THE ORTHODOX FORUM

Jewish Tradition and the Nontraditional Jew

edited by Jacob J. Schacter
Jewish Tradition and the Nontraditional Jew
Jewish Tradition and the Nontraditional Jew,

edited by Jacob J. Schacter

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To my parents
Rabbi Herschel and Pnina Schacter
whose devotion to Ahavat Yisrael,
in ways both large and small,
has profoundly influenced my life
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One of the central problems facing the contemporary American Jewish community is the progressively deteriorating relationship between the various denominations within Judaism. In claiming that it alone is best equipped to meet the challenges of twentieth-century Jewish life, each one often presents its position with a lack of regard or respect for any alternate point of view. Most problematic is the fact that this deterioration is taking place at a time when the vast majority of American Jews are not formally affiliated with any religious movement at all and are in the process of being lost to the terrible scourges of intermarriage, assimilation, apathy, and indifference.

Orthodox Jews, in particular, face a very difficult dilemma. On the one hand, they are committed to the notion that the halakhah is normative and binding not only for themselves but for all Jews. They believe that it is God's will that every member of kelal Yisrael observe Jewish law as presented in the Bible and the
Talmud, as codified in the Shulhan Arukh, and as applied to contemporary times by authoritative religious decisors or posekim. It is this belief in the centrality of halakham and in the absolute requirement to adhere to its dictates that, they believe, sets the Jews apart from the rest of the world, constituting the uniqueness and individuality of this "chosen people" among the community of nations. No deviation from this fundamental commitment on either ideological or practical grounds can be tolerated, they claim, for it would undermine and deny the very essence of a divinely revealed Judaism. Consequently, in the words of the prominent Reform Jewish theologian Eugene Borowitz,

Theologically, Orthodoxy cannot recognize the teaching of Progressive Judaism as valid. The basic, authoritative Jewish texts of Jewish law clearly classify our modernist reinterpretation of Judaism as our tradition's equivalent of heresy, apikorsat. Ideally, it can never be condoned... We cannot ask Orthodoxy to violate its own faith and accept Progressive Judaism, de jure, as a fully equivalent, if alternative, interpretation of Judaism.

And if they cannot accept any other interpretation of Judaism as valid, then clearly Orthodox Jews will have serious problems with those Jews who do accept those interpretations as legitimate expressions of Judaism and certainly with those who propagate them as a matter of religious principle and personal prerogative.

Yet, many contemporary Orthodox Jews find it very difficult to accept the practical implications of this position. The classic manner of dealing with an apikorsat—"one is required to actively destroy them and to bring them down to the nethermost pit"—and the obligation to hate the wicked (Pesahim 113b) sound very harsh

to the ears of many who are unprepared to adopt such a policy toward neighbors, co-workers and, very often, close relatives. In the minds of many Orthodox Jews, a fundamental sense of ahavat Yisrael, a basic feeling of closeness toward a fellow Jew ("a man shlokt a yid tut mir vay") and a deep rooted fealty toward that mystical unit known as kelal Yisrael strongly militate against adopting, in any practical sense, such a strict, exclusionary attitude. R. Yehiel Michiel Epstein, the nineteenth century author of the Arukh ha-Shulhan, enjoyed a warm relationship with one of the mask'ilim of his town. When asked how he could be close to a Jew who commits major violations of the Torah when the tradition mandates that we hate him, he responded, "Yes, it may be that I am obligated by law to hate him, but what can I do? I cannot hate a Jew." When the late first Chief Rabbi of Palestine, R. Avraham Yitzhak Hakohen Kook, was asked how he could love all those secular Jews who violate so much of Torah law, he replied, "Better that I err in engaging in groundless love than in groundless hatred."

But the issue goes beyond mere sentiment. Strong arguments are also made on purely halakhic grounds against the more strict, extreme position. For example, in a famous, oft quoted passage, R. Isaiah Karelitz, known as the Hazon Ish, ruled that the laws of "downing" a heretic no longer apply in a time when God's presence is not directly evident and palpable in the world. And, R. Yisrael Meir Hakohen, known as the Hafetz Hayyim, cited an opinion that the prohibition against hating another Jew (Leviticus 19:17) applies today even to a totally wicked person ("rasha gamur"). His reasoning is based on the fact that since there is no one in our times who is capable of properly rebuking him, he cannot be held responsible for his actions. While some continue to argue that halakhah today

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3Both of these stories are cited in Aharon Yaakov Greenberg, Ikrei Torah, vol. 2 (Tel Aviv: Yavneh, 1976), 325.
4Sefer Hazon Ish: Yoreh De'ah (Bruei Brak, 1962), Hilkhah Shetihah 2:16.
Preface

indeed mandates hating other Jews,6 others find such a conclusion to be indefensible and untenable.7

This volume seeks to address this issue from the perspectives of Jewish history, Jewish law (halakah), and Jewish thought (hashkafah). The first two essays present the historical background to the current situation, clearly demonstrating how the problem we face today is not a new one, and presenting some of the approaches taken in medieval and modern times to deal with it. But the historical reality of Jewish nonobservance differed greatly during these two periods. During the middle ages, nonobservance was clearly an individual phenomenon. To be sure, neglect of various positive and negative commandments could be found in the medieval Jewish community to a greater or lesser extent, but these were only isolated instances in a society which, on the whole, was committed to the observance of Torah law. In Chapter 1, Dr. Ephraim Kanarfogel deals primarily with the neglect of tefillin, tzitzit, mezuqah, the desecration of the Sabbath, sexual promiscuity, and gambling, and attempts to formulate some criteria to account for the difference in the attitude toward such religious deviance in the Ashkenazic and Sephardic communities.

The problem became much more acute with the advent of Enlightenment and Emancipation in the second half of the eighteenth century, and the conscious attack on rabbinic authority and rejection of the binding nature of halakah which developed in their wake. With the rise of the Reform movement at the beginning of the nineteenth century, deviance from halakah became institutionalized and conceptually justified, and it moved from being a minor phenomenon on the periphery of Jewish life to becoming the dominant religious expression of the vast majority of Jews. Those who still retained their allegiance to traditional Judaism found themselves vastly outnumbered and they struggled to maintain their values and beliefs, which included very definite feelings about the religious posture of all Jews, against the onslaught of modernity. It is one thing to deal with isolated cases of ignorant or religiously weak individuals within an essentially committed and traditional community; it is quite another to deal with fully developed ideologies represented by movements which rejected and claimed to supplant traditional Judaism. Dr. Judith Bleich traces the range of Orthodox reactions to the first hundred years of the Reform movement from the founding of the Hamburg Temple in 1819 through the beginning of the twentieth century.

We decided to dispense with a separate analysis of this issue in premedieval times because the ancient talmudic categories of mussar, apikorus, min, anus, tinok she-nishbah, and others are relevant today only to the extent that they have been defined and applied by medieval and modern posekim. For the purpose of formulating current policy, a focus on these two later time periods would be sufficient.

The second half of the volume deals with a number of practical legal and conceptual issues. Rabbi Yehuda Amital discusses the current obligation of individual Jews and rabbis to rebuke a coreligionist who is not observant, the halakhic problems related to kiruv (outreach), such as inviting a guest for Shabbat knowing that he or she will drive a car on that day, and the matter of permitting a minor infraction in order to prevent the committing of a greater sin. Dr. Norman Lamm addresses the nature and parameters of the obligation of ahavat Yisrael and analyzes whether one is ever obligated to hate another Jew or consider him or her to be outside the fellowship of kelal Yisrael. Rabbi Nachum L. Rabinovitch deals with the obligation and implications of kol Yisrael arevin zeh ba-zeh (all Jews are responsible for one another), the


Both the prohibition against hating Jews and the obligation to rebuke transgressors appear in the same biblical verse (Leviticus 19:17).

See, for example, David Ben-Zion Klein, "Bi-Inyan Mitzvat Sinah le-Resha'im," Ha-Maayan 18:1 (1977): 71-73.

See the articles cited in the first section of Nathaniel Helfgot’s bibliography at the end of this volume.
It is my pleasant task to express my hakarat ha-tov to those who played an important role in the publication of this volume. The papers printed here were first presented at a meeting of the Orthodox Forum, a think tank on issues facing contemporary Orthodoxy convened by Yeshiva University, which took place in New York City in May 1990, and which I chaired. I am pleased to express my thanks to Dr. Norman Lamm, President of Yeshiva University, for his overall support and encouragement of this project; to Rabbi Robert S. Hirt, Vice President for Administration and Professional Education at the Rabbi Isaac Elchanan Theological Seminary, an affiliate of Yeshiva University, for his constant involvement and dedication; and to Mr. Daniel Ehrlich of Yeshiva's Max Stern Division of Communal Services for his very competent technical assistance and helpful staff support.

I would also like to express my personal gratitude to Dr. Joel B. Wolowelsky for his general suggestions as well as his very useful assistance in helping prepare Rabbi Amital's and Rabbi Rabino-vitch's original Hebrew papers for translation into English; to Rabbi Michael Berger for providing the first draft of these translations; to Dr. Moshe Sokol and Rabbi Kenneth Hain for their valuable advice; to the other members of the Orthodox Forum Steering Committee for their helpful input; to Arthur Kurzweil, Muriel Jorgensen, and the staff of Jason Aronson Inc. for all their efforts on behalf of this work. They are responsible for the handsomeness of the volume as well as the system of transliteration utilized throughout it.

Finally, my thanks to the scholars whose work we publish here. It was a great pleasure working with these highly capable individuals, all of whom have made significant contributions to contemporary Jewish life.

I hope that this volume will be of great practical benefit to rabbis, educators, and interested laypersons as they struggle with what is surely one of the most vexing and difficult Jewish problems of our time.
In History
1

Rabbinic Attitudes toward Nonobservance in the Medieval Period

Ephraim Kanarfogel

Medieval rabbinic authorities encountered several different modes of nonobservance. Perhaps the most vexing consisted of Jews who were converted, either willingly or forcibly, to Christianity or Islam. Halakhists had to consider the intention and possible intimidation of the apostate, as well as the extent to which he or she upheld Jewish practices and beliefs after conversion. They had to rule on the apostate's status as a Jew in regard to issues ranging from divorce to the status of the wine he touched. In addition, they had to set the conditions for his possible return and to define the posture toward him to be adopted by members of the Jewish community.1

1Obviously, conversion to Islam did not pose precisely the same halakhic problems as did conversion to Christianity. See, for example, J. Katz, "Sheloshah Mishpatim Appologetiyim be-Giluleihem," in his Halakhah ve-Kabbalah (Jerusalem: Magnes, 1984), 277-90; H. Soloveit-
It would be fair to say that in both Franco-Germany and Spain, medieval halakhists attempted to keep the door wide open for those who wished to return. They stressed the ultimate Jewishness of those who had converted as a result of the Crusades or the threats of violence in late medieval Spain, and eagerly welcomed their repentance. Only those who had willfully abandoned the practice of Judaism, as a result of greed or studied rejection, were considered beyond hope. To be sure, it was necessary to protect the community from individuals or groups who flirted with the possibility of return over a long period of time only to remain entrenched in their apsotasy, while wives and families who had remained true to their Jewish faith despaired of their own personal and economic well-being. Nonetheless, medieval rabbinc leadership attempted to smooth the road back as much as possible. The re-adoption of Jewish practices and beliefs was often all that was required to remove any stigma.


5The nature and content of separate acts of repentance that may also have been required differed between Ashkenaz and Sephard. See Netanyahu, above, n. 2.
sinners (mumarim) who had not been exposed to proper rebuke or instruction had to be loved and could not be rejected.\(^6\)

The different types of nonobservance in the Middle Ages described thus far would probably characterize or mirror the vast majority of nonobservant Jews today. It would be instructive to study in detail how Rishonim dealt with mumarim, meshummadim, and tinokot she-nishbu, both in theory and in practice.\(^7\) A more significant contribution to the contemporary scene could be made, however, by studying topics such as the limits of ahavat Yisrael and the requirements of tokhahah in medieval rabbinic literature.

Since these areas have been covered in some of the other chapters in this volume,\(^8\) I should like to turn to yet another mode of nonobservance that medieval rabbinic scholarship confronted.

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Rabbinic Attitudes toward Nonobservance

This category too has relevance for contemporary religious life. Within the normative Jewish communities of medieval Europe, scholars, simple people, and sinners lived side by side. Rabbinic leaders and theoreticians had to develop strategies for dealing with common religious abuses and malfeasances that appeared within their communities. Rather than presenting a broad survey of these manifestations of nonobservance, I will describe how medieval rabbinic scholars and leaders dealt with patterns of nonobservance in three somewhat diverse areas of halakhah. I shall argue that rabbinic attitudes toward nonobservance in the medieval period were shaped, in large measure, by the religious character of the communities that they were dealing with and that they, in turn, helped to inform. The areas to be analyzed are the neglect of mitzvot asher and lo taaseh—specifically, tefillin/tzitzit/mezuzah and halikhot Shabbat; sexual promiscuity and deviation; and gambling.\(^9\)

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NONFEASANCE OF TEFILLIN, TZITZIT, AND MEZUZOT

The degree of malfeasance concerning tefillin varied. Several Ashkenazic sources focused on the fact that people had stopped wearing

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\(^9\)I have refrained from analyzing rabbinic responses to crimes such as murder and informing, which were committed in both Sefarad and Ashkenaz [see, e.g., H. J. Zimmels, Ashkenazim and Sephardim (London: Oxford University Press, 1958), 253; A. A. Neuman, The Jews in Spain, vol. 1 (Philadelphia: Jewish Publication Society, 1962), 13, 131-38] since the heinousness of these acts often merited unique punishments. I have likewise not dealt with detached Jewish communities in the late Middle Ages, such as those in Italy and Crete, whose overall level of observance lagged far behind the norm. See, e.g., M. Gudemann, Ha-Torah veha-Hayyim (Warsaw: Ahi-Assaf, 1898), 3:186-97; I. Barzilay, The Italian Enlightenment and the Jews (New York: E. J. Brill, 1965), 206-09; and M. Benayahu, R. Eliyahu Kapsali Ish Condia (Jerusalem: Tel Aviv University, 1983), 42-44, 106-17.
tefillin for the entire day, which had been the preferred practice.\(^{10}\)

The limiting of tefillin to the morning prayer service or slightly beyond was due mainly to the fear of becoming unclean or the professed inability of individuals to concentrate properly on the tefillin for a lengthy period of time. There are, however, other sources that reflect pervasive, outright neglect (i.e., that tefillin were not being worn at all).\(^{11}\) In the words of one Tosafot: “Ami’am samkhu ha-olam shelo nahanu le-khatat tefillin?” [“On what do those who do not put on phylacteries rely?”] \(^{12}\)

As the passage just cited intimates, Ashkenazic halakhists attempted to mitigate or partially justify even the more severe forms of neglect. Tosafot texts maintained that the problems concerning tefillin in their day flowed from an inherent weakness in the fulfillment of this precept that dated back to the talmudic era and even beyond. Neglect was the “fate” of this precept, whether due to the genuine need for enhanced bodily cleanliness when wearing tefillin or simply because of indolence.\(^{13}\) Moreover, the complexities and numerous opinions within hilkhot tefillin generally, and espe-

\(^{10}\)See Tosafot Berakhot 44b, s.v. ve-livnei maarava; Pesahim 113b, s.v. vee-eyin; Halakhot Ketanot le-R. Asher b. Yehiel, Hilkhot Tefillin, sec. 27.

\(^{11}\)Tosafot, Shabbat 49a, s.v. ke-Eliasha; Tosafot, Rosh ha-Shanah 17a, s.v. karkafta; Shabbotei ha-Leket, ed. S. K. Mirsky (New York: Sura Institute, 1966), 88-89. Cf. N. S. Grünspan, “Le-Korot Mitzvat Tefillin ve-Haznahatah,” Ozar Ha-Hayyim 4 (1928): 159-64, and Z. D. Grünburger’s response in Ozar Ha-Hayyim 5 (1929): 71-72. There is much evidence from the Geonic period for the neglect of tefillin. Here, too, some sources reflect outright neglect, to the extent that questioners asked whether it was yuhara to put on tefillin altogether, while others described the problem as one of degree. See Shabbotei ha-Leket, 86-87, 91; M. M. Kashner, Torah Shelemah 12:260-62, 265-66; Ozar ha-Geonim, ed. B. M. Lewin, Berakhot, 30 (no. 87), 41 (nos. 89-90); Rosh ha-Shanah, 27 (no. 17), 28 (no. 18), 29 (no. 22). Cf. Shakh, Hohen Mishpat 87:41.


\(^{13}\)See above, n. 11.

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ually the major controversy between Rashi and Rabbenu Tam (whose views were mutually exclusive), caused some to abandon the mitzvah out of ignorance, confusion, or perhaps, concern for berakhah le-vatalah. As Shabbotei ha-Leket concludes: “Mihu ikkar taam dole nahanu velo heziziku bangim [bi-tefillin] ha-olam mishum shenehleku be-hilkhatotenu Rashi ve-Rabbenu Tam. Hilkahk, lo yadinun le-me’edkad ke-hilkhetu.” [“The main reason, however, that many do not maintain the precept is due to the halakhic controversies of Rashi and Rabbenu Tam. Thus, they do not know how to properly perform it.”] \(^{14}\) Ashkenazic sources offered excuses for the poor performance by some, satisfied that the abuses were understandable and not wholly unexpected. To improve the situation, rabbinic writers stressed the importance of this mitzvah in light of its neglect, and issued halakhic compendia or handbooks devoted to it in order to clarify misunderstandings and stimulate proper performance.\(^{15}\)

A different path was taken, however, by the Tosafist R. Moses of Coucy, author of Sefer Mitzvot Gadol. R. Moses preached about the neglect of tefillin in Spain, and apparently in Ashkenazic locales as well.\(^{16}\) He did not offer any justification. Rather, in focused ser-

\(^{14}\)Shabbotei ha-Leket, 89. See also Samson b. Eliezer, Sefer Barukh She’amur (Warsaw, 1880), 2-3, citing R. Abraham of Sinzheim, a student of R. Meir of Rothenburg: Sefer Mitzvot Gadol (Venezia, 1546), aseh 22 (fol. 104b); R. Barukh of Worms, Sefer ha-Tenahah (Warsaw, 1897), 110; and Teshuvot Maharik (above, n. 12). Cf. Sefer Hasidim, ed. J. Wistinetzki (Frankfurt, 1924), sec. 1031.


\(^{16}\)Rabbi Moses of Coucy, Sefer Mitzvot Gadol, aseh 3: “Kakh darasheti mitzvah zu be-galuyt Yisrael le-hokhiah be-khokhiah ve-ehad hayayy bi-tefillin u-ve-netzikut.” At the end of this passage, R. Moses noted that he was able to convince thousands of Jews in Spain to accept these precepts (as well as tizit) while preaching there during the year 1236. “Ve-khek benishet le-aretz hayiti ahar kakh ve-netkhalu dvarav...” Other descriptions of the locales in which he preached refer specifically to lands other than
mons and words of rebuke, he forcefully urged the fulfillment of the mitzvah in practice. R. Moses' presentations regarding tefillin (and mezuzah as well) were occasioned by an additional impetus for neglect that was more troubling than those mentioned above. A number of normative and nonnormative commentaries and texts could be read or misunderstood as maintaining that tefillin represented a metaphysical concept rather than a ritual requirement. This (mis)reading made an impression in Ashkenaz, but it was far more prevalent in medieval Spain and Provence where the tenets of philosophical rationalism were openly taught. No matter what his source may have been, R. Moses was undoubtedly aware of it.18

Other rabbinic figures in Spain also reacted to the neglect of tefillin. Another well-known preacher, Rabbenu Yonah of Gerona, stressed the importance of this precept as well as the consequences of its neglect, and suggested that individuals press each other to fulfill it. Spanish kabbalistic works with an eye toward socioreligious critique, such as the Rabba Mehemna, identified ammei ha-aretz as "wicked people, unmarked by symbols of purity, who do not have tefillin on their head and arm.... "20 Sefer ha-Rimmon censured those who suggested that it was more effective to verbally remember the Creator than to wear tefillin.21

Spanish and Provençal sources noted that the custom to place ashes on the bridegroom's head, in the place which normally was the site of the tefillin shel rosh, had been abandoned in their areas due to the fact that many did not wear tefillin.22 Yosef ben Zabara described at least one region in Provence in which tefillin and mezuzot were totally absent. In their place, the populace apparently substituted some form of divination that allegedly guided their actions.23

20 See the citations in Y. Tishby, Mishnat ha-Zohar, vol. 2 (Jerusalem: Mossad Bialik, 1961), 685-86.
22 See Sefer Ha-Mehkhtam in Ginzie Rishonim le-Massekhet Taanit, ed. M. Hersher (Jerusalem, 1963), 278-79; Sefer Avaraham ha-Shalem, 361-62; Menahem Ibn Zerah, Tzedah la-Derekh 3:21; See Yosef to Even ha-Ezer 65, s.v. uve-tohk ha-simah. See also Bahya b. Asher, Kad ha-Kemah in Kitvei Rabbenu Bahya, ed. C. Chavel (Jerusalem, 1970), 444-45; She'elot u-TeshuvotMaharam b. Barukh (Lemberg, 1860), no. 223; and Sefer ha-Eshkol, ed. A. Auerbach, 2:90.
23 See Yosef b. Zabara, Sefer Sha'ashuim, ed. I. Davidson (Berlin, 1925), 142. See also Jacob of Marvège, She'elot u-Teshuvot min ha-Shamayim, ed. R. Margoliyot (Jerusalem: Mossad ha-Rav Kook), no. 26, 63-64 on the Provençal origin of the author, see now I. Ta-Shema, "She'elot u-Teshuvot..."
Justifications were also offered by Ashkenazic halakhists for the many who did not don tzitzit. In response to a query from his son-in-law, R. Uri ("May shehna de-mekillin bah rov Yisrael she-ein mit'atfin bah bekhol yom"), Raban noted that tzitzit were required only if one wore a four-cornered garment.24 Tosafists recommended that one purposely wear a four-cornered garment (tallit), which would afford the wearer the opportunity to fulfill the precept of tzitzit.25 It was apparent, however, that not everyone could or did purchase a tallit. Indeed, Tosafot formulations supported the Ashkenazic burial custom in which the tallit that the deceased was wrapped in had its tzitzit invalidated or removed. In their view, burying someone who had never fulfilled the precept of tzitzit during his lifetime constituted lo'eg la-rash, just as burying someone in invalid tzitzit had been considered lo'eg la-rash in the talmudic period.26

The absence of tzitzit in their day was attributed by some Tosafot texts to a change in clothing style. Four-cornered garments were no longer part of one's usual dress, as they were assumed to have been


24Sefer Raban, ed. S. Z. Ehrenreich, sec. 40 (fol. 30c).
26See, e.g., Tosafot Berakhot 18b, s.v. le-mahar; Shabbat 32b, s.v. ba-avon tzitzit; Baba Batra 74a, s.v. piskei huda karna; Avodah Zarah 65b, s.v. aval osin oto; Niddah 61b, s.v. aval osin oton.

in the talmudic period.27 Other texts, however, identified the nonfeasance with religious laxity.28 A formulation from the mid-thirteenth century asked, "So what if they will be embarrassed [at the time of burial]? They have denigrated the precept of tzitzit in their lifetime."29 In any event, burial in a valid tallit was reserved only for singular scholars, thereby sparing those who did not wear tzitzit from the problem of lo'eg la-rash.30

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27Tosafot R. Yehudah mi-Paris (above, n. 25); Tosafot Berakhot, Shabbat, Baba Batra in the above note; Tosafot, Arakhin 2b, s.v. ha-kol hayayvin be-tzitzit.
28Tosafot Avodah Zarah, Niddah (above, n. 26).
30See E. E. Urbach, Baalei ha-Tosafot 1:271. The distinctive tallitot, or fringed garments, worn by the German Pietists all day (in addition to their teffillin) were probably intended, among other reasons, to visibly remind the Ashkenazic communities of the importance of tzitzit. Cf. H. Soloveitchik, "Three Themes in the Sefer Hasidim," AJY Review 1 (1976): 329; I. Marcus, Piety and Society (Leiden: E. J. Brill, 1981), 98-99. It is possible that the tallit katan, which received approbation in Ashkenazic rabbinic literature of the late thirteenth century, was intended to address the tzitzit problem. See Teshuvot R. Hayyim Or Zarua (Leipzig, 1860), no. 4, and the practices of R. Meir of Rothenburg recorded in Sefer ha-Agr, ed. M. Herscher (Jerusalem: Pe'er, 1960), 21, secs. 28-29. Cf. Sefer Mordekhai, Halakhot Ketanot, sec. 943, Sefer Or Zarua (above, n. 29), and Sefer ha-Agr, sec. 26.

In the fifteenth century, however, those who wore the tallit katan outside or over their garments were considered to be exhibiting yuhara. See Teshuvot R. Ishra Bruna, no. 96, and cf. Magen Avraham, Orah Hayyim 8:13. Interestingly, R. Meir of Rothenburg's student, and possibly R. Meir himself, was prepared to allow women to wear tzitzit (a tallit?) and pronounce the blessing over them. Maharil, however, considered this yuhara. See the sources and discussion in Y. Dinari, Hakhmei Ashkenaz bi-Shi'hei Yemei ha-Benayim (Jerusalem: Mosad Bialik, 1984), 32-33. See also 215-16; cf. Semag, aseh 26.
Regarding the neglect of mezuzot, the rabbinic posture even in Ashkenaz tended more toward deep concern and less toward proposing possible justifications. Rabbenu Tam noted that “less than ten years have passed since there were no mezuzot in our entire realm.”31 R. Meir of Rothenburg added that “had they known how salutary mezuzah is for them, perhaps they would not have transgressed.”32 Perhaps the allegorical interpretation of mezuzah had gained currency in Ashkenaz. Nevertheless, Maharam implicitly (and Maharil explicitly) suggested that questions and halakhic debates about which rooms and structures required mezuzot may have again played a role in the absence of mezuzot in Ashkenaz.34

NONOBSERVANCE OF THE SABBATH

Outright desecration of the Sabbath was not tolerated within any medieval Jewish community. Transgression of a mitzvah lo taaseh, and a severe one at that, could not be viewed in the same manner as the neglect of a mitzvah asher. A comprehensive comparison of Sabbath observance is beyond the scope of this study. Nonetheless, we can readily discern a significant policy difference between Ashkenaz and Sephard in regard to the violation of rabbinic or other lesser prohibitions on the Sabbath that were usually related to personal or business needs. Rabbenu Gershom was asked about the appropriate punishment for one who agreed upon the price of a horse and also took possession of it on Shabbat. He ruled that the appropriate punishment was lashes. In addition, if the place where

this occurred was felt to be lax in regard to Sabbath observance, the rabbinical court should exercise its right to give additional lashes or punishments (bet din makin ve-onshin shelmo min ha-Torah... laasot seyag la-Torah).35

R. Isaac Or Zarua witnessed Rabiah administering lashes to those who ate bread that was baked by a non-Jew on the Sabbath, even though there was some debate in medieval Ashkenaz about what food a non-Jew could prepare for a Jew.36 An Ashkenazic responsa from the eleventh century recorded the case of a boat with Jews on it that landed in a particular locale on the Sabbath. The local Jews boarded the boat and ate from the food of the Jews on the boat that had obviously been brought from afar on the Sabbath. Unnamed legal decisors forbade this action “but did not administer lashes since it was unintentional (shogegin hayu).” Had the transgression been purposeful, it would not have been more than an issur sheut, which apparently would have warranted lashes nevertheless.37

Shibbolei ha-Leket records the case of merchants whose wagon had broken down outside a town on erev Shabbat.38 Their goods were being transported by hired non-Jewish workers as well as by Jews, and most of them reached the town before the Sabbath. The owners remained with the broken wagon until it was fixed (by non-Jews?), arriving in the community when the kahal was already leaving the synagogue on the Sabbath eve. None of the community members extended even a word of greeting. The merchants were not permitted to enter the synagogue the next morning, lest others sense that their actions were appropriate and be led to violate the Sabbath willfully. On Sunday, the community (communal court)

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31R. Tam, cited in She’elot u-Teshuot R. Meir mi-Rothenburg (Cremona, 1557), no. 108.
32Ibid. Cf. E. E. Urbach, Baulei ha-Tosafot 1:82.
34See Maharil (above, n. 31) and Teshuot Maharil, no. 94. Cf. Dinari, Hakhmei Ashkenaz, op. cit., 32, 217; I. Ta-Shema (above, n. 15).
35Teshuot Rabbenu Gershon Me’or Ha-Golah, ed. S. Eidelberg (New York: Yeshiva University, 1955), no. 9, 63–64.
36Sefer Or Zarua, sec. 358 (150, end). See also below, n. 42; cf. Otzar ha-Gemolim, Shabbat, 114–15.
rendered its judgment, which included lashes and a fifty-day period of fasts, in addition to heavy charity donations. A second wave of fasting, for three days a month for an entire year, was also imposed. The text concludes that "if, God forbid, this had been done purposefully," they would have been even more stringent and imposed additional restrictions, including a severe ban for thirty days.39

Geonic literature mandated corporal punishment for hillul Shabbat, even in regard to dinim de-rabbanan.30 This approach, however, was adopted only in Ashkenaz.41 While lashes were administered in Spain for a number of serious crimes, there is no report of lashes for any form of hillul Shabbat.42 Even more surprising is the fact that

39 The twelfth-century Tosafist R. Hayyim Kohen called upon communal religious leaders (shofei Yisrael) to be more aggressive in curtailing violations that involved amira la-aksum. See J. Katz, Goy shel Shabbat, 55.
40 See the text in S. Assaf, Ha-Onshin Aharei Hatmitin ha-Talmud (Jerusalem: Ha-Poel Ha-Tzair, 1922), nos. 20, 26, 34. See also J. Mann, “The Response of the Babylonian Geonim as a Source of Jewish History,” Jewish Quarterly Review 10 (1919-20): 342-45, 354-55.
42 S. Assaf records instances of malkat being administered for various crimes in Sefarad (Ha-Onshin, op. cit., 61-63, 70-71), but none were for cases of hillul Shabbat. See also Mafteah ha-Sh’elot u-Teshuvot shel HaKhammi Sefarad (above, n. 7) 1:166-67; 2:84-85, 104-05. Cf. Judah b. Barzillai, Sefer ha-Iltim (Cracow, 1903), sec. 30, 46-47. For the more restrained reaction in Spain to cases similar to that of Rabiah (above, n. 36), see Rashba, Responsa 1:709, 808. There is evidence for issurei shavot being punished in Spain by monetary fine. See Y. Baer, History of the Jews in Christian Spain 1:234-35. [On severe abuses of Sabbath observance in medieval Spain, see Shrock, Rabbi Jonah, 126-27; C. Horowitz, The Jewish Sermon in 14th Century Spain, 47-48; Judah b. Asher, Zikkron Yehudah (Berlin, 1846), no. 91 (fol. 44a-b).] Of course, as J. Katz has noted [Goy shel Shabbat, 56], not all Tosafists would have agreed with the position taken by Rabiah. What

Ashkenazic halakhists, who proposed suggestions for circumventing certain rabbinic prohibitions, responded so harshly when an issur de-rabbanan was violated. Spanish halakhists, on the other hand, were less creative in terms of heterim, but also less vigorous in the punishment of deviations.43

**SEXUAL PROMISCUITY**

Sexual promiscuity and even adultery were never absent from any region in the medieval Jewish world. The rabbinic reactions in Ashkenaz and Sefarad, however, reflected different patterns of abuse. Jewish men commonly kept Jewish and non-Jewish concubines in Moslem Spain and later in Christian Spain.44 The challenges that these relationships posed to the rabbinic leadership were complex. Prolonged affairs, even with Gentile women, were religiously and morally reprehensible. At the same time, the widespread nature of these relationships, and the presence of even more

43 All of the attempts to reconcile halakhic guidelines with actual practices in medieval Europe that were analyzed by Prof. Katz in his Goy shel Shabbat emanated from Ashkenaz. See Goy shel Shabbat, 36, 167-72, 175-80. This pattern was also noted by Prof. Katz in regard to setting the time for minhag ma’ariv. See his “Ma’ariv bi-Zemano U-Shelo bi-Zemano—Dugma le-Zikhah ben Minhag, Halakhat, ve-He’vrah,” Zion 35 (1970): 35-60. In regard to pawnbroking, see H. Soloveitchik, Halakhah, Kalkalah ve-Dimmui Atzmi (Jerusalem: Magnes, 1985), 111-14, 118-19. See also his “Religious Law and Change: The Medieval Jewish Experience,” AJES Review 6 (1987): 205-22.
44 Perhaps due to their proliferation, Jewish and non-Jewish pilagshim were sometimes referred to interchangeably in medieval Sefardic rabbinic literature, despite the different halakhic problems engendered by each type. See, e.g., M. A. Friedman, Ribbu Nashim be-Yisrael (Jerusalem: Tel Aviv University, 1986), 296-98, and below, n. 50.
objectionable possibilities (i.e., relations with married Jewish women) also had to be considered.

R. Moses of Coucy preached at length in Spain during 1236 about the sinfulness of sexual relations with Gentile women. His audiences responded by "sending away many women (hotzu' u nashim rabbot)." Rashba roundly condemned the actions of one man who had bought a maidservant to live with him and his Jewish wife following the birth of their daughter. After the maid conceived, the husband had her converted (as a shifhah kena'ahit), and subsequently had yet another child with her, all to the chagrin and humiliation of his first wife and child. Rashba recommended to his questioner, a communal (rabbinic) leader, that the community in some way limit this practice and reconcile the husband with the first wife, lest others begin to deal flippantly with Jewish women. A herem was issued in Toledo in 1281 against sexual promiscuity in general, and the keeping of non-Jewish concubines in particular. Those who did not abide by the ban were threatened by R. Todros ben Yosef ha-Levi Abulafia with severe punishment. Nonetheless, many who had vowed to honor the ban could not restrain themselves and either openly flouted the ban or attempted to circumvent it. Rashba advised the rabbinical leadership in Toledo to proceed cautiously and gradually in eliminating communal vices. "Patience and consensus will cause the masses to return to the proper path." For individuals, however, whose evil nature was well known, and who persisted in flouting the law, all forms of corporal punishment were to be considered.

Specifically in regard to concubinage, Rashba was asked to deal with the situation of one man who had acquired a Moslem concubine and had then converted her to Judaism and married her without giving her a ketubah. He claimed that he was exempt from the herem, which required the sending away of Moslem concubines (as well as single Jewish sexual partners) in the absence of a valid marriage with ketubah, because he was now legally married to this woman and had, in any event, announced in the presence of witnesses that he did not accept the herem.

Rashba responded that this individual was clearly in violation of the Toledo herem, which was promulgated to promote Torah observance and eliminate sinful behavior. He had no right to exclude himself unilaterally from such a herem. Inter alia, however, Rashba noted that while the behavior of the individual in converting and marrying the woman could not have been sanctioned a priori, she could have remained with him as a pilegsh had it not been for the Toledo herem. Given the gravity of the situation, and his sense that more moderate means had to be found to persuade people to change, Rashba considered a bona fide pilegsh relationship preferable to cohabitation with a non-Jewish woman and would have been willing to allow this relationship.

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43Sefer Mitzvot Gadol, lo taaseh 112 (end). See also the letter of Ramban to his son concerning non-Jewish women, below, n. 54.
44Rashba, Responsa 1:1205. See S. Z. Havlin (below, n. 50), 237-40.
47Rashba, Responsa 5:242.
48Rashba's major concern in this case, as in the responsum discussed above (n. 46), was how the presence and treatment of a pilegsh might negatively affect the structure and integrity of the family. The pilegsh relationship per se was never criticized. In responsum 4:314, however, Rashba writes, "I do not wish to show that it is permitted to marry a Jewish girl as a pilegsh, especially over and above his lawfully married Jewish wife." Perhaps the backing away from pilegsh in this situation was due to the fact that the husband in question had made a Jewess by birth (as opposed to a Moslem woman) into a pilegsh in order to damage his
There can be little doubt that these kinds of considerations were a factor in the famous responsum of Ramban on the applicability and permissibility of pilagshut. In writing to Rabbenu Yonah, Ramban held that pilagshut could be sanctioned within Jewish society at large, provided that the halakhic conventions designed to ensure that the relationship would not be a promiscuous one (e.g., that she be me-yuhedet to) were observed. At the very end of his responsum, however, Ramban adds a postscript: “And you, our teacher may God keep you, in your locale warn them from [taking a] pilegsh – because if they know that it is permitted, they will act wantonly and have relations with them even when they are in a state of niddah.”

This responsum has been understood by some to mean that Ramban approved of pilagshut in theory only. Others have argued that the content of the body of the responsum strongly suggests relationship with his wife. Given these particular circumstances, pilagshut became an unacceptable option. This responsum also cites Rambam’s negative view of pilagshut, which is not found in any of Rashba’s other responsa on this topic. The heavy reliance upon Rambam alone in formulating the ruling, as well as other stylistic anomalies, has led S. Z. Havlin to question the attribution of this responsum to Rashba. As we have seen, Havlin’s skepticism is rewarded if the contents of the other responsa of Rashba concerning pilagshut are taken into account. See S. Z. Havlin, “Takkanot Rabbenu Gershom Me’or ha-Golah be-Inyanei Ishut bi-Tehumei Sefarad u-Provence,” Shenaton ha-Mishpat ha-Ivri 2 (1975): 209, 212, 237. Cf. Y. Baer, History of the Jews in Christian Spain 1:254–56 (and 434–36, n. 13) and E. G. Ellinon, Nissuin shel ke-Dat Moshe ve-Yisrael (Tel Aviv, 1975), 55–57. See also Rashba, Responsa 1:610, 628, 1187, 1249–50.


In light of the common attitudes toward selecting sexual partners in medieval Spain, I believe that Ramban should be included among those who were prepared to accept properly monitored pilagshut as an alternative to random promiscuity. He did not want it to be suggested publicly because of the pitfalls that were inherent in it, but he made it available nevertheless, either to cover those who had already gotten involved or to accommodate those who were involved in less halakhically acceptable relationships. It must be recalled that Ramban felt it necessary to warn his son, who was at the Castilian court, of the grave sins incurred by engaging in sexual relations with non-Jewish women.

Nahmanides’ position becomes clearer if we compare his formulation with a responsum of R. Asher b. Yehiel. Rosh was asked if the family of a man who was having relations with a single Jewish woman, a servant in their home, may demand that the girl be ejected since the fact that she is his pilegsh is an embarrassment to them. Rosh responded that the rabbinical court should force him to remove her from the home since “it is well-known that she is embarrassed to immerse herself and he is thereby having relations with a niddah.” Rosh is much more strident than Ramban in expressing his concern about the possible violation of hilkhot niddah, but that may perhaps be explained by the fact that he was

53See Ellinon, Nissuin shel ke-Dat, 72–79; R. Yaakov Emden, She’elot Yavetz, vol. 2, no. 15. See also the responsa of Ramban in Sifran shel Rishonim, ed. S. Assaf, 56, no. 1.

54See Kitvei ha-Ramban, 369–70. See also Zohar 2:3a–b (and Y. Baer, History of the Jews in Christian Spain, 4:417 n. 19; Zohar 2:87b; Raaya Mehmna 4:124b–125a; C. Horowitz, The Jewish Sermon in 14th Century Spain, 45–47.

5She’elot u-Teshuvot le-R. Asher b. Yehiel (reprinted Jerusalem, 1971), 32:13. The questioner had noted that “in this land [=Spain], men were often alone [le-hiyshad] with single women [who served] in their homes.” Cf. Teshuvot ha-Rosh 32:16, 54:8; Teshuvot ha-Ritva, ed. Y. Kafah (Jerusalem: Mossad ha-Rav Kook, 1959), no. 68.
responding to a specific case in which a disruption in the lives of the family members was in fact occurring. Even Rosh leaves open, albeit to a lesser extent than Ramban, the possibility that if the laws of niddah were observed, the pilegesh option could be considered.  

R. Nissim Gerondi also countenanced pilegesh.  

As the formulations of Ran, Rashba, and Ramban indicate, the fact that a pilegesh was required to have the status of meyuhedet lo made this option preferable to the alternatives, since the possibilities of more objectionable sexual unions were thereby diminished. This notion was found most explicitly in the writings of R. Menahem Ibn Zerah who, noting that “many people in this land [Spain] take concubines,” openly approved of these relationships and sought to insure that they would, in fact, minimize promiscuity.
had to view sexual transgressions not merely with regard to the individuals involved but to their larger implications as well.

At no time in the High Middle Ages were there waves of sexual violations in Ashkenaz.61 Illicit sexual encounters were considered in Ashkenazic rabbinic literature as lapses on the part of individuals rather than as a larger societal problem. It should be noted that R. Moses of Coucy's major addresses on the evils of sexual relations with non-Jews were delivered exclusively in Spain.62 Only in the

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62 R. Moses addressed an introductory passage that he subsequently included in his Sefer Mitzvot Gadol, "le-galat Yerushalayim ve-li'she'ar galuyot Edom," meaning Spain as well as other areas (countries) in Christian Europe. See the end of his introduction to the mitzvot aseh. So, too, his introduction to the negative commandments notes that he had occasion to preach widely: "She-asabev ba-arat zekhut le-hokhiah galuyot Yisrael." His preachings concerning tefillin were offered "be-galuyot Yisrael." These words then made an impact "bi-Sefarad [during his mission there in 1236; see above, n. 16]... ve-khen bi-she'ar aratzot" [aseh 3]. His exhortations concerning the need for increased Torah study were also "le-galuyot Yisrael" [aseh 16]. The need for Jews to deal honestly with fellow Jews and Gentiles alike, owing to the length and severity of the exile, was preached by R. Moses "le-galat Yerushalayim asher bi-Sefarad ve-li'she'ar galuyot Edom" [aseh 74]. On the other hand, his preaching concerning yein nesekh was rendered only in Sefarad [lo taaseh 148], where there was a problem that did not exist in Ashkenaz [cf. H. Soloveitchik, "Religious Law and Change" (above, n. 43), 218] as was his advice concerning the construction of mikvatot [aseh 248]. R. Moses' detailed assessment of the evils entailed in sexual relations with non-Jewish women was made repeatedly, but only in Spain: "Ve-he'eravki bi-derashot ka-elu be-galat Yerushalayim asher bi-Sefarad ve-hotzi'v nashim nakhrigyon rabbit bishnay 996 (= 1236 CE)..." [lo taaseh 112]. R. Moses' designation of particular derashot for each area appears to be quite precise. General remarks, standard problem areas (Torah study, honesty), and widespread problems such as tefillin were

fifteenth century did German and Austrian rabbinic scholars (such as R. Israel Isserlein) begin to preach publicly against these sexual liaisons.63

On the other hand, the penitential literature of the German Pietists is replete with penances for those who had engaged in sexual relations with non-Jewish women, and for more severe indiscretions as well.64 To be sure, given the hypersensitivity of Hasidim to transgression,65 the use of this literature as a historical

addressed to all locales that he covered. Problems endemic to Spain (yein nesekh, proper mikvat [see above, n. 58]), as well as sexual relations with non-Jews, were spoken about only in Spanish communities. Cf. J. Katz, Ben Yehudim le-Goyim, 106–07.

63 See S. Eidelberg, Jewish Life in Austria in the XVTh Century (Philadelphia: Dropsie College, 1962), 84–86. On the increase in sexual crimes in late medieval Ashkenaz, see also Dinari, Yuval, and Rosensweig, above, n. 61. In the second half of the fifteenth century, R. Judah Mintz of Padua, [She'elot u-Teshuvot (Cracow, 1882), no. 5] noted that R. Jehuda ha-Nasi, who approved the presence of prostitutes as a means of preventing men from committing adultery with married women. Cf. above, n. 59. R. Judah Mintz did not himself condone this policy, but could do nothing to dislodge it. Cf. Maharam Padua, Responsa, no. 19; and R. Shalomoh Luria, Yam shel Sholomoh, Ye'amo 2:11.

64 See I. Marcus, "Hasidim Ashkenaz Private Penitentials," Studies in Jewish Mysticism, ed. J. Dan and F. Talmage (Cambridge: Association for Jewish Studies, 1982), 57–83; idem, "Hibburei ha-Teshuvah shel Hasidei Ashkenaz," Mehekarim be-Kabalah, be-Filosofiah Yehudit, u-be-Sifrut ha-Musar ve-he-Hagat (Mudkhamim li-Yeshuvot Tishby) (Jerusalem: Magnes, 1986), 369–84; idem, Piety and Society, 42–52, 79. In addition to the so-called sage-penitentials and private penitentials, Marcus has noted the existence of "responsa" authored by R. Yehudah ha-Hasid to queries about which penances should be prescribed for particular sins. Even if these texts were inspired by actual questions, and were not merely a literary device, there is no evidence to suggest that the questions came from outside the small circle of the German Pietists.

source requires caution. In any event, the penances themselves were meant to be utilized by wayward individuals and represented, quite obviously, the antithesis of accommodation.

The prominent place given to sexual transgressions in the penitential, and the frequency with which they were mentioned, probably meant that the German Pietists believed there was cause for serious concern in Ashkenaz. The Pietists were not merely attempting to cover different theoretical possibilities, as was perhaps the case regarding penances for yom nesekh; see H. Soloveitchik, above n. 62. Still, the issue requires further study. Shaving with a razor, which became a problem in a number of European communities during the modern period [see, e.g., Teshuot R. Akiva Eiger, vol. 1, no. 96; R. Samson Morpurgo, Shemesh Tzaddakah no. 61; and R. Ovadyah Yosef, Yehaveh Daat, vol. 2, no. 16], does not appear to have been prevalent in medieval Ashkenaz. See, e.g., Sefer Rabbah (Teshuot), ed. D. Debiltsky (Bnei Brak, 1989), sec. 947 (123–25), and Shibolet ha-Leket, ed. Y. Hasidah, vol. 2 (Jerusalem, 1989). Yet, this prohibition leads off a category of penances in R. Eleazar Rokeah’s Hilkhot Teshuva [see I. Marcus, “Private Penitentials,” above, n. 64], and its practitioners were censured by R. Eleazar in his Sodei Razayya. See Nathan Nata Spira, Megalleh Amnukot (Lemberg, 1882), fol. 39b (Leviticus 19:2); Sefer Hasidim, ed. Wistinetzki, sec. 1664. [Note that the exempla sections, which constitute a significant part of Sefer Hasidim, refer only sparsely to manifestations of sexual promiscuity. See H. Soloveitchik (above note), 330–35; I. Marcus, Piyyut and Society, 59–65; and Y. Baer, “Ha-Megammah ha-Datit ha-Hevravit shel Sefer Hasidim,” Zion 3 (1937): 42 n. 56.] In consonance with their disdain for many aspects of the intellectual and communal leadership in Ashkenaz, the German Pietists may have taken a harsher view toward (potential) nonobservance in Ashkenaz than did normative (non-Pietist) halakhists. Cf. ms. Vatican Ebr. 183, fol. 17v, and below, n. 84. We have seen the strong position taken by Spanish Kabbalists against sinners in their realm. See above, nn. 20–21, 54.

Note that both R. Moshe mi-Coucy and R. Yonah Gerondi, the two major Rishonim who actually functioned as public mokhkim, had affinities for Hasidut Ashkenaz. [See I. Ta-Shema, “HaSidut Ashkenaz bi-Sefarad: Rabbenu Yonah Gerondi—ha-Ish u-Fo’alo,” Gadut Ahar Golah (Mehkarim

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GAMBLING

A final area of religious malfeasance that we shall note was the proliferation of gambling. Gambling was permitted, based on a cogent reading of the relevant talmudic sources, provided that it was not the gambler’s sole source of livelihood and that the money being wagered was clearly acknowledged by all participants. It is therefore unlikely that the many Rishonim who ruled that gambling was permissible did so because of external considerations per se. Those who ruled that even casual gambling was improper could have reached this conclusion on the basis of an alternative analysis of the underlying Talmudic sources. Sometimes, however, a

Muggashim Li-Prof. Hayyim Beinart), ed. A. Mirsky et al. (Jerusalem, 1988), 165–73, and the literature cited in nn. 19–20; My Jewish Education and Society in the High Middle Ages (Detroit: Wayne State University Press, 1992), 74–79; and cf. C. Horowitz, The Jewish Sermon in the 14th Century, 25–26.) It is therefore not surprising that both were against pilagshut in Spain (above, nn. 45, 51), and that R. Moses was not prepared to justify the neglect of mitzvot asah in Ashkenaz as other Tosafists were (above, n. 16).

S. Z. Havlin (above, n. 50), 205–13, has demonstrated that Jewish communal policy in Christian Spain was conducted in accordance with the Takkasah Rabbenu Gereshom prohibiting polygamy, of which Spanish Jewry was aware, although the force of this policy was independent custom rather than the takkansah itself. A less formal policy in this matter could undoubtedly have facilitated the allowance of pilagshut. Cf. Y. T. Assis, “Herem de-Rabbenu Gereshom ve-Nisu’ei Kefel bi-Sefarad,” Zion 46 (1981): 251–77. It should be noted, however, that Ashkenazic halakhists made no attempt to bypass the takkanah. Moreover, they did not consider permitting pilagshut even for unmarried men. Cf. Yarm shel Shelomoh (above, n. 63).

See Sefer Mordekhai le-Massechet Sanhedrin, sec. 689–91; Mishneh Torah, Hilkhot Eduot 10:4, and Haggahot Maimoniyot, ad loc. (sec. 5); Tosefat R. Asher b. Yehiel le-Massechet Sanhedrin 3:3; Tosafot, Ervin 82a, s.v. amar R. Yehudah.
Rishon does intimate in the course of a ruling or responsum that his negative ruling was occasioned by the fact that gambling had gotten out of hand or had become a potentially dangerous activity.69

The excessive gambling that appeared throughout the Jewish communities of Christian Europe spawned different types of reactions. Several Ashkenazic communities, including the joint Kehillot Shum, enacted legislation or passed restrictions designed either to curtail gambling by limiting it to certain holidays and nonmonetary forms, or to stop their members from gambling entirely.70 In Spain, where the domestic and economic stresses that excessive gambling created were described in a number of responsa, the gamblers were excluded from participation in communal affairs and even given lashes.71

For their part, individuals who were trapped by this vice often took oaths promising that they would stop gambling. But the gambler frequently could not keep his oath and asked for a rabbinic release from it. A passage in the Talmud Yerushalmi proscribed release from an oath in circumstances where the one who had taken the oath could then continue to do something that was prohibited according to rabbinic law.72 The applicability of this principle to gamblers' oaths was initially a matter of Talmudic interpretation. Ultimately, however, the possibility of temporal concerns playing a

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69 See, e.g., the responsum of R. Yosef Tob EIm in Haggahot Mordekhai le-Massekhet Sanhedrin, 722-23.

70 See L. Finkelstein, Jewish Self Government in the Middle Ages (reprinted New York: Jewish Theological Seminary, 1964), 60, 228, 242; Sefer Mordekhai le-Massekhet Sanhedrin, sec. 695, and cf. Sefer Rabin, ed. S. Z. Ehrenreich, fol. 224a. See also Tosafot, Erwein 104a, s.v. hakki garis, and Sefer Mitzvat Gadoel, lo ta'aseh 65 (fol. 22a).


role in a Rishon's ruling becomes more likely.73 Some of the halakhists who concluded that the vow could be nullified were inclined to do so because it was very difficult for people to control their urge to gamble. Indeed, even Ashkenazic halakhists were prepared to accommodate the inveterate gamblers by allowing them to be released from their ill-fated vows. The Tosafist R. Tuvyah of Vienne ruled: “Now, in this era, the vow of [abstention from gambling] should be nullified, for it is almost an involuntary act, since they cannot control themselves.”74 R. Samuel of Evreux wrote that “if it is certain that [the gambler] will not be able to restrain himself and will violate his oath, it is better to release him from it.”75

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73 See Rashba, Responsa 1:755, 3:305; 7:4, 537; Meyahot la-Ramban, nos. 252, 286; Rosh, Responsa 12:5-6; Zikhron Yehudah, no. 71; Rosh, Responsa, no. 51.


75 See Sefer Orhot Hayyim le-R. Aharon ha-Kohen mi-Lunel, ed. M. Schlesinger, vol. 3 (Berlin, 1899), 495; Mordekhai Shavuot, 787; and L. Landman, “Jewish Attitudes Toward Gambling: The Professional and Compulsive Gambler,” Jewish Quarterly Review 57 (1967): 302. The Mordekhai text reports that some boors (rekim) would wager their own bodies and then have to be redeemed. R. Meir of Rothenburg was prepared to nullify all vows taken by nonprofessional gamblers. See R. Meir b. Barukh me-Rothenburg, Teshuva, Pesakim u-Minhagim, ed. I. Z. Kahana, vol. 2 (Jerusalem: Mossad ha-Rav Kook 1960), 247-48, sec. 178-79. Nonprofessional gambling, however, was technically not included in the proscribed category of meshekh be-kutsya. Maharam's responsa also reveal the practice of some gamblers to vow that if they continued to gamble, they would give sums of money to charity. See Cremona, nos. 299-300; Lemberg, nos. 211-12; Prague, nos. 493, 500. [Note the harsh stance of Sefer Hasidim toward those who gambled (ed. Wistinetski, sec. 853, 1236).] For the deteriorating situation in late medieval Ashkenaz, see S. Eidelberg (above, n. 63), 83-84, and B. Rosensweig (above, n. 61), 34. Cf. Teshuvot ha-Rama (above note), 439-41.
COMMUNITY, HALAKHIC PROCESS, AND DECISOR

When evaluating the data that has been gathered in order to ascertain rabbinic attitudes toward nonobservance, we ought not succumb to temptation and conclude simply that medieval Ashkenazic society was more observant than Hispano-Jewish society. It is true that Spanish society alone had a courtier class, whose lifestyle was especially conducive to religious malfeasance, and that the scholarly class in Spain was smaller and more detached from the rest of the population compared to its Ashkenazic counterpart. In addition, the role that the study of philosophy played in undermining religious observance must also be considered. At the same time, Ashkenazic society was far from utopian. The heinous crimes of murder, informing, and adultery were not unknown there. Many Ashkenazic Jews who under difficult circumstances were challenged to accept Christianity did not choose martyrdom. Contrary to a popular misconception, many Ashkenazic Jews were not scholars and, as we have seen, many had difficulty in fulfilling

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76See C. Horowitz, The Jewish Sermon in 14th Century Spain, 41-49.
79See above nn. 9, 61, 63.
80See H. Soloveitchik, "Religious Law and Change" (above, n. 43), 214-16.

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Rabbinic Attitudes toward Nonobservance

some of the most basic religious precepts. Clearly, a more nuanced interpretation of the data is called for.

Medieval Ashkenazic society, due to its relatively insular nature, had a high level of what Jacob Katz has termed kefifah la-samkhut. Laymen in Ashkenaz were likely to follow what was prescribed by rabbinic decisors. As a result, Tosafists felt free to apply their dialectical methodology to categories such as goy Shel Shabbat, and develop patterns of leniency that were often beneficial to Ashkenazic society. When an unacceptable overextension or misguided malfeasance on the part of laymen did occur, however, the rabbinic response was swift and harsh. Such was the reaction in the hilkhhot Shabbat cases that we have presented.

Ritva cites an Ashkenazic formulation, which perhaps captured the essence of this approach:

A venerable Ashkenazic rabbi pointed out in the name of his French teachers, including Ri and R. Meir of Rothenburg, that these words (mutav shiyu shogegin) were said only for their generation [of the talmudic period]. But in this generation, when they are lenient in a number of things, it is appropriate to make a seyag la-Torah, even in matters that are de-rabbanan, and to protest and to fine people so that they will not transgress, neither accidentally, nor willfully. To be sure, mutav she-yihyu shogegin was employed by Tosafists, and

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84Shitah Mekubbetzet, Asafat Zekanim le-Massekhet Betzah (reprinted, New York, 1967), 30b, s.v. ve-hiksheh (fol. 23b). Ritva himself noted that in a situation where an attempt at rebuke would surely go unheeded, mutav she-yihyu shogegin would have to be retained. This confirms that the French formulation presumed a degree of kefifah la-samkhut.
the conditions of its use were discussed and refined. Nonetheless, this statement may represent the belief of Ashkenazic halakhists that in order to provide the leniencies which were necessary in their era, it was necessary to inhibit any deviation from these guidelines, even those that occurred be-shogueg. The only vice-related act that was tolerated in Ashkenaz was the ubiquitous gambling oath.

Professor Katz further maintained that because of the well-honed "ritual instinct" of even the common folk in Ashkenaz, halakhists were inclined to justify long-standing religious customs and practices that did not appear, at first blush, to be in accordance with Talmudic law. It appears that the "ritual instinct" of Ashkenazic Jewry also allowed the malfeasance or nonfeasance regarding tefillin, tallit (and to a lesser extent mezuzah) to be explained away if not justified, by Tosafists. These precepts could not have been brazenly dismissed by members of a group that never strayed far from the directives of its rabbinic leadership. There must be a way to explain why some members behaved as they did. Indeed, it may have been the complexity of the halakhah itself which caused them to become confused or misguided. In any event, the response of Ashkenazic rabbinic leadership to common forms of nonobservance was linked

85See Tosafot, Shabbat 55a, s.v. ve-af al gav and parallels; Sefer Mordekhai ha-Shaleml Massekhet Betzah (Jerusalem: Makhon Yerushlayim, 1983), 103 (to Betzah 30a); Sefer Raban, Massekhet Niddah, ed. S. Z. Ehrenreich, sec. 336, fol. 141a; Tosafot, Eruvin (above, n. 68); and Y. Henkin (above, n. 8).

The use of this principle does increase in the late thirteenth century and beyond. Maharam himself invoked it, followed by others, as a measure of rabbinic control over the religious life of the community was lost. See E. E. Urbach, Baalei ha-Tosafot 2:549-50; I. A. Agus, Teshuvot Baalei ha-Tosafot (New York: Yeshiva University, 1954), 175-76; and Y. Dinari, Hakhamei Ashkenaz be-Shilah Yemei ha-Beinuyim, 61-63, 72.

86Cf. Tosafot, Hagigah 16a, s.v. ve-yaseh; Kiddushin 40a, s.v. ve-yaseh; so-called Rashi to Moed Katan 17a, s.v. mah; Sefer Hasidim, ed. J. Wistinetzki, sec. 62; Orzar ha-Geonim, Moed Katan, ed. B. M. Levin, 20, 68; R. Naftali Zevi Yehudah Berlin, She'elot u-Teshuvot Meshiv Davar, no. 44; and Y. Dinari, Hakhamei Ashkenaz, 52-53.

87I. Katz, Goy Shel Shabbat, 176-79.

to their policy of using dialectic as a means of justifying existing societal practices as well as of fostering halakhic creativity.

Spanish Jewish society, on the other hand, was clearly less devoted to its halakhic leadership. Thus, Spanish halakhists, even those who had been trained by Tosafists and schooled in their methods of dialectical resolution, never felt the luxury of being able to expand the halakhah. They had to go mostly "by the book." Moreover, they made little attempt to justify societal practices that appeared to deviate from Talmudic law since the "ritual instinct" of the populace was not considered to be reliable. In the same vein, they could not effectively explain away ritual malfeasance.

Philosophical allegory and skepticism, rather than concern or confusion about proper performance, played a significant role in the neglect of certain mitzvot ma'asriyyot. 91
The gulf that separated laymen from the halakhic process in Spain necessitated that religious malfeasance be handled more delicately. As the material concerning sexual misconduct indicates, the issue of whether enforced restrictions would improve the situation always had to be considered. For this reason as well, Spanish halakhists could not possibly have prescribed lashes for violations of *issurei Shabbat de-rabbanan.*

I am suggesting, in short, that rabbinic attitudes toward nonobservance in the Middle Ages were conditioned by the religious nature of the communities as well as by the fealty that the communities demonstrated toward the halakhic process and its decisors. Full validation of this thesis can be achieved only after a

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92 Another detail that accords with our interpretation of the differences between the Spanish and Ashkenazic communities, but requires further corroboration, should be noted. Members of the Ashkenazic communities themselves were involved in imposing restrictions on gambling (see above, n. 70) and in censuring those who violated *issurei Shabbat* (above, n. 38). Rashba, on the other hand, chastised a Spanish community in which a group of its members wished to repeal gambling restrictions already in force. See Rashba, *Responsa* 7:244, 270. Cf. 2:279, and *Teshuvot ha-Rashba ha-Meyuhasot la-Ramban,* no. 244. Moreover, Spanish communities, beginning with the mid-thirteenth century, appointed official *benrei averot* to monitor religious problems and enforce observances. The members of *Kehillot Ashkenaz* were apparently able to police themselves more informally. See Rashba, *Responsa* 3:304, 318; 4:311; *Meyuhasot,* no. 279; and Y. Baer, *A History of the Jews in Christian Spain* 1:231–25.

Professor Katz has noted, regarding Sabbath violations in eastern Europe during the sixteenth and seventeenth centuries, that as the *keffah la-samkhut* decreased, rabbinic leadership curtailed its attempts to justify communal practices. The leaders appointed or acted themselves as *anhei tamid* or *memanim* (= *benrei averot*), to make sure that extant statutes were not being violated. See his *Goy shel Shabbat,* 70–83, 180–81, and H. H. Ben-Sasson, "Takkanot Issurei Shabbat Shel Polin u-Mashma'utan ha-Hevratit ve-ha-Kalkalit," *Zion* 21 (1956): 185–87.
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Rabbinic Responses to Nonobservance in the Modern Era

Judith Bleich

"But if the watchman see the sword come and blow not the trumpet, and the people be not warned; if the sword come and take any person from among them, he is taken away in his iniquity, but his blood will I require at the watchman's hand. So you, O son of man, I have set you a watchman unto the House of Israel: therefore you shall hear the word at my mouth, and warn them from me" (Ezekiel 33:6-7). It was with these prophetic words that the Orthodox rabbis who appended their signatures to the manifesto Shelomei Emunei Yisrael opened their official document of protest in the wake of the Reform Rabbinical Conference that had taken place in Brunswick, Germany, in 1844. Similarly, when these same individuals resolved to publish a Hebrew-language journal "to raise the honor of Torah and to remove stumbling blocks from the path of faith," they gave the journal the title Shomer Tzion ha-Ne'emanim (Faithful Guardian of Zion) and inscribed on the masthead of each
issue the words: “founded by an association of rabbis and scholars standing in the breach and guarding the holy charge.”

In seeking to analyze the various forms of response toward the nonobseruant as gleaned from nineteenth- and twentieth-century rabbinic writings one must understand that, for the most part, the authors were responding, under pressure of events, to what they regarded as an organized, concerted attack upon the foundations of Judaism. Their responses, whether overly restrictive or (on rare occasions) surprisingly mild, were prompted by a conviction that, as the watchmen unto whom had been entrusted the preservation of the embattled fortress, they must safeguard against the breaches that might bring down even the outer walls and turrets and thereby leave the inner precincts exposed.

Nonobseruant individuals were always to be found within the Jewish community. At times their numbers were few; at other times, many. Toward the end of the eighteenth century one finds increasingly frequent references to transgressors and a change in the tone of rabbinic homilies and admonitions in reaction to the rising incidence of nonobservance and the increasing severity of infractions. In the course of time, remonstrations concerning lack of meticulousness in observance, self-indulgence, pursuit of luxury, and even undue attention to changing fashions in attire gave way to rebuke of those who concern themselves with secular education rather than Torah study and of those who transgress Jewish law publicly and defiantly.

These admonitions were usually addressed to anonymous individuals and apparently generated little, if any, opposing response. With the growing laxity of observance there came a new
disregard for rabbinic authority. The issue was first joined in 1782 in the clash between traditional rabbinic leaders and Naphtali Hertz Wessely over the projected educational program advocated in the latter’s Divrei Shalom ve-Emet. But it was with the advent of an organized movement for religious reform in the early nineteenth century that the issue of nonobservance assumed an entirely new guise. From that point on, rabbinic reaction focused upon the fact that the nonobseruant were no longer religiously weak or even recalcitrant individuals but were adherents of a movement that sought to supplant traditional Judaism. The Reform movement was regarded as posing such a threat because of four factors: (1) the public and communal nature of the transgressions of its adherents, (2) recognition of deviationist rabbinic authorities as mentors, (3) the open and avowed agenda for innovation, and (4) renunciation of fundamentals of faith. With the emergence of institutionalized Reform as a separate and distinct religious denomination, rabbinic responses differed radically from those of an earlier age. The responses to this challenge were manifold and diverse and each merits separate examination and analysis.

1See, for example, the admonitions of R. Jacob Emden, Siddur Bet Yaakov (Lemberg, 1904), “Mussar Naeh, Halon ha-Shevi,” 314–15; R. Jonathan Eibeschutz, Yaarot Devash (Lemberg, 1863), 1:11a–12a; 2:23a, 65a–66b; and R. Yehezel Landau, Denehei ha-Tzelah, 47–38, 103–04. See also Azriel Shohet, Im Hiltufi Tekufat: Reshit ha-Haskalah be-Yahadut Germanyah (Jerusalem: Bialik Institute, 1960), 35–42, 89–122, 139–73.


3Much of the historical and bibliographical literature regarding this period of history has been written from a partisan point of view and reflects a pronounced bias, if not outright distortion of facts. Recent work in this field is far more objective and has done much to redress the balance. Significantly, the standard history of the Reform movement, David Philipson, The Reform Movement in Judaism (New York: Krav, 1967) has been superseded by an excellent work, Michael Meyer’s Response to Modernity: A History of the Reform Movement in Judaism (New York: Oxford University Press, 1988), which strives for the objectivity and evenhandedness that is notably absent in Philipson’s writing. Nevertheless, even this outstanding work, at times, misses the mark in understanding and analyzing the reaction of the Orthodox and certainly does not even lay claim to detailing their response.
THE INITIAL RESPONSE: ELEH DIVREI HA-BERIT

The innovations of the Hamburg Temple prompted the first major response of the Orthodox in the form of a classic work of responsa, Eleh Divrei ha-Berit (Altona, Germany, 1819), a collection of twenty-two responsa signed by forty rabbis from Germany, Poland, France, Italy, Bohemia, Moravia, and Hungary. Appended to the Hebrew text are German excerpts in both Hebrew and Gothic characters. The material published in Eleh Divrei ha-Berit contains virtually all the substantive arguments offered in objection to Reform innovations. In subsequent polemics the sources and arguments set forth in that volume were cited over and over again.

Needless to say, publication of this work evoked a shrill response. The respondents in Eleh Divrei ha-Berit were berated by defenders of Reform on account of their excessive liberalism, despite the fact that they were merely rebutting the purportedly halakhic arguments of Reform innovators. In much of the secondary literature, writers who have focused attention upon the liturgical controversies have found fault with this collection of responsa while only a few have recognized that the rabbinic writers did forthrightly confront the wide spectrum of issues involved and that Eleh Divrei ha-Berit reveals an almost uncanny prescience. The respondents had realized that what appeared to be minor ritual innovations heralded a revolutionary approach to Jewish law. As they predicted, in the following decades Reform spokesmen abandoned all allegiance to halakha and instituted full-fledged reforms in all areas of Jewish religious life.

Yet, at the outset, one of the striking features of the encounter between Orthodoxy and Reform was the focus on questions of Jewish law and the attempt of writers who favored Reform to prove that the new norms of conduct could be justified on the basis of halakhic sources. In the first decade the language of the debate was Hebrew and the style and content that of classic responsa literature.\(^5\)

\(^5\)Writing of this extended "battle of the proof texts," Petuchowski (ibid., 98) notes that it is of abiding interest that the early Reform writers sought to justify their actions in the arena of halakha, for this underscores the fact that they assuredly had no intention of founding a new religion but wished to base their halakhic reform on a Judaism rooted in the Bible, Talmud, and Codes. His assessment is predicated upon the assumption of intellectual honesty on the part of these early writers, i.e., the assumption that they actually believed that the proof-texts and precedents cited served to support the conclusions they set forth.

In contradistinction, one of Rabbi Tzvi Hirsch Chajes's gravest accusations in refuting Reform halakhic arguments was the charge of intellectual dishonesty. See Minhat Kena'ot, published in Kol Sifrei Maharatz Hoye, vol. 2 (Jerusalem: Divrei Hakhamim, 1958), 973-1036. Chajes claimed that many of the halakhic rulings of Reform writers were based on their finding a precedent in some totally obscure source, giving such precedent undue weight and, moreover, frequently, even citing the obscure leniency out of context in a manner that served to distort its original intention. Such distortion and citation out of context could lead the reader to the most bizarre conclusions:

The rabbis at their forefront justify their actions, saying the law is on their side and they are acting in accordance with Torah... based on
Menahem Mendel Steinhardt of Hildesheim served as one of the three rabbis who were appointed to head the Jewish Consistory of Westphalia. While in that office, Steinhardt’s erudition was enlisted in the attempt to give legitimacy to Israel Jacobson’s earliest religious reforms. While Steinhardt’s Divrei Igeret, published in Rödelheim in 1812 with the addition of comments and notes by Wolf Heidenheim, certainly falls within the ambit of mainstream halakhic literature, in many significant respects it prefigures the style, motifs, and even insinuations, of later defenders of Reform practice.6

Continued opposition to the ritual innovations in Berlin prompted the Reform partisans to commission another halakhic defense of their innovations. In 1818, in Dessau, Germany, Eliezer Lieberman, a Hungarian Jew regarding whose credentials there is only uncertain information,7 published a treatise of his own, Or Nogah, together with a collection of responsa of others, Or Nogah ha-Tzedek. The latter responsa were authored by Sephardic rabbis in Italy, Shem Tov Samum of Leghorn and Jacob Recanati of Verona, and two Hungarian rabbis, Aaron Chorin of Arad and Moses Kunin of Ofen. These responsa dealt with the earliest ritual innovations, in particular, use of the organ in the synagogue and prayer in the vernacular. Interestingly, while he maintained that daily prayer with a minyan is not an obligation, nor even a mitzvah, Aaron Chorin urged the Reform congregation to arrange for public prayer on weekdays. Chorin cited an opinion of Maharil that advises individuals to pray at home with proper devotion. For while the Talmud (Berakhot 6b) states that God is angry if He comes to the synagogue and does not find ten men there, this is not the case when the holiness of the synagogue is desecrated by individuals whose behavior is indecorous. However, noted Chorin, the criticism and conclusion of Maharil apply to the Orthodox whose communal prayers lack reverence and solemnity. Since Reform congregations do conduct themselves with decorum they, then, might indeed arouse God’s ire if they fail to pray with a minyan.8

Ironic was Lieberman’s suggestion in Or Nogah that German Jews should pray in their vernacular but that Polish Jews should pray in Hebrew, not simply because their knowledge of the holy tongue was superior to that of their German coreligionists, but because they should not be encouraged to pray in “the corrupt German in which they are fluent as a patois.”9

Much of the technical legal argumentation presented in Eleh Divrei ha-Be’erit represented an attempt on the part of the Orthodox to discredit Or Nogah and Or Nogah ha-Tzedek, both their content and the reliability and authoritativeness of the respondents.

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7Regarding the somewhat mysterious Eliezer Lieberman, see Yekutiel Greenwald, Korot ha-Torah ve-ha-Emanah be-Hungaryah (Budapest: Kats-

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8“Kinat ha-Emet,” Or Nogah ha-Tzedek, 25.

9Or Nogah, pr. 1, 8-9.
In their introductory comments to *Eleh Divrei ha-Berit* the members of the Hamburg Bet Din emphasized that these responsa were not the product of a predisposition to negativism or of a zeal to condemn. They underscored the salient distinguishing characteristics of the social and religious problem posed by the innovations introduced by the members of the Hamburg Temple Society: the changes constituted the actions of a group that had separated itself from the traditional community for the express purpose of instituting changes in both custom and law. They represented a carefully designed agenda and were the product of a concerted, organized plan to establish alternative ecclesiastic authorities to rule on matters of religious ritual. Moreover, the innovations did not represent the private acts of individuals but were public in nature and involved an entire community. Sinners and backsliders were always to be found, and, sadly, more so in recent times, the rabbis averred, but "they did not separate themselves entirely from the community to constitute separate councils and to motivate the children of Israel publicly to change the customs of Israel and the laws of our holy Torah." There was always reason to hope for the repentance and spiritual improvement of transgressors. In such individual cases, benign neglect might, in the long run, constitute a wiser policy than denunciation or punitive measures. But the public, communal, and divisive nature of the actions of the Hamburg Temple Society necessitated a reasoned and forceful response that might have been avoidable under other circumstances.

[For] now, on account of our great sins, the disease has spread in the Jewish community, for some persons have begun to gather together to legislate laws of iniquity, to change the customs of Israel in contradiction of the words of our holy Sages . . . . The page is too short to include all their deleterious practices and customs in which they have chosen arrogantly to oppose the holy words of our Sages, the Bet Din of their city and the vast majority of our congregation who are faithful and observant of the divine laws.

Moreover, the official community could not allow itself the option of silence in the face of such organized rebellion lest silence be mistaken for agreement: "Then we said that now is not the time to be silent or to place a hand over the mouth. If we are silent we will be found guilty for people will say, 'The rabbis have been silent and silence is acquiescence.'"

The substantive portions of most of these responsa deal with technical, halakhic questions regarding changes in the liturgy, recitation of prayer in the vernacular, and use of the organ in the synagogue both on the Sabbath and on weekdays. Some respondents simply cited general dicta opposing abrogation of time-hallowed practice (*minhag shel Yisrael Torah hu*), while others cited a host of halakhic sources and precedents to bolster their restrictive pronouncements.

Apart from their particular arguments against abrogation of established practices, the writers protested the hubris of the innovators in relying upon little-known individuals whose scholarship and authority were, at best, dubious. A number of respondents explicitly cast aspersions upon the character and qualifications of the champions of Reform, Eliezer Liebermann and Aaron Chorin. The recantation of Aaron Chorin and his renunciation of the innovations he had earlier espoused are of particular interest. Chorin's recantation is appended by Hatam Sofer to the latter's

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10 *Eleh Divrei ha-Berit*, Introduction, ii.
11 Ibid., iii.
12 Ibid., iii–iv.
13 Ibid., v.
14 See, for example, ibid., 1–3, 70.
15 See, for example, the discussion regarding the use of an organ, ibid., 30–32, 67, 74–75, 85–86.
16 See, in particular, ibid., 21–22, 30ff., 77, 89.
third letter in Eleh Divrei ha-Berit. Even more remarkable is the fact that Chorin later retracted his recantation.  

Vituperation and invective were not wholly absent. The Reform clergy were characterized as evil and wicked men. It was imperative to combat such individuals for “the hands of the wicked must be weakened and the “the house of the wicked” must be eradicated. Some respondents urged representations to civil au-

17 Ibid., 97-98. On Chorin and the recantation see Meyer, Response to Modernity, 158, 432 nn. 41, 42; Philipson, The Reform Movement, 442 n. 112.

18 See, for example, Eleh Divrei ha-Berit, 24, 26, 53, 59, 64, 84. For the often-employed play on words moreh horah – moreh ha-naah, see Solomon Schreiber, Igerot Soferim (Vienna and Budapest: Joseph Schlesinger, 1933), sec. 1, 51. With respect to the language employed, one should be mindful of the style and idiom of rabbinic pronouncements in general and their penchant for hyperbole. Much of the polemical literature on both sides was couched in derogatory and derisive language. See Alexander Guttmann, The Struggle over Reform in Rabbinic Literature During the Last Century and a Half (New York: World Union for Progressive Judaism, 1977), 139-46. In Eleh Divrei ha-Berit, 21, 24, Or Nogah was referred to as Divrei Aven, Words of Iniquity (the term Aven was formed as an acrostic derived from the first two letters of the word Or and the initial letter of Nogah) and those who followed the prescriptions of the “Shining Light” (Or Nogah) were described as “walking in darkness, not light.” The Reform writers employed a similar style. Eliezer Lieberman, Or Nogah, pt. 2, 4, wrote of the Orthodox that their eyes were blinded and therefore they could not see the truth. The Orthodox were branded as “stillstander” ( inert) and mocked as backward and unenlightened. See Plaut, The Rise of Reform Judaism, xxiii. In the protracted debate concerning the question of delayed burial one finds, at times, particularly tasteless comments of Reform partisans regarding efforts on the part of the Orthodox to secure timely burial. A sensitive reader would certainly find sarcastic remarks concerning the bereaved and their sincere attempts to honor the dead to be offensive. See, for example, Der Israelit des neunjahrigen Jahrhunderts (IMJ) “Die Beerdigung der jüdischen Leichen in Altona,” 6 (1845): 214-15.

19 Eleh Divrei ha-Berit, 23, 26.

20 Ibid., 15.

21 Ibid., 79-81.


23 Eleh Divrei ha-Berit, 27-28. As early as September 5, 1815, R. Akiva Eger authored a brief responsa in which he explicitly opposed proposals that prayer services be conducted in the vernacular. This responsa is published in L. Wreschner, “Rabbi Akiba Eger’s Leben und Wirken,” in Jahrbuch der jüdischen literarischen Gesellschaft (JLLG) 3 (1905): 75-77 and in Likkat Teshuvot ve-Hiddushim mi-Rabbi Akiva Eger (Beit Brak, 1968), 11-13. R. Akiva Eger’s opinion on this matter was, in all likelihood, solicited by Rabbi Meir Weyl, then Associate Chief Rabbi of Berlin, who sought to stymie the religious reforms introduced into private synagogues in Berlin that very year by Israel Jacobson and advocated before the Prussian authorities by David Friedlander. As one of his most extensive correspondents, Weyl, at times, consulted Eger on matters of policy concerning negotiations with government officials and Reform partisans. See Wreschner, JLLG 2 (1904): 41, 60-62; 3:35. Cf. Ludwig Geiger, Geschichte der Juden in Berlin, vol. 2 (Berlin: J. GuttenTag, 1871), 210-30.

For the scholarly correspondence of Eger and Weyl, see Teshuvot Rabbi Akiva Eger, vol. 1 (Warsaw, 1834), nos. 23, 40, 64, 107, 112, 154, and Teshuvot Rabbi Akiva Eger, vol. 2 (Vienna, 1859), nos. 75, 82, 83, 85, 94, 118, 119; Teshuvot Rabbi Akiva Eger mi-Ketov Yad (Jerusalem, 1966), nos. 37, 39, 43, 71, 84; Teshuvot Hadashot le-Rabbenu Akiva Eger (Jerusalem, 1978), Yoreh De’ah, no. 2, and Hoshen Mishpat, nos. 2, 9. In his responsa,
to acquire a name among the nations... but in truth they are neither Jews nor Christians." As R. Moses Sofer put it in his letter, "The intent of these individuals is to curry favor in the eyes of the nations and the officials."

Turning aside from the intricacies of the halakhic disputations regarding the question of whether an organ might be used in the synagogue or whether the formulae of certain prayers might be changed at will, the respondents emphasized the significant theological and philosophical issues raised in the particular liturgical changes adopted in the Hamburg Temple Prayerbook. The innovators had tampered with the text of prayers concerning the Messiah, the rebuilding of Jerusalem, the ingathering of the exiles, and resurrection of the dead. The alterations introduced in the text of these prayers reflected a rejection of fundamental principles of faith. R. Mordecai Benet declared that one who questions these beliefs is, if not a heretic, at the very minimum, spiritually misguided. Eliminating such passages from the prayerbook would result, heaven forfend, in future generations being cut off from the historic traditions of *kelel Yisrael* and becoming "totally separated from the body of the entire congregation of Israel."27

The respondents certainly had a clear understanding of the theological chasm that existed between the exponents of Reform and the traditionalists. The Orthodox rabbis did not believe in the slightest that the controversy revolved upon merely minor cosmetic changes in the ritual. R. Akiva Eger wrote bluntly, "Is not this, heaven forfend, the overthrowal and uprooting of religion?" Changing minor details, he argued, would ultimately cause the unraveling of the entire fabric of religious life.28

In a succinct statement decrying any form of ritual innova-

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24Ibid., 33. Cf. the language of R. Akiva Eger, in his 1815 responsum (cited in n. 23 above).
26Ibid., 27.

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Eger expressed opposition to the use of the vernacular in the liturgy for reasons that were based entirely upon technical application of halakhic requirements. However, his negativism toward this innovation clearly extended beyond halakhic technicalities. More significant than the legal argumentation is his analysis of the motivation underlying this specific reform and the tenor of his concluding comments which constitute a call for self-pride and self-awareness: "He whose intent is for the sake of Heaven and whose desire is not specifically to preen himself in the eyes of the nations and to be similar unto them and to lower the language of splendor, the holy tongue, from its honor, will concede the truth" (Wreschner 3:37).

It is instructive to compare this responsum with what is perhaps the very earliest responsum regarding prayer in the vernacular. That responsum, dated March 20, 1809, and authored by Samuel Eger of Brunswick, a cousin and colleague of Akiva Eger, addressed itself to the introduction of prayer in the German language by Israel Jacobson in his school in Cassel. Unlike Akiva Eger, Samuel Eger readily concedes the halakhic argument but similarly focuses on the motivation of the innovators. Use of the vernacular, he asserts, will only give support to those who seek to undermine tradition and will eliminate all incentive for the study of Hebrew. Moreover, retention of Hebrew in prayer serves as a necessary link uniting Jews throughout the world. The responsum is published in B. H. Auerbach, *Geschichte der israelitischen Gemeinde Halberstadt* (Halberstadt: H. Meyer, 1866), 219-21.

23Elle Diacre ha-Berit, 13.
tion, Eger presented the ideological substratum upon which this viewpoint was based. He underscored the interrelationship and interdependence of the Oral and Written Law in declaring, "They are united and bound together and are inseparable," and asserted that without rabbinic interpretation as expressed in the Oral Law, biblical commandments are incomprehensible. For example, absent rabbinic exegesis, biblical terms describing tefillin are entirely unintelligible. The characteristics of acts labeled as "labor" and proscribed on the Sabbath are not delineated in Scripture. Therefore, as he argued elsewhere, "without total faith in the words of the Talmud according to tradition the entire Torah would fall."[29]

The strongest criticism of the innovators was the charge that they had sundered the unity of the community. In sharpest language, R. Eliezer of Triesch, in his second letter, criticized the motives and actions of the Hamburg Temple leaders and accused them of destroying the solidarity of the Jewish people:

And now let us judge together . . . Why have you separated yourselves from the community? And why were you not concerned regarding [the prohibition of] "And you shall not make groups and groups" that our Sages have interpreted as you shall not create separate groups? . . . Why are you relying . . . on the decision of one rabbi (in the work called "Nogah ha-Tzedek") and why did you not consult the scholars of your city, the great rabbis of your Bet Din Tzedek from whom goes forth Torah to the residents of your esteemed community? . . . What benefit will accrue to you if you separate from the community and from the entire body politic of the people? . . . It will be devastating for generations to come . . . if you be separated from Jews and not reckoned among the nations . . . What will you answer on the Day of Judgment? What will you say on the Day of Reckoning? . . .

29Ibid., 27.
30Iggerot Soferim, sec. 1, 50. Cf. also Drush ve-Hiddush mi-Ketau Yad, 176.

Rabinic Responses to Nonobservance in the Modern Era

People of the Lord of Abraham! Look to the Rock whence you are hewn. Are we not all sons of one man? Do we not all have one Father? . . . Who knows if you will not, heaven forfend, cause lamentation for generations and all the children of Israel shall weep for you."[31]

R. Jacob of Lissa pleaded, "We, too, call out to you with an entreaty of love. . . What is the benefit of creating a split and separation of hearts in Israel?"[32]

Its many harsh comments notwithstanding, Eleh Divrei ha-Berit was not entirely strident in nature. A conciliatory note is sounded by R. Eliezer of Triesch in the same letter in which he berates adherents of Reform for sowing dissension in the Jewish community. He goes so far as to apologize in case he has inadvertently been too negative or stinging in expressing his opposition to the innovators:

If my pen has slipped . . . do not count it to me as a sin, for from my great pain and distress I have spoken thus and for the zeal of the Lord of Hosts . . . and what shall I do, my Father in Heaven has decreed . . . in an explicit commandment of the Torah, "You shall surely reprove your fellow and not bear sin on his account." I have shown you the good and correct way and far be it from me that I should cease to pray on your behalf.

I shall raise my hands to the Lord and pray to the God of heaven and earth and their hosts, forgive the transgressions of your servants for the entire people are unwitting and give them a new heart, and a correct spirit renew in them, and let them all form together one association to serve You with a perfect heart. . .

[31]Eleh Divrei ha-Berit, 92.
[32]Ibid., 82.
[33]Ibid., 93.
Most striking is the self-critical note struck by R. Eliezer of Triesch and his positive suggestions for self-improvement in the practices of the Orthodox community. He draws attention to the rabbinic teaching that transgression breeds further transgression and that punishment is often encountered in the very area in which one has sinned. Surely the religious community must examine its own actions and practices with a critical eye. If contention and controversy have erupted in matters of synagogue ritual perhaps it is a reflection of negligence and contentiousness among the observant in precisely that area of divine service. It is for the leaders and rabbis of the community to seek, in the spirit of authentic Jewish tradition, to make synagogue services more edifying. It is for them to eradicate all manner of social inequity and to concentrate on enhancement of brotherly love and neighborliness in the community. Their own leadership must be free of moral flaws. Above all, they must strive to promote the ideals of harmony and love for fellow Jews, for no Jews—by implication, not even backsliders—are without redeeming qualities. The dissidents must be approached with love and gentleness, “with a soft expression and intelligent ethical reproof,” and brought back “to be one people with us as they were until now, all together in one accord to serve the great and awesome God.”

The issues raised by the writers in Eleh Divrei ha-Berit were amplified by rabbinic writers in the years that followed and, as we shall note, were the subject of ongoing rabbinic discussion.

Typically associated with Purim parodies. Notable are two sharp ripostes to comments in Eleh Divrei ha-Berit. Rabbi Moses Sofer had commented, inter alia, that a further reason for recitation of prayer in Hebrew is the fact that the holy tongue is the language of the King of kings. In appearances before royalty, subjects speak the language of the sovereign they address, even if he understands other tongues. Similarly, in addressing the King of kings it is seemly to use His language (Eleh Divrei ha-Berit, 10–11). Bresselau responded by asking, What has happened to the man Moses (i.e., Moses Sofer)? Is God to be likened to a human being? “And to whom shall you liken Me?” (Isaiah 40:25) (Herev Nokem, 15). Turning to the responsum of R. Jacob of Lissa, Bresselau is more stinging. R. Jacob had cited Isaiah 6:9, “Hear you, but understand not,” and argued that we must follow tradition even if we comprehend it not. We may not rely solely on the perceptions of our own intelligence for our intelligence is all too limited (Eleh Divrei ha-Berit, 79). Indeed, countered Bresselau, we may not follow “our own intelligence” for it is all too limited. R. Jacob has written well regarding himself. And, by implication, regarding all the Orthodox who are categorized by know-nothingness, following and understanding not (Herev Nokem, 15).

The satiric style was continued in some of the pamphlets published on both sides of the debate, all too often in a form more puerile than witty. A curious example of this genre which surfaced in the United States is the brief pamphlet Emek Refa'iim by M. E. Holzman, published in New York in 1865 and addressed to the “Doctors” (Refa'iim a pun on the Hebrew rafim, doctors) of the Reform clergy and, in particular, to one “Doctor Lavan” (German weiss, white), Dr. Isaac Mayer Wise. Following dissemination of Wise’s prayerbook, Minhag America (Cincinnati, 1857), the author undertook to warn Wise in a satiric manner that America is a “free country,” but not free from divine retribution.

The satiric style continued to characterize the Reform-Orthodox debate at a much later time. In a letter regarding a pamphlet entitled Kuntres le-Maam Ahaba ve-Re'at attacking Reform, Rabbi A. I. Kook criticizes the use of satire in the course of polemic: “Satire is a medium that it is fitting to employ with caution and in a precise measure, both from the vantage point of propriety and, more so, from the vantage point of the law. . . .” See Igerot ha-Re'iyah, vol. 2 (Jerusalem: Mossad ha-Rav Kook, 1968), 144.
POSSIBLE SCHISM OR BAN?

As the Reform movement grew and established itself as a separate denomination, the policy to be adopted with regard to those who identified publicly with the movement became a major issue. Were they to be treated simply as transgressors or were stronger communal sanctions to be imposed?

As one of the staunchest advocates of Orthodoxy who countered fiercely any encroachment of Reform, Hatam Sofer coined the aphorism hadash asur min ha-Torah (that which is new is forbidden by the Torah) as a battle slogan in opposing all manner of Reform innovation.37 As a champion of Orthodoxy, he inveighed against exponents of Reform "who have distanced themselves from God and His Torah, due to our many sins," and cautioned against any association with them: "Do not dwell in their vicinity and do not associate with them at all... and do not say, the times have changed. For we have an old Father, may his name be blessed, and He has not changed and will not change. . . ." Nevertheless, even Hatam Sofer stopped short of issuing an outright interdict or ban. In one of his responsa Hatam Sofer comes close to endorsement of a ban, but even in that statement he takes note of possible repercussions at the hands of civil authorities and limits himself to the hypothetical declaration that "if their judgment were in our hands" he would rule that the status of adherents of Reform is identical to that of sectarians and heretics and would demand total separation from them. Those comments, published in his responsa collection, are quite emphatic:

If their judgment were in our hands, it would be my opinion to separate them from our domain; our daughters not to be given to their sons, nor their sons [to be taken] for our daughters, so that we should not come to be drawn after them and that their congregation be like the congregation of Zadok and Boethus, Anan and Saul, they for themselves and we for ourselves. All this appears to me as halakhah, but not to be implemented in practice in the absence of permission and authorization of the government; in the absence of this [permission] my words should be void and considered as naught.39

Twenty odd years later, following the Reform rabbinical conferences, the possibility of ban (herem) or schism again loomed large on the horizon. It is instructive to examine several responses to these conferences in order to appreciate the tension in the Orthodox camp and the reluctance to take so final a step.

In Altona, Rabbi Jacob Ettlinger and his colleagues published a formal protest in the form of a written manifesto entitled Shelomei Emunei Yisrael (The Faithful Believers of Israel), encompassing both a Hebrew and German text and bearing the signatures of seventy-seven Orthodox rabbis. This manifesto came to be regarded as the official statement of the Orthodox and received much wider endorsement. In the years that followed, the number of signatories rose to over three hundred.40

It must be noted that references to the manifesto as a ban or anathema are simply misstatements of fact.41 The document contains no anathema or imprecation, nor does it single out any individual for attack. Even its critics admitted that the manifesto

37Teshuvot Hatam Sofer, vol. 6, no. 89.
38See Hatam Sofer's last will and testament printed in S. Schreiber, Hut ha-Meshalah (Tel Aviv: Mesorah Press, 1963), 152-53.
39See, for example, Teshuvot Hatam Sofer, Orach Hayyim, no. 28.
40The manifesto is dated 1845 but the pamphlet does not indicate the city of publication. The German text was republished in Der Israelit 10 (1869): 177-80. An English translation was published in the British Voice of Jacob 4 (1845): 136-37, 142-43 and in the American Occident 3 (1845-46), 146-49, 198-201. Israelit 10 (1869): 177, refers to 300 signatories. Cf. Iggerot Soferim, sec. 1, 85. On the reaction evoked by the protest, see Philipson, The Reform Movement, 159-62.
was restrained in expression and did not strike the strident note they associated with many other Orthodox pronouncements. The relative moderation of tone reflected in the manifesto was the product of the influence of R. Jacob Ettlinger.

Although Ettlinger's influence was decisive with regard to the manifesto, his moderation was not always accepted with equanimity by the more extreme among his colleagues. Probably the best example of those disparate modes of reaction is to be found in an encounter that took place between Ettlinger and Rabbi Solomon Eger. Following the conferences in Brunswick and Frankfurt, R. Solomon Eger, son and successor of R. Akiva Eger and a renowned authority in his own right, resolved to issue a ban against Reform Jews declaring them to be outside the pale of the community of Israel. Eger informed Ettlinger of his intention whereupon the latter summoned Eger to Altona to discuss the matter in person. Eger undertook the journey and was received with great cordiality and honor by Ettlinger as well as by the rabbis and Klaus scholars of Hamburg and Altona. Eger anticipated Ettlinger's unreserved endorsement and cooperation in circulating the text of the proposal but was soon disenchanted. Ettlinger conceded that, in theory, Eger was justified in wishing to pronounce a ban; however, in practice, he refused to sanction such a course of action. This policy of restraint had other prominent advocates as well. R. Solomon Eger also describes a meeting with R. Nathan Adler of London who was visiting in Hanover at the time. Eger wished to obtain the support of Adler, but his entreaties were deflected.

42Ibid., 100.

43On Ettlinger's role in organizing and publicizing this protest see Chajes, Minhat Kena'ot 2:1019, note; Igerot Soferim, sec. 3, 6-7; IdNJ 6:213; Israelet 10 (1869): 569; 12 (1871): 941; Die jüdische Presse 3 (1872): 343.

44Igerot Soferim, sec. 1, 83. Adler had returned to Hanover from London for the celebration of his mother's eightieth birthday. The visit is described in Der treue Zionswächter 3 (1847): 230-31, 238-39, and in Voice of Jacob 6 (1847): 192.

In a private communication in which he discussed the incident and described his keen disappointment, Rabbi Solomon Eger interpreted the attitude of Ettlinger and his colleagues as the product of fear of untoward repercussions:

Although they were forced to admit that the matter was halakhically correct, they were unwilling to act upon it. For the sage, the Chief Rabbi of Altona, despite all his piety and despite all that has been done through him to denigrate the deeds of these rebels in the pages of the Guardian of Zion through Dr. Enoch, is yet afraid to do such a thing against the wicked who rule over him. For so do they honor and elevate him in accordance with the custom of the people of Germany ... that he conducts his rabbinate in such a manner as [was customary] in the past and no small or big matter is changed in the synagogues of Altona and Hamburg without permission of the rabbinate. I was greatly impressed with their ancient customs. . . . The rabbis of Germany are afraid to quarrel publicly with the wealthy and to publicize a ruling such as this against the heretics lest these turn to evil ways in public and they [the rabbis] lose the good status they yet enjoy.

Eger later observed that it would have been wiser to have approached the rabbis of Hungary for assistance in his campaign against Reform. This assessment of the difference in approach on the part of the rabbis of the Hungarian school and that of Jacob Ettlinger and Nathan Adler is well founded. It is, however, incorrect to attribute the reaction of Ettlinger and Adler to cowardice or
self-serving motives. Their refusal to be party to a formal ban or interdiction was a reasoned decision consistent with a carefully formulated policy eschewing methods judged to be counterproductive.\footnote{Cf. Yonah Emanuel, “Perakim bi-Toledot ha-Rav Yaakov Ettlinger z*l,” Ha-Maayan 12 (1971-1972): 32, on the opposition of R. Samson Raphael Hirsh and R. Azriel Hildesheimer to the issuance of bans.}

Even more restrained was the position of R. Eliyahu Ragoler of Kalisch, who not only cautioned against issuing a ban but even questioned the wisdom of publishing public protests lest such action fan the flames of controversy and only exacerbate the problem: “It is necessary to be very careful . . . in determining how to publish against them,” wrote Ragoler, “for even from a controversy between great Sages of the land, both of whose intentions were for the sake of Heaven, there sprang many evils.”\footnote{Teshuvot Yad Eliyahu, Pesakim, pt. 1, no. 25.}

In 1849 the prominent Galician rabbinic scholar, R. Tzevi Hirsch Chajes, published a Hebrew monograph entitled Minhāt Kenaot written in response to the Brunswick and Frankfurt Reform Rabbinical Conferences of 1844 and 1845.\footnote{The thrust of many of Chajes’s previous scholarly writings, Torat Nevi’im (1836), Darkei Horah (1842-43), and Mevo ha-Talmud (1845), had been directed to a defense of tradition and an attempt to discredit the work of innovators and critical scholars. The Reform Rabbinical Conferences gave further impetus to this apologetic and polemical bent. In the introduction to Minhāt Kenaot, Chajes writes that he had prepared that monograph in response to the Frankfurt Rabbinical Conference and wished to publish it as a davat be-ittō, a timely response in the proper time and place, while the influence of the conference was yet palpable, but his efforts had been stymied by official censors who prevented publication of the work at that time. See Chajes, Minhāt Kenaot, 975, and Mayer Herskovics, Maharatz Haye: Toldot Rabbi Tzevi Hirsch Hayes u-Mishnatto (Jerusalem: Mossad ha-Rav Kook, 1972), 196-97, 490-91.}

Minhāt Kenaot presents one of the most comprehensive halakhic discussions of Reform innovations, ranging from details of synagogue ritual to questions of Sabbath observance, circumcision, and intermarriage. In Minhāt Kenaot Chajes presents a historical and theological elucidation of sectarianism and of sects prevalent during the talmudic period. Chajes traces sectarianism from its earliest manifestations reflected, in his opinion, in the biblical account of the golden calf and of the adherents of Korach (following Tanhu’ma and Midrash Yalkut) and later in the worship of the devotees of the Shrine of Micah and of the shrines in Beth-el and Dan as well as the heresies of the Sadducees, the Essenes, the early Christians, and the Karaites.\footnote{Chajes, Minhāt Kenaot, 981-85. See the lengthier discussion in Darkei Mosheh, in Kol Sifrei 1:442-53.} His historical survey concludes with a discussion of the innovators of his own time whom he regards as having set themselves apart as a separate sect and as having utterly rejected the binding force of Torah as one discards old fashions in favor of new. Chajes endeavors to place the Reform movement in a historical perspective and to compare and contrast it to earlier deviations from normative Judaism. He concludes in no uncertain terms that, halakhically, the status of exponents of the Reform movement is in no way different from that of members of the sects of antiquity:

There is no doubt whatsoever that all the rulings that our Sages of blessed memory decreed for the Sadducees and Karaites apply to them . . . i.e., to those who comport themselves according to the Rabbinical Conferences and separate from their brethren and join to choose for themselves innovations of which our forefathers could not conceive. . . . I frankly do not know whether they continue to have any relationship whatsoever with us . . . save for the fact that the majority of them yet circumcise their children. . . . Except for that, they have already separated from us in all matters of faith and practice.\footnote{Chajes, Minhāt Kenaot, 1012.}
Despite the strong and unequivocal nature of this statement, as well as of other statements couched in similar language elsewhere in Minhat Kenaot and his other writings, Chajes was ambivalent about implementing in practice what he deemed valid in theory:

Behold I will not hide the truth. Greatly is my heart pained to pronounce my verdict against them in this manner, to estrange from us a large populace, particularly our brethren of German descent, who are accomplished in wisdom and knowledge, far superior to other members of our nation in other countries. 53

Quite apart from his hesitation to alienate and estrange a large number of his coreligionists, Chajes was also wary lest internal dissension and rift within the Jewish community serve as ammunition for anti-Semites at the very time that Jews were under keen scrutiny as they fought to gain rights and privileges from European governments. He was extremely wary of adding fuel to possible anti-Semitic allegations at such a sensitive time. Above all, he sought to avoid an irreparable schism.

Drawing on a biblical precedent, Chajes cites the reaction of the Jewish people following the outrage at Gibeah (Judges 21:3). After taking an oath not to marry members of the tribe of Benjamin, all Israel lifted up their voices and wept sorely and they said, "Oh, Lord, God of Israel, why has this come to pass that there should be today one tribe lacking in Israel?" How can it have come to pass, writes Chajes, that we should ourselves cut off our own flesh and blood in our own day? What has become of the imperative to seek peace in one's own locale and pursue it elsewhere? As the Sages teach, he adds, even if Israel worships idols, if there be peace among them, punishment is mitigated. 54

53Ibid., 1012-13. 
54Ibid., 1013.
During the following decades other rabbincic decisors appear to have followed the same pattern. They held up the specter of schism but threatened it as a last resort to be implemented only in the event that the Reform movement proceed to adopt drastic innovations in areas of marital law. Thus R. Hayyim Ozer Grodzinski, who maintained that secession from a unified community was a question of policy dependent on local conditions rather than a clear-cut matter of halakhah, wrote explicitly that should Reform leaders institute certain further innovations with regard to marriage and divorce it would become necessary for the entire community to separate itself totally from adherents of Reform. But at no time was this threat carried out in practice.57

**ENLISTMENT OF CIVIL AUTHORITIES**

Yet another form of response to the activities of the nascent Reform movement involved complaints to civil authorities and efforts to secure governmental intervention in the internal religious affairs of the Jewish community. Involvement of civil authorities became an extremely sensitive matter and an area of strife in the Reform-Orthodox struggle. Attempts to involve the civil authorities were possible because not only was there no separation of Church and State in nineteenth-century Germany but also because the kehillah was a quasi-governmental body subject to regulation by the State. Moreover, the civil authorities had reason to fear every liberal movement as a potential challenge to the authoritarian nature of the State and were also motivated by a desire to preserve the

makes his tongue smooth, and at will jagged." And he concludes bitingly: "A hypocrite and a chameleon is this rabbi!" See Herskovics, Maharatz Hayes, 325-26.

57Ahiezer: Kovez zikaron, ed. Aaron Suraski, vol. 1 (Brni Brak: Netzach Press, 1970), 244-45. This "Letter Regarding the Kehillot in Germany" was also published in Sefer ha-zikaron le-Rav Weinberg, ed. E. Hildesheimer and K. Kahana (Jerusalem: Philipp Feldheim, 1969), 9-12.

religious status quo on the assumption that State-supported established religious denominations would continue to promote loyalty and submissiveness to the authority of the State.58

There is no gainsaying the fact that the Orthodox were prepared to enlist the cooperation of government officials in their attempt to stymie the advances of Reform. The Orthodox authorities in Berlin had no compunctions in encouraging the suspicions of Prussian government officials who, for reasons of their own, found Reform innovations unwelcome.59 Similarly, in Breslau, R. Solomon Tiklin and his supporters did not hesitate to encourage the Prussian authorities in their investigations into Geiger's purportedly radical political activities.60 In response included in Eleh Divrei ha-Berit one finds the suggestion of R. Eliezer Triesch of Moravia that requests be addressed to civil authorities to assist in suppression of these dangerous Reform tendencies61 and the even more aggressive advice of R. Abraham Eliezer ha-Levi of Trieste urging that Jews in positions of influence press the authorities to harass leaders of the Reform movement relentlessly.62 Years later, in the manifesto Shelomei Emunei Yisrael, the same tactics were again advocated: "Embrace all means in your power, every legally permitted method, to defeat their counsels and to frustrate their designs." Accompanying that exhortation was the observation that the beneficent and

58Cf. Robert Liberles, Religious Conflict in Social Context: The Resurgence of Orthodox Judaism in Frankfurt am Main, 1838-1877, (Westport, CT: Greenwood Press, 1985), 12, 15, 235 n. 23, on government support of Reform in the 1830s and 1840s. See also Guttmann, Struggle over Reform, 97-104.


62Ibid., 26.
liberal governments under whose rule Jews found themselves favored a society firmly based upon sound and well-established religious principles rather than upon the untested innovations of exponents of Reform. A contemporaneous communication of the Jerusalem rabbinate was even more explicit: "Whoever has influence with the government, turn your attention to the capital in order to strengthen the breaches of the perfect Torah."

Reform writers have objected that "once religion became the object of the struggle for power, those involved persuaded themselves that the end justified the means." However, in point of fact, partisans of the Reform movement, when capable of doing so, sought to involve government authorities in such controversies no less so than did the Orthodox. This was the case in the election of Rabbi Akiva Eger to the chief rabbinate of Posen which was fraught with tension and conflict. Despite his unquestioned position as the preeminent talmudist of the era—or, arguably, precisely because of that status—his candidacy was vigorously contested by a group of young intellectuals who did not hesitate to make representations to government officials charging that Eger was known to be "a fanatic ... not in a position to teach pure religion and true morality" and that he "diametrically opposes the spirit of the times [and] promotes only bigotry and prejudice...." In a deposition dated August 28, 1815, bearing the signatures of twenty-two opponents, it was contended that not only would Eger be unable to fulfill the functions of a preacher and teacher of morality as demanded by the times, but that his very presence in Posen would serve to stifle intellectual progress. Revealing their deep-seated animosity, opponents of his candidacy declared, "He will destroy any disposition toward enlightenment and culture, while the number of [Talmud] students, augmented on account of him, will contribute to the unsettling of all intelligence, will muddle the senses of the youth and thwart the true development of their spiritual potential."

Even more significant is the fact that the very earliest religious reforms instituted in Westphalia were imposed upon the populace without their consent by the Consistory headed by Jacobson who employed the coercive force of the secular authorities for that purpose. It is ironic that, although the Consistory specifically proscribed private services under penalty of fine and a threat that if obedience were not forthcoming "unpleasant measures of force would be necessary," when, after the dissolution of the Consistory, Jacobson's own private services in Berlin were banned, he was outraged. Later, in Hamburg, both sides vied for government support to such an extent that Gabriel Rieser was prompted to...

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comment wryly: "The great majority of the members of our Congregation would much rather endure the displeasure of Almighty God than that of the Senate ... in which noble sentiment the Orthodox party is fully their equal."70

COMMUNAL STRINGENCY

Because of the relatively rapid growth of the Reform movement, many rabbinic authorities—particularly Hungarian rabbis of the school of Hatam Sofer—were moved to adopt an even more stringent policy with regard to any ritual change than they might have advocated under other circumstances. The phenomenon of communities in which relatively minor aesthetic innovations were swiftly followed by the adoption of full scale programs of liturgical and ritual reform reinforced the opinion of these rabbinic leaders that the wisest policy was a stance of absolute conservatism. Resistance even to insignificant changes in synagogue practice that might have been sanctioned from the vantage point of halakhash was perceived as the prudent course of action. Accordingly, a form of siege mentality prevailed under which any accommodation in matters of synagogue and ritual affairs was eschewed. Specific issues—location of the bimah in the center of the synagogue, wearing of clerical robes, performance in the synagogue, and preaching in the vernacular, for example—regarding which there might have been legitimate differences of opinion, and with regard to which permissive as well as restrictive opinions were forthcoming in other times and other places, were all decided in a restrictive manner by the vast majority of these Hungarian rabbis in order to present a united Orthodox front against innovation.

These authorities were entirely candid in enunciating the considerations underlying this policy. In a discussion of the changes instituted in the Chorshulen (choral synagogues),71 R. Yehudah Azvod conceded that many of his interlocutors had noble intentions but warned that they erred nonetheless "as experience has taught" because the new modes of behavior "that are known as Reform" frequently began with minor matters, only for the true agenda to be revealed later. The result was the eradication of the unique characteristics of Jewish worship and the erosion of Jewish law. Therefore, concluded Rabbi Azvod, "Anyone who changes is at a disadvantage ... and this has been our uniqueness ... not to change a thing in any matter of new practice."72 Maharam Schick similarly wrote, "Experience testifies unto us that as long as Israel preserved their customs there was Torah and fear [of God] among Israel and from the time that they have begun to make changes in their customs, religion has been constantly deteriorating."73 R. Abraham Samuel Benjamin Sofer (known as Ketav Sofer) also wrote that instigators of Reform initially introduced relatively innocuous changes: "Not with big things did they begin, but with minor customs and enactments." It is that experience, he asserted, that evoked rabbinic resistance since the experiences of "these communities are always before our eyes."74


71The Chorshulen were Orthodox synagogues that boasted male choirs with no instrumental accompaniment. The choir was derided by some as a modern innovation inconsistent with traditional practice. Advocates of the Chorshulen favored adaptations designed to promote decorum and aesthetically pleasing services.

72Teshuvot Yehudah Yaaleh, Yoreh De'ah, no. 39.

73Teshuvot Maharam Shik, Even ha-Ezer, no. 87.

74Iggerot Soferim, sec. 3, 10. See also R. Solomon Schreiber, "Ohel Leah," published as the introduction to Rabbi Abraham Samuel Benjamin Sofer, Sefer Ketav Sofer al ha-Torah (Tel Aviv: Sinai Press, 1980), 27-28. R. Solomon Schreiber relates that his father, Ketav Sofer, declined to join forces with R. Meir Eisenstadt, author of Teshuvot Imrei Esh, in an organized protest against a group of radical Reform partisans. Ketav Sofer stated that he was not concerned with opposing radical innovators since their views would, in any event, not influence the broad masses of
Hatam Sofer, asked to rule on the permissibility of moving the bimah from its central position, issued an unequivocal negative ruling, voicing his oft-quoted aphorism: “Innovation is forbidden by the Torah.”75 Thereafter, the issue of the location of the bimah was elevated by the Orthodox in Hungary to a position of a fundamental principle and became symbolic of the entire struggle for and against Reform. Moving the bimah from the center of the synagogue came to be regarded by the Orthodox as the thin edge of the wedge of Reform. Some followers of Hatam Sofer went so far as to rule that it is preferable to pray privately than to pray in a synagogue without a central bimah.76 In a responsa dealing with that very question, R. Azriel Hildesheimer emphasized that it was an issue that many rabbis had raised to the level of “an obligatory battle” and hence had come to represent the much broader issue of rabbinic authority. Moreover, he noted that he had never seen this innovation instituted in a community unless they had a “spark” of Reform and, as a result, he deemed it to be a matter with regard to which rabbis should not turn a blind eye.77 Nevertheless, others did not view this ruling as absolute. At a much later date, Rabbi Moses Feinstein wrote that the stringent attitude of Hungarian rabbis who forbade prayer in an edifice in which the bimah was not located in the center of the synagogue was a horaat shaah—an ad hoc ruling promulgated as a means of stemming the tide of Reform and applicable only in that locale and at that time.78

Hungarian Jews. He was, however, far more distressed when the innovators accepted basic halakhic premises but “were permissive with regard to rabbinic enactments and customs of Israel.”

75 Teshuvot Hatam Sofer, Orah Hayyim, no. 28.
77 She’elot u-Teshuvot Rabbi Ezriel, Yoreh De‘ah, no. 20.
78 Iggerot Moshe, Orah Hayyim, vol. 2, nos. 41, 42. Elisha S. Ancelovits, in his unpublished paper “The Boundaries within which Traditional Judaism Faced Modernity: Part I, Opposition to the Relocation of the

Rabbinic Responses to Nonobservance in the Modern Era

Another area in which rabbis tended to extreme stringency because of these considerations was the issue of change in the nature of the mehitzah, or partition, between the men’s and women’s sections of the synagogue. Asked whether it would be permissible to accede to a request to change a partition fashioned of wide boards for one of narrow slats “permitting people to see and be seen,” Maharam Schick, in a strongly worded negative reply, remarked that the matter is one of gravity “especially in our generation when it might be likened to the Jewish custom regarding the shoelace, for which one is obligated to sacrifice one’s life if need be” (Sanhedrin 74b).79 Responding to a similar query, Rabbi Hillel Lichtenstein extended the ruling in declaring that even if there is not a single woman present in the synagogue, one may not pray there since “on account of this willful violation it has become desecrated.”80 In a discussion of laws pertaining to synagogue construction, Rabbi Hayyim of Sanz stressed that with regard to the determination of this question local custom plays a decisive role and it is therefore forbidden “to vary and build a synagogue in a fashion other than in accordance with the custom that we have always followed in this country.” R. Hayyim of Sanz also added the comment that this is a matter regarding which the talmudic ruling requiring martyrdom for violation of even the most minor of Jewish customs is applicable.81

In other countries and at a later date other halakhic issues became the rallying point in the struggle against sectarian practices. In the United States a major issue in the early part of the twentieth century was that of mixed pews. That, however, was an issue involving an unequivocal breach of halakhah. In his written comments on this matter—one of the rare occasions on which he

Bimah and Wedding Ceremony,” examines several other sources relating to this topic.

79 Teshuvot Maharam Shik, Orah Hayyim, no. 77.
80 Teshuvot Bet Hillel, no. 104.
81 Teshuvot Divrei Hayyim, Orah Hayyim, no. 18.
expressed his views in writing—Rabbi Joseph B. Soloveitchik declared that a synagogue that adopts mixed seating forfeits its sanctity and that one should forego tefillah bi-tefillah even on the High Holy Days rather than pray in such a synagogue. He, too, ruled that organized opposition toward religious practices requires a “heroic stand” even in matters involving a minor custom:

I know beforehand the reaction to my letter on the part of our apostles of religious “modernism” and “utilitarianism.” They will certainly say that since a great majority of the recently constructed synagogues have abandoned mixed seating, we must be out of step with the masses. This type of reasoning could well be employed with regard to other religious precepts, such as the observance of Sabbath, or the dietary laws. However, we must remember that an ethical or Halachic principle decreed by God is not rendered void by the fact that the people refuse to abide by it. . . . The greater the difficulty, the more biting the ridicule and sarcasm, and the more numerous the opponent then the holier is the principle, and the more sacred is our duty to defend it. In my opinion, the Halachic dictum, bishe’ath gezerath ha-malchuth afilu mitzvah kallah kagon le-shinye arketha de-mesana, yehareg ve’al ya’avor [at a time of religious persecution through governmental decree, even for a minor custom, such as involving changing a shoelace, let one suffer death sooner than transgress it] (Sanhedrin 74b), requiring of us a heroic stand in times of adversity, applies not only to political or religious persecution originated from some pagan ruler, but also to situations in which a small number of God-fearing and Torah-loyal people is confronted with a hostile attitude on the part of the majority dominated by a false philosophy.82


It is important to note that even those authorities who ruled permissively with regard to some of these matters were aware of the need for extreme caution because of the nature of the controversy with Reform. Thus, in his discussion of the relatively moderate innovations introduced in the Choshulah, R. Tzevi Hirsch Chajes was careful to state that, in themselves, those changes did not, strictly speaking, constitute halakhic violations. Chajes clearly expressed his approval of sermons in the vernacular and the elimination of piyyutim as modifications that serve to enhance decorum during the services. He, however, cautioned against excessive expenditure for synagogue edifices and added the halakhic ruling that architectural designs that consciously simulate church architecture are forbidden by Jewish law. He included in that category the bells placed on several synagogues in Germany for the purpose of summoning worshippers to services—an innovation first instituted in the Temple of Jacob inaugurated by Israel Jacobson in Seesen in 1810.83 However, elsewhere Chajes was careful to point out the manner in which even permissible innovations should be introduced, and cautioned that sensationalism and publicity must be avoided in order to prevent confusion on the part of the untutored masses. Enumerating customs that can and should be modified in synagogue practices—for example, sale of Torah honors and recitation of some of the piyyutim, which are essentially impermissible interpolations in the blessings of the Shema—he noted that such practices were abrogated by individual rabbis in certain areas of Poland and Russia and that quarrels or divisiveness had not ensued. Chajes attributed this to the fact that these changes were instituted without publicity, formal gatherings, or public announcements. He stated that with reference to innovations or changes in ritual, it is of paramount importance to recognize that gatherings and fanfare are generally harmful for a number of reasons but primarily because the untutored masses are unable to distinguish between customs that have the force of law and mere
folkways. If folkways are abrogated the ignorant may mistakenly conclude that the law can also be altered arbitrarily. For this reason, explained Chajes, the Sages counsel conservatism and caution with regard to changing any aspect of synagogue practice. He also contended that customs and practices pertaining to the synagogue and communal life have a certain spiritual power and serve to strengthen bonds of solidarity and feelings of national pride among the scattered Jewish people. For that reason one must exercise exceeding caution with respect to their observance; vigilance is necessary lest divisiveness be created and “the people thereby become sundered in half.”

THE NONOBSERVANT AS INDIVIDUALS

Changing sociological realities prompted rabbinic authorities to undertake a fundamental reassessment of certain time-hallowed distinctions. Although rabbinic authorities reacted with stringency to ritual innovations even remotely akin to those advocated by exponents of Reform, their response to lapses in observance on the part of individuals was far more tolerant. There was even an underlying feeling of sympathy for the plight of those whose deficiencies in observance were motivated by economic hardship. Increasingly large numbers of individuals no longer conformed to Orthodox standards of religious and ritual observance. Confronted with this fact, many authorities drew a crucial distinction between individuals whose deviation from religious practice was prompted by economic considerations, or was born of ignorance, and those whose nonobservance was the result of an ideological metamorphosis.

This distinction was enunciated and justified in halakhic categories in a seminal responsum authored by Rabbi Jacob Ettlinger. In talmudic sources the status of a “mumar with regard to the entire Torah,” a person who rejects the commandments of the Torah in their entirety, is tantamount to that of an apostate. The Gemara (Hullin 5a) declares that one who desecrates the Sabbath in public is to be regarded as a “mumar with regard to the entire Torah.” Rashi, ad locum, elucidates this categorization by noting that public desecration of the Sabbath, ipso facto, constitutes denial of the divine role in creation of the universe. In publicly rejecting his obligation with regard to Sabbath observance the transgressor denies both God as Creator and the veracity of the biblical account of creation. Hence the Sabbath-desecrator is a “mumar with regard to the entire Torah.”

The novel socioreligious phenomenon of otherwise devout and believing Sabbath-desecrators prompted Ettlinger to a reassessment of the implications of such desecration. Although he appended a caveat declaring that his discussion was only theoretical in nature and not intended as a normative ruling, Ettlinger noted that the Sabbath-desecrators of his day could hardly be categorized as heretics:

However, as to Jewish sinners of our time I do not know how to consider them. . . . For because of the multitude of our sins the sore has spread greatly, to such an extent that for most of them the desecration of the Sabbath has become like a permissible act. . . . There are those among them who offer Sabbath prayers and recite the kiddush and then violate the Sabbath. . . . The Sabbath desecrator is considered a mumar only because, by denying the Sabbath, he denies the creation and

84 Tzvi Hirsch Chajes, Darkei Horaah, chaps. 6 and 7 in Kol Sifrei 1:238-42.
85 Ibid., 242.
86 See Salo W. Baron, “The Modern Age,” in Great Ages and Ideas of the Jewish People, ed. Leo W. Schwartz (New York: Random House, 1956), 363-64. Baron notes that as early as 1770 an anonymous writer (Mordcaï van Aron de Pinto) urged abolition of the Sabbath and holidays for economic considerations.
87 Binyan Tzion be-Hadashot, no. 23.
Ettlinger believed that the motives prompting many of his contemporaries to become lax in religious observance were economic rather than ideological in nature. Yet, although he was not prepared to regard the masses as heretics, he nevertheless emphasized that this liberal stance could not be extended to encompass those individuals who flagrantly rejected fundamental dogmas of Judaism. Accordingly, he declared that his ruling could not be regarded as applicable in instances in which "it is clear to us that [the individual] is aware of the Sabbath laws and yet audaciously desecrates the Sabbath in the presence of ten assembled Jews, for such a person is comparable to an absolute mumar.

The practical consequences of the ruling were significant. Although Ettlinger presented this decision only as a theoretical hypothesis (she-lo le-halakhah la-maaseh), it soon became standard practice to count Sabbath-desecrators as members of the quorum for public prayer and to accord them the privilege of being called to the Reading of the Law. Neither practice could have been permitted other than on the basis of a rationale similar to that advanced by Ettlinger. To this day, when pressed for a defense of such practices, rabbinic authorities invariably reply with a citation to this responsum. Of particular interest are the permissive rulings of R. David Tzevi Hoffman and, more recently, of the late R. Moses Feinstein, both of which cite Ettlinger as precedent.

The reasoning underlying this pivotal halakhic decision is also reflected in a basic theological distinction formulated by Ettlinger. In several passages in his homiletical-exegetical work, Minhat Ani, he draws a sharp distinction between individuals who have abandoned observance for pragmatic and financial reasons and those whose rejection of mitzvot is predicated upon ideological considerations. In his commentary on Be-haalotka Ettlinger states:

For there are two categories of transgressors, [There are] transgressors by virtue of [human] nature, those who do not overcome their passions but in their hearts believe in the Torah and the commandments and there are sinners ... who sin not on account of desire, but because they do not believe in the Torah and deny its commandments. The distinction between these two [categories], in which there may be discerned the origin of their transgression, is if they only sin to transgress a negative commandment so that they do not put a rein on their passions to guard against forbidden pleasures, but they observe the positive commandments which are not contrary to their passions. In this it may be recognized that they believe in the Torah. However, if not only do they sin in transgressing negative commandments, but also do not observe the positive commandments of the Torah, this indicates that they deny the Torah.

Individuals who desecrate the Sabbath for material gain, but nevertheless participate in rituals associated with Sabbath obser-

88In the United States, R. Abraham Rice affirmed the position that Sabbath desecrators should not be called to the Torah and when his opinion could no longer prevail he ruled that one should not answer "Amen" to the blessings recited by a Sabbath desecrator. This unpopular stance aroused much disserion. See Israel Tabak, "Rabbi Abraham Rice of Baltimore," Tradition 7:2 (Summer 1965): 107-08.
89Melamed le-Ho'il, Orar Hayyim, no. 29.
vance (e.g., the recitation of kiddush) were, according to Ettlinger’s analysis, to be regarded as “transgressors by virtue of [human] nature,” but not as heretics. It is to the status of such individuals that Ettlinger’s halakhic ruling was addressed.

It was Ettlinger’s contention that a considerable number of those who were attracted to the Reform movement were individuals whose motivation was primarily economic or social in nature. Accordingly, they sought to disregard those commandments which might lead to financial hardship or create embarrassment in association with non-Jews. Ettlinger underscored the need to differentiate between individuals whose intent was merely “to ease the yoke of Torah according to the needs of the times” and individuals who denied the divinity of the Torah and rejected its basic doctrines. Those whose transgression was motivated by passion could more readily be guided back to the path of Torah.

While many who assimilated were indeed motivated by social or economic considerations and the desire for material success that appeared to them to be contingent upon acculturation and loss of ethnic distinctiveness, there were a growing number of individuals whose nonobservance was founded upon an intellectual rejection of the fundamentals of faith. It was this latter group to whom rabbinic figures found it much more difficult to relate. Although Ettlinger presumed that the vast majority of the nonobservant were motivated by materialistic concerns, he nevertheless cautioned that even those individuals who were motivated by heretical views and who must be deemed to be “total transgressors” were not to be written off as hopelessly lost to Judaism. But, as will be shown, it was his disciples who were to turn their energies to that segment of the nonobservant population.

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92Ibid., 39b.
94Ibid., 91b.
95Philipson, The Reform Movement, 60.
96Ibid., 70.
who does not himself abide by the strictures of both biblical and rabbinic law have no binding force whatsoever. Quite simply, Rabbi Akiva Eger argues, such an individual’s conduct is governed by one of two motives; in either event he is unfit for rabbinic office. Either he lacks the requisite knowledge or he is knowledgeable but does not accept talmudic law as normative. If he is ignorant, how can he presume to issue legal rulings? If he is knowledgeable but knowingly repudiates talmudic law, how can he be regarded as a rabbinic decisor? The view articulated by Rabbi Eger reflects the attitude of the Orthodox vis-à-vis sectarian clergy that prevails to this very day.

CONCERN FOR UNITY

Contemporary attacks on the Orthodox community focus on Orthodox intransigence with regard to questions of personal status and call the Orthodox community to task for a lack of concern for the unity of kelal Yisrael. Ironically, in Eleh Divrei ha-Berit the strongest and most penetrating criticism of the Hamburg Reform leadership is couched in identical terms. They were taken to task for instituting innovations that effectively shattered the cohesiveness and unity of the Jewish community:

Why have you separated yourselves from the community? . . . What benefit will accrue to you if you separate from the

community and from the entire body politic of the people? . . . It will be devastating for generations to come. . . .

A similar argument was formulated by an Orthodox rabbinic writer in the United States. Writing in the Occident in 1845, Rabbi Abraham Rice penned an eloquent plea for unity:

The only and legitimate pride which the Jew bears in his heart is, that with us there are no sects, that the Jew in the East is like the one who lives in the West—that the religion in the South must be as it is in the North. This unity may be lost through a single ill-advised alteration; every ignorant man would daringly attempt to modify the religion according to the notions of his feeble intellect; and there would arise a multitude of sects without any parallel. But no! O God, Thy name is one and thy people Israel will remain one.

Eugene Borowitz, a prominent contemporary Reform writer, candidly concedes that classical exponents of Reform did not regard unity as a paramount value:

Had Kelal Yisrael been our most significant concern we could never have brought Progressive Judaism into being, for its creation seriously divided the Jewish community by defying the accepted community leadership and the established traditions of our people.

Yet, more often rabbinic writers were placed on the defensive and were accused of being those who were responsible for rendering Jewish unity a nullity since they would not compromise with regard to issues of Jewish law that threatened to split the Jewish people.

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97Iggerot Soferim, sec. 1, 51.
99Eleh Divrei ha-Berit, 92.
asunder. An incisive response to these frequently voiced accusations may be found in Minhat Ani, in comments on the scriptural portion of Pinhas. Etlinger asserted that although unity is a fundamental value and a prerequisite for divine redemption, it is but one value among many:

If you see that there are rebellious individuals who wish to destroy your Torah, then it is the time to act for the Lord, to wage the war of the Lord against them. And he who wages the war of the Lord against the heretics should not restrain himself on account of a false argument that peace is great and it is better to grasp in friendship anyone who may be termed a Jew than to create a separation of hearts. And the reason for this is that although peace between man and man is great, nevertheless, even better is peace between Israel and their Father in Heaven. Therefore, he who avenges the vengeance of the Lord to strengthen the Torah, he is the one who desires peace and seeks it diligently. 102

This principle is evidenced in the narrative of Phineas. In avenging the Lord, Phineas killed a prince of the tribe of Simeon and was nevertheless rewarded with the covenant of peace. Scripture states, “Behold, I give unto him my covenant of peace” (Numbers 25:12), and the Midrash adds, “it is indeed just (be-din ha) that he receive his reward. My covenant of peace.” 103 Although Phineas’ action seemingly fostered dissension and aroused the antagonism of an entire tribe, ultimately this very action brought peace between the Almighty and Israel. Therefore, Minhat Ani concludes, the Midrash uses the expression “it is indeed just (be-din ha)” with reference to Phineas’ reward. 104

Similarly, in his essay “Phineas—Eliyahu,” Samson Raphael Hirsch emphasized that the covenant of everlasting priesthood was granted to Phineas for demonstrating by means of his zeal that there are values that supersede unity and peace:

God has promised His true peace not to weakness, the weak acquiescence which allows events to take their course, which is bold only where there is no resistance and will advocate the good cause only when it meets with general approval and needs no defenders; He has not promised the covenant of His rule to those who proclaim “peace, peace at any price.” He has promised it to those whose highest and ultimate aim is true peace in Heaven and on earth. He has promised it to the zeal of Phineas, to the very man who is assailed by all the zealous adherents of a false peace as if he were a disturber of the peace; to him who in the name of God opposes every mocking departure from the law of God, the only power before which everyone has to bow; to him whose aim is to assert for the Law of God the sole rule over the acts and consciences of men. 105

The compromise of other values is too high a price to pay for unity and there do exist overriding concerns in the face of which the ideal of unity must be swept aside.

SECESSION

In the last decades of the nineteenth century, German Orthodoxy became embroiled in an internal dispute which, in essence, involved a judgment of the extent to which communal unity could be preserved when it came into conflict with ideological principle. The most radical response to the emergence of Reform institutions was the policy of secession adopted and vigorously advocated by

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102Etlinger, Minhat Ani, 106a.
103Bamidbar Rabbah 21:1
104Etlinger, Minhat Ani, 104b–105a.
Samson Raphael Hirsch. The Jewish community in each city was organized as a kehillah recognized by the government and supported primarily by a tax earmarked for religious purposes, which was levied upon Jew and Christian alike. The governing board of the kehillah was responsible for the administration of religious, educational, social, and philanthropic institutions and organizations. The establishment of Reform institutions under the aegis of the kehillah evoked a reaction from Hirsch demanding that the Orthodox withdraw from the kehillah and establish their own independent institutions. Hirsch contended that membership in the communal organization constituted a form of endorsement or, de minimis, conferred legitimacy upon the ideological positions espoused by the institutions sponsored by the kehillah. Accordingly, Hirsch asserted that halakhah forbids such endorsement or conferral of legitimacy and hence ruled that formal association with any organization that denies the fundamental principles of Judaism is forbidden. It must be noted that in formulating this position Hirsch emphasized that his policy demanded, not disassociation from individuals, but secession from a communal system that he viewed as an institutionalized expression of heresy.

However, as a practical matter, Hirsch was unable to act on his

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106 See the valuable discussion in Liberles, Religious Conflict, 165-226. It is commonly assumed that separation as a policy of the Orthodox community began in the 1870s with Hirsch. In fact, the idea of autonomous religious communities each practicing Judaism in accordance with its own dictates dates from an earlier period and was viewed as a desideratum by exponents of Reform. Thus in the 1830s Abraham Geiger maintained that the only manner in which the Reform movement could move forward at a suitable pace was by obtaining permission to form autonomous religious organizations apart from the general community. See Abraham Geiger, Nachgelassene Schriften, vol. 5 (Berlin, 1878), 54-55; and Wiener, Abraham Geiger, 99-100.

107 Offener Brief an St. Ehrwürden Herrn Distrikt-Rabbiner S. B. Bamberger in Würzburg (Frankfurt am Main: I. Kaufmann, 1877), 6ff. This letter was included in Gesammelte Schriften von Rabb. Samson Raphael Hirsch (Frankfurt am Main: I. Kaufmann, 1908), 4:316-43. An English translation of this document as well as of Bamberger’s response and Hirsch’s counterreply may be found in Samson Raphael Hirsch, The Collected Writings, vol. 6, Jewish Communal Life and Independent Orthodoxy (New York and Jerusalem: Philipp Feldheim, 1990), 198-317.

108 In the implementation of a policy such as secession, the sociological realities are often more dispositive than the theoretical or philosophical arguments. Liberles (Religious Conflict) quite correctly underscores the fact that secession was not “the cause of the strengthening of Orthodoxy in Germany.... Rather it was an expression of that strength.” He concludes:

All Orthodox leaders including Bamberger welcomed the law of separation, but only Hirsch approached it from a perspective of strength. For the others it was a guarantee of minority rights; for Hirsch it represented the right to be fully independent;... for Hirsch, emancipation was an opportunity. In that he was unique, as early as 1836 and as late as 1877. [pp. 225ff.]
since he was sincerely convinced that "within none of the Christian churches is there a deeper cleavage than between Reform Judaism ... and Orthodox traditional Judaism." Hirsch immediately began to lobby for a similar right to be granted to Jewish citizens. With the assistance of an influential statesman, Eduard Lasker, Hirsch finally succeeded in this endeavor. On July 28, 1876, the Prussian Parliament passed the Law of Secession granting Jews the right to withdraw from the organized community without renouncing Judaism and the concomitant right to form independent Jewish communities.

Following promulgation of the Law of Secession, Hirsch urged his congregants to secede from the established Jewish community of Frankfurt since it was now legally permissible for them to belong to the Orthodox community exclusively. Some congregants followed Hirsch's directive; however, a large number elected to remain within the general kehillah as well. To a large extent it was the relative newcomers to Frankfurt who followed Hirsch unconditionally while members of many of the older Frankfurt families who had a deep attachment to the historic kehillah and its institutions chose to maintain dual membership. Many of the latter were particularly loath to surrender their burial rights in the communal cemetery in which their forebears were interred.110


110 See Liberles, Religious Conflict, 215-17. Of interest are analyses and reminiscences of the events in Frankfurt contained in Historia Judaica 10:2 (October 1948). In three articles—[Saemy Japhet], "The Secession of the Frankfurt Community under Samson Raphael Hirsch" (100-22); Isaac Heinemann, "Supplementary Remarks on the Secession from the Frankfurt Community under Samson Raphael Hirsch" (123-34); and Jacob Rosenheim, "Historical Significance of the Struggle for Secession from the Frankfurt Jewish Community" (135-46)—the developments in Frankfurt are discussed by natives of the city who were intimately involved in its

A very tense situation developed within the Frankfurt community, a situation that became exacerbated when the renowned Rabbi S. B. Bamberger of Würzburg issued a ruling supporting the decision of those who chose to remain within the general kehillah.111 Much of the material contained in Bamberger's rebuttal

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of Hirsch’s position, although intriguing and of weighty halakhic import, is a non sequitur. The only salient point is a fundamental and empirical disagreement with regard to whether continued participation in the kehilla could, or did not, constitute endorsement and legitimization of the views and policies espoused by institutions supported by the kehilla. Bamberger contended that the nature of the association with the Frankfurt kehilla was such that continued membership could not be construed as legitimization of heresy.

However, Bamberger was prepared to endorse retention of membership in the kehilla only in circumstances in which the Orthodox would be granted total autonomy in conducting the affairs of their own synagogues and religious organizations. As late as February 1877 he endorsed Hirsch’s call for secession in Frankfurt and reversed his position only when such autonomy was guaranteed by the kehilla. With regard to other communities in which the fundamental demands of the Orthodox were not granted, Bamberger ruled unequivocally that secession was not merely permissible but mandatory. In a responsa concerning the question of secession, Bamberger’s son Simchah notes explicitly that only when the specified conditions were met did his father “agree that there is no obligation to separate from the Reform congregation in accordance with his reasoning. However, when these considerations are absent, his opinion has been recorded three and four times, namely, in the matter of Karlsruhe, Vienna, Wiesbaden and Frankfurt, that it is incumbent upon the law-abiding to separate themselves from the Reform congregation.”

Later, after concessions had been granted to the Orthodox community in Frankfurt assuring them of autonomy in matters of religious practice, Bamberger ruled that Austritt (secession) was not mandatory in that community under the then prevailing circumstances. However, he did not view Austritt to be either forbidden or repugnant. He simply recognized the cogency of the familial, social, and emotional motives for remaining within the kehilla. While he fully recognized that remaining in the kehilla would minimize divisiveness within the community and provide opportunities for positive influence over others, he did not raise continued association to the level of an ideological imperative. Not so the leaders of the Frankfurt kehilla. For them secession was a breach of the unity of the community and unity was not only a cardinal principle but one with regard to which there could be no disagreement. Although tolerant of diverse theological positions with regard to all fundamentals of Jewish faith and practice, they regarded unity as the one dogma to which all must subscribe: “There will be no end to sectarianism if every tiny faction which does not agree with the forms recognized by the majority has the right, on that account, to withdraw from the whole.” Later, they wrote, “The religion of the majority alone, according to the principles of Judaism, is the true and legitimate religion.”

From that point on, the German Orthodox community was sharply divided. Following Hirsch’s policy of Trennungsohodoxy (separatist Orthodoxy) Jewish communities in several cities, notably those of Berlin, Wiesbaden, Darmstadt, and Mainz, established separatist Orthodox congregations. On the other hand, a large segment of Orthodoxy, whose position was considerably strengthened by Bamberger’s sanction, chose to administer their own Orthodox institutions under the auspices of the overall community. Proponents of the latter policy, which came to be known as Gemeindeorthodoxy (communal Orthodoxy), established such com-

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112Bamberger, Oseene Antworte, 14.
114From a memorandum of the Frankfurt kehilla board to the city Senate in 1854, cited by Liberles, Religious Conflict, 179.
115From a memorandum of the Frankfurt kehilla board to the city Senate in 1858, ibid.
munal arrangements in many towns, notably in Berlin, Cologne, Frankfurt, Hamburg, and Breslau. Frequently, the very threat of secession appears to have had a significant effect in prompting the kehillah to accommodate the concerns of the Orthodox.\(^{116}\) Certainly this was the case in Frankfurt itself where the various concessions granted the Orthodox within the kehillah were surely the result of the desire to limit the number who seceded. This rift within Orthodoxy did not heal with time and the two camps remained separate and distinct until the Holocaust decimated German Jewry.

Much has been written regarding the respective merits and failings of both approaches. The separatists have been taken to task for engendering a tragic waste of resources and for promoting divisiveness and disharmony. Hirsch's defenders, on the other hand, have maintained that it was not for the Law of Secession and the viable option of establishing autonomous Orthodox communities even Gemeindeorthodoxie would have been unable to wrest any concession from the general communities which were dominated by Reform elements. Very much to the point are the remarks of the Lithuanian rabbinic authority Rabbi Hayyim Ozer Grodzinski. R. Grodzinski hesitated to offer a definitive opinion with regard to what he viewed as a dispute whose resolution was contingent upon familiarity with the details of the local situation and subsequent determination of the wisest course of action under the circumstances, but nevertheless declared that in his opinion Hirsch's action was necessary for the preservation of Orthodoxy:

There is no doubt that the sage and saint Rabbi S. R. Hirsch, of blessed memory . . . did a great thing in founding the admirable and outstanding Religionsgesellschaft which became an exemplary Jewish community. Had the God-fearing not separated themselves by means of a separate kehillah, due to their minority status they would have become submerged within the general community—a development which did not occur when they separated and developed on their own. Then even the general community was forced to improve itself and to conduct the general institutions in a sacred manner.\(^{118}\)

\(^{116}\) Despite the wealth of analytic comment in Noah Rosenbloom's *Tradition in an Age of Reform: The Religious Philosophy of Samson Raphael Hirsch* (Philadelphia: Jewish Publication Society, 1976), that work is marred by a partisanship that moves the author to interpret objective data in a manner that is not compelling. In particular, Rosenbloom's account of the controversy over secession is flawed. Rosenbloom is certainly entitled to regard secession as having been an unwise policy. But labeling Hirsch's action as "heedlessness" (p. 117) is hardly an appropriate designation if Hirsch believed he was "heedful" a higher imperative. The portrayal of those in other communities who followed Hirsch's secessionist policy as "malcontents" is also entirely unsupported and without basis in fact. Rosenbloom writes, "As expected, Hirsch's action was emulated by malcontents in other communities in Germany, such as Baden, Karlsruhe, Darmstadt, Wiesbaden, Giessen, Cologne, Bingen and Strassburg" (p. 119). The implication that those who—correctly or misguidedly—followed this policy were misanthropic, dyspeptic individuals, unhappy because of petty concerns or jealousies, can only reflect an unscholarly bias.

\(^{117}\) Although, as noted above (n. 108), Liberles maintains that the Law of Secession was a manifestation of the strength of the Orthodox, its enactment certainly served to enhance that strength (cf. Liberles, 211). While the situation in Austria was not identical to that in Germany, the threat of Austritt served to curb radical Reform tendencies in that country as well. The Austrian government rejected a petition presented by the Orthodox members of the Schiffschul in 1872 for permission to secede and form a separate community. Nevertheless, the possibility that the Orthodox might eventually obtain such permission and act upon it influenced Vienna's Jewish communal leaders to desist from introducing ideological reforms in the communal synagogues. See Marsha L. Rozenblit, "The Struggle Over Religious Reform in Nineteenth-Century Vienna," *AJS Review* 14:2 (Fall 1989): 209–21. Significantly, Rozenblit demonstrates that the fear of loss of tax revenue was an important factor in the ultimate decision (p. 219).

\(^{118}\)*Ahiezer: Koveitz Igerot, 1:243.*
Whatever arguments may be presented in favor, or in criticism, of the wisdom and value of Hirsch's policy, several important points must be emphasized in the interests of historical accuracy. Hirsch's argument against enforced membership in, and taxation on behalf of, an overall religious superstructure was based upon considerations of freedom of conscience and infringement of basic civil liberties. Freedom of religion, argued Hirsch, entails not only freedom to desist from a form of worship which runs counter to an individual's convictions, but also freedom to refrain from actively supporting such forms of worship and the propagation of theological tenets offensive to a person's convictions. Thus, Hirsch claimed that the legal right of secession was based upon the fundamental principle of freedom of religious conscience which includes an individual's right to form his own independent community.

It is a distortion of fact to contend that Hirsch's practical policy of separation from the larger Jewish community was indicative of a lack of concern for individuals who did not accept the teachings of traditional Judaism. Hirsch's Nineteen Letters, published in 1836, and a significant portion of his subsequent writings were addressed precisely to the questing and the nonobservant. Ultimately, the policy of separatism did in fact lead to an attitude of introversion and to an unfortunate erosion of interest in the well-being and welfare of the wider community. However, Hirsch himself cannot be faulted on that account. Quite to the contrary, Hirsch castigated those whose concern was limited solely to the religiously observant. Most revealing is Hirsch's discussion of the scriptural narrative of Abraham's quest for ten righteous men within the city of Sodom. He notes:

The idea of a righteous man in the midst of Sodomite depravity which Abraham visualizes, for whose sake the city might be saved, is not one who keeps to his own four walls, in haughty pride of his superiority gives up the masses and just looks on at their ruinous moral lapses, who thinks he has done quite enough if he saves himself and at most his own household. Yea, such a one Abraham would not class as righteous. He would not consider that he had at all fulfilled the duty which lies on every good man in bad surroundings. The ruin of the masses whom he had long given up would leave such a man cold. He might even possibly feel a certain smug satisfaction in it. That is not Abraham's "righteous man" out of consideration for whom the salvation of the city should be effected. His righteous man is to be found "in the midst of the city" and in lively connection with everything and everybody. He never leaves off admonishing, teaching, warning, bettering wherever and however he can. He takes everybody and everything to heart; he never desairs, he is never tired of trying, however distant the hopes of success may be. These are the righteous ones whom he presumes must be "in the midst of the city" who would feel grief and pain at the death of each individual of these thousands. . . .

Moreover, in formulating his position, Hirsch emphasized that his policy demanded, not disassociation from individuals, but secession from a communal system that he viewed as an institutionalized expression of heresy. In effect, Hirsch argued that the admonition "Do not associate with the wicked, even for purposes of Torah" (Avot de Rabi Natan 9:4) is not applicable to the heretics of the modern era and ruled that heretics and apikorsim such as those with whom the Sages forbade all form of social contact no longer exist in our time. The religious views of the nonobservant of modern times have been shaped by parents, educational institutions, and a climate of opinion over which they have no control. They are the products of their culture and are not to be held responsible for what they are. From a halakhic perspective they are to be considered in a category identical to those apikorsim and Karaites of whom Maimonides declared in Hilkhot Mamrim:

119See the discussion in David Henshke, Ha-Maryan 13:4 (1973): 44-47.


121Cited by Hirsch, Collected Works, 6:207.
However, the children and grandchildren of these errants, whose parents have misled them, those who have been born among the Karaites who have reared them in their views, are like a child who has been taken captive among them, has been reared by them, and is not alacritous in seizing the paths of the commandments, whose status is comparable to that of an individual who is coerced; and even though he later learns that he is a Jew and becomes acquainted with Jews and their religion, he is nevertheless to be regarded as a person who is coerced for he was reared in their erroneous ways. Thus it is those of whom we have spoken who adhere to the practices of their Karaitic parents who have erred. Therefore it is proper to cause them to return in repentance and to draw them nigh with words of peace until they return to the strength-giving Torah. [3:3]

Perhaps the best exposition of the arguments both for and against secession may be found in the previously cited letter of R. Hayyim Ozer Grodzinski. R. Grodzinski recognized the cogency of both positions as well as the sincere positive intentions of the protagonists. He wrote:

Regarding the question of association with sinners, in the opinion of the separatists they see in this a great danger to Judaism that [people] will learn from their actions and by their proximity they may influence the future generation in a negative manner. It is axiomatic that a matter that concerns the foundations of Judaism involves a grave proscription. However, in the opinion of the accommodationists, they see in this matter a great mitzvah, not to estrange a large portion of the Jewish people and bring them merit, and they see no loss in this for the faithful who are separated with regard to religious needs. And, thus, this does not involve a question regarding which one says, and do you tell an individual, sin in order that you bring merit to your friend? For, in the opinion of the accommodationists, this does not entail any sin or transgression, rather, to the contrary, it is a mitzvah to bring merit to the many. Accordingly, what the separationists see as a great transgression in uniting, in this, the accommodationists see a mitzvah. The doubt, according to this, is in the very act itself, whether it is a mitzvah or a transgression. 122

What was apparent to R. Hayyim Ozer Grodzinski, writing in the early part of the twentieth century, has become even more evident as the events of recent history have vindicated the arguments of both proponents and opponents of secession.123

122 Ahu'zer: Koveitz Lggerot 1:243-44.

123 Hirsch was not moved to formulate the policy of Austritt in the 1870s because of disinterest in the welfare of the nonobservant. His teachings and writings were addressed to that constituency and his concern for them was very real. However, if there is a shortcoming to be ascribed to the remarkable kehillah in New York City that has inherited the traditions of Frankfurt am Main, it is an insularity and isolationism, which is not the case, but the product, of Austritt. Lack of contact over a period of years is bound to decrease a sense of concern and ongoing interest. With the passage of decades the kehillah has increasingly focused in an inward direction and has had little contact with individuals of different religious outlook and orientation. The result has been a sad loss for the wider Orthodox community. The standards, integrity, cohesiveness, and faith of the kehillah have produced outstanding educational and communal institutions greatly benefiting both residents of its environs and the entire city. But the general Orthodox community in the United States, not to speak of those beyond the pale of Orthodoxy, has not had the benefit of its guidance or leadership.

On the other hand, the ability of the kehillah to recreate itself on these shores after dislocation and war, despite relatively meager financial resources during its early years, and to develop into a community that is a model kehillah, stands as a tribute to the staunch advocates of Torah im derekh eretz among its adherents and to their total commitment to its religious ideals. It is a singular community in which the word of Rav remains unquestioned law, kevod ha-rabbamut is a meaningful phrase, and the label of the community, K'hal Adas Jeschurun, stands for a level of religious probity and reliability that is acknowledged by the entire spectrum of Orthodox Jewry.
Nevertheless, since as R. Hayyim Ozer Grodzinski noted, the decision to secede from the wider community is to be reached on the basis of a variety of considerations that depend on the needs and problems of the particular locale, the philosophy and rhetoric of secession of the 1870s may be sorely out of place in the 1990s. Of interest in this regard is a statement of a number of rabbis of the London Orthodox community issued in 1979 in opposition to joint communal programs to be undertaken under the auspices of Orthodox Jews in association with Jews in Liberal-Reform congregations. Noteworthy is not so much the decision itself, which may or may not be compelled by halakhic and/or socio-religious considerations, but the language in which it is couched. In a publication addressed to the broader general community, the Orthodox rabbis state: “Anyone who imagines that these dissenters can be brought back into the fold by consorting with them is deluding himself and misleading others. Indeed, such conduct will repel the Orthodox and those awaiting proper spiritual guidance.”

This is not a halakhic pronouncement but a descriptive statement of fact. Is this a statement that had validity in the 1980s? Will it be valid for the 1990s?

**SELF-CRITICISM**

Rare, but not entirely absent, in rabbinical writings of this period is the expression of a sense of responsibility bordering on guilt on the part of the rabbinic leaders themselves for the failings of the generation. In the earliest responsa focusing on Reform collected and published in *Eleh Divrei ha-Berit*, R. Eliezer of Triesch turned to his colleagues and admonished that the movement for reform in religious worship served as a sign that the Orthodox were indeed found wanting in precisely that aspect of religious life. If there were inadequacies in ritual and communal life it was rabbinic leaders who bore the brunt of the responsibility for improvement. Moreover, only individuals who were themselves of exemplary moral stature could hope to exert influence on the wayward.\(^{125}\)

Of the various writings that focused on halakhic problems relating to the nonobservant, R. Tzvi Hirsch Chajes’s *Minhat Kenaot* was unique in its scathing self-critique and indictment of the Orthodox rabbinate and its failure to respond to the needs of the time. In the opinion of Chajes, the early successes of the Reform movement were directly attributable to this deficiency.

It is on account of this self-critique that *Minhat Kenaot* occupied a position of unique importance in the polemical literature of the time and that it may have had a salutary impact. Most polemics fail to persuade since the argument is addressed to, read by, and accepted by only an already committed audience. In Reform-Orthodox polemics, the Orthodox preached to the Orthodox concerning the failings of the Reform rabbinate and the Orthodox agreed; the Reform preached to the Reform concerning Orthodox shortcomings and adherents of Reform agreed. In *Minhat Kenaot*, in an unusual *vole face*, an Orthodox writer castigated his Orthodox colleagues, in Hebrew, regarding their own failings.

Whatever hesitation and ambivalence Chajes may have experienced in pronouncing judgment upon exponents of Reform, he hesitated not a whit in his sharp critique and condemnation of his Orthodox colleagues. In *Minhat Kenaot*, he declared unequivocally: “I know the responsibility for the religious warping of the generation rests solely upon our contemporary rabbis. Theirs was the obligation to stand on the lookout.”\(^{126}\) Again and again, he calls the rabbis to task in the words of the prophet Ezekiel, “But if the watchman sees the sword come and blows not the horn, and the...

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\(^{124}\) *The Jewish Chronicle* (London), April 20, 1979, 21.

\(^{125}\) *Eleh Divrei ha-Berit*, 94–96. Cf., also, comments in *Minhat Ani*, regarding the responsibilities of religious leaders, 5b, 87a–88a, 99a, 129b–130a.

people be not warned and the sword do come and take any person from among them... but his blood will I require at the watchman's hand" (33:6). In his analysis of the paralysis in Orthodox leadership Chajes differentiated between various categories of rabbinic leaders, all of whom he regarded as having fallen short of the mark. He divided those rabbis into four groups: to three of these groups he directed counterarguments and words of inspiration and encouragement; with regard to the fourth group he simply bemoaned the fact that he could find no common ground for discourse.

There are a significant number of rabbis among the Orthodox, wrote Chajes, who simply are unaware of the cataclysmic events taking place all around them. They have no knowledge of Reform circles in Germany; they have not followed the proceedings of the Reform Rabbinical Conferences as reported in the press and they are ignorant of the extent of the changes that have been instituted in various synagogues. In strongest tones, Chajes expressed disdain for such leadership:

With such rabbis I can have no relationship whatsoever, since I know with certainty that they do not fulfill the obligations that devolve upon them by virtue of their standing in the community. Their standing demands of them not to be silent, bovine-like, concerned only with their immediate surroundings, unaware of what transpires among their people. Rather, an obligation devolves upon them to be informed.\(^\text{127}\)

Complaints regarding know-nothingism among rabbis are a recurrent theme in Chajes's private correspondence. He repeatedly assailed defects in the religious education of the age. At an earlier date Chajes had authored a memorandum to the government containing practical suggestions regarding the training of rabbis and the responsibilities of their office in the community. In a private communication in which he described candidates for rabbinic office in Galicia, Chajes candidly wrote:

Even that segment of the youth that prepare to devote themselves to a rabbinical career have not the vaguest notion of the scope of that office... Of the vast corpus of the laws, of \textit{Orah Hayyim} they study only the laws of Passover, and even that section not in its entirety... and then of \textit{Yoreh De'ah}, the laws of ritual slaughter, tereifot, milk and meat, and forbidden mixtures. This constitutes their entire course of study. If one of them has a smattering of proficiency in these areas, even if he does not know that David reigned after Saul, he will be recommended by the Rabbis as the most qualified rabbinical candidate for even the most prestigious cities.\(^\text{128}\)

In another communication Chajes bemoaned in particular the lack of appreciation of the importance of the study of history among members of the Polish rabbinate: "In particular, among our coreligionists in the provinces of Poland, knowledge of the events of history is regarded as a useless matter and they have no desire to pursue it, deeming such study a waste of time and effort."\(^\text{129}\)

However, the vast majority of Orthodox rabbis, Chajes claimed, were indeed aware of the dangers of the innovators but, nevertheless, had been unable to respond adequately. Chajes divides those rabbis into three subgroups:

1. Those who were afraid to be vocal in opposition to Reform.

\(^{\text{127}}\)Chajes, \textit{Minhat Kenaot}, 1016.

\(^{\text{128}}\)The full text is cited in Herskovics, 367–68. See also N. M. Gelber, \textit{Toldot Yehudei Brody} (Jerusalem: Mossad ha-Rav Kook, 1955), 288.

deviation and inadvertently enhance its success. Eastern European masses who had hitherto followed tradition unquestioningly might learn of innovations introduced by adherents of Reform and find them to be appealing. Accordingly, those rabbis regarded silence as the better part of valor.

2. A second group consisted of rabbis who were well aware of their own failings and lack of skill in the art of debate. They feared public confrontation lest their lack of expertise bring dishonor to their cause.

3. Finally, a third segment of the rabbinate consisted of talented and learned individuals who enjoyed positions of prestige in the community but considered themselves to be above the fray and believed it to be beneath their dignity to engage in debate with individuals who were not their equals in rabbinic scholarship. Turning to the first two groups, Chajes stated simply that fear of publicity was vain. Regardless of what would or would not be done on the part of the Orthodox, the masses could not long remain in ignorance of the activities of Reform innovators. Chajes recognized adoption of an ostrichlike mentality to be ridiculous and candidly remarked, “Whether or not the innovators are knowledgeable or pious, they are assuredly most adept in the art of communication in public and they know how to present their programs in an attractive format.”

Whoever would not hear about those matters from the periodicals and newspapers would not be likely to learn about them from learned scholarly debates. To the second group, Chajes offered advice and encouragement. He cautioned that fear of dishonor is but a defense mechanism and added that perhaps these individuals merely seek noble excuses to avoid challenge.

However, upon the third group, Chajes vented his spleen in language bespeaking pain and bitterness. He felt that they had abdicated their role as rabbis since they placed their personal honor and glory above the welfare of their communities. In the sharpest of tones he catalogued the shortcomings of the Orthodox rabbinate: their poor communication skills; their lack of pastoral technique; their failure to promote the welfare of their constituents; and their abysmal failure to understand the spirit that animates contemporary society and the very real social, ideological, and intellectual problems with which their coreligionists were confronted. In their self-absorption they had even failed to address the single most important need of the hour: establishment of appropriate educational institutions. Unfortunately, conceded Chajes, they were, and deserved to be, a target for the criticism of Reform adversaries: “Because of the behavior of the rabbis of our country, our adversaries have found a place to make claims against rabbis of the old school saying that those who follow talmudic Judaism are as sheep who have no shepherd or guide.”

On the other hand, wrote Chajes, the leaders of the Reform movement had excelled in the very areas in which the Orthodox had failed so abjectly.

In a remarkable departure from the recriminatory style of Orthodox polemists, Chajes candidly conceded the ability of Reform leaders to address the concerns of their followers and bemoaned the abysmal failure of most traditional rabbis to understand the very real ideological problems with which their constituents were confronted. In all honesty, one must admit, wrote Chajes, that whether or not the innovators are knowledgeable and while they may not be pious, “they certainly do have manners and culture and an ability to speak.” No wonder, he added, that even formerly traditional congregations in large cities in Eastern Europe availed themselves of the services of these preachers.

130Chajes, Minhat Kenaot, 1017.
devastating critique of the Orthodox leadership and his intriguing analysis serve as a harbinger of what was to become the agenda for counter-Reform in the 1850s and 1860s.

One of the major rabbinic figures at the helm of the movement for counter-Reform and a creative leader in the revitalization of Orthodox educational institutions in Germany and Hungary was Azriel Hildesheimer. In many of these endeavors he was motivated by a visionary zeal shared by few of his contemporaries. He, too, turned a keenly critical eye upon the rabbinate and, in numerous letters and writings, sought to arouse his colleagues from their lethargy and to spur them to positive endeavors:

The greatest enemies in our midst are fear, confusion and dread . . . our side is silent and continues to be silent. . . .

...Indeed, I am assured that only with regard to what should not be done is there ever agreement among Gedolei Yisrael, but not with regard to what may be done; . . . always in our midst there is only "No" and "No." But . . . the main thing is to build. 134

POSITIVE RESPONSES

Responses to Reform were by no means entirely negative in nature. In a limited sense the Reform movement occasioned salient introspection and self-criticism of the type called for by R. Tzvi Hirsch Chajes and improvements in such relatively minor matters as synagogue decorum. That reaction was prompted, in part, by recognition of the fact that these matters did indeed require correc-

Schapiro (New York, 1954), 63. Chajes had no such compunctions. He readily conceded that the strength of Reform leaders lay in their homiletical skills.

134 Ibid., 35.

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tion but, primarily, out of a desire for containment, that is, to eliminate factors that might prompt further alienation and defection.

The prospect of the alienation of additional Jews, the aggregate number of whom could not be foretold, was certainly a matter of concern. But no less significant was the challenge of winning back the hearts and minds of those already attracted to the Reform movement. Many of the methods employed in that endeavor would also serve to stem the ongoing loss of those who, with the enticing availability of Reform as an option, were becoming disaffected with Orthodoxy. Although not all Orthodox leaders recognized that a positive program was imperative, some realized quite clearly that, ultimately, the only effective response to Reform and nonobservance was to be found in a positive approach, and that an effective agenda must include the founding of appropriate educational institutions, publication of journals and books for a popular audience, as well as the reopening of channels of communication and instruction.

One of the earliest rabbinic figures to express the need for such a positive approach was R. Jacob Ettlinger. His awareness of this need is articulated in a number of highly significant passages in Minhat Ani. In those comments Ettlinger called upon rabbinic leaders to concentrate their efforts upon a program of instruction and careful explanation geared to those whose faith had faltered. He stated emphatically that criticism and didacticism alone would continue to be ineffective; emphasis must be placed upon teaching and clarification of the practices and traditions of Judaism. Commenting on the double Hebrew expression for reproof (hokhe'ah tokhiah) employed in the biblical admonition "You shall surely reprove your friend" (Leviticus 19:17) and upon the dual connotations of the Hebrew term hokhahah, as meaning proof as well as reproof, Ettlinger notes:

The repetition of [the word] hokhe'ah denotes that it is of the essence of reproof that when one says to one's friend, "Do not
do that" if he has committed a transgression or, "Do so and so," if he has ceased to observe a commandment, one should not do so without explaining the reason to him. . . . Rather, one should explain the matter to him so that he himself will understand the purpose of that which he admonishes him to do or to cease doing. . . . And that is what is meant by "You shall surely reprove" (hokhe'ah tokhiah): with evidence and with logic you shall reprove him. . . .

Ettlinger's positive approach undoubtedly molded the thinking of his disciples Samson Raphael Hirsch and Azriel Hildesheimer. Assuredly, the greatest accomplishments of these two leading ideologues of modern Orthodoxy in Germany were their innovative programs for dealing with the intellectual needs of their age.

Hirsch's first major literary works were the Nineteen Letters, published in 1836 under the pseudonym of Ben Uziel, and Horeb, subtitled Essays on Israel's Duties in the Dispersion, a compendium of halakhot and their underlying rationale and interpretive meaning, published in 1837. In the case of the Nineteen Letters, in a sense,

the medium was the message; the format was as significant as the content. The letters were presented in the form of a dialogue via correspondence. In the first letter, a questioning and questing individual addresses a young rabbi and the rabbi replies in the following eighteen epistles. The salient feature is that there is a dialogue between two different individuals with two differing perspectives. The one doubts, hesitates, queries, questions. The other discusses, explains, argues, rhapsodizes, and interprets. At no time, however, does the respondent castigate or berate. The message of the format is clear and unequivocal: The author recognizes that there are different perspectives and, more significantly, that these differing perspectives are cogent and sincere. Hirsch is saying to the questioner: I realize that you have questions; I know that there are ample reasons to question; I wish to teach, to explain, and to provide answers. Your questions are well founded; I understand your doubts and hesitations. I even recognize that, in part, the shortcomings of our own community have caused your doubts to become even stronger. In the broad Orthodox community the neglect of spirituality has fostered a type of arid observance that is unattractive and hollow. No wonder that such rote observance has failed to inspire your confidence. But do not permit the failings of contemporary coreligionists to quench your own thirst for spirituality.

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Torah scholars both of his own generation and of the generation that followed. Rabbi Israel Salanter sought to promote the translation of the Nineteen Letters into Russian. See Dov Katz, Tenu'at ha-Musar, 3rd ed. (Tel Aviv: A. Zion, 1958), 1:223. R. Hayyim Ozer Grodzinski, Ahir'ezer: Kovetz Iggerot, vol. 2, also commended translations of Hirsch's writings and wrote in superlative terms of "the Gaon and scholar, of blessed memory, who knew the ailments of the children of his generation and endeavored to cure them and was successful in drawing pure, living waters, waters of healing and refreshment for those who suffer maladies of the soul" (589-90). Cf. the encomium of Rav Kook, Iggerot ha-Reiyah 1:182: "The giant in knowledge, noble prince of God, the Gaon, R. Shimshon Hirsch, who with the saving might of his right hand preserved the remnant of Western Jewry."
ality and do not permit the failings of our coreligionists to cloud
the beauty of the traditions of our people.

Although the dialogue is not continued and the doubter is not
afforded an opportunity to challenge the answers provided in the
form of the literary device of further letters, the message of the
format is nevertheless not lost: The message is one of respect, of
concern, of cordiality, and of availability. Moreover, although the
questioner is afforded but one letter, Hirsch, in his replies,
frequently presents the opposing arguments and gives credence to
many of the well-taken criticisms of exponents of Reform. Indeed,
perhaps the most powerful of Hirsch’s methods is his utilization
of the skilled debater’s technique of stealing the opponent’s
thunder by conceding the opponent’s best arguments in presenting
them oneself.

Also noteworthy in terms of format is another stylistic char-
acteristic which might easily be overlooked by a twentieth-century
reader. Accustomed as we are to “equal opportunity” language, we
may not notice the sensitivity to, and awareness of, the role of
women and the conscious effort to address the concerns of “sons
and daughters.” Such awareness and sensitivity is highly unusual
in a nineteenth-century Orthodox writer.

137Indeed, this was Geiger’s criticism of the Nineteen Letters and it is
well-taken. See Geiger’s review, “Rescensionen, Iggerot Tzafon: Neunzehn
Briefe über Judenthum, Erster Artikel,” Wissenschaftliche Zeitschrift fur
jüdische Theologie 2 (1836): 355; and Liberles, Religious Conflict, 122.
138For example, Samson Raphael Hirsch, The Nineteen Letters of Ben
Uziel, trans. Bernard Drachman (New York: Bloch, 1942), 98–100,
to his friend Z. H. May in Hamburg included in Horeb, trans. I. Grunfeld
139Hirsch, Nineteen Letters, 199, 201, 203, 220. The title page of the first
edition of Horeb bore the dedication, “To Israel’s thinking young men and
women,” and in the Foreword, the author writes, “I ventured to lay my
essays before my brothers and sisters because the time seemed to demand
something of the kind” (cxl).

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Horeb presents a response to the challenge of Reform on an
entirely different level. The basic thrust of Reform was radically
antihalakhic, if not completely antinomian. Rather than debating
fundamental questions of the theological or philosophical basis for
the continuing binding force of halakhic rules or responding tech-
nically with involved arguments regarding the parameters of par-
ticular laws, Hirsch, in this work, adopted a quite different tactic. In
Horeb, Hirsch undertook to delineate the laws, to teach their
details, and to offer interpretations of their significance and sym-
bolic or spiritual meaning. Rather than debate the case, Hirsch
presented the law as a given. However, the detailed, precise, loving
exposition of the law in its minutiae was, in itself, the answer to
Reform. In effect, Hirsch was saying: This, the law, the 613 mitzvot,
presented herewith in six divisions, is Judaism. This is the heart and
soul of our religion. Reject the law and you are rejecting the heart
and soul of Judaism.

Apart from his literary efforts, Hirsch played a major role in
the modernization of Jewish education. In Frankfurt, Hirsch made
establishment of a school that would offer a dual curriculum of
religious and secular studies a matter of highest priority. Schools
established by the Orthodox in Altona and Halberstadt had intro-
duced the combined study of religious and secular subjects and use
of current educational methodology. Hirsch deemed such edu-
cational enterprises to be fundamental for the survival of Ortho-
dox. Indeed, his earliest literary endeavors had been spurred by his
concern to provide textbooks for teachers. The school he

Mordecai Eliav, Ha-Hinnukh ha-Yehudi be-Germaniyah be-Yemen ha-
Haskalah ve-ha-Emunei-patziyot (Jerusalem: The Jewish Agency, 1960),
14In his letter to Z. H. May dated April 13, 1835, Hirsch writes, “I am
in charge of a few hundred young souls; I have to provide teachers for
them, of whom I have to ask that they introduce our youth into Judaism.
But I cannot ask that of the teachers, because they themselves do not
know what Judaism really means, and one cannot even really blame them
founded in Frankfurt in 1853, the Unterrichtsanstalt der Israelitischen Religionsgesellschaft, attracted a significant enrollment and became an important institution for the training of Orthodox laymen.\footnote{Ibid., 18-19; Eliau, Ha-Hinnukh, 237-38.}

The second major ideologue of the time, R. Azriel Hildesheimer, recognized that it was not sufficient to create institutions for elementary education. The need of the hour was for the training of rabbis who would be equipped to respond to the unique demands of the time. Writing to a group of lay leaders in May 1872, Hildesheimer, then in Berlin, extolled the positive achievements of a reinvigorated, restructured Orthodoxy and the establishment of independent congregations and journals. Yet, in a cri de coeur, he expressed his anxiety that, these developments notwithstanding,

Where can we find . . . in our camp an institution that, in some measure, can respond to the destructive tendencies of our time and answer the needs of the hour? . . . Have we at all begun such an undertaking, even partially? . . . He who does not wish to deceive himself must see that in our stance there is a narrowness that may quiet matters momentarily but will not provide a substantive solution . . . Whence shall we take rabbis? Whence shall we take teachers?\footnote{Published in Meir Hildesheimer, “Ketavim be-Dvar Yesod Bet ha-Midrash le-Rabbanim be-Berlin,” Ha-Maayan 14 (1974): 14-15.}

Hildesheimer was not the first to perceive the need for a new type of institution for the training of rabbis. During the early years for their ignorance. Moreover, there is no text-book available which I could give them for guidance” (Horeh, cxxv). Similarly, in the Nineteen Letters, Hirsch asserts, “I rejoice that the impulse to these essays was derived from the necessity of supplying the teachers of the schools under my supervision with a book in which they could read themselves into Jews before they began to rear young souls for Judaism” (p. 219).

\footnote{Eliau, Ha-Hinnukh, 227-32. See also Liberles, Religious Conflict, 152-55; and Rosenbloom, Tradition, 104.}

of the nineteenth century, the growth of Haskalah and impoverishment in some parts of Europe caused many of the yeshivot in Western Europe to close and the number of students in the ones remaining to dwindle. Until that time, the yeshivah, with a curriculum of study consisting solely of Talmud and Codes, had served as the major source for the training of rabbis. The traditional yeshivah was an academic institution of higher learning concerned solely with rabbinic scholarship and made no effort to provide practical or professional training for rabbis. In response to cataclysmic change in the orientation of the Jewish community a demand arose for the establishment of a radically new type of educational institution that was to differ from the yeshivah in three basic respects: (1) There was to be a pronounced professional orientation with courses in homiletics and practical rabbinics. (2) The curriculum was to include secular studies as well. (3) The religious studies program was to be broadened to include Jewish philosophy and history and a somewhat positive attitude to modern Jewish scholarship and Wissenschaft.\footnote{Cf. the interesting comments and analysis of Mordecai Breuer, “Three Orthodox Approaches to Wissenschaft,” Jubilee Volume in Honor of Rabbi Joseph B. Soloveitchik, ed. S. Israeli, N. Lamm, and Y. Raphael (Jerusalem and New York: Mossad ha-Rav Kook and Yeshiva University, 1984), 2:856-65.}

Throughout the course of the nineteenth century there was the focus of heated controversy within the Orthodox community. A number of innovative proposals were vigorously endorsed by some authorities only to be violently contested by others. The earliest suggestion for the establishment of a rabbinical seminary is found in a little known work entitled Mosdot Tevel, authored by Rabbi David Friesenhausen and published in Vienna in 1820. Friesenhausen claims to have submitted his novel proposal to government authorities as
early as 1806, but he surmised quite correctly that "the majority of rabbis will oppose this matter." The rabbinic leaders who originally endorsed the plan were prevailed upon publicly to withdraw their support. More realistic proposals for the establishment of a rabbinical seminary were advanced by Rabbi Jacob Ettlinger as early as 1829, and again, in greater detail, in 1846. For a variety of reasons those projects were abandoned but many aspects of the proposed curriculum were later adopted by the Orthodox seminary established by Hildesheimer.

What for others was but a dream became a reality as the result of the creative leadership of Hildesheimer. Die Rabbinerseminar für das Orthodtische Judentum established by Hildesheimer in Berlin in 1873 became a potent force in the Orthodox community. Decades later Joseph Wohlgemuth made the extravagant claim that the Rabbinerseminar had saved Orthodox Judaism in Western Europe and "only fools or zealots would not recognize this." Apparently there are many whom Wohlgemuth would have considered to be fools and zealots since, despite its many successes, the Rabbinerseminardid not meet with universal approval in rabbinic circles.

Hildesheimer himself suggested that much of the opposition was based on previous negative experience with graduates of government-sponsored assimilationist seminaries and would dissipate when it became evident that his institution, staffed with an observant and dedicated faculty, was of a different genre. But that was an oversimplification. Several of Hildesheimer's prominent colleagues in Germany remained notably cool toward the undertaking. Rabbi Samson Raphael Hirsch was unenthusiastic. Although the relationship between Hirsch and Hildesheimer may not have been free of tension, Hirsch's distrust of the seminary was based upon ideological considerations.

The venerable Rabbi Seligmann Baer Bamberger of Würzburg, as Hildesheimer himself conceded, was opposed as a matter of "pure ideological conviction with no personal animus whatsoever" simply because he did not favor the mingling of secular and sacred studies in a rabbinical academy.

Many rabbinic authorities regarded the Rabbinerseminar as highly effective in preserving Orthodoxy in Germany but considered it to be unacceptable as an ideal. In particular, R. Isaac Elhanan Spektor and Rabbi Israel Salanter praised Hildesheimer's achievements in Berlin. Yet, repeatedly, reservations were expressed.

146R. David Friesenhausen, Mosdot Tevel 91a.
147Ibid., 92a. See also R. Solomon Schuck, She'elot u-Teshuvot Rashban al Even ha-Eger (Satmar, 1905), no. 157; and R. Moses Schick, She'elot u-Teshuvot Maharam Shik, Orah Hayyim, nos. 306, 307.
149Der treue Zionswächter 2 (1846): 241-45.
150Die jüdische Presse 3 (1872): 34-44.
152Iggerot Rabbi Ezriel, 34 (Hebrew).
155Hungarian rabbis who had been vociferously opposed to Hildesheimer's earlier educational activities in Eisenstadt were muted in criticism of the Berlin seminary. See Eliav, "Mekomo," 66-67. Characteristic is an alleged comment of Ketov Sofer favoring Hildesheimer's Berlin endeavor because while "here he spoiled, there he will correct" (Iggerot Soferim, sec. 3, 41, n.).
pressed regarding the suitability of such a program of study in Eastern Europe where Torah learning had not been diluted. In a lengthy responsum in which, inter alia, he discussed the conditions under which secular studies might be included in the curriculum of communal schools, the head of the famed Yeshivah of Volozhin, R. Naftali Zevi Yehudah Berlin, cautioned that one should not expect such schools to produce rabbis and arbiters of the law for "it is the way of Torah to endure ... and the goal of Torah study to be achieved, only in someone who devotes himself to it totally and exclusively."  

Rabbinic Responses to Nonobservance in the Modern Era

Decades later, some prominent Orthodox scholars continued to view rabbinical seminaries as, at best, an accommodation necessary to meet the needs of the Jewish communities of Western Europe. In the early 1930s, during the early years of the Hitler regime, a plan was formulated to relocate the Hildesheimer seminary — then in the sixth decade of its existence — to Palestine. Meir Hildesheimer, the administrator, traveled to the Holy Land on an investigatory mission. However, upon his return to Berlin, the Board of Directors and teaching faculty vetoed the proposal. In all likelihood a principal reason for abandonment of this plan was the avowed opposition to transfer of the seminary expressed by leading Orthodox rabbinical authorities in Jerusalem and in Eastern Europe. An explicit record of this opposition is to be found in a series of letters discussing the projected move written by R. Hayyim Ozer Grodzinski of Vilna to the heads of the Berlin seminary as well as to his rabbinic colleagues in Palestine, including Rabbi Joseph Tzvi Duschinsky in Jerusalem and Rabbi Abraham Isaiah Karelitz, the HaZon Ish, in Bnei Brak.

Rabbi Grodzinski enumerated his reasons for opposing establishment of a rabbinical seminary in Palestine, succinctly stating that: (1) While the Hildesheimer seminary fulfilled "the need of the hour, the time and the place," and was essential in an age and a locale that required Orthodox communities to appoint rabbis who had also received a university education, such a need was limited to the acculturated German community of the late nineteenth and early twentieth centuries. (2) Palestine in the twentieth century had no need, wrote Rabbi Grodzinski, for such a "factory for the production of rabbis." Palestine had great yeshivot of its own and did

157On Rabbi Israel Salanter’s reservations regarding professional schools for the rabbinate see Katz, Temuah ha-Mussar 1:226–27; and Rabbi Jacob J. Weinberg, Seridei Esh, vol. 4 (Jerusalem: Mossad ha-Rav Kook, 1969), 234–35. Although R. Israel Salanter was opposed in principle to the establishment of rabbinical seminaries in Eastern Europe, he was a proponent of a vigorous educational program directed toward both the broad masses and the intelligentsia. He attempted to foster translations of the Talmud into a European vernacular as well as into Hebrew in order to popularize its study and mounted a campaign for the inclusion of talmudic studies in the curricula of European universities. See Katz, Temuah ha-Mussar, 221–22; and Hillel Goldberg, Between Berlin and Slabodka: Jewish Transition Figures from Eastern Europe (Hoboken, NJ: Ktav, 1989), 30. Rabbi Israel Salanter believed that, apart from other benefits that might accrue, acceptance of Talmud in the academic curriculum of the university would lend it prestige in the eyes of assimilated Jews and might stimulate their own renewed interest in their heritage. He understood full well that they were enamored of secular and non-Jewish culture. Subjects held in esteem by non-Jews might arouse their own curiosity. If valued by non-Jews, then the Talmud might be seen as having enduring value by Jews as well. (It is related that when, on one occasion, a nonobservant maskil was called to the reading of the Torah in Brisk and recited the blessings, R. Joseph Baer Soloveichik, the Beit ha-Levi, commented pithily, "He certainly should recite the blessing 'who has given us the Torah' for had God given the Torah to the non-Jews, he would feel bound to observe its tenets." See Aaron Suraski, Marbittei Torah u-Mussar [New York, 1977], 1:83.)

158She'elot u-Teshuvot Meshiv Davar, no. 44.


160Ahi'zer, Kevetz Iggerot 2:443–47. Some of these letters are also to be found in Abraham I. Karelitz, Kevetz Iggerot (Bnei Brak, 1956), 2:170–74. See also Pe'er ha-Dor: Hayyei ha-Hazon Ish (Bnei Brak: Netzach Press, 1966), 1:315–16; and Seridei Esh, vol. 1 (Jerusalem: Mossad ha-Rav Kook, 1961), 307–08.
not require spiritual leaders to whom secular studies were primary and Torah studies secondary.\(^{161}\) (3) Furthermore, in Rabbi Grodzinski's opinion, neither could graduates of such a seminary properly serve the Sephardic community in Palestine. Its graduates would not appeal to the traditional element among them. As for

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\(^{161}\) Asher: Kovetz Iggerot 2:444. In 1950 Rabbi Herzog expressed a similarly negative opinion regarding the establishment of rabbinical seminaries in Israel. While he favored the establishment of a university under Orthodox auspices, he emphasized that he viewed the establishment of an Orthodox rabbinical seminary to be detrimental and wrote bluntly: "The seminaries have not as yet provided us with a single great scholar (gadol). When great scholars entered them, some emerged as pygmies, while some emerged as great scholars. But it was not the seminaries that made them into great scholars." See Rabbi Isaac ha-Levi Herzog, Tehukkah le-Yisrael al pi ha-Torah, vol. 3, Hazakah, Hakkim ve-Takkanot ha-Rabbanim ha-Rashit, ed. Itamar Wahrhaftig (Jerusalem: Mossad ha-Rav Kook and Yad Harov Herzog, 1989), 240. Cf., however, the assessment of Rabbi Weinberg, Seridei Esh, vol. 2 (Jerusalem: Mossad ha-Rav Kook, 1962), no. 30, who writes movingly, "It is proper to record that among the rabbis of Germany there were righteous, pious and holy men, who in other countries would have been pursued by tens of thousands of people seeking to benefit from their Torah and fear of God," and attests that, for these individuals, secular academic pursuits and attainments were secondary in nature and that they made use of their academic titles only in dealings with civil authorities or the assimilated.

Whatever may have been their attitude toward establishment of rabbinical seminaries, Torah scholars of every orientation exhibited an attitude of deep respect and fulsome appreciation for the contributions of both Hirsch and Hildesheimer. This attitude was based on the firm conviction that the synthesis of Torah and secular studies advocated by both Hirsch and Hildesheimer was predicated upon absolute and uncompromising faith and fear of Heaven and an unshakeable sincerity of commitment to Torah and mitzvot. As Rav Kook wrote (Iggerot ha-Reiyah 2:27) of both Hirsch and Hildesheimer, they manifested "the ability to unite knowledge of the world and of life with a stalwart fear of God and love of Torah and mitzvot, with faith and a perfect heart."

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\(^{162}\) Weinberg, Seridei Esh 1:2.
who had mastered the secular wisdom of the day and responded to its challenges. It was Hildesheimer's hope that among the graduates of his institution there would be individuals suited to such a mission, persons capable of communicating with modern intellectuals and trained to transmit Jewish values in the modern idiom.\textsuperscript{163} Whether or not Hildesheimer succeeded in that goal is a different question.

With the passage of time the need for rapprochement with the nonobservant became ever more compelling. It became increasingly evident to rabbinic leaders that positive approaches must be found in opening channels of communication. In a letter dated 25 Iyar 1912 addressed to those who were planning the first Knessiah Gedolah of the Agudath Israel movement, Rabbi Abraham I. Kook wrote that one finds "two spiritual strands . . . two opposites that cannot be united, holy zealotry and patient tolerance (ha-kinah ha-kedoshah ve-ha-savlanut ha-metunah)." But these two opposing vector forces of zealotry and calm patience must be reconciled if efforts for the greater good of kelal Yisrael are to be crowned with success. Only by fostering deep spiritual love for each member of the Jewish people can the tolerance and patience so sorely needed be acquired.\textsuperscript{164}

In even stronger words than those used by Bamberger and Hirsch in the 1870s, Rabbi Kook argued that deviationists of modern times must be approached in a conciliatory manner. He vigorously opposed the view that had been adopted by "the great majority of [Torah] scholars that in our times it is fitting to abandon those children who have been turned from Torah ways and the faith by the raging current of the time. I say emphatically, that this is not God's way . . . !"\textsuperscript{165} Such individuals must be regarded in every respect as acting under force majeure. "They are coerced in every sense of the word," wrote Rabbi Kook, "and heaven forbid us from judging the compelled as we do the self-willed."\textsuperscript{166}

Eighty-two years later the prophetic quality of the words penned by Rabbi Kook in 1908 becomes ever more evident. To the extent that rabbinic leaders erred in their assessment of, and response to, Reform, it was in the failure to develop avenues of communication with those whose deviation was intellectually motivated. The watchmen on guard on the watchtower, the Shomrei Tzion, had absorbed a siege mentality. But the watchmen referred to in Ezekiel are enjoined to be tzofim, those who stand on the lookout, those who look ahead to the future. Ultimately, as Rabbi Kook predicted,

\begin{quote}
the transgressors and the rebels who are not prisoners of fashion but of misdirected reason will return at a highly exalted degree. For this reason, there is great hope for the vast majority of our children, so we must [hold] them and not forsake them "and it shall come to pass that, instead of that which was said to them, you are not my people, it shall be said of them, you are the sons of a living God." [Hosea 2:1]\textsuperscript{167}
\end{quote}

\textsuperscript{163}Ibid., 1:2.


\textsuperscript{166}Rabbi Abraham I. Kook, liggerot ha-Reiyah 1:171.

\textsuperscript{167}Ibid., 171-72.
In Law and Thought
3
Rebuking a Fellow Jew: Theory and Practice

Yehuda Amital

The commandment of tokhahah (rebuke) requires Jews to reprimand each other for sins they may commit. In an expression of mutual concern and responsibility, the Torah (Leviticus 19:27) bids every Jew to assist one another’s observance of mitzvot with constructive criticism. Clearly, such an imperative assumes that the entire community subscribes to the same law and authority, an assumption considered reasonable in premodern times. But is this mitzvah normative even when it is obvious that the object of the reproof will not heed the reproach? This issue is clearly relevant in contemporary times, and a clear analysis of it is urgently needed in today’s Jewish world.¹

It would appear that this question directly depends on the

¹See Haggahot Maimuniot, Mishneh Torah, Hilkhot De’ot 6:3 for a preliminary discussion of the issue. However, only the views of the Yere’im and the Semak are cited there. See n. 4 below.
more fundamental matter of whether the goal of the rebuke—helping one's neighbor to avoid sin and return to complete religious observance—is part of the very definition of the mitzvah itself, or is only the reason for the mitzvah, and therefore of no intrinsic halakhic consequence. If it is considered part of the obligation itself, then the commandment cannot simply be understood as an obligation to rebuke but must be expanded to include all means of influence that could be brought to bear to help another person avoid sin. Indeed, the vast majority of rabbinic authorities follow this approach and therefore include other means, such as persuasion, under the mode of behavior required by this commandment.

Strikingly, and somewhat paradoxically, while this mode of reasoning results in expanding the parameters of the mitzvah in one respect, it circumscribes it in another. For if the purpose of the mitzvah—bringing a fellow Jew closer to God—is an intrinsic aspect of it, then it would not be required in a case where the end result will not be achieved, such as when it is known that the rebuke will not listen or respond. In fact, if it is clear that the sinner will not heed the words of the rebuker, most authorities maintain that there is no obligation to admonish. On the contrary, the obligation is to refrain from saying something that will not be heeded. Others

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2 This matter falls under the rubric of the more general question of whether or not we may engage in darshinan tauma di-ke-stra, interpreting the reason for a commandment, and investing that reason with halakhic significance. The ruling is that we are not to engage in such activity and, therefore, whatever is deemed to be only a reason for a mitzvah remains outside its halakhic boundaries. See, for example, Kiddushin 68b and the other references cited there in Maseh ha-Shas. The Hida, Birkei Yosef, Orach Hayyim, no. 608, makes this connection explicitly. See, too, She'elot u-Teshuvot Aveni Nazer, Yoreh De'ah, no. 461:4.

3 See Rambam, Sefer ha-Mitzvot, Aish no. 205; Hilkhhot De'ot 6:7; Semag, Mitzvot no. 11; Rashi, Yevamot 65b, s.v. lomar davar ha-nishmu; Rif and Meiri on Yevamot 65b; Rosh, Bitzah 4:2; Tosafot, Baba Batra 60b, s.v. muta; Shabbat 55a, s.v. ve-af al gaz; Rabad, cited in Hida, Mahazik Berakhah, Orach Hayyim 208; Shitah Mekubetzet, Baba Metzia 31a; Sefer

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disagree and maintain that there always exists an obligation to admonish a sinner, if only once, whether it will be effective or not. However, the strength of the admonition depends on whether the reprimand is directed at an individual (where more of an effort is required) or at a group. Moreover, it is likely that even these authorities maintain that if it appears probable that a reprimand will be not only ineffective but counterproductive, that it will lead the sinner either to sin further or even only to hate the rebuker, then there is no obligation to fulfill the mitzvah of tokhahah.

There is another related source for restricting the application of tokhahah based on the continuation of the verse "and you will not bear a sin over him" (Leviticus 19:17). Based on Targum Onkelos's interpretation, this means that a Jew will be held responsible for a sin committed by his friend only if he could have rebuked him and did not do so. This interpretation is echoed by Ibn Ezra and the Rambam in their biblical commentaries on this verse as well as by Rabbeinu Yonah, Shabbat Teshuahah 3:59, 72, 196. Such accountability is reasonable only if such a rebuke would have been successful had it been attempted (see Shabbat 54b–55a). However, if one knows in advance that his rebuke will go unheard, he is not obligated to go through with it.

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Yere'im ha-Katzar, no. 37; Hagahot ha-Gra, Orach Hayyim 608:4; Sefer ha-Hinukh, no. 239; Sefer Hasidim, no. 413 (no. 938, in another edition; although there the emphasis is on the negative impact such a rebuke may have [i.e., the rebukee might be motivated to sin even more], not its futility. See Magen Avraham, Orach Hayyim 608:3).

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4 See Yere'im, no. 223; Semak, no. 114; Ritva and Nimukei Yosef, Yevamot 65b; Rama, Orach Hayyim 608:2. See too Biur Halakhah, ad loc.

5 See Sefer Hasidim, no. 413; Taz on Rama, Yoreh De'ah 334:3; Nekidor ha-Kesef, ad loc.
A distinction must also be made between cases where those committing the sin are aware that what they are doing is prohibited and those where they actually believe their activity to be permissible. In the latter case, their unwillingness to heed the reproacher is not due to any obstinacy or rebelliousness, but simply to the fact that they have been trained to believe that their behavior is acceptable, and the person admonishing them must be considered to be unnecessarily stringent. With respect to those who are convinced that what they are doing is correct, some authorities maintain that there is no obligation of tokhahah. If, however, the sinner is merely acting out of ignorance, then the commandment to correct his or her misconception does obtain. Similarly, a distinction may exist depending on the nature of the violation, whether a Torah law is at stake (in which case rebuke is more seriously required), or merely a rabbinic ordinance, and whether the violation was committed willfully (bi-mezid) or mistakenly (bi-shogeg).


Interestingly, the Raavan (no. 25, end) applies the principle of mutashe-yehu shogegin (it is better that they sin out of ignorance) to such circumstances and does not require rebuke even in a case where the possibility exists that they may respond favorably. He requires rebuke only when the efficacy of the act is assured in advance.

Rama, Darkei Mosheh, Oruh Hayyim 608 (based on the Sefer ha-Ite) requires rebuke whenever an explicit law of the Torah is being violated since, as he clearly assumes, there is no one who is ignorant of the Torah’s lucidly formulated written laws and, therefore, the violation must have been committed willfully (see below). The Rashba understands the distinction based on the inherent severity of the commandment, considering a biblical law to be more serious than a rabbinic one.

See She’elot u-Teshuvot Avnei Neter, Yoreh De’ah, no. 461:4; Sefer Yere’im ha-Katzar, no. 37. There is also a distinction made between

All this, however, concerns only the obligation of an average individual Jew to reproach his or her fellow coreligionist. What about the obligation of the leaders of the community, such as rabbis, whose responsibility extends throughout the entire Jewish community? What are the limits, if any, to their obligation to rebuke?

On this subject, the insightful words of the Rashba (R. Solomon ibn Adret; c. 1235-1310) deserve careful attention:

Be aware that a soft spoken word shatters bones, and different ways will clear a path before the people to remove obstacles from them. [Therefore,] one must progress from the easy to the difficult, and not attempt the entire package all at once. These words are directed towards the intentions of the heart, and you are already familiar with that which is stated in Nazir (23b), “A sin for its own sake is greater than a good deed not performed for its own sake.”

[Our Rabbis] have already shown us good and clear counsel, as it states in Avodah Zarah (15a) with reference to the house of Rabbi Judah the Prince which was under an obligation to send a fattened bull to the Caesar on the Roman holiday. Rabbi Judah then paid 40,000 coins to the Caesar for the concession that they would not sacrifice it on that day but on the morrow, then he paid another 40,000 for the concession that they would not sacrifice it at all. [The Talmud] comments on it that Rabbi Judah intended to uproot the entire practice, and therefore uprooted it slowly, bit by bit.

Furthermore, you should know that it is impossible to deal with all people equally. Recall that David, our lord and king, decided to overlook the misconduct of Joab and Shim’i, even though they deserved death, . . . for to everything there whether or not the rebuke has the power to enforce his will on the recalcitrant sinner. See Bi’ur Halakah, Oruh Hayyim 608, s.v. mohin bi-yadam, citing Hida, Birkei Yosef, ad loc.
is an appropriate time, and ignoring something sinful is occasionally a positive commandment, and everything must be measured by the need of the hour . . . 10

While the Rashba's advice certainly applies to every individual, it was clearly intended for communal leaders, who are required to adapt their actions to contemporary exigencies all the more. Even though, generally speaking, it is improper to ignore the behavior of a sinner, at times it is a mitzvah, if the situation so requires. What emerges from this is that even in a case where the normative requirements of tokhahah call for an obligation to rebuke, if the leaders of the community believe that the times require refraining from such activity, then it is their obligation to do so. Indeed, the Rashba says further in the responsum: "And if silence, employed to ultimately yield positive results, is occasionally ineffective, the use of force will only engender the opposite."

THE VALUE OF PERSUASION

In light of the previous discussion, it is clear that there are a number of different reasons why there is no obligation to rebuke Jews who do not believe in the sanctity or binding force of the Oral Torah: (1) it is clear that they will not heed the words; (2) they are part of a group with respect to which it is said that "just as it is a mitzvah to speak words that will be heeded, so too it is a mitzvah not to speak words that will go unheeded" (Yevamot 65b); (3) in the sinner's own opinion, his conduct is permissible. In all of these cases, the authorities cited above do not require rebuke. Indeed, R. Yehiel Michael Epstein (1829-1908) deemed it obvious that with respect to such Jews, the entire notion of rebuking them simply does not apply:

Understand that all [the laws of rebuke] apply only to a Jew who believes but has been overtaken by desire to commit [his

10 She'elot u-Teshuvot ha-Rashba 5:238.

sin]. In such a case [the mitzvah of tokhahah applies. But with respect to those who totally deny the words of the Rabbis, reproach simply does not apply, for they are apostates and heretics and one should not argue with them. 11

Nevertheless, even though formal reproof is ineffective and hence inappropriate, there is still room for other means of persuasion and influence. According to those who maintain that the aim of tokhahah—returning errant Jews to the path of Torah and mitzvot—is actually part and parcel of the definition of the commandment, then it is possible to expand the scope of the mitzvah to include the use of other kinds of persuasive means, as was suggested earlier.

Some might argue, however, that in order to fulfill this commandment, the other Jew at whom the persuasion is being directed must at least be considered "your neighbor (amitkeha)." 12 a title nonobservant Jews lack according to R. Israel Meir Hakohen (the Hafetz Hayyim; 1838-1933). 13 However, as is well known, many great scholars have already dealt with the status of today's nonobservant Jews and determined that such an extreme position is inappropriate. For example, R. Jacob Ettlinger (1798-1871) wrote:

As to the sinners of our time, since, due to our overwhelming sins, [lack of observance] has reached epidemic proportions, such that the majority deem desecration of the Sabbath to be permissible, I do not know whether to treat them as those who

11 Arukh ha-Shulhan, Orah Hayyim, no. 608:7.
12 After all, that is the text of the biblical verse "Reproach your neighbor" (Leviticus 19:17). This is the opinion of Tanna de-Vei Elyahu.
13 See R. Israel Meir Hakohen, Brur Halakhah, Orah Hayyim 608, where he takes the position that public violators of the Sabbath are not considered "neighbors" with respect to the observance of Torah and mitzvot and hence are not in the category of those toward whom an act of tokhahah would be a fulfillment of a mitzvah.
view their behavior as permissible (i.e., omer mutar) and do not willfully desecrate the commandments.14

It was his considered opinion that nineteenth-century German nonobservance was not to be treated as harshly as it should have been in earlier periods. Similarly, R. David Tzevi Hoffman (1843–1921) stated: “There is room to be lenient [in regard to counting mehaleleli Shabbat to a minyan] for today they are not called public desecrators of the Sabbath, since the majority of them act thus.”15 Be that as it may, the views of R. Abraham I. Kook (1865–1935) and R. Isaiah Karelitz (the Hazon Ish; 1878–1952) are our most reliable guides: we must try to attract the unobservant and return them to Torah observance “with bonds of love.”16 Moreover, R. Joseph Babad (1800–c. 1874) implicitly disagrees with the Hafetz Hayyim’s opinion and writes that “it appears to me that if there is a reasonable possibility that he [the unobservant Jew] will accept the reproof, then one is obligated to reprimand him, so that he may return to the correct path and be considered, once again, a brother.”17

Therefore, even if the formal mitzvah of tokhahah may not be applicable, communal leaders have a special responsibility and a unique obligation to engage in other forms of persuasion. Further corroboration of this position is found in a passage of the Jerusalem Talmud. Commenting on the verse, “Cursed be the person who does not fulfill the words of this Torah to observe them, and the entire nation will say ‘Amen’ ” (Deuteronomy 27:26), it states:

Rabbi Asi said in the name of Rav Tanhum bar Hiyya: If one learned, taught, observed and performed [mitzvot] but was in

14 See She’elot u-Teshuvot Binyan Tzion 2:23, end.
15 Sefer Melamed le-Ho’il, Orakh Hayyim, no. 29.
17 See Minhat Hinukh, Mitzvah no. 239.

a position to encourage others in their observance and did not do so, such a person is included in this curse. This is interpreted as referring to the king and the Nasi who, by virtue of their power, have the ability to force violators of the Torah to observe it. Even if he [i.e., the leader] was an impeccably righteous person in his own conduct, but had in his power to encourage Torah observance among the wicked and did not, then he is accursed.18

Clearly, these words are applicable also to those who have the ability to enhance Torah observance through persuasion. In fact, one’s responsibility in this regard is measured precisely according to the degree of one’s powers of persuasion, as the Talmud (Shabbat 54b) states: “Anyone who is able to protest the behavior of his family members and does not, is held responsible for his family members; [if he is able to protest the activities] of the members of his town and does not, then he is held responsible for the conduct of the people of his town; if for the whole world, then he is held responsible for the entire world.” “Protest” here refers not only to rebuke in the conventional sense but also to the use of persuasion.19

ARGUMENTS FOR TEMPERING REBUKE

However, the effective use of persuasion to help the unobservant return to Judaism raises a number of halakhic problems that we must consider. The Rambam (1135–1204) writes in connection with the Great Sanhedrin that “if they see that the situation requires the suspension of a positive commandment or the violation of a negative one in order to bring many back to proper observance, or to save many Jews from stumbling in other areas, they may enact

18 See Talmud Yevamot (Sotah 7:4). This passage is cited by the Ramban in his Commentary on the Torah, Deuteronomy 27:26.
19 See Rashi, Shabbat 54b, s.v. bikhol ha-olam kulo.
Yehuda Amital

whatever they feel the moment requires.\textsuperscript{20} The problem that the Rambam identified in connection with "many" Jews (a "rabbin") may also arise in our day when dealing with individuals. At times, in order to assist individual Jews to return to observance, and to spare individuals from stumbling, there is a need to ignore certain violations of rabbinic or even Torah laws; at times, there is a need to rule permissively, and even to abet the violator indirectly. Such halakhic questions arise daily, as we shall shortly see. Moreover, the halakhic considerations in any given case cannot be exercised in a vacuum, limited exclusively to the particular situation under discussion. Every deliberate overlooking of a sin, and every dispensation given in a specific case, may result in a cumulative negative effect with regard to the public at large. There is a need for tremendous caution and a large measure of divine assistance to help us refrain from destroying in one case when we want to improve in another. In the same vein, many questions arise in the domain of "putting a stumbling block before the blind" and "assisting sinners," where the one who is doing the influencing may himself be violating the law, as will be shown below. As a result, persuasion as an alternative to rebuke is a dangerous route, "on which the righteous travel safely but the frivolous stumble."\textsuperscript{21}

In his responsum cited above, the Rashba afforded us wide latitude in overlooking a sinner's misconduct, based on a consideration of long-term goals. He explicitly noted that "looking the other way from the sinner is, at times, a positive commandment." Indeed, it is standard procedure to ignore a whole host of violations when dealing with penitents at the outset of their return to observance (hegerim bi-teshuah), out of a concern that if the burden imposed upon them is too heavy at the beginning, they might become frustrated and revert to their former (mis)behavior. I heard from a reliable source that one of the leading halakhic authorities in Israel instructed those who work in kiruv not to discuss the laws of family

\textsuperscript{20}Hilchot Mamrim 2:4.
\textsuperscript{21}This is a play on the words of Hosea 14:10.

purity with those married individuals taking their first steps toward renewed observance. Furthermore, he suggested that even if the subject is broached by the penitent him/herself, the instructor should plead ignorance.

Rabbi Dov Katz relates that when R. Israel Salanter (1810-1883) arrived in a port city in Germany, he discovered that those Jewish merchants who had business at the port would load and unload their goods on the Sabbath as on any other day. When R. Salanter arrived in the synagogue where those merchants prayed, he asked if he could give a sermon about the Sabbath. However, after discovering that there were Lithuanian visitors present, he refrained from doing so. On the next Sabbath, after he had determined that there were no such guests, he delivered an inspiring sermon on the importance of the Sabbath which was perfectly suited to his audience. He concluded the sermon by saying that "while loading and unloading at the port is necessary, writing is not," and the merchants accepted his suggestion and refrained from writing on the Sabbath. After several Sabbaths, R. Salanter offered another sermon in that same synagogue and told his audience that "removing one's goods [at the dock] is essential, but surely loading is not," and the merchants accepted this as well. A while later, he again delivered the sermon, and spoke of the prohibition of unloading also, and thus those Jews were slowly brought to observe the Sabbath properly.\textsuperscript{22} The novelty of this tale is that it allows for much more than simply looking the other way. Indeed, R. Salanter explicitly permitted behavior which was prohibited by law in order to attract his audience to observe Shabbat completely.\textsuperscript{23}

Quite frequently, Orthodox synagogues do not refrain from allowing unobservant Jewish families to celebrate their \textit{bar mitzvah}

\textsuperscript{23}I am aware that this book on the Musar movement is not a halakhic work, despite the well-known erudition of its author. Nonetheless, I think that it is appropriate to mention this story because it is relevant to our subject.
celebrations in them. They do so even though it is obvious that many members of the family will drive to the synagogue on the Sabbath. As long as they park their vehicles out of the sight of the synagogue, the rabbi and congregants ignore the Sabbath desecration that such celebrations necessarily entail. They are clearly not concerned with violating the prohibitions of “putting a stumbling block before the blind” or “assisting sinners” in their transgressions. Moreover, it is also an everyday occurrence in Israeli rabbinal courts, on which sit very distinguished Torah scholars, to spare no effort in trying to reconcile an unobservant couple which has come to them for a divorce despite the fact that they obviously do not observe the laws of family purity.

Apparently, in both of these cases the rabbinic authorities are relying on a statement in the Mishnah: “Bet Shammai says that one should not sell a cow for plowing to those who work their fields during the Sabbatical year (when the law requires the land to lie fallow), and Bet Hillel permits it, for the buyer may slaughter it (and not use it for plowing)” (Sh. 5:8). R. Ovadya Bartenura (c. 1450–before 1516; ad. loc.) explains Bet Hillel’s reasoning by noting that “if any conceivable possibility can be suggested (that will not entail violation of the law) we accept it.” So too in these cases of the potential violation of either Shabbat or taharat ha-mishpahah, we consider any possibility, however remote, that will not necessarily result in any violation of the law.

However, R. Abraham Gombiner (the Magen Avraham; c. 1637–1683) stipulates that one may not lend tools to a person suspected of doing work on the Sabbath unless there exist permitted uses for these tools that are not farfetched but standard. If, however, their use for permissible purposes is only unlikely, then such lending is forbidden, unless refusal to lend will lead to strife (“mipnei darkei shalom”). According to this, it would appear that a more stringent position would also have to be taken in the cases above, as well, where the possibility of not violating Torah law is highly unlikely. Nevertheless, one may distinguish between the two circumstances, claiming that in the cases under discussion here the demands of peace in the home or the intention of drawing the unobservant to Torah is identical to the consideration of “mipnei darkei shalom,” thus allowing for the overlooking of probable Torah violations, as long as it is possible—however unlikely—that they will not take place.

Incidentally, an occurrence similar to the one described by the Magen Avraham occurred to me about twenty-five years ago. An observant, God-fearing Jew asked me whether he could buy a truck in partnership with a nonobservant Jew, where the latter had conditioned his participation on his being allowed to use the vehicle to take his family to the beach on the Sabbath. I consulted two great rabbincic scholars and both upbraided me, for opposite reasons. The first, who is no longer alive, claimed: “I don’t understand your question. What argument can possibly be made to permit this?” The other, the great Rabbi Shlomo Zalman Auerbach, claimed: “I don’t understand you! What argument can possibly be made to forbid this?” I asked him if his permissive stance was based on the consideration described above, that is, that we consider any feasible possibility in such a case, and he answered: “Yes,” despite the fact that the other Jew had openly stated his intention to drive the truck on the Sabbath.

PUTTING A STUMBLING BLOCK BEFORE THE BLIND

One of the more common problems that arises today is whether or not one is permitted to invite an unobservant Jew to a Sabbath meal when it is clear that he will be returning to his home by car and will thus violate the Shabbat. With regard to the Friday night meal, most rely on the famous ruling that if we offer such a Jew a place to sleep, thereby affording him the opportunity not to des-
crate the Sabbath, then we need no longer concern ourselves about his violation, even though it is clear that he will decline such an invitation. There are situations, however, where such a reasoning cannot be employed. It is well known that in a number of communities around the world, many Jews have been influenced by the B’nei Akiva movement to return to observant Judaism. The major activity of this movement is Shabbat afternoon meetings, and it often happens that teenagers who live quite a distance from the meeting location apply for membership in B’nei Akiva. The question, of course, is whether to accept them and ignore their probable desecration of the Shabbat or not, and thereby run the risk of “losing” them entirely. On the one hand, there is more room to be lenient here, for what is at stake is merely a rabbinic prohibition against riding on a bus. On the other hand, we are dealing with a regular, ongoing violation, not a one-time event. In addition, there is also the issue of the public nature of this conduct, since the other members of the group will surely be aware of it. Moreover, such behavior may also at times result in violating the Torah prohibition against carrying in the public domain, which the young adult may do.

Rabbi Shlomo Zalman Auerbach suggests an approach with regard to the prohibition against “putting a stumbling block before the blind” that has far-reaching and novel halakhic consequences. He suggests that while we do not allow someone to commit even a minor violation in order to save others from a greater sin, nevertheless it is permitted to “put a stumbling block before the blind” (e.g., offer food to someone who will not make a berakah and thereby cause him to violate a particular detail of the law) in order to help him avoid stumbling over an even greater “obstacle” (i.e., doing something that may result in distencing him entirely from Torah and mitzvot, the concern being that if he is not offered the food, he will totally reject Judaism). The reasoning behind this is that “it turns out that there is no sin here at all, for in this case there is no obstacle being set. On the contrary, it is the removal of a very great obstacle, by actively exchanging it with a less serious one.”

Similarly, he writes that if someone sees his friend drink the wine of orlah, and is totally unable to prevent him from violating this biblical prohibition unless he hands him, instead, either wine from untithed grapes (tevel) or wine made by non-Jews (stam yayin), which are only rabbinically prohibited, he does not violate the prohibition of placing an obstacle before the blind since he is sparing his friend from an even greater stumbling block.

The basic question is how far can we extend the scope of Rabbi Auerbach’s insight, a subject which demands a thorough analysis. For example, does this mean that we can allow a woman to immerse herself in a mikveh without washing her hair, a procedure normally prohibited, because she refuses to do so and would not immerse herself at all otherwise? Would we permit a woman to count only the “seven clean days” after her period, but not the five days of her menstrual flow itself, before resuming sexual relations with her husband if otherwise she would not “count any days” at all? The range of considerations here extends beyond the limited scope of “placing a stumbling block before the blind,” and discussions of this subject have already appeared in the responsa literature of earlier generations.

Simply put, are we permitted to instruct sinners to violate minor infractions of the halakah in order to prevent them from committing greater sins or even just to bring them closer to observance and belief in general?

The Rambam was the first to address this issue. A Mishnah in Yevamot states explicitly: “One suspected of having relations with a maidservant who was later freed, or with a non-Jew who later

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25See Rabbi Shlomo Zalman Auerbach, Sefer Minhat Shlomo (Jerusalem: Makhon Sha’arei Ziv, 1986), no. 35:1. This principle had already been formulated by R. Akiva Eger in his commentary to Shulhan Arukh, Yoreh De’ah 181:6.

26Orlah is the Torah prohibition against deriving any benefit from the fruit of a tree during the first three years after it was planted. This applies to vines and their grapes as well.
converted, should not marry her, but if he did, we do not force him to divorce her" (24b). In his Mishneh Torah, the Ramabam ruled in accordance with this Mishnah.27 In one of his responsa, he addressed the question as to whether a Jewish court was obliged to coerce a man to send a non-Jewish maid with whom he had sexual relations out of his house. He wrote:

It is clear that according to Torah law, he must remove her, even while she is still non-Jewish, for the Torah made concessions only to man's strongest desires, and this is not the proper way [of satisfying them]. . . . Therefore, the Jewish court, after hearing such a report, must use every means at its disposal to force the person either to send the girl away, or free her (by which means she becomes Jewish) and marry her. And even though we rule that a person may not marry a freed maid servant with whom he has been suspected of fornication, here we rule the opposite in order to facilitate his repentance, saying it is better that he eat gravy and not the fattest, itself, and we rely on the statement of the Rabbis: When there is a need to act for the sake of God, then [one may] violate His Torah. So here he is permitted to marry her, and may God in heaven atone for our sins.28

Subsequent scholars relied on this responsum to permit the conversion of a non-Jewish woman who had married a Jew civilly, when her intention is to marry him in accordance with Jewish law after she had converted. R. Hayyim Ozer Grodzinski (1863–1940), for example, permitted the conversion of a non-Jewish woman under these circumstances, writing that "the Ramabam's words are a fundamental principle."29 R. Hayyim of Sanz (1793–1876) apparently had not seen this responsum of the Ramabam and neverthe-

less, in a similar case, wrote that "we permit him a minor violation so that he will not come to commit more serious ones. . . . Many have leaned towards leniency in such matters. . . . But we should not, God forbid, permit this easily, and it requires the consent of the rabbis in your surrounding area."30

However, in regard to the Rabbi's edict (Yevamot 42a) prohibiting one from marrying a pregnant or nursing woman until her child is 24 months old (the age an infant usually finishes nursing), there is a disagreement as to whether or not this prohibition can be waived in the event that the woman would engage in promiscuous behavior while single. In this case, R. Yosef Karo (1488–1575) maintained that it is not permissible to suspend this minor prohibition in order to prevent the violation of an even greater one (promiscuity). He considered the view which permits a promiscuous nursing mother to marry to be "an errant decision" and called upon "all wise scholars whose hearts have been touched by God to strongly oppose it."31 R. Yehudah Mintz (1408–1506), however, did permit such a woman to marry before her child reached 24 months. Although he acknowledged the novelty of his lenient decision, he felt that the circumstances necessitated such a ruling.32 Based on R. Mintz's ruling, followed by R. Moshe Isserles (the Rama; c. 1525–1572), R. David ha-Levi (the Taz; 1586–1667) ruled that one should not excommunicate someone who would most assuredly cease observance as a result of the excommunication.33

28See Rambam's book of responsa, Sefer Pe'er ha-Dor, no. 132.
30See R. Hayyim of Sanz's She'elot u-Teshuvot Divrei Hayyim, Even ha-Ezer, no. 2:36.
31See R. Yosef Caro, She'elot u-Teshuvot Bet Yosef, Even ha-Ezer, in the responsa following the Laws of Ketuvot, no. 1.
32See R. Yehudah Mintz, She'elot u-Teshuvot Mahari Mintz, no. 5. This dispute is cited in the Shulhan Arukh (Even ha-Ezer 13:13). Rabbi Yosef Caro is consistent with the opinion expressed in his responsa and forbids such behavior while R. Moshe Isserles follows the opinion of R. Mintz.
33Taz, Yoreh De'ah 334:7.
However, two caveats must be considered if we choose to follow this more lenient position: (1) R. Yehezkel Landau (1713-1793) pointed out that the Rama permitted only such a violation if it would be temporary, but if a lenient ruling would lead to the individual permanently violating the law then it could not be followed. The Otzar ha-Poskim records that most rabbinic decisors also reject the Rama’s lenient position in cases where the couple will live together in violation of the laws of family purity. One must therefore be very careful in drawing any inferences from the Rama’s ruling.

R. Naftali Tzevi Yehudah Berlin (the Netziv; 1817-1893) was asked about a case in which a woman who was suspected of not having observed the laws of family purity was “now moved by a desire to cleanse herself in pure waters,” but only on the condition that she be allowed to immerse during the day, and not at night, which is the lawful time for immersion. If permission was not granted her, she claimed that she would continue to sin and not immerse at all. Despite the fact that immersing during the day is a relatively minor prohibition, the Netziv was unsure whether such behavior could be permitted, even under such circumstances, in light of the fact that the very prohibition was instituted lest other women see her immersing during the day and think that on the seventh day (rather than after seven complete days, i.e., the eighth night) a woman is permitted to immerse. The response implies that if the considerations had been limited only to the conflict between a minor violation and a more serious one he would have permitted it. However, the Netziv concludes his response by stating that “the principle that one may suspend one prohibition for the sake of another must be exercised most sparingly.”

R. Yehiel Yaakov Weinberg (1885-1966) was approached by a French ritual slaughterer, appointed to be in charge of the community’s butchers, who saw that those belonging to the more liberal segments of the community were not concerned at all with the laws of trefah. If he were to check the animals and inform the butchers which ones were not kosher, they would eat the meat themselves anyway and also sell it to others, thereby violating a Torah prohibition. He asked whether, under these circumstances, it would be better not to check at all and rely on the fact that the majority of animals are not blemished in a way that would render them unfit for eating, for Torah law allows an animal to be eaten even without checking. In his response, R. Weinberg deals at length with the definition and scope of “putting obstacles before the blind” and “abetting sinners,” leans towards a lenient position, but then concludes that “all I have written is for academic purposes [only], and not for a practical ruling. The final decision should come from the leading scholars of the generation, in Israel and the Diaspora.”

Similarly, Rabbi Ovadiah Yosef (b. 1920) was approached by a slaughterer who had been asked by a nonobservant Jew to slaughter a chicken for him. In the course of handling the bird, the slaughterer detected that its wing was broken near the joint next to the ribcage, a defect that renders it automatically unkasher. However, he felt that were he to refuse to slaughter the bird, the owner would slaughter it himself with a regular kitchen knife (which is invalid for ritual slaughter), and would eat the chicken despite the warnings of the slaughterer. Should he therefore slaughter the blemished chicken himself or not? Rabbi Yosef cited the responsum of R. Tzevi Pesah Frank (1873-1960) who was asked by a slaughterer for a kibbutz that did not observe kashrut whether or not he had to check the animals. He concurred with R. Frank’s decision not to

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34See R. Yehezkel Landau, Noda bi-Yehudah, Mahadura Tinyana, Even ha-Ezer, no. 34.
35Even ha-Ezer, ad loc.
36See R. Naftali Tzevi Yehudah Berlin, Meshiv Davar, no. 2:43, 44.
37If a blemish is found on an animal, usually on the lung, but also on other organs and tissues, such that the animal would most likely have died within twelve months had it not been slaughtered, then the animal is not considered to be kosher (e.g., it is trefah), and cannot be eaten by Jews.
38Seridei Esh, no. 2:57.
require it, and added parenthetically, "and I ruled similarly here in Tel Aviv to allow ritual slaughter without an inspection of the lungs, in order to spare some from the potential prohibition (obstacle) of slaughtering the animal with their own invalid knives." Rabbi Yosef cited many responsa of recent scholars who absolutely forbid the suspension of a rabbinic ordinance in order to spare someone from a more serious offence. Yet, he concludes:

The principle of permitting a minor violation for the sake of [avoiding] a more serious one must be exercised most sparingly. Just like in the case of healing the body, a doctor sometimes decides to amputate the hand to prevent the spread of the disease to the rest of the body, and sometimes decides to leave things as they are, all decided upon with the counsel of other doctors, so too should this procedure be followed with the healing of the soul. One must consult many erudite and esteemed Torah scholars, so that the decision should not cause any damage, God forbid. 39

It is noteworthy that a large proportion of the recent responsa dealing with such matters relates to problems arising with individuals who may become entirely unobservant if we do not permit them a certain leniency, or refer to nonobservant individuals whom we want to help avoid more serious violations. The major question for us is whether, in our time, given the grave situation in which Judaism finds itself, the general, more strict considerations here outlined should be reconsidered and, as a broad guiding principle, we should be required to adopt a more lenient posture, in order to draw the hearts of Jews nearer to God.

39Yabia Omer, Yoreh De'ah, no. 63.
A more elaborate Hebrew version of this essay will appear in the Sefer ha-Yovel le-Mordekhai Breuer.

4
Loving and Hating Jews as Halakhic Categories

Norman Lamm

The feeling of love that is expected from every individual Jew for his people (ahavat Yisrael) is an existential fact that sometimes assumes mystical proportions. Associated with this love for Israel is its opposite, the injunction against hating one's fellows in his heart. And the exception is the commandment to hate the rasha, the evil-doer.

These are themes which stir passions and, indeed, have played a not insignificant role in the political polemics of our day, both enriching and obscuring the rhetoric of intra-Jewish dialogue.

Concomitant with these problems, and deeply intertwined with them, is that of Jewish identity, often phrased as who does and who does not belong to kelal Yisrael, the Jewish people.*

*This is not the same as the current "Who is a Jew?" question, which refers to one's individual identity as a Jew. Our problem is that of, as it were, citizenship in the Jewish people. This will be clarified in the course of the chapter.
But these are also biblical or rabbinic commandments, and it is instructive as well as enlightening to view them more dispassionately as halakhic categories. Such a treatment, as the reader will surely notice, is not without its problems, but it is well worth the enterprise. At the very least, such an objective legal focus will make possible a modicum of calm analysis, certainly more than is otherwise likely in dealing with such fateful questions.

"Thou shalt love thy neighbor" as thyself (Leviticus 19:18) is the biblical source of ahavat Yisrael, the commandment to love one's fellow Jews, as codified by Maimonides\(^2\) and the author of Sefer ha-Hinnukh.\(^3\) What is the scope of this mitzvah? There is, according to halakhah, a mitzvah to "hate" evil-doers and, prima facie, love and hate are mutually exclusive. Are, then, evil-doers outside the pale?

We will divide our consideration of the issue into two parts, dealing first with the theoretical halakhic aspects and then moving to the contemporary implications of these halakhot.

HALAKHIC ASPECTS

The Position of Hagahot Maimuniyyot

In Hilkhot De'ot, Maimonides writes:

It is incumbent on everyone to love each individual Israelite as himself, as it is said, "Thou shalt love thy neighbor as thyself." Hence, a person ought to speak in praise of his neighbor and be careful of his neighbor's property as he is careful of his own

\(^1\)The translation of le-re'akha is problematic. We shall here adopt the conventional "thy neighbor" for the sake of convenience. The proper definition of this term is a major concern of this essay. The question of whether non-Jews are included in this commandment, important as it is, is not treated here and must be left for another occasion.

\(^2\)Maimonides, Mishneh Torah, Hilkhot De'ot 6:3; Sefer Ha-Mitzvot, aseh no. 206.

\(^3\)Sefer ha-Hinnukh, no. 243.

And, writing in a similar vein, the medieval biblical exegete and talmudist, R. Samuel ben Meir (Rashbam), comments on Leviticus 19:18 as follows: "Thou shalt love thy neighbor as thyself." He is thy neighbor if he is good, but not if he is evil, as it is written, "The fear of the Lord is to hate evil" (Proverbs 8:13). And so too, "Shall I not hate, O Lord, those who hate Thee?" (Psalms 139:21).

The following positive commands were ordained by the Rabbis: visiting the sick; comforting the mourners; joining a funeral procession; dowering a bride; escorting departing guests; etc. These constitute deeds of loving-kindness performed in person and for which no fixed measure is prescribed. Although all these commands are only on rabbinical
authority, they are implied in the precept, "Thou shalt love thy neighbor as thyself," that is: what you would have others do unto you, do unto him who is your brother in the Torah and [in the performance of] the commandments. [14:1]

It seems, however, that these statements do not correlate with Maimonides' own views as expressed in Hilkhot Rotze'ah, chap. 13. He writes in halakhah no. 13 (based on the principle that unloading an animal takes precedence over loading another animal in response to the mitzvah to minimize pain to animals):

If one encounters two animals, one crouching under its burden and the other unburdened because the owner cannot find anyone to help him load, he is obligated to unload the first to relieve the animal's suffering, and then to load the other. This rule applies only if the owners of the animals are both friends or both enemies [of the person who comes upon them]. But if one is an enemy and the other is a friend, he is obligated to load for the enemy first, in order to subdue his evil impulse. [13:13]

In the next halakhah, Maimonides defines "enemy":

The "enemy" mentioned in the Law [cf. Exodus 23:5] does not mean a foreign enemy but an Israelite one. How can an Israelite have an Israelite enemy when Scripture says, "Thou shalt not hate thy brother in thy heart" (Leviticus 19:17)? The Sages decreed that if one all by himself sees another committing a crime and warns him against it and he does not desist, one is obligated to hate him until he repents and leaves his evil ways. Yet even if he has not yet repented and one finds him in difficulties with his burden, one is obligated to help him load and unload, and not leave him possibly to die. For the enemy might tarry because of his property and meet with danger, and the Torah is very solicitous for the lives of Israelites, whether of the wicked or of the righteous, since all Israelites acknowledge God and believe in the essentials of our religion. For it is said, "Say unto them: As I live, saith the Lord God, I have no pleasure in the death of the wicked but that the wicked turn from his way and live" (Ezekiel 33:11). [13:14]

If, then, one is required to be solicitous of the transgressing Israelite, why does Maimonides in Hilkhot Emeel apparently exclude him as an object of love, restricted to "your brothers in the Torah and the [performance of the] commandments"?

Character Building and Halakhah

At first blush, one might suggest that the moral imperative to "subdue his evil impulses" (at the end of Hilkhot Rotze'ah 13:13) and to perfect one's character is the reason one must first unload the burden of one's enemy's animal before loading that of one's friend. This moral imperative would even override the halakhic prohibition of causing animals undue pain (tsaar baalei hayim). Indeed, this seems to be R. Abraham Maimonides' sense of this law.

The verse means to say that although he is hated because of his sins, nevertheless we have to strengthen him financially because possibly he will repent or he will leave his possessions to children who are upright in their deeds. From this we learn that the purpose of this and similar mitzvot is not only solicitude for the property owner, but also in order to acquire for himself virtuous traits.4

According to this principle of R. Abraham, one may override a specific biblical law to achieve the goal of ethical and moral perfection. The students of R. Isaac Luria, centuries later, also

4See Rabbi M. M. Kasher, Torah Shelemah, Mishpatim (vol. 17), addenda, 202, quoting the excerpts of R. Abraham Maimonides' Commentary, as printed in the Jubilee Volume in Honor of Rabbi David Zvi Hoffman.
exhibited this predilection to value the goal of moral perfection over the performance of mitzvot. R. Hayyim Vital held that virtue resides in the lowly soul (ha-nefesh ha-yesodit), whereas the drive to perform the commandments rests within the rational soul. Yet the rational soul does not have the power to perform commandments without the assistance of the bedrock soul. While individual virtues are not reckoned within the 613 biblical commandments, virtuous behavior is the necessary propaedeutic to performance of all the mitzvot. For him, "it is more important to avoid non-virtuous behavior than it is to perform the mitzvot." 5

It is difficult, however, to accept R. Hayyim Vital’s position as normative halachic practice. R. Hayyim of Volozhin’s words on this score are well known. In his work Ruah Hayyim, commenting on the Mishnah in Tractate Avot (1:2), 6 he makes the remarkable comment that the three attributes of Torah, worship, and loving-kindness—the “three foundations upon which the world rests,” according to the Mishnah—existed as independent variables only prior to the giving of the Torah. Subsequent to the revelation at Sinai, worship and kindliness became meaningless when separate from Torah. Hence, if one acts in a seemingly virtuous manner but contrary to halakhah, he has strayed from the proper path of life and has lost his way. The Taz 7 offers a graphic example of this principle. Before the revelation of the Torah at Mount Sinai, one who lent money at interest performed a virtuous act; when the Torah prohibited usury, however, it redefined its moral nature as well. Lending money at interest became a vice and, as a result, any subsequent offender became eternally damned.

Hence, the improvement of ethical qualities and the attainment of a moral character, important as they are, may not override the formal halakhah. How, then, can we formulate Maimonides’ position—that the suppression of one’s evil impulses overrides the injunction against causing pain to animals—in strictly halakhic terms?

Love and Hatred

One must, I believe, subsume the moral act of subduing one’s evil impulses under the formal rubric of a mitzvah. If this act is categorized as a technical mitzvah, one can understand why it overrides the prohibition of causing undue pain to animals. That mitzvah is none other than the commandment to love one’s fellowman. But if so, we must also reckon with the obligation to hate evil-doers. How can this positive mitzvah of love override two other mitzvot (in this case, the prohibition against inflicting needless pain upon animals and the obligation to hate evil-doers)? Even if the commandments to love one’s neighbor and to hate evil-doers neutralize each other, there remains the prohibition of causing undue pain to animals. How, then, may one load the burden of his enemy, the evil-doer, before unloading for his friend, and thereby allow the animal of his friend to suffer pain?

We can suggest the following formulation. The positive commandment to love one’s neighbor (which, in this case, is to load his enemy’s donkey first) overrides only the prohibition of causing unnecessary pain to animals. It does not override the mitzvah to hate evil-doers (which mitzvah, however, does not diminish the imperative to help the evil-doer’s animal). Analyzing the matter further, we can posit the following reconstruction of both the rejected hypothesis and the conclusion of the germane talmudic passage which forms the basis for Maimonides’ ruling. 8 Originally,

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6R. Hayyim of Volozhin, Ruah Hayyim to Avot 1:2. See my Torah Lishnah (New York: Yeshiva University Press/Ktav, 1989), 87, on this work.
7Yoreh De’ah 160.
8Baba Metzia 32b. “Come and hear: If a friend requires unloading, and an enemy loading, one’s [first] obligation is towards his enemy, in order to subdue his evil inclinations. Now if you should think that [relieving the suffering of an animal] is biblically [enjoined], [surely] the other is prefer-
the Talmud thought that when one is faced with the live option of unloading one's friend's animal or loading one's enemy's animal, one should pursue the first option for two reasons. First, the prohibition against causing unnecessary pain to animals (in this case, delaying the act of unloading the friend's animal) dictates that one should immediately perform the act of unloading. Second, the mitzvah to hate evil-doers should require that one should first attend to the animal of one's friend (i.e., an observant Jew). But when the Talmud concludes that the goal of subduing one's evil inclination (i.e., the formal mitzvah of loving one's neighbor which applies to everyone) mandates that one help his enemy first, this mitzvah overrides the prohibition of causing undue pain to animals. Although the mitzvah to hate evil-doers remains in full force, it is irrelevant to the imperative at hand—to subdue the evil inclination. We thus remain with two commandments: to love and hate the very same person.

But how is it possible for the Torah to command to love someone and, at the same time, to hate the same person? One may offer two explanations for this apparent conundrum. First, the law to "love" one's neighbor is purely functional, restricted to the practical sphere, and makes no demands upon one's emotions. Contrariwise, hatred of evil-doers is a mitzvah which focuses upon one's psychological attitude only. Nahmanides, in his commentary to Leviticus 19:18, writes: "This is an expression by way of over-statement, for a human heart is not able to accept a command to love one's neighbor as oneself. . . . Rather the commandment of the Torah means that one is to love one's fellow being in all matters as one loves all good for oneself." The Torah could not demand, according to Nahmanides, that one emotionally bestow the same degree of love that he feels for himself upon others. Rather, the verse means that one must act lovingly to one's fellow; he must conduct himself as if he loved him. In this vein Nahmanides explains why the preposition et is not used.⁹ According to this distinction between the mitzvah of love and the mitzvah of hate, it is understandable for Maimonides to rule that one simultaneously hate someone with respect to attitude but perform acts of love toward him as a practical matter.

This analysis, however, cannot suffice for our reconstruction of Maimonides' position, for he clearly rejects a dichotomy between the nature of the mitzvot of love and hatred. According to Maimonides, the mitzvah to love one's neighbor includes one's emotional orientation toward him. In Sefer ha-Mitzvot (ed. Kapah), Maimonides writes:

By this injunction we are commanded that we are to love one another even as we love ourselves, and that a man's love and compassion for his brother in faith shall be like his love and compassion for himself, in respect of his money, his person, and whatever he possesses and desires. Whatever I wish for myself, I am to wish the like for him; and whatever I do not wish for myself or for my friends, I am not to wish the like for him. This injunction is contained in His words (exalted be He), "thou shalt love thy neighbor as thyself." [no. 206]

⁹See also Meiri to Yoma 75b: "One should not let hatred of his fellow deter him from helping him as much as he can." See Maharam Shick's work on the commandments, Mitzvah no. 244.
He reiterates this view in Hilkhot De’ot 6:3 and in Hilkhot Evel 14:1, both cited above.

In sum, Nahmanides perceives the essence of the mitzvah of love and the means of its implementation to lie in the practical sphere. Maimonides, however, holds that while the means of implementation are functional or practical in nature, the essence of the commandment, which defines its fulfillment, is emotional, a feeling of love. This feeling, and not the act per se, constitutes the essence of the fulfillment of this mitzvah. Our original question then, remains: How can Maimonides conceive of a simultaneous mitzvah of love and hatred, both on the emotional level?

Maimonides believes, in my view, that it is psychologically and therefore legally possible to maintain a position of ambivalence. Halakhah can demand that one both love and hate the same person. Hence, one must love even the evil-doer, even while one is also halakhically required to hate him.

Maharam Schick points out that the Torah formulated the mitzvah of love with the term neighbor, not the usual brother. He believes that this demonstrates that one must love even those who are not God-fearers. In support, he cites the talmudic statement (Sanhedrin 52a) that the mitzvah of neighborly love obligates us to choose an "easy death" for those condemned by the Sanhedrin to die. There certainly can be no greater evil-doer than one who

Yosef Binyamin Perlow notes that the term neighbor was used by the early medieval halakhic authorities, R. Meir Abulafia, in his commentary Yad Ramah to Sanhedrin 52b, deduces the same principle from the Hebrew spelling of the term that connotes neighbor. Neighbor includes, he writes, even the evil among the Jews. Indeed, the word for neighbor and the word for bad are spelled identically in Hebrew (ra).

**Your Brother in Torah and Mitzvot**

However, it yet remains for us to reconcile our analysis of the aforementioned passage—in opposition to the interpretation of Hagahot Maimuniyyot—with Maimonides' remarks in Hilkhot Evel which limit the mitzvah to love one's fellow Jew to the Jew who is "your brother in Torah and mitzvot." Are not the latter the very source of Hagahot Maimuniyyot?

This key phrase must be understood not in terms of actual observance, which is the literal sense in which it was read by Hagahot Maimuniyyot, but as a metaphor for those who are obligated to study Torah and observe mitzvot—Jews. Interestingly, the Yemenite manuscript of Maimonides' Hilkhot De'ot substitutes "children of the covenant" for "Israelite." We suggest that "your brother in Torah and mitzvot" is another such honorific synonym; it only excludes non-Jews, and is not meant to limit the mitzvah to those who are totally observant Jews.

The literalist reading of the phrase "your brother in Torah and mitzvot" presents insuperable difficulties. Where does one draw the line? If one who is inadequately observant of mitzvot is excluded, what of one who does not satisfy the criterion of the first half of the phrase, one who is not a scholar and cannot study Torah, and is therefore not "your brother in Torah? Moreover, everyone has sinned at one time or another in his life ("For there is not a

10This analysis is opposed to that of R. Barukh Halevi Epstein who, in his Torah Temimah (Leviticus 19:18), classifies love as the opposite of hatred. According to our analysis, Maimonides thus antedated the "discovery" of ambivalence by psychoanalysis by over 700 years.

11See Tanya (Likkutei Amarin), chap. 32, who, in a famous passage, asserts that even those whom we must hate we must simultaneously love. Our hatred is directed to the element of evil in them; our love is focused upon the good that they contain. This view, of course, has roots in the famous talmudic record of the dialogue between R. Meir and his wife Beruriah, in which he accepted her distinction between praying for the destruction of sinners and praying for the eradication of sin: David's plea in his Psalms was for the latter, not the former. See Berakhot 10a.

12See Maimonides, Mihneh Torah, ed. Cohen and Liberman (Jerusalem: Mossad ha-Rav Kook, 1964), ad loc.
righteous man upon earth who doeth good and sinneth not" (Ecclesiastes 7:20). In face of the reductio ad absurdum that would impose massive limitations upon the scope of the mitzvah and effectively make it inoperative, it is preferable to interpret the phrase "your brother in Torah and mitzvot" in the manner we have here suggested.

Different Classifications of Evil-doers

We cannot complete our analysis of Maimonides' position without referring to his concluding remarks in Hilkhot Rotze'ah: "The Torah is very solicitous of the lives of Israelites, whether of the wicked or of the righteous, since they acknowledge God and believe in the essentials of our religion." The point of these remarks, of course, is to make a drastic distinction between different types of evil-doers. Perhaps our previous contentions hold only for the evil-doer who still believes in the fundamentals of the Jewish faith, one, that is, who transgresses but has not strayed theologically.

Of course, the distinctive literary character of Maimonides' concluding words to all his fourteen books of the Mishneh Torah is well known. In light of this tendency to stylistic flourish, it is conceivable that the word "they" does not refer to specific Jews, whether observant or nonobservant of halakhah, but pertains, rather, to Jews as a whole. All Jews, even sinners, are regarded by the Jewish tradition "as full of mitzvot as a pomegranate"; and all Jews collectively constitute the people of Israel which in its ideal state is pure and holy. Hence, all Jews are included in the group of those who "acknowledge God and believe in the essentials of our religion" and are therefore deserving of compassion. The mitzvah to love one's fellow Jew applies to all.

Support for our contention may be found in the law, formulated by Maimonides in Hilkhot Avodah Zarah 5:4, that the commandment to love one's fellow Jew does not apply to one who attempts to persuade his neighbor to worship idols.

The execution of the enticer devolves upon the one he attempted to entice, as it is said, "Thy hand shall be first upon him to put him to death" (Deuteronomy 13:10). The latter is forbidden to love the enticer, as it is said, "Thou shalt not consent unto him" (Deuteronomy 13:9). Since, in reference to an enemy, it is said, "Thou shalt surely help with him" (Exodus 23:9) it might be supposed that this person [the enticer] should also be helped. It is therefore said, "Nor hearken unto him" (Exodus 13:9).

The source for this law is the Sifre: "Thou shalt not consent unto him" (Exodus 13:9): Because of what is said elsewhere, thou shalt love thy neighbor as thyself (Leviticus 19:18), you might think you must love this one too; hence the verse says, "Thou shalt not consent unto him, nor hearken unto him" (Pisla 89). (Parenthetically, Maimonides' use of this passage in the Sifre—defining "thou shalt not consent" as "thou shalt not love"—in his formulation of the law of loading and unloading in Hilkhot Rotze'ah, may also lend credence to our contention that the commandment to "subdue his evil impulse" is that of neighborly love.) If the Sifre is viewed as presenting the only exception to the universal rule to love one's neighbor, then it follows that all other evil-doers, even those who deny the fundamentals of Jewish belief, do fall under the scope of this law. Even with regard to such people, one must adopt a simultaneous posture of love and hate.13 Barring the lone exception of the "persuader" to idolatry, the mitzvah to love one's fellow Jew is absolute.

However, Maimonides, in his Commentary to the Mishnah, after enumerating his formulation of the thirteen principles of Judaism, does indeed distinguish between classes of evil-doers.

If a person holds all these principles to be sound, and he truly believes in them, he is then part of that "Israel" whom we are

13See n. 11, above.
to love, pity, and treat, as God commanded, with love and fellowship. Even if a Jew should commit every possible sin, out of lust or mastery by his lower nature, he will be punished for his sins but will still have a share in the world-to-come. He is one of the "sinners in Israel." But if a person holds one of these principles to be defective, he has removed himself from the Jewish community. He is an atheist, a heretic, and unbeliever who "cuts among the plantings." We are commanded to hate him and destroy him. Of him it is said: "Shall I not hate, O Lord, those who hate Thee?" (Psalms 139:21).14

Thus, Maimonides might accept that the commandment to love one's neighbor applies to one who sins out of moral weakness if he still subscribes to the thirteen fundamentals of Jewish belief, but he excludes the Jewish heretic from the fellowship of Israel.

The aforementioned Sifre stands in stark opposition to Maimonides' position just cited. One may deduce from it that one must even love his neighbor who is a heretic; the only exception is the "enticer." Apparently, however, the heretic is in many respects worse than one who persuades others to idolatry. True, when Maimonides writes (in Chapter 2 of Hilkhhot Avodah Zarah) that with regard to many halakhot, the heretic and the apikorses are no different from one who incessantly worships idols, and he does not mention as well that the mizrah to love one's fellow man does not apply to the heretic, this supports our previous contention that only the persuader to idolatry is not subject to the mizrah to love

14Maimonides, Commentary to the Mishnah, tractate Sanhedrin, chap. 10, ed. J. Kapah, 145. Parenthetically, we have here one of the first mentions of the term kelal Yisrael in halakhic literature. In contemporary parlance, this is a composite noun indicating, the collectivity of Israel, or, the Jewish community. This is not, however, strictly the sense in which Maimonides uses the term. For him it might better be translated, "the category of Israel," meaning, the very definition or identity of one's Jewishness. See below, p. 153, and n. 15.

These words are consistent with his opinion in his Commentary to the Mishnah, cited above. R. Menahem ha-Meiri, in his commen-

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one's fellow man. However, we cannot escape the conclusion that Maimonides' own words on the heretic in his Commentary to the Mishnah militate against our interpretation of his position in the Mishneh Torah.

In truth, Maimonides holds that the heretic does not only lose his share in the world-to-come; he is removed from the class of those fellow Jews whom one is commanded to love and, indeed, he is not considered part of the Jewish people (kelal Yisrael, literally, "the category of Israel." This is the original meaning of the term so often used today).15 With regard to the principle of the resurrection of the dead, Maimonides writes: "The resurrection of the dead is one of the cardinal principles established by Moses our Teacher. A person who does not believe in this principle has no real religion and no connection with the Jewish people" (Commentary to the Mishnah, Sanhedrin, chap. 10).

In Mishneh Torah, Hilkhot Rotze'ah, he writes:

It was at one time deemed meritorious to kill apostates—by this are meant Israelites who worship idols or who provocatively do other sinful things, for even one who provocatively eats carrion or wears clothes made of mingled stuffs is deemed an apostate—and heretics, who deny the authenticity of the Torah or of prophecy. If one had the power to slay them publicly by the sword, he would do so. If not, one would plot against them in such a way as to bring about their death. Thus, if a person saw that such a one had fallen into a well containing a ladder, he would remove the ladder, giving the excuse that he wanted it to get his son down from the roof, and would bring it back afterward, and do similar acts. [4:10]

These words are consistent with his opinion in his Commentary to the Mishnah, cited above. R. Menahem ha-Meiri, in his commen-

tary on this Mishnah in tractate Sanhedrin, also writes in the same
vein: "Since he believes what is proper for one to believe, and is thus
included among the people (Hebrew: am), his many sins do not
exclude him from the class of virtuous people." Meiri seems to
agree with this limited classification of the term "people of Israel.

Although Maimonides' position is clear, there do seem to be
inherent difficulties with it, especially with his equation of those
who will receive no share in the world-to-come with those who are
not part of "Israel."

For one thing, why did the Mishnah itself not adopt the
Maimonidean formulation and write, "All of Israel has a share in
the world-to-come ... and these are not included in Israel ..."? Per-
haps the Mishnah did not want to reach this extreme conclusion
and only stated the fact that these people, while remaining part of
Israel, do not possess a share in the world-to-come; while those
who do maintain Judaism's cardinal beliefs will merit a share in
the world-to-come.

Another difficulty: In Avot de Rabbi Natan, we find the fol-
lowing remark: "Seven have no share in the world-to-come, to wit:
Scribes, elementary teachers, (even) the best of physicians, judges in
their native cities, diviners, ministers of the court, and butchers"
(30:5). Later in the same chapter, still others of such type are added
to this category. Now, this presented a problem for the Tosafists. In
their commentary to Sotah 5a (s.v. kol), they ask why the Mishnah in
Sanhedrin did not mention the many others who do not share in
the world-to-come according to various views in the Talmud, such
as: the haughty;16 those who die outside the Land of Israel;17 the
ignorant, if they do not at least help support Torah scholars;18
those who lend money at interest, and the like (in addition to the
seven enumerated in Avot de Rabbi Natan). Certainly it is unthink-
able that these people would not be counted as belonging to kela

16Sotah, ad loc.
17Ketubot 111a.
18Ketubot, ad loc.
when Maimonides in *Hilkhot Teshuvah*, chap. 3, classifies those who will not receive a share in the world-to-come, he does not include the remark that these people are not counted as part of Israel.

Moreover, Maimonides himself fails to apply in practice the principle that theological heresy removes from one his status as a Jew. Thus, for instance, his codification as halakhah the law that an apostate Jew who has married a Jewess is considered married (*Hilkhot Ishut* 4:15); in the immediately preceding halakhah he declares as null and void any marriage contracted between a Jew and a non-Jew. Finally, the Maimonidean equation of "no share in the world-to-come" with exclusion from *kelal Yisrael* is upset by the famous teaching of the Tosefta (Sanhedrin, chap. 11) that the pious Gentiles (hasidei umot ha-olam) have a share in the world-to-come. Maimonides codifies this in *Hilkhot Melakhim* 8:11. Hence, if non-Jews have a share in the world-to-come, it follows that the right to such eternal bliss is not a sure sign of one's status as a Jew.

In the final analysis, we must accept the stark truth that Rabbi Moses ben Maimon differentiated between different degrees of "wickedness" in his *Commentary to the Mishnah*. One who does not accept the fundamentals of Jewish belief excludes himself from the class of individuals the halakhah tells us to love and, in addition, is excluded from *kelal Yisrael*, the fellowship of the people of Israel. It is possible, however, that with regard to the equation of those who forfeit their share in eternal life with those who lose their status as Jews, he changed his mind when he later wrote his immortal code, *Mishneh Torah*; at the very least, there is enough material in his halakhic code to support the contention that he was no longer as certain then that heresy leads to exclusion from the Jewish people as he was when he wrote the *Commentary to the Mishnah*.

It is, at first, quite astonishing that Maimonides takes such a hard line on orthodox adherence to the Thirteen Principles. Any deviation results not only in the loss of eternal life, but of membership in *kelal Yisrael*. However, upon reflection, this is not at all surprising. Systems that hold that the acme of Judaism is attained in formulating correct ideas and true notions about God, as opposed to proper conduct, will consider any divergence from such correct opinions to be severe violations of the integrity of the faith. Rationalism is closely linked to dogmatism. Since Maimonides is the supreme rationalist, who holds that metaphysics is beyond halakhah, and that the loftiest goal is the forming of correct concepts about the Deity, it is in the area of ideas and theory that the test of faith takes place. It is in that realm, rather than in behavior, that one stands or falls as a Jew.

### CONTEMPORARY IMPLICATIONS

The halakhic implications of the issue we have been discussing are of great import to the Jewish community today. Are we, in fact,

21I am indebted to Dr. Jacob J. Schacter for alerting me to the article by Dr. Menachem Kellner on this subject (in *Tora* [1989], 249–60 [Hebrew]). Kellner attempts to solve the problem of the inconsistency in Maimonides in a rather novel manner by linking it to a supposed Messianic dimension of Maimonides' thought. But while that could possibly explain Maimonides' insistence on theological purity in his *Commentary*, it does not adequately explain the apparent contradictions in the Code. While I have no better way of systematically explaining away all the latter, I prefer to think that Maimonides had, at that stage of his life, begun to question the certainty of his earlier convictions (the *Commentary* was begun by Maimonides at the age of 23 and concluded when he was 30 years old) and therefore ruled in all practical issues in the *Mishneh Torah* that heresy does not exclude one from the fellowship of Israel.
commanded to exclude all those who reject the fundamentals of Jewish belief from the mitzvah of love and from membership in kelal Yisrael. If indeed this is what we are bidden to do, the ramifications are nothing short of cataclysmic. But if one is not sure that the halakhah is indeed such, but decides to act toward Jews who have abandoned the creed of Judaism as if they were enemies, he is not being malhmir (adopting the stringent view); he is illicitly being meikil (adopting a lenient view) on the mitzvah of the love of one's neighbor, a mitzvah which involves potential defamation of God's Name, "Thou shall love thy neighbor as thyself—I am the Lord," and a commandment which Hillel, in a famous passage (Shabbat 31a), considered the fundamental principle of Judaism even in its negative formulation.

Our analysis will show that there are four cogent reasons for concluding that the mitzvah to love one's fellow Jew applies to virtually all Jews today, even those who do not believe in the basic tenets of Judaism. Recent halakhic authorities (Aharonot) have already proposed two reasons, which we shall here cite, and we shall assert two additional reasons for this decision as well.

The Prevailing Zeitgeist as a Form of "Coercion"

How do we classify one who does not accept the fundamentals of Jewish belief (whether Maimonides' Thirteen Principles or the various other dogmatologies proposed by other medieval Jewish

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22This was indeed explicitly published as the policy of Agudath Israel in an article by Rabbi Moshe Blau in Kol Yisrael in 1923: "Only one who believes in the God of Israel and in the Torah of Israel is entitled to be called by the name Jew (Yisrael). One who violates the Sabbath openly or proudly and brazenly announces that he is not religious, is not [part of] kelal Yisrael, neither according to Halakhah nor according to Jewish logic." That same theme was reflected more recently in the pages of Ha-Mahanah ha-Haredi (August 1987), the organ of the Belzer Hasidim, where the editor declared that the total population of kelal Yisrael in our days amounts to no more than about a million people.

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authorities) if his dissention issues neither out of his personal philosophical conviction nor out of spite, but simply because of mindless conformity to the prevailing norms and values of the ubiquitous secular culture? In other circumstances, had he been nurtured by a loving family committed to Torah, and educated by competent and religiously inspired teachers, he might well have grown up firm in his commitment to God, Torah, and the Jewish tradition. Can we not claim for such people the halakhic status of "children who were taken away into captivity amongst the heathen" that the Talmud categorizes as ones (coerced transgressors) and, hence, exonerated from willful heresy, and included amongst those we are commanded to love!

Rabbi Abraham Isaac ha-Kohen Kook maintained that the category of the sinner by coercion applies as well to the realm of faith and beliefs.

Just as the Tosafists remark in Sanhedrin 26b (s.v. he-hashuel) that someone who is suspected of an act of sexual immorality because he was seized by passion is not disqualified as a witness because "his passion coerced him," and, by the same token, the Tosafists in Gittin 41b (s.v. kofin) write that seduction by a maid-servant is considered a form of coercion, we may say that the Zeitgeist acts as an evil intellectual temptress who seduces the young men of the age with her charm and her sorcery. They are truly "coerced," and God forbid that we judge them as willful heretics.

Once we grant that in matters of faith, as in the realm of sexual misconduct, extenuating circumstances do exist along with the consequent halakhic categories of lack of intention, coercion, and ignorance of the law, we must then proceed to investigate carefully every case of a person to whom we would deny the biblical mandate of love, making sure that he willfully rejected Judaism

because of his free personal decision rather than his seduction by the overwhelming might of the cognitive majority in his environment. The mitzvah to love one's fellow is, as R. Akiba is quoted in Sifra to Leviticus (19:18), a kelal gadol, or fundamental principle of the Torah.

Hence, we dare not, in our paganized generation, glibly assume that any particular person is not a "child who has been taken captive among the heathen" and is thus excluded from the circle of those we are commanded to love and from the fraternity of Israel. Moreover, not only is it wrong to condemn whole sections of the Jewish people to this status but, given the intellectual climate in which we live—its pervasive secularism, hedonism, agnosticism, and materialism—each individual Jew who has strayed from Torah must be presumed to be "coerced" and thus not regarded as a willful heretic or apikores. "And it shall be forgiven all the congregation of the children of Israel ... seeing that all the people were in ignorance" (Numbers 15:36).

Rabbi Abraham Isaac Karelitz, known as the Hazon Ish, arrived at the same conclusion. His words deserve close attention:

I believe that the law that we drop (into a well, i.e., kill) an apikores (heretic) only existed in an epoch when divine Providence was perceived by all as self-evident, as in those times when overt miracles were abundant and the Heavenly Voice (bat kol) was heard, and when the righteous men of the

24By the same token, there is no special merit in faith and obedience in the presence of revelation or, derivatively, in circumstances when the Zeitgeist moves an individual to belief and observance. In both cases, the environment exercises a form of duress on the individual. The maximum opportunity for freedom of choice, and therefore for credit or blame, occurs when circumstances are neutral, equidistant from both extremