rational, atemporal element, is the active force in the world, in that motion and change consist of



changes of *zurah* (form, the rational component of all things) wrought upon the underlying material principle, the primal matter. Matter is inert, passive, receptive; it is the substance that, by receiving different forms, undergoes the temporal processes of motion and change. Maharal follows the Platonic line in identifying *sikhli* with *tov* and *tov* with *kiyyum* (reality; for Maharal, it has the technical sense of self-sustaining existence). Creation is described in Genesis as *tov*, for creation has sufficient *sikhli* character, i.e., *zurah*, to exist on its own.<sup>18</sup> *Homer*, on the other hand, as the passive, inchoate, nonrational principle, represents evil, defined as lack of *kiyyum*: All objects, compounded of *zurah* and *homer*, are *sikhli* only in terms of their *zurah*; man alone actually has *sekhel* (rational/spiritual capacity). But man's *sekhel* is adulterated by its necessary connection with *homer*. Maharal views man as a primarily *homri* reality onto which the *sikhli* is somehow grafted in an uneasy union: "Though man has *sekhel*, this is merely the human *sekhel* which is bound up with *homer*, and the world would not be worthy of *kiyyum* based only on the *tov* contained therein, for the human *sekhel* is negligible and lowly; rather [the world attains *kiyyum*] because of the Torah, which is the divine *sekhel* and the absolute *tov* . . . Therefore the completeness of man himself such that he is considered the significant creature that contains *tov* is due to Torah."<sup>19</sup> Further on, Maharal describes human *sekhel* as "a wee bit of the *tov*."<sup>20</sup> Thus man's *sekhel*, bound to the *homri*, is more a potentiality for spiritual well-being through dedication to Torah than actually the source of *tov* and *kiyyum*.

Now we can understand the contrast between *gemilut hasadim* and Torah more clearly. Torah is the higher ideal — in fact the highest ideal — for it addresses itself to and refines the *sikhli* capacity latent in man, thereby elevating man to the level of a *sikhli* individual.<sup>21</sup> *Gemilut hasadim*, though a lower ideal, is a more human ideal, for man is essentially a *homri* creature, and *gemilut hasadim* brings about the purification of man's *homri* being. This explains why, as we've noted, Maharal speaks of Torah elevating man, while *gemilut hasadim* elevates

*adam azmo*. Torah involves dedication to a system of divine rationality, of transcendent truth. The man of Torah transcends himself by immersing himself in Torah's transcendent system. The archetypal *ba'al ha-torah* is Moses,<sup>22</sup> described by the Torah as *ish ha-elokim* (Deuteronomy 33:1), which Maharal interprets as meaning half-man, half-God,<sup>23</sup> as it were. *Gemilut hasadim* involves perfecting one's relations with his fellow, i.e., perfection in the human realm. Humanitarian action is the highest expression of one's humanity. Thus the *ba'al gemilut hasadim* is, like Abraham, an *Av Ram* (exalted father),<sup>24</sup> a man who has expressed his humanity to the fullest by affirming the humanness of other human beings.<sup>25</sup>

Maharal notes three ways in which *gemilut hasadim* uplifts the personality:

(1) Through *gemilut hasadim*, one identifies oneself with the community of Israel, who are, like the patriarch Abraham, distinguished by the attribute of *gemilut hasadim*. One thereby participates in an exalted people, resulting in individual exaltation.

(2) Through *gemilut hasadim*, the individual becomes a *mashpia*, an active, giving force, and every *mashpia* is elevated above the recipient of its activity. This is because the *sikhli* is identified with the power of *mashpia*, while the *homri* is constituted as a receptive principle.

(3) Through *gemilut hasadim* man emulates God:

R. Aha said, "What is the meaning of the verse, 'You shall walk after God'? Is it then possible to walk after *Shekhinah*? Is it not written, 'For God is a consuming fire, a zealous God'? Rather it means to follow His attributes: just as He clothes the naked . . . so you should clothe the naked; God visits the sick . . . so you should visit the sick, etc."

(*Sotah*, 14a)

The *gemara* thus identifies *hiddammut* (imitatio dei) with acts that come under the rubric of *gemilut hasadim*.<sup>26</sup>

Why do *hazal* single out *gemilut hasadim* as the imitable attribute of God? Maharal's answer can be divided into three parts:

(a) *Gemilut ḥasadim* is the attribute that "relates to *hashem yitbarakh azmo*", i.e., belongs to the divine essence (divine essence being defined as that which, as it were, individuates God, makes Him unique).<sup>27</sup>

(b) *Gemilut ḥasadim* is done by man on his own initiative, without a specific *mizvah* obligation<sup>28</sup> (recall the original definition of *gemilut ḥasadim* as *lifnim mishurat ha-din*). Since God is by definition autonomous, man can emulate Him only through a good act performed on his own initiative.

(c) *Gemilut ḥasadim* is the one quality that man can incorporate in its entirety. A human feeling, crystallized in human action for the benefit of other humans, *gemilut ḥasadim* lies fully within the realm of human capability. Other attributes of God may be emulated by man but not replicated, e.g., *mishpat* (judgment). Man's capacity, in any given case, to either discern the facts correctly or to recognize the truly just resolution of conflicting demands is severely limited. Man judges properly not through emulation of God's justice, throwing man back upon his own limited resources, but through participation in divine Justice: "God stands in the community of God (i.e., the court); in the midst of the court He will judge"<sup>29</sup> (Psalms 82:1). Similarly *emet*, *shalom*, and even *zedakah* are, on the human level, subject to a kind of occasionalism in which man performs the motions, while God carries out the results.

We can now see how, for Maharal, *gemilut ḥasadim* defines humanity as a metaphysical principle within the World Order which is Torah. The impetus, performance, subject, and arena of the act are all autonomously human. Man truly creates good in his own image. This is why *hesed* characterizes those Biblical figures who exemplify entry into God's chosen nation: Abraham, Rebecca, and Ruth.<sup>30</sup> Deprived before their conversions of the benefit of divine revelation and commands, they could manifest their spiritual virtues only on the humanly accessible level of *gemilut ḥasadim*.<sup>31</sup>

Maharal winds up the first chapter with one further dimension:

R. Simlai preached, "Torah begins with *gemilut ḥasadim* and ends with

*gemilut ḥasadim*. It opens with *gemilut ḥasadim*, as it is written, 'God made for Adam and his wife cloaks of leather and clothed them' (Genesis 3:21), and it closes with *gemilut ḥasadim*, as it is written, 'He (God) buried him (Moses) in the valley' " (Deuteronomy 34:6).

(*Sotah*, 14a)

Maharal's explanation of this *midrash* will be clear if we keep in mind the definition of Torah as World Order and the correspondence between *kiyyum* and *tov*: reality — Torah — came into being, i.e., followed a state of *he'ader* (nonbeing). Coming into being amounts to an outpouring of *tov*, for only through *tov* does anything attain *kiyyum*. Any beginning, then, is an outpouring of *tov* from the latter's divine source; in essence, an act of divine *gemilut ḥasadim*. Similarly Torah, the vessel of temporal reality, begins with an act of *gemilut ḥasadim*, symbolizing the *gemilut ḥasadim* which the creation of Torah itself represents. Torah ends with *gemilut ḥasadim*, for Torah is not merely an existing entity with *kiyyum*, but eternal reality suffused with divinity. Therefore, Torah must be permeated by the *tov/kiyyum* matrix; its alpha and omega must be *gemilut ḥasadim*. Note that Maharal has played on Torah's dual aspect of temporality and eternity to establish the tie-in to *gemilut ḥasadim*.

The notion of *gemilut ḥasadim* as *imitatio dei* now appears in a clearer light. Creation is an act of divine *gemilut ḥasadim* in which God, through no law or necessity, but purely *lifnim meshurat ha-din*, bestows His goodness upon a world external (*kivyachol*) to Him, conferring reality upon it. God's *hesed* thus consists of affirming the world as an independent reality. Human *gemilut ḥasadim* also consists of affirming other beings, namely men, as autonomous beings. The form which this affirmation takes is the bestowal of good,<sup>32</sup> for good and reality are corollaries. Only those virtues which man has reified in terms of external temporal (*homri*) reality,<sup>33</sup> fully belong to man. Man, by bestowing good, solidifies the hold of good upon his own personality. In sum, the bestowal of good upon others redounds to one's own good and the affirmation of the

humanity of the other confirms oneself in his own human individuality and uniqueness. The parallel between divine and human *gemilut hasadim* thus has two dimensions: (a) The form of both actions is the same; both God and man affirm an external reality's otherness by bestowing good upon it. (b) The results of both are mirror images; divine *hesed* produces the *kiyyum* of the recipient (world), while human *hesed* confirms the *kiyyum* of the donor.

### III

Throughout my exposition, I have resisted the temptation to translate metaphysical categories into those of psychology and epistemology, as contemporary rehabilitators of metaphysics, as Sartre and Tillich, have done. What the article has thereby gained in faithfulness to Maharal it may seem to have lost in relevance to modern thinking. Of what relevance to us is an ethical and theological system based on an outmoded metaphysics? More generally, this question demands that we attempt a critique of Maharal's thought from the standpoint of modern philosophy.

Before outlining such an attempt, two general observations are in order: (1) Metaphysical principles are often quite readily translatable into categories of human experience, as the work of Sartre and Tillich amply illustrates. Human thoughts and emotions operate within certain fixed patterns of experience so that contemporary philosophers of the existentialist school speak of modes of Being when they mean modes of experience. Though there is a world of difference between subjective and objective ontology, the conclusions of the latter may often be translated into meaningful concepts in the former. Especially in a symbolic system like Maharal's, where human reality and the external world have corresponding structures,<sup>34</sup> one may expect that what is true of reality as a whole is true of human experience as well. (2) Modern philosophy does not claim that it is impossible that the world be constructed according to fundamental metaphysical principles. For the most part the contention of modern philosophers is that man cannot

know that it is so constructed, or what these metaphysical principles are. Accordingly, contemporary theology has directed its attention exclusively to religious experience, neglecting metaphysical questions,<sup>35</sup> which it too regards as beyond human ken. Traditional religious metaphysics has thus not been disproved but ignored.

Observation (1) serves in general as grounds for reinterpreting metaphysical speculations in a modern light. This is what Bergson did to Berkeley and Spinoza, Tillich to the ontological argument, and John Herman Randall to Plato. In this light, Maharal may be seen as stressing, in *Netiv Gemilut Hasadim*, the majesty of man as moral creator when he recognizes the divine spark, the *zelem elokim*, within him.<sup>36</sup> This recognition cannot remain static. *Zelem elokim* is common to all men, so that one who recognizes his own creative potential must recognize, through dynamic interaction with other men, the divine stamp that characterizes humanity. Such activity symbolizes and impresses upon human consciousness the majesty of man as chief of all God's creatures. Thus, Maharal has lifted *gemilut hasadim* out of the realm of ethics into the realm of religion. Acts of *hesed* are important because of the *hesed* we owe to God (creation) and because we can develop our own divinely-inspired personalities only insofar as we recognize the true source of human greatness: the *zelem elokim* common to all mankind.

Observation (2) demands of us that we not remake Maharal, but allow him to remake us. The modern world suffers from a profound sense of rootlessness due to our alienation from the external world. Religion in particular has suffered from the notion that rationality is a human fabrication and Nature is senseless or even random. The cosmological argument has suffered not only at the hands of analytic philosophers, but more importantly at the hands of scientists, historians, poets, and even theologians who feel that the world shows little or no signs of design. Belief in a perfect and omniscient Creator, however, entails belief in a rational, if imperfect, creation. From Maharal one can derive a sense not

only of the rationality of creation, but of the correspondence between creation and the source of human understanding, Torah. Maharal's science is outmoded, but his metaphysics need not be. *Tov* may — and from a religious standpoint should — be regarded as the principle governing the world as a whole, the essence of *kiyyum*. The spiritual should be regarded as more real, in some objective sense, than purely sensual existence, though man is inextricably bound up with the latter — and according to Maharal can and should find value in his temporal existence. "We must love this world, this absence of God by virtue of which we are, for only through it, like the smile of the beloved through pain, can we sense the perfectly non-present Being who alone can redeem it. 'In the beauty of the world, brute necessity becomes an object of love.'"<sup>37</sup>

This is not to say that Maharal's system will be accepted in its entirety by the modern thinker. Aside from significant revisions of scientific and metaphysical details, a modern thinker would certainly stress, as Maharal did not, the social and emotional dynamics of *hesed*. The split personality, the will to power, the hidden motives and emotional conflicts of even the most benevolent relationships are foreign to Maharal. To be sure, Maharal's metaphysics is sufficiently sophisticated to allow for conflicts to arise, but these conflicts are susceptible, as human emotions are not, to harmonious resolution. A human substance split into *homri* and *sikhli* is not identical with a man torn between eros and thanatos or between the will to power and altruism, though they may be corollaries. Maharal's metaphysics should neither be identified with nor divorced from modern psychology and anthropology completely. Rather the more profound psychological understanding of our day should be coupled with Maharal's more profound sense of the rationality of divine creation to produce a fuller understanding of how religious demands symbolically express man's understanding of and obligation to his Creator.

NOTES

1. This date is not universally accepted. See Frederic Thieberger, *The Great Rabbi Loew of Prague*, p. 12-3.
2. Since Maharal uses many words in a special technical sense, often different from the word's usually accepted meaning, I will retain the Hebrew original in such cases and provide a rough translation in parentheses.
3. The idea of a multi-tiered reality, in which the several tiers correspond to each other structurally, is a staple of Platonic philosophy. Plato utilizes this concept in many dialogues, particularly *The Republic* and *Timaeus*. The notion of a model for the world is also a common Platonic concept (*Timaeus*), which finds its classic formulation in Philo's logos, viz. Harry A. Wolfson's *Religious Philosophy: A Group of Essays*, chapter 2, esp. pp. 28-38. Maharal's philosophy parallels Platonism in many important respects. This subject awaits further study, as does the more general question of the relation between Jewish mysticism — or mysticism generally — and Neoplatonism.
4. Similar considerations apply to all works of art. It may be instructive to think of creation as a divine work of art.
5. In an essay contributed to Rollo May, *Symbolism in Religion and Literature*, p. 221.
6. This corresponds to the distinction drawn by Erich Kahler, in May, *op. cit.*, p. 65-7, between "ascending" and "descending" symbolism.
7. Viz., e.g., May's and A.N. Whitehead's essays in May, *op. cit.*
8. An argument along these lines is advanced by Paul Tillich in his essay in May, *op. cit.*, pp. 94-7.
9. See *NT (Netiv Torah)*, 6 and *NA (Netiv Avodah)*, 8.
10. See *NT*, 9.
11. In *NGH (Netiv Gemilut Hasadim)*, 4-5, Maharal identifies *zelem elokim* as the source from which *gemilut hasadim* flows.
12. Cf. *Rambam, Shemonah Perakim*, chapter 6 and *Mishneh Torah, De'ot* 1:5.
13. Cf. Maharal's *Derekh Hayyim to Avot*, 1:2.
14. Cf. *Rambam, op. cit.*
15. Viz. *Derekh Hayyim to Avot*, 1:18.
16. Cf. *Ramban to Leviticus* 1:9. Compare also Rabbi J.B. Soloveitchik's view of sacrifice as symbolic suffering in a *Kinus Teshuvah Derashah* printed in *Panim el Panim*, Tishrei, 5734. Characteristically, Maharal is not concerned with the sacrifice as symbolic of an emotional expression, as are *Ramban* and *R. Soloveitchik*, but with the rational dimension.
17. *NGH*, 1.

18. *Derekh Hayyim*, 1:2.
19. *Ibid.*
20. *Ibid.*
21. *NT*, 6, 9.
22. Viz. Maharal's *Derashah le-Shabbat Shuvah* on verse in Deuteronomy, 32:1.
23. Ideas in a similar vein may be found in *Gevurot Hashem*, chapters 16-24.
24. *NGH*, 1.
25. *NGH*, 4-5.
26. *Shabbat*, 127b. Cf. Abba Sha'ul's statement about *ve'anvehu* on *Shabbat*, 133b.
27. This statement, obscure as it stands, leads into the topic of Maharal's theosophy, which is beyond the scope of this paper. The interested reader will find a slightly more intelligible version of this remark in Maharal's *Hiddushei Aggadot to Sotah*, 14a, which turns to the relation between *tov* and creation, as elaborated later in my paper. This should be compared with *NA*, 18 (on *ki le'olam hasdo*) and reconciled with *Netiv Zedakah*, 4, which asserts that *zedek*, not *hesed*, is the "truest" attribute of God. An interesting contrast to Maharal's position may be found in *Hiddushei ha-Griz al ha-Torah*, sections 3 and 137.
28. Note that one of the sources in the Torah for the *mizvah* of *gemilut hasadim* is *v'asita ha-yashar v'ha-tov* (Deuteronomy 6:18, viz. Rashi and Ramban, ad loc.), which emphasizes human initiative and judgment. Rabbi Aharon Lichtenstein has identified this and *hiddammut* as the two sources of *gemilut hasadim*.
29. See Rashi, ad loc. Cf. Ramban, Deuteronomy 19:19. Compare also Maharal's interpretation of *dan din emet la'amito* (*Shabbat*, 10a) in *Derekh Hayyim*, 1:18; *NT*, 10; and *Netiv ha-Din*, 1.
30. See Genesis 18:2-8; Genesis 24:12-22 and Rashi on verse 14; Ruth 3:10 and *Yalkut Shimoni*, sections 601-602.
31. Cf. Maharal's *Gur Aryeh* to Genesis 24:22.
32. In *NGH*, 4-5 Maharal shows in detail how the specific activities categorized as *gemilut hasadim* accomplish the purpose of affirming the Other in his Otherness.
33. Cf. *NT*; 4, 8, 10.
34. Esp. in *Derekh Hayyim* 1:2.
35. With the notable exception of Thomists, such as Gilson and Maritain.
36. See *NGH*, 4, vis-a-vis *hakhnasat orhim* and *NGH*, 5, vis-a-vis *halvayat ha-met*.
37. Leslie Fiedler's introduction to Simone Weil's *Waiting for God*, p. 37.

Arthur Schaffer is a doctoral candidate in the Department of Horticulture, Rutgers University, working in the field of plant breeding and genetics. He has taught Plant Biology at Yeshiva College and is presently serving as Guest Botanical Curator of the Yeshiva University Museum.

## THE HISTORY OF HORSERADISH AS THE BITTER HERB OF PASSOVER

### Introduction

Many Ashkenazic Jews specifically use the root of the horseradish plant at least one of the two times that bitter herbs are called for at the Passover *seder*. Surprisingly, horseradish has not always been used for *maror*. Only since the Middle Ages, as Jews migrated northward and eastward into colder climates, has horseradish taken its place on the *seder* table. The possibility even exists that horseradish was not present in Israel in Biblical and Talmudic times and hence could not possibly be identified with *maror*.<sup>1</sup> In addition, it can be argued that the characteristics of horseradish do not even fit the Talmudic requirements for bitter herbs since horseradish is not bitter (מר) but rather is hot and sharp (חריף).<sup>2</sup> In this paper I will trace and

1. A number of scholars come to this conclusion. See G. Dalman, *Arbeit und Sitte in Palastina* (Hildesheim, 1964 repr. of Gutersloh, 1928) II, 274; J. Feliks, *Kil'ei Zera'im VeHarkavah* (Jerusalem, 1967) pg. 59; I. Low, *Die Flora der Juden [DFD]* (Hildesheim 1967, repr. Wien and Leipzig, 1928) I, 431. Ephraim Hareuveni, *Leshonenu* 9 (1938) pg. 220, writes:

בגולה כשהתרחקנו מעל אדמותינו ומעל צמחנו ונהגנו לאכול כמרור את ה"חריץ" המר אשר בטעות קרא לו חזרת.

2. See J. Feliks, *ibid.* The Babylonian Talmud (*Pesahim* 39a) mentions

account for the history of the widespread use of horseradish for the bitter herbs of Passover.<sup>3</sup>

I

The Mishnah mentions five species that may be used for *maror*:

ואלו ירקות שאדם יוצא בהן ידי חובתו בפסח  
בחזרת ובעולשין ובתמכא<sup>4</sup> ובחרחבינה ובמרור.<sup>5</sup>

three characteristics of *maror*: כל ירק מר יש לו שרף ופניו מכסיפין  
(See R. Rabbinovicz, *Dikdukei Soferim* [DS] to *Pesahim* 39a, especially note ב). It is beyond the scope of this paper to discuss these characteristics. However, in a private, unscientific study comparing the tastes of horseradish and cultivated endive in its mature stage (development of seed stalk), I found that their respective tastes were sensed by different areas of the tongue, implying that physiologically they are different tastes. The bitter element of the endive, which is found in many plants of the Composite family, is related to its white latex sap (the שרף) found in the leaves and the stems, a characteristic which horseradish lacks. The pungency of horseradish is due to two volatile sulfur-containing oils which are released upon grinding. For this reason, ground horseradish loses its pungency when left out in the air for a period of time.

3. I would like to emphasize that לא באתי להורות אלא להראות! Whether horseradish could have halakhically been used to fulfill the requirement for *maror*, see comment of R. Moses Isserles to *Shulhan Arukh, Oraḥ Hayyim* 473/5, and the commentaries thereto. Also see the comment of R. Menahem Ha-Meiri in *Bet ha-Beḥira* to *Pesahim*, ed. Klein (Jerusalem, 1966) pg. 124. The Meiri is one of many *Rishonim* who interpret the fifth species of the mishnah, מרור, as a generic term for any bitter plant.
4. Throughout the *Rishonim* and *Aḥaronim*, תמכא is spelled at times with an א and at times with a ה. For the sake of consistency it will be spelled throughout this paper with an א.
5. *Shishah Sidrei Mishnah, Pesahim* 2:6, ed. H. Albeck (Jerusalem, 1958). The same order is found in *Ha-Mishnah Al Pi Ketav Yad Kaufman* (Jerusalem, 1967) pg. 113. The mishnah found in the Vilna edition of the Babylonian Talmud lists תמכא second and עולשין fourth. See R. Rabbinovicz *DS* to *Pes.* 39a, note ל. This change in order has significant halakhic bearing since the order in the mishnah is taken to imply an order of priority. Thus, if חזרת (lettuce) cannot be found, the next plant listed should be used, and so on. See, for example *Sefer Ra'avyah*

Our use of horseradish is predicated on its identification with תמכא. Both the Babylonian and Jerusalem Talmuds identify תמכא in their respective vernaculars. The Babylonian is of little help when it states חנה תמכא שמה בר חנה תמכא שמה.<sup>6</sup> However, the Jerusalem Talmud is a bit more helpful and defines תמכא as תמכא.<sup>7</sup> Seemingly a word of Greek origin, its identification has been the object of some discussion and suggestions, but it is certainly not identified with horseradish.<sup>8</sup>

Whether or not horseradish even existed in the Middle East during Mishnaic or Talmudic times is a difficult question to answer.<sup>9</sup> The general assumption is that it did not.<sup>10</sup>

(Jerusalem 1964 repr.) II, 101, who seems to be the first to mention this rule.

6. *TB, Pesahim* 39a.
7. *TJ, Pesahim* 29c.
8. See Feliiks, op. cit., pg. 59, who mentions the views of Löw (endive) and Dalman (member of the parsley [umbellifer] family). But see Dalman, op. cit., II, 275-276, who is more descriptive. Dioscorides, a first-century C.E. Greek botanist, describes a plant *Gingidion* which seems typical of an umbellifer. See *The Greek Herbal of Dioscorides*, ed. by R.T. Gunther (New York, 1959) pg. 178. Also see Pliny, *Natural History* (Loeb Classical Library, London, 1950) XX:16, who writes, "They [Syrians] sow a vegetable called by some, gingidion, that is very much like staphylinus, only it is slighter and more bitter." Staphylinus seems to be an umbellifer and not related to horseradish.
9. It is far easier to be certain that a species did exist in a certain area and time than to be certain that it did not. There are few cases where one can be absolutely sure that the plant in question was not present in the area under study. The best examples are those plant introductions that were brought from the new world to the old world after the Spanish discoveries. Thus, for example, we know that tomatoes and potatoes were not found in Europe until the 1500's and hence we can be certain that the *Rishonim* did not use boiled potatoes for *karpas* on Passover. For interesting histories of many plants see "Our Vegetable Travelers" by V. Boswell, in *National Geographic* 96 (1949) 145-217. For more detailed studies, *Evolution of Crop Plants*, ed. N.W. Simmonds (New York, 1976), is by far the most comprehensive work of its nature.
10. Horseradish does not seem to be mentioned by any of the early Greek or Roman botanists. A. De Candolle in *The Origin of Cultivated Plants* (New York, 1959, repr. of 2nd edition, 1836), pgs. 33-36, charts the probable place of origin and later migrations of horseradish, based

However, there is a questionable reference to it by Dioscorides, an early Greek botanist (first century C.E.), which may be taken to mean that it at least was present in his area of the Mediterranean.<sup>11</sup>

The most fruitful sources we have that can serve as indicators of what plant material was considered acceptable for *maror* by Jewry in various periods and geographic locations are the commentaries, codes, books of customs, lexica and responsa composed over the years in a variety of localities. It is to these that we will now turn our attention.

Rabbi Nathan of Rome (1035-c.1110),<sup>12</sup> in his Talmudic dictionary, defines תמכא as קרדו,<sup>13</sup> which most likely is cardoon (*Cynara cardunculus* L.), a close relative of the globe artichoke (*C. scolymus* L.). It is a thistle-like plant of the Composite (Daisy) family (which also includes lettuce, endive, chicory and wormwood) whose leafstalks may be blanched and eaten.<sup>14</sup> R. Nathan continues ויש אומרים מרובי"ו,<sup>15</sup> which is undoubtedly *Marrubium vulgare* L., or horehound. This is a member of the Labiate (Mint) family, with whitish hairy leaves and a bitter taste, and was often mentioned by the Greek, Roman and medieval herbalists.<sup>16</sup>

largely on philological considerations. His conclusion is that horseradish originated in eastern Europe and later moved westward. Also see the article by J.W. Courter and A.M. Rhodes, "Historical Notes on Horseradish" in *Economic Botany* 23 (1969) 156-164 and the sources in note 1. of this paper.

11. Dioscorides, op. cit., pg. 197. Under the description of what he calls *Thlaspi* (Shepherd's purse) he writes, "Crateuas reckons up another kind of *Thlaspi* which some call *Persicum Sinapi*, broad leaved and big rooted." See also Courter and Rhodes, op. cit.
12. The *Encyclopedia Judaica* has been used for spelling of names and dates of personalities, unless otherwise noted.
13. *Arukh ha-Shalem*, s.v. תמכא. ed. Kohut (New York, 1915).
14. Pliny (XIX:43) did not have much regard for cardoon, considering it "a monstrosity of the earth" used "for purposes of gluttony." He relates that it was often preserved in honey, vinegar and spices.
15. See *Arukh ha-Shalem*, ed. Kohut. See note 5 for variant readings of the crucial final word.
16. Horehound is described as bitter by Columella, *De Re Rustica*, (Loeb

Rashi (1040-1105), a contemporary of R. Nathan living in North France, also defines תמכא as horehound,<sup>17</sup> as do the various books attributed to his school.<sup>18</sup> In Provence (South France), in the late twelfth century, R. Issac b. Abba Mari likewise defines תמכא as horehound.<sup>19</sup> In North Africa, at about the same time as Rashi, R. Isaac Alfasi (1013-1103) defines תמכא as אל שלים,<sup>20</sup> which is possibly a form of rape.<sup>21</sup> Oddly,

Classical Library, Mass. 1955) III, 39, "And it has also profited to drench the plants in horehound's bitter sap." Dioscorides, op. cit., pg. 349, refers to it by its Greek name *Prasion* and also describes it as bitter. It is also mentioned by many medieval herbals, including one of the most important, the *Circa Instans* of the 12th century (in *The Herbal of Rufinus*, ed. L. Thorndike, Chicago, 1946, pg. 231). In a thirteenth-century Hebrew translation of the *Circa Instans*, *Sefer ha-Ezer* (J.T.S. MS. micro. 5517), its description is as follows:

מארווביאום הוא עשב נקרא גם כן פראשיאום.

In a later copy of the *Sefer ha-Ezer* (J.T.S. MS. micro. 5518) it is spelled, מרובי. I would like to express my thanks to Dr. Tobias of the J.T.S. library, who brought this manuscript to my attention. For the origin of the name horehound see A.H. Hareuveni in *Sinai* 22 (1948) pgs. 302-303. For alternative interpretations see *The Englishmen's Flora* by G. Grigson (London, 1955) pg. 328; *Oxford English Dictionary*, s.v. horehound and J. Lust's *The Herb Book* (New York, 1974), which states that horehound was dedicated by the ancient Egyptians to the god Horus, the god of the sky and light.

17. Rashi's commentary to *Pes.* 39a. See A. Darmestater and D.S. Blondheim, *Les Gloses Francaises dans les Commentaires Talmudiques de Raschi* (Paris, 1929) I, no. 687 for variant readings. Also see I. Low, "Pflanzennammen bei Raschi" in *Festschrift zum 70th geburstage A. Berliners* (Frankfurt a.m. 1903) p. 246.
18. See *Sefer ha-Pardes*, ed. Ehrenreich (Budapest, 1924) pgs. 46, 52; *Sefer ha-Oreh* (Jerusalem, 1967 repr. of Buber edition Lvov, 1905) vol. II, pg. 192; *Siddur Rashi* ed. Freimann and Buber (New York, 1959 repr. by Menorah) pg. 183; *Maḥzor Vitry*, ed. S. Hurwitz and A. Berliner (Berlin, 1896) pg. 270.
19. *Sefer ha-Ittur* (Lemberg, 1860) II, 54a.
20. *Hilkhot ha-Rif* (Constantinople, 1509) to *Pes.* 39a. The J.T.S. ms. Rab. 692 (facs. repr. by Makor Publishers, Jerusalem, 1974) fol. 45b reads 692 (facs. repr. by Makor Publishers, Jerusalem, 1974) fol. 45b reads תמכא ובלעו מרובי and אל שלים which is undoubtedly a post-Alfasi addition. The manuscript has been described as thirteenth-century Provençal and the additional vernacular definition coincides well with this origin. Pseudo-

though, nowhere in the rest of rabbinic literature is there a mention of such a plant as a bitter herb.<sup>22</sup> Maimonides (1135-1204), who wrote largely in Egypt during the latter half of the twelfth century, defines תמכא as סריס (seris),<sup>23</sup> a Greek word for a form of endive.<sup>24</sup> According to Maimonides, at least four of the five types of bitter herbs in the mishnah are lettuces and endives.<sup>25</sup>

Rashi on the Rif contains no translation of תמכא, while it does translate the other species, possibly due to the fact that the author was dealing with a manuscript of the Rif which already had this definition incorporated into the text.

21. *Brassica napus* L. See *An Arabic-English Lexicon* by E.W. Lane (London, 1867) III, 1402; Maimonides' *Biur Shemot ha-Refu'ot* ed. by S. Muntner (Jerusalem, 1969) pg. 79 (273). But, see also the description of *Tanḥum ha-Yerushalmi* in *Leshonenu* 33 (1969) pg. 293, Lane, III, 1592 and Muntner pg. 49 (143) who describe a bitter grain under the word שלים אל. Various manuscripts of Alfasi differ in their reading of this word, some placing the יד before the ל and some after.
22. R. Asheri quotes the Rif in a corrupt form, של"ה. The אל שלים of the Rif is quoted by later commentaries (see later in text) who add their own vernacular definition of either a form of lettuce or horehound to it. But, see end of note 25.
23. *Mishnah Im Perush R. Moshe b. Maimon*, ed. J. Kafah (Jerusalem, 1964) II, pg. 168. Our printed version of Maimonides' *Perush ha-Mishnayot*, found in the back of the Vilna edition of the Babylonian Talmud (see the Mekorot repr. Jerusalem, 1970 of the first edition, Napoli, 1492 of the *Mishnah Im Perush ha-Rambam*, Pes. 2:6) has the additional phrase גרל בגנות שהוא גרל עולשין אלא שהוא גרל בגנות, which is lacking in the original used by Kafah. Also see footnote 25.
24. Dioscorides, op. cit., pg. 173. "Seris (some call it Picris, the Egyptians Agon, the Romans Intybus agrestis) is of two kinds, wilde and Sative, of which the wilde is called Picris or Cichorum, but ye other kinde broader leaved . . . which is that of ye garden. And this is of a twofold kinde, for the one is more like lettuce, the other is narrow leaved, and bitter." Also see Maimonides' *Biur Shemot ha-Refu'ot* ed. by S. Muntner (Jerusalem, 1969) pg. 81 (285); Columella, op. cit., II, 389; Feliks, op. cit.
25. See J. Kafah, op. cit., note 34, who writes that Maimonides' translation of the fifth species, מרור, is not כוסברתא (coriander) as is found in the printed version in the Talmud, (see note 23), but rather כס ברי, Arabic for wild lettuce, and כוסברתא is merely a corruption. In the earliest

We find the first mention of horseradish in rabbinic literature of mid-twelfth century Germany. R. Eliezer b. Nathan of Mainz, (c.1090-c.1170) a contemporary of R. Tam, mentions *meeretich*, the German word for horseradish.<sup>26</sup> However, it is not mentioned as a bitter herb, but rather as an ingredient in his recipe for *haroset!* In fact, when he does define the herbs of the mishnah he defines all but תמכא.<sup>27</sup> R.

manuscript of the *Perush ha-Mishnayot* (with an introduction by S. Sassoon, facs. by Ejnar Munksgaard Pub., Copenhagen, 1956, I, pg. 284), dating from the time of Maimonides, it can clearly be seen that the definition of מרור כס ברי is מרור. For Maimonides' definition of חרחבינה see *DFDJ* I, 439. Regarding the Arabic translation of the Rif, אל שלים, which may be a form of rape or a completely different plant (see note 21), the fact that no such similar plant is mentioned by the *Rishonim* or *Aḥaronim* is unusual. It seems possible that, in fact, שלים or שלים resulted from an error in copying a very early manuscript. The earliest reference we have of the Rif mentioning שלים is an early thirteenth-century lexicon by *Tanḥum ha-Yerushalmi* (letter "ח" printed in *Leshonenu* 33 (1969) 280-296 by H. Shai). If, however, the Rif wrote סריס or שריס, it is not difficult to imagine the ר being mistakenly changed to a ל by the addition of a short stroke, and the *samekh* being changed into a final *mem*, thus forming שלים from שריס. See the comment by R. Elija Shapiro (*Elijah Rabbah*, Sulzbach 1757, repr. N.Y. n.d., pg. 164b.), who writes that the Rif defines תמכא as סריס. A more detailed study by someone expert in this field is necessary.

26. *Even ha-Ezer, Sefer Ra'avan* (Prague, 1610) 74b. The origin of the words *meeretich* and horseradish are fascinating. *Meerettich* indicates a radish (*rettich*) that grows near a body of water. Hence its Latin generic name *Armoracia*, formed from the Celtic: *ar* near, *mor* the sea, *rich* against. *Merretich* may have evolved into horseradish by taking *meer* to be *mare*, a horse, and thus sea-radish became horseradish! Another possibility exists that horseradish means a strong or hot radish. See "Historical Notes on Horseradish", op. cit. Also see the *Hokhmat Shelomo* of R. Shelomo Kluger to *Shulḥan Arukh, Oraḥ Ḥayyim* 473/5, who suggests that if *meeretich* can be used for *maror*, so can plain *retich* (radish, *Raphanus sativus* L.) since by their names, they must be very similar plants. Most probably he was referring to the sharp varieties of radish.
27. *Even ha-Ezer*, op. cit., 73a. So too his grandson, R. Eliezer b. Joel. See *Sefer Ra'avyah* (Jerusalem, 1964 repr. of Aptowitz ed.) II, 101 and the note of Aptowitz who adds into the text [תמכא מרוב"א] and writes in a footnote: הוספתו על פי הגמרא ופירש"י שאין סברא שרבינו השמיטו



Eleazer of Worms (c.1165-c.1230) also mentions *meeretich* only as an ingredient of *haroset*<sup>28</sup> and, in his definitions of the five herbs of the mishnah, identifies *תמכא* with *אגרוון*, which is probably a corruption of *andorn*, the German word for horehound.<sup>29</sup> In Germany, then, at least until the period of Eleazer of Worms, there is no mention of horseradish as *maror*.<sup>30</sup> חזרת, lettuce of a leafy or 'romaine' type,<sup>31</sup> was used

28. *Ha-Roke'ah* (Fano, 1505) 284:

החרוסת . . . ונותנים בו קצת מה בשיר השירים אגחים תאנים ורימונים ופלפל חנגביל וכמך וכרפס ומירח"ך.

Apparently it was customary, at least in North France and in Germany, to add vegetables to the *haroset* in order to make it thick. See, for example, *Rashbam to Pes.* 116a, s.v. לסמוכיה.

29. *Ibid.*, 282. See I. Low, *DFDJI*, 431. It does not take too much imagination to see the *א* and first *ר* of *אגרוון* replacing, due to a scribal error, the *ו* and first *ר* of *אגרוון*. In the *Sefer ha-Assufot (Studies and Texts)* by M. Gastner, London 1925-1923, III, 216-243), *תמכא* is defined as *andorn* (pg. 221). See *Mavo LeSefer Ba'alei Assufot* by B.Z. Benedict in *Sinai* 27 (1950) 322-329 and *Encyclopedia Judaica*, s.v. Lattes, Judah.

30. *Meeretich* is mentioned as a form of *maror*, although not as *תמכא*, in the Pseudo-Rashi commentary on the Rif to *Pes.* 39a. There, *meeretich* is given as the definition of the fifth species, *מרירחא*. It is similarly found in ms. Bod. 545 and Br. Mus. 473 fol. 88a of Alfasi with Pseudo-Rashi. According to Rabbinovicz (in a short note to the *DS* at the end of *Shekalim*) the Pseudo-Rashi dates to the second half of the thirteenth century and is part of the general literature that sprung up around the Rif, due to the earlier ban on studying Talmud. It is therefore not surprising that it mentions horseradish. In the *Sefer ha-Assufot [SH]* (see note 29), *meeretich* is mentioned as one of the ingredients of *haroseth* where it is also identified with *אמרפול* which is the *la'az* of Rashi and many others (for example, the Ra'avan, Ra'avyah, Roke'ah) for the fifth species *מרירחא*. Earlier in the *SH*, (pg. 221) *מרירחא* of the mishnah is also defined as *אמרפול* but with the accepted German vernacular of wormwood, as it is in the Ra'avan, Ra'avyah and Roke'ah. *Amerfoil* cannot be both wormwood and horseradish unless, as I. Low suggests, it is just a general term for 'bitter leaves'. The other possibility is that the second *amerfoil*, associated with horseradish and *haroseth*, is a later addition. Considering the lack of manuscripts and general confusion surrounding the authorship of the *SH* (see above note), no conclusions may be drawn.

31. See note 50. Iceberg, or head lettuce as we know it, seems to have

and, when it was unobtainable, endive and horehound were used; wormwood, too, may have been relied on to some extent.<sup>32</sup>

In the areas south and west of Germany, i.e. North France, Provence, Italy, Spain, North Africa and Eretz Yisrael; lettuces, endives, horehound and, depending on local custom, other flora such as cardoon are mentioned and may have been used. Again, there is no mention of horseradish. The situation in these Mediterranean countries, in contrast to that of Germany, remained unchanged throughout the Middle Ages.

In Italy, R. Judah b. Benjamin Anav (mid-thirteenth century) quotes R. Nathan's definitions of cardoon and horehound<sup>33</sup> while R. Yehiel Anav<sup>34</sup> and R. Zedekiah Anav,<sup>35</sup> R. Judah's nephew and cousin respectively, mention only horehound. In North France, R. Moses of Coucy (first half of thirteenth century) maintains the tradition of horehound.<sup>36</sup> We can also infer from a comment attributed to R. Peretz (end of thirteenth century) that horseradish was not used for bitter herbs in North France.<sup>37</sup> In discussing the use of roots for

originated sometime in the late Middle Ages and is associated with a simple mutation. It is first described in Fuchs' sixteenth-century herbal as *Lactuca capitata* and would now be considered as *L. sativa var. capitata*. The picture associated with *L. capitata* in Fuchs' herbal, looks more like a romaine lettuce than a head lettuce in spite of its name and, in fact, romaine (*Cos*) lettuces are a loose heading form of lettuces, as opposed to a leaf lettuce. See "Salads For Everyone — A Look at the Lettuce Plant" by T.W. Whitaker in *Economic Botany* 23(1969) 261-264.

32. See note 30.

33. *Perush R. Yehudah b. R. Binyamin Anav al ha-Rif, Massekhet Pesahim* (New York, 1915) to *Pes.* 39a.

34. *Tanya* (Cremona, 1565) pg. 57b.

35. *Sefer Shibbolei ha-Leket ha-Shalem* (New York, 1959) pg. 194.

36. *Sefer Mizvot Gedolot* (Venice, 1547) 118a, Aseh 41.

37. This comment is found in the *Hiddushei ha-Ritva* (Warsaw, 1864 and repr. after his commentary to *Shabbat* in many editions) to *Pes.* 39b.

הוא דתן במתניתין יוצאין בקלח שלהן פי בתוס' בשם השר מקוצי דוקא בקלח אבל בשורש לא ידע ליזהר להסיר השורש מן החזרת ע"כ משיטת הרב דב' פרץ.

For information regarding the authorship of the *Ritva to Pesahim* see

*maror*, which was prohibited by R. Tam, R. Peretz rules that one must be certain to remove the root of the lettuce plant when it is used. If, in fact, horseradish was used, mention of its root would certainly have been made. In Provence, R. Manoh of Narbonne (end of thirteenth and first half of fourteenth century) defines חמכא as a form of endive,<sup>38</sup> like Maimonides,<sup>39</sup> while his contemporary, R. Aaron of Lunel, continues the tradition of horehound.<sup>40</sup>

In Spain, R. Moses Halava (mid-fourteenth century) quotes Alfasi's definition of חמכא with the additional comment והוא מרובי,<sup>41</sup> while R. Joseph Habiba (beginning of 15th cent.) also defines חמכא as horehound.<sup>42</sup> R. Simeon b. Zemah (1361-1444), originally from Spain but forced to move to N. Africa in

1391, quotes Alfasi's Arabic translation and adds that it is a form of lettuce.<sup>43</sup> Even by the early sixteenth century, Obadiah of Bertinoro, who first lived in Italy and later in Eretz Yisrael still makes no mention of horseradish as *maror* when he defines the species of the mishnah.<sup>44</sup>

The first mention we have of חמכא translated as horseradish is in the late thirteenth-century Germany, in the *Haggahot Maimuniyyot*,<sup>45</sup> written by R. Meir Ha-Kohen, student of R. Meir of Rothenburg (c. 1215-1293). Surprisingly, among no other student of R. Meir from whom we have written records, do we find similar mention of horseradish.<sup>46</sup> In addition, the first corroboration, from later commentaries, that the *Haggahot Maimuniyyot* defined חמכא as *meeretich* does not occur until about two hundred years later.<sup>47</sup> It seems possible

*Hiddushei ha-Ritva, Massekhet Eruvin* (Jerusalem, 1974) ed. by M. Goldstein, pg. 15. The prohibition of using the root is attributed here to R. Samson of Coucy, brother-in-law of R. Moses of Coucy. In most sources, it is attributed to R. Tam. See second half of this paper.

38. *Sefer ha-Menuḥa* (Constantinople 1718, repr. in *Kovez Rishonim al Mishneh Torah*, Jerusalem 1967) 24a.

והחמכא היא עשב נקראת אסקריולא והיא חזרת מדברית.

In *Sefer ha-Ezer* (note 16) אסקריולא is given as a synonym for אנדיבה (endive), together with חזרת מדברית. *Scariola* is also described in the *Circa Instans*, pg. 125 as a type of endive.

39. For information on the relationship of the *Sefer ha-Menuḥa* to Maimonides, see H. Tchernowitz, *Toldot ha-Posekim* (New York, 1946) III, 281.

40. *Orhot Hayyim* (Florence, 1750) 79a. A contemporary, R. Menahem Ha-Meiri (1249-1316), defines חמכא as קרשפילאה (*Bet ha-Behirah al Massekhet Pesahim*, ed. J. Klein, Jerusalem, 1966, pg. 124) which is how Rashi defines עולשין. A study of this *la'az* would demand a much larger study than this note can offer. But, see *Sefer Ra'avyah* ed. by Aptowitz, II, 101, note 1 for an idea as to what such a study might produce.

41. *Perush Maharam Halava al Massekhet Pesahim* (Jerusalem, 1966) to *Pes.* 39a:

חמכא חמכתא שמה פ' הרב אלפסי שקורין לה בלשון ערבי אל שלים והוא מרובי.

The last two words מרובי והוא מרובי, may either be part of the Alfasi that R. Halava used or may be R. Halava's own addition. See note 20.

42. *Nimmukei Yosef* (New York, 1960) to *Pes.* 39a.

43. *Sefer Ma'amar Hamez* (printed together with *Sefer Yavin Shemu'ah*, Livorno, 1744, repr. Jerusalem, 1970) 35a:

ובחמכתא פירש הריף ז"ל שהוא אלשיל"ם בל' ערבי ובל' רומי ליטוגא רומני.

44. Commentary of R. Obadiah of Bertinoro to *Mishnah Pes.* 2:6.

45. To *Mishneh Torah, Hilkhot Hamez u'Mazza*, 7:13. In the modern printed editions there are contradictory vernaculars. The Amsterdam 1702 edition reads מירטיך בלעז מרוב"א which makes no sense. In a number of manuscripts of the HM studied, *meeretich* is mentioned in all but one. The Constantinople 1509 ed. 133b has only *meeretich* as the definition of חמכא (although it appears more like מירטיך with a *samekh*). In ms. Br. Mus. 501 (fol. 85) described as sixteenth-century Italian, (*Catalogue of the Hebrew and Samaritan Manuscripts in the Br. Mus.* by G. Margoliouth (London, 1965) II, 112) there are no translations of any of the species. In Bod. 844 fol. 146a חמכא is defined as מירטיך בלעז מרוב"א as it is in J.T.S. ms. Rab. 350 which again makes no sense. Bod. 641 fol. 144b mentions מירטיך and מרוב"א but also quotes the *Arukh*. In the Nurnberg Landeskirch, Arch. 88 2 there is מירטיך בלעז מרוב"א, after which the *Arukh* is quoted, which in turn is followed by an additional *la'az* which I could not make out. How much of these comments were actually written by R. Meir Ha-Kohen, or whether any part at all was, is questionable. See for example, E.E. Urbach's *Ba'alei ha-Tosafot* (Jerusalem, 1954) pg. 435.

46. See *Sefer ha-Parnes* by R. Moshe Ha-Parnas (Vilna, 1891) par. 57, 6a; *Sefer Tashbaz* (Cremona, 1556) 8a, only mentions that if one cannot find *maror* then wormwood can be used. For Asheri see note 22.

47. The first to mention that the *Haggahot Maimuniyyot* defines חמכא as

that this comment in the *Haggahot Maimuniyyot* may have resulted from a later addition, and not from the late thirteenth century.<sup>48</sup>

By the first half of the fourteenth century, horseradish is clearly mentioned as an acceptable form of *maror*. R. Alexander Suslin (d. 1349), of Frankfurt and later Erfurt, in eastern Germany, distinctly mentions the custom of using *meeretich* when lettuce could not be found, although he does not explicitly define *חמכא* as *meeretich*.<sup>49</sup>

During the middle of the fourteenth century the custom of using horseradish already existed. It was, however, considered preferable to use lettuce when available, and there are indications that in western Germany, lettuce was indeed available Passover time.<sup>50</sup> We have reason to believe, though, that lettuce was at times difficult to obtain, as evidenced by the com-

*meeretich* is R. Joseph b. Moshe, student of R. Israel Isserlein, in *Leket Yosher* (Berlin, 1903, repr. Jerusalem, 1964) pg. 92.

48. See note 45. For the reader who feels that I am making emendations too quickly see "The La'azim of Rashi and of the French Biblical Glossaries" by M. Banitt, in *The World History of the Jewish People*, ed. C. Roth, vol. 11, The Dark Ages, ch. 12, pgs. 291-297 and notes and bibliography. See especially pg. 295 where he writes, "Curiously enough, neither Rashi nor any rabbi of his period could resist the temptation of inserting into their commentaries translations in a foreign tongue they did not understand, but which they had found in their sources and which must have been practically useless for their countrymen . . . In fact, we are faced with the general medieval traits of an inveterate compilatory attitude and a strong verbalistic trend in education." If this is true for Rashi and his period it is all the more true among the later commentaries and copyists. The *Haggahot Maimuniyyot* is a fine example.

49. *Sefer ha-Agudah* (Cracow, 1571), 162a,

וראייתי רבותי החזירין אחר לטוג"א ואם לא מצאו יקחו מירטיך.

However, when defining the species immediately before, he does not define *חמכא* at all, much like the Ra'avan and Ra'avayah.

50. See, for example, *Sefer Minhagim Devei Maharam b. Barukh MiRothenburg*, ed. I. Elfenbein, vol. 5 (New York, 1938) pg. 24; *Minhagei R. Hayyim Paltiel in Kiryat Sefer* 24 (1948) pg. 79. Also see note 80 of the paper and *Sefer Ma'asei ha-Geonim*, ed. A. Epstein and J. Freimann (Berlin, 1910 repr. 1967) pg. 18.

ments of R. Shimshon b. Zadok<sup>51</sup> (student of R. Meir of Rothenburg) and R. Alexander Suslin<sup>52</sup> who describe situations where it was not obtainable.

The availability of lettuce and other leafy annuals that must be sown from seed depends on climatic factors. In areas such as Spain, Provence, Italy, Eretz Yisrael and N. Africa, all bordering the Mediterranean, the climate is such that lettuce is easily obtainable in March-April. As one moves northeast, the climate in winter becomes progressively colder, and spring, which heralds the growing season, begins progressively later.<sup>53</sup> In western Germany, as previously mentioned, lettuce was generally available. In unusual years, especially when Passover occurred early, it is probable that lettuce was difficult to obtain, or at least it was prohibitively expensive.<sup>54</sup> Further east, in cities such as Erfurt, it was probably even more difficult to procure. In contrast to the leafy annuals, a perennial root crop such as horseradish would be obtainable in cooler climates. Its leaves would push forth from the ground with the advent of spring, and in colder regions, where even the leaves would not be available, the root itself could be stored and made available throughout the year. The dependence on horseradish, then, probably started in the cooler climates of eastern Germany and moved to the even colder climates of Poland and Russia. The reverse may also be true; the custom of using horseradish may have begun in the colder portions of eastern Europe, for which

51. See note 46.

52. See note 49. Suggestions that lettuce should be bought *אפילו בדמים יקרים* may also be indicative of the increasing difficulty, even in northern France, of obtaining lettuce. See, for example, the gloss to *Amudei Golah (Semak)* (Cremona, 1556) 107b par. 220. Rashi, too, is reported to have had difficulty in obtaining lettuce one year. See *Mahzor Vitry* and *Sefer ha-Oreh* (my note 18).

53. See *The Times Atlas of the World* (London, 1968) plates 4 and 5 which illustrate climatic patterns of Europe. For an interesting study of the effect of climate on history, see *Times of Feast, Times of Famine; A History of Climate Since the Year 1,000*, by Emmanuel LeRoy Ladourie, Doubleday, New York, 1971.

54. See note 52.

we have few written records,<sup>55</sup> and once established, moved to the relatively warmer Germany where it could be depended upon whenever necessary. In either case, the custom of using horseradish for *maror* and its identification with one of the species of the mishnah, thereby legitimizing its use and giving it roots in tradition, seems to stem from the migration of the Jews north-eastward into Europe, and the flowering of new Jewish communities in these colder regions.<sup>56</sup>

55. For an introductory survey of early East European Jewish settlements see *The World History of the Jewish People*, ed. C. Roth, vol. 11, The Dark Ages, ch. 13, and notes and bibliography.

56. As previously mentioned, it is not within the scope of this paper to deal with the definitions of all the species of bitter herbs. However, the observant reader will no doubt be bothered by the possibility that horseradish may have been used prior to the thirteenth century in countries warmer than Germany and the change that occurred in thirteenth-century Germany was a transposition of horseradish from its definition as one of the other species of the mishnah to *תמכא*. The only possibility of this having occurred is with the fifth species of the mishnah, the *מרירתא* of the Talmud. As already mentioned (note 30), at least one source defines *מרירתא* as horseradish, albeit a late one. Rashi himself defines *מרירתא* (*Pes.* 39a, s.v. *מרירתא*) as *פופרץ* (see Darmestater and Blondheim op. cit. for variant readings), which he is reported to have used one year when he could not find lettuce. (See sources in my note 18.) No one suggests that this might be horseradish. Darmestater and Blondheim identify it with tusselage, Löw with *Sonchus oleraceus*-sow thistle (*J.Q.R.* 21 [1931] p. 328), a member of the Composite family; others suggest pepper and purslane (see footnotes to sources in my note 18). My feeling is that *פופרץ* refers to a peppery tasting plant, possibly garden cress or peppergrass (*Lepidium sativum* L.), a member of the same family as horseradish (Cruciferaeae). Pliny (op. cit. xix: 42) describes a plant whose common name is *piperitidis* on account of its peppery taste, and this plant seems to be *L. sativum*. In the time of Rashi, though, *piperitidis* or *פופרץ*, if a loose term for a pungent plant, may have referred to something other than peppergrass. However, it is interesting to note that no matter what *פופרץ* may be, after Rashi and his school it is never heard from again, and horseradish is not mentioned as a bitter herb for approximately two hundred years.

What remains unanswered is how horseradish attained its place of prominence on the list of acceptable bitter herbs. Given the conservatism of the halakhic process, the sudden introduction of a new species to fulfill so important a requirement as the eating of *maror* is

After R. Alexander Suslin, the use of horseradish is taken for granted. R. Jacob Moellin (c. 1360-1427) mentions *meeretich* and states that R. Suslin identifies it with *תמכא*, although this is not evident from R. Suslin's writings themselves.<sup>57</sup> But R. Jacob then continues onto another problem which also is symptomatic of the migrations of the Jews into colder climates.

## II

## The Root of the Problem of the Problem of the Root

R. Moses of Coucy is the first to mention, in the name of R. Tam (c.1100-1171), that one may not use a plant root for *maror*, since the mishnah states *ויוצאין בקלה שלהן* and *קלה* is taken to mean the stem, exclusive of the root.<sup>58</sup> This restriction seems to have been well-accepted<sup>59</sup> and as long as horseradish was not used, and leafy vegetables such as lettuce were available, this ruling posed no problem. One had only to be careful to remove any part of the root that may still have been attached to the plant.<sup>60</sup> However, once horseradish appeared as one of the bit-

difficult to imagine. One possibility that comes to mind is that since it was legitimately used in the *haroset*, as previously mentioned, it was already present at the *seder* table and was available to fill the void when other species could not be obtained. However, there is no real support for this suggestion. The alternative, mentioned at the beginning of this note, is likewise difficult to imagine, especially considering the silence of two hundred years between Rashi's *פופרץ* and the *Haggahot Maimuniyyot's* *מרטץ*.

57. *She'elot u'Teshuvot Maharil* (Cremona, 1556) par. 58, pg. 18a states: ואגודה כתב דמירעטיך היינו תמכא דמתניתין.

But see note 49.

58. *Sefer Mizvot Gedolot*, op. cit.

59. It is also attributed to R. Shimshon of Coucy (the 'Sar' of Coucy), the brother-in-law of R. Moses of Coucy (see note 37). It is mentioned, in the name of R. Tam, in most mss. of the *Haggahot Maimuniyyot*. This law appears to have originated with R. Tam and was unknown prior to him. Rashi used the *פופרץ של עיקר* which apparently was a root. See comment of Rashi, *Hullin* 59a, s.v. *עיקרא דמרירתא* and Tosafot to *Sukkah* 13a, s.v. *מרירתא*. See sources in my note 18.

60. See note 37.

ter herbs of the mishnah, R. Tam's prohibition became a serious problem.

In Germany, ground horseradish root was commonly used as a condiment, much as we still use it today.<sup>61</sup> It is not unusual, then, that when the Jews began using horseradish for *maror* the initial reaction was to use the root. In addition, among the Jewish communities far to the east of Germany, it is questionable whether the leaves of horseradish were available by Passover, due to the cold weather and the lateness of the growing season. R. Moellin is the first to deal with the problem raised by R. Tam's prohibition and, in no uncertain terms, applies the principle of R. Tam to horseradish too, stating that its roots may not be used for *maror*.<sup>62</sup>

R. Isaac Tyrnau, a contemporary of R. Moellin, writes that one may use lettuce and horseradish leaves or stems, but adds that roots should not be taken.<sup>63</sup> A gloss to this ruling states:

צריך עיון על הקריין ושמעתי שקרוי קלח  
עד למטה מזנבו ושכולין קטנים יוצאין מהן.<sup>64</sup>

61. John Gerard's *The Herbal or General History of Plants* (1633, repr. New York, 1975) pg. 242, under the description of horseradish, states, "Horse Radish stamped with a little vinegar put thereto is commonly used among the Germans for sauce to eat fish with, and such like meates, as we [the English] doe mustard."

62. See note 57. Also *Sefer Maharil* (Cremona, 1558) 21a, which states: [צריך ליוהר ליקח הקלח של המערטיך או הירוק שלו ולא השורש כדדייק התם [ר' חם?] דאין יוצאין בשרשים.]

In the *She'elot u'Teshuvot Maharil* (note 56) it is explicitly attributed to R. Tam.

63. *Minhagim* (Venice, 1591) 22a-b:

יקח לטי"ך או קרי"ן הקלחין או עלין שלו ואם אין לו לטי"ך יקח ווערמט או איזה עשב מר . . . ויוצאין בקלחין . . . ולא בשרשים כלל.

This is the first time that the Slavic word for horseradish is used in rabbinic literature. Judging both from the gloss and the phrase ואם אין לו לטי"ך it seems plausible that קרי"ן was added later. Otherwise it should read יקח קרי"ן. Also see *Sefer Minhagim* of R. Abraham Klausner, ed. *Disin* (Jerusalem, 1978), p. 111 and the numerous glosses there.

64. For information on the authorship of the glosses, see H. Tchernowitz,

This redefinition of the term קלח, allowing the use of the main root of horseradish, has its origins in a problematic responsum of R. Jacob Weil, a student of R. Moellin. In one section he redefines the term קלח, without making reference to horseradish. Later on, however, while specifically discussing horseradish he declares that one should only take that part of the plant that is above ground; any parts below ground should not be taken since they fall under the category of "root" which R. Tam prohibits.<sup>65</sup>

The same paradox is found in the *Leket Yosher* of R. Joseph b. Moses, student of R. Israel Isserlein (1390-1460). On the one hand he quotes R. Weil's redefinition of קלח for the expressed purpose of לישב המנהג, to justify the use of the horseradish root, which seems to have become a common custom.<sup>66</sup> Later, while describing the *seder* of his teacher, R. Isserlein, he explains that the horseradish root does fall under the category of "root" and thereby under the prohibition of R. Tam.<sup>67</sup>

This tension, felt already in the early fifteenth century in the writings of R. Weil, continues for the next two hundred years. On the one hand, the prevailing custom was to use the root; however, there remained opposition to its use due to the

*Toledot ha-Posekim* (New York, 1946) II, 260. I am assuming that the author of the gloss wrote after R. Weil.

65. *She'elot u'Teshuvot Mahari Weil* (Hanau, 1610) 67b:

כפ"ק דסוכה חניא אוזב ג' קלחים ובהן ג' גבעולי פרש"י קלחים שרשים מטעם זה נראה הוא דכתב ר"ת ולא שרשים היינו השרשים הקטנים המתפצלים לכאן ולכאן אבל השורש הגדול שבו עומד הירק הוי בכלל קלח.

In the next column he writes:

ואם יקח מירעטי"ך יקח מה שהוא למעלה מן הקרקע כגון העלין וסמוך לו אבל לא יקח מה שהוא למטה מן הקרקע דהוי שורש ור"ת כתב דוקא קלח ולא שרש.

66. *Sefer Leket Yosher*, ed. J. Freimann (Berlin, 1903, repr. Jerusalem 1964) pg. 83.

67. *Ibid.*, pg. 92.

. . . ואי ליכא חזרת כל המוקדם במשנה קודם כך כתוב הגאון ועולשים לא ידענא מאי היא אבל חמכה פ' בהג' במיימוני שהוא מירעטי"ך שאנו קוראין בארצותינו קריין וכתב ר"ת שאין אנו יוצאין בשרשים מונקט במתניתין דיוצאין בעלין ובקלחין ושרשים לא הזכיר. לכך הזהירו רבותינו שלא ליקח גוף הקריין אלא הקלחין והעלין שבראשו.

ruling of R. Tam. For the halakhic justification of the custom, R. Weil's redefinition was repeatedly referred to. At times, only parts of his comments were quoted, depending on whether the authority was justifying or opposing the use of the roots.

R. Isaiah Horowitz (1565?-1630) quotes the whole responsum of R. Weil but concludes that 'ראוי לנהוג' not to use the roots.<sup>68</sup> This phrase implies preferability of the leaves, while it recognizes the custom of using the root. R. Benjamin Solnik (1550-1640) and R. Joel Sirkes (1561-1640) both are more definitive in their rulings. R. Sirkes relays only the half of R. Weil's responsum that prohibits the use of the horseradish root.<sup>69</sup> R. Solnik, while quoting the permissive half of the responsum concludes with the restrictive opinion and adds that he himself would use only that portion of the plant that grew aboveground: the leaves and the thin uppermost section of the root that protrude above soil level.<sup>70</sup>

In Germany, R. Joseph Hahn (1570-1637) stresses that if one must use horseradish, only the leaves should be used.<sup>71</sup> As late as the second half of the seventeenth century there was still

68. *Shenei Luhot ha-Brit* (Wilhemsdorf, 1686) 119a.

וכן ראוי לנהוג בזה כי שמעתי אומרים בשם הגאון מהר"ר שכנא שהורה כן דכל מה שהוא תחת הקרקע נקרי שורש ולא נקרי קלח אלא מה שיוצא למעלה מהקרקע סמוך לעלין על כן כשיקח כוית מקריין יקח העלין עם הראש הקריין שהעלין נתחבר בו ע"כ.

It is interesting to note here, that the definition of קלח and שורש became even less anatomical and more utilitarian. No longer is there "root" or "stem" but rather "above ground" and "below ground". See also note 70.

69. See his commentary, *Beit Hadash to Tur Oraḥ Hayyim* 483, s.v. ואלו ירקות.

70. *Sefer Masa'at Binyamin* (Cracow, 1633). At the end of his responsa there are a few pages of his commentary to the *Shulḥan Arukh*. In his commentary to *Oraḥ Hayyim*, n. 3, he writes:

ואני שמעתי בשם מהר"ש השני שקבל מרבוחיו דכל מה שעומד בקרקע קרוי שרשים ומה שלמעלה מן הקרקע קרוי קלח וכן אני נוהג ליקח העלין וקצת מן הקריין עצמו כעובי אצבע ששיעור זה הוא דאי למעלה מן הקרקע.

The מהר"ש is R. Solomon b. Judah Leibush of Lublin (d. 1591); 'second' to R. Solomon Luria. For the little that is known about him see the article by I. Lewin in *Ha-Darom* 22 (1966) pgs. 5-18.

71. See second half of note 74.

opposition by R. Samuel b. Joseph, the author of the *Olat Tamid*, to the use of the below-ground portion of horseradish.<sup>72</sup> R. Elijah Spira (1660-1712) sums up both positions and concludes that להקל יש ובשעת הדחק יש להקל,<sup>73</sup> again implying the uneasiness on the part of the authorities in sanctioning the use of the root.

However, in spite of the attempt by rabbinical leaders to discourage reliance on the root, the common practice continued. In the first half of the seventeenth century we hear of the custom, in Poland, of using horseradish leaves the first time that *maror* is called for at the *seder*, and the root only for *korekh*.<sup>74</sup> This custom became widespread and is described as

72. *Sefer Olat Tamid* (Amsterdam, 1681) 473/4:

וכתב מהר"י ורייל ואם יקח מערטו"ך יקח מה שהוא למעלה מן הקרקע כגון העלים ולא מה שהוא למטה מן הקרקע דה"ל שורש ואין יוצאים בשרשים ונ"ל דה"ה בקריין אין ליקח למרור רק מה שהוא למעלה סמוך להירוק וכן ראיתי רבתי נוהגין.

It can be seen that the author did not realize that *meeretich* was horseradish by his comment בקריין. For an interesting description of the *Olat Tamid*, see Tchernowitz, III, pg. 164.

73. *Sefer Eliyyah Rabbah* (Sulzbach, 1757 repr. New York, n.d.) pg. 164b.

74. See the commentary of the *Taz-Magen David* to *Shulḥan Arukh* 473/8 where he writes:

וראיתי הרבה אנשים שלוקחין בשעת אכילת מרור את הירק שלו ובשעת הכריכ' נותלין הקלח ואין לזה טעם וריח דיש ליקח הירק גם בשעת הכריכה כי ויכל לאכול בטוב כוית ממנו כי אינו מצער כל כך כמו הקלח שיש לו כח יותר.

A somewhat similar custom seems to have been prevalent in Frankfurt A.M. R. Hahn in *Yosef Omez* (Frankfurt A.M., 1723 repr. in Frankfurt, 1928, Jerusalem, 1965) writes that lettuce was used for מצות מרור and horseradish leaves for *korekh*. par. 746):

... ואחר כך המרור והחרוסת דהיינו לאטיך אם אפשר אם דמין יקרים ואחר כך המעררעטיך שלוקחין אותו לכריכה.

However, in later paragraphs, when describing the rituals of *maror* and *korik* in more detail he writes (par. 765): for *maror*:

אחר כך יקח כוית לאטיך אם יש לו ואם אין הלאטיך מצר שלא יהיה לו כוית ממנו ישתדל שיהיה לו לפחות עלה אחד של לאטיך ויצרף אותו עם הירק שעל שרש מעררעטיך ולא השרשים עצמן עד שיהיה ביחד כוית.

אחר שאכל מרור יעשה הכריכה דהיינו שיקח כוית לאטיך או ירק שעל המעררעטיך לאפוקי השרשים כדלעיל.

It would seem that if one had enough lettuce for both *maror* and

such by R. Abraham Gombiner<sup>75</sup> (1637-1683), R. Jacob Risher<sup>76</sup> (1660-1733) and R. Judah Ashkenazi<sup>77</sup> (first half of the eighteenth century). This practice undoubtedly sprouted from the tension over the acceptability of the horseradish root. There was no question regarding the permissibility of the horseradish leaves in this period. However, leaves were in short supply<sup>78</sup> and could not be stretched to fulfill the requirements of both *mizvat maror* and *korekh*. As a solution, the more preferable leaves were used when the blessing on *maror* was made and the halakhically less preferable roots were used for the *korekh*, considered secondary to the *mizvat maror*. Thus one could be certain of fulfilling the requirement of eating *maror* by using the leaves when the blessing was made.<sup>79</sup>

By the eighteenth century there was no more discussion as to the acceptability of the horseradish root.<sup>80</sup> East European

*korekh* so much the better. If one had only horseradish leaves, they could be used for both. However, if one had some lettuce, but not enough for both *maror* and *korekh* then, it should be used for the מצות מרור.

75. See *Magen Avraham to Shulhan Arukh, Oraḥ Hayyim* 473/5, where the phrase ונתפשט המנהג is used. R. Gombiner suggests that the halakhic preferability of the leaves is implied from the language of the mishnah ויוצאין בקלה שלהן which, he claims, implies reduced halakhic desirability of the root. See commentary of *Mahazit ha-Shekel*, ad loc.

76. *Hok Ya'akov*, ad loc., ונתפשט המנהג.

77. *Ba'er Hetev*, ad loc., ונתפשט המנהג. For information regarding the authorship of the *Ba'er Hetev* see Tchernowtiz, III, pgs. 306-307.

78. See *Magen Avraham*, op. cit. He writes:

ומפני שאין העלין הרבה כל כך לכן נוטלין הקלה לכריכה מיהו אם רוצה ליטול העלין לכריכה הרשות בידו, implying that the custom had become so routine that permission had to be given for the use of the leaves for *korekh*.

79. See note 74 for the same concept applied to lettuce and horseradish.

80. Still, not all are content with the use of horseradish. R. Zevi Ashkenazi (*She'elot u'Teshuvot Hakham Zevi* n. 119, Jerusalem, 1970) bemoans the use of horseradish:

ומפני שבארצות אשכנז ופולניא שהן קרות אינו מצוי בזמן הפסח לא הורגלו לקחתו לחובת מצות מרור או מפני שלא היו בקיאים בטוב פתרון שמות הירקות כאנשי ארצות הקרובות לארץ ישראל ובכל לא ידעו מה הוא ולקחו הקרי"ן שהוא תמכא לפ"ד מקצת חכמים ונפק מיניה חורבא כי הן רבים עתה עם הארץ שאינם אוכלין אפי' כחצי זית מחמת חורפיה ושהוא מדיק באכילתו חי ותבטלים מצות מרור ואף החרדים אל דבר ה' ואוכלין כדית מהקרי"ן

Jewry relied on it at Passover time, even in areas where leafy vegetables could be obtained. In 1822, R. Moses Sofer gave increased stature to horseradish when he wrote that it may even be preferable to lettuce due to the difficulty of cleaning the lettuce leaves of insects.<sup>81</sup> The final irony may be that the modern Hebrew word for horseradish is *hazeret*, the first species of the mishnah which, according to all commentators, is lettuce!

The history of the use of horseradish for *maror* is one that parallels the travels and migrations of the Jewish people. As long as the Jews enjoyed the warm, calm climate of the Mediterranean region, lettuce and similar bitter, leafy vegetables were used at the Passover seder. Only as they moved northward and eastward was horseradish accepted as one of the permissible bitter herbs. As leafy vegetables became even less available, concomitant with the move into colder regions, a dependence on the horseradish root became inevitable.

The *maror* symbolizes not only the bitter bondage of Egypt, but also serves as a reminder of the bitter exile and the wanderings of the past and present. How fitting it is then, that the symbol of this bitterness, horseradish, is in itself a product of these selfsame wanderings. Even the celebration of the *seder* has been so affected by the Diaspora that commemorative symbols have become evidence and testimony.

מסתכנים בו כי באמת במקום שחזרת שהוא הלאטוגא סלאט שכיה כמו בערי אמשטרדם והמבורג ושאר ערי אשכנז אף שהוא עדינו קטן מאוד קורא אני על הקרי"ן סכנה ואין בו מצוה.

81. *Sefer Hatam Sofer-Helek Oraḥ Hayyim* (Vienna, 1855 repr. New York, 1968) n. 132. He also mentions that the word תמכא is an acrostic for תמיד מספרים כבוד א"ל, thereby raising its status.

#### Acknowledgement

I would like to thank the staffs of the Mendel Gottesman Library of Yeshiva University, the Jewish Theological Seminary Manuscript Room, and the New York Botanical Gardens Library and Rare Book Room. I would also like to thank Dr. R. Steiner for assistance with Arabic, Dr. Moshe Bernstein for assistance with Greek, Latin and Syriac, Mr. Tzvi Erenyi for editorial and stylistic comments, Rabbi David Strauss and Rabbi Efraim Kanarfogel for a number of productive conversations, and my wife, Naomi, for inestimable help.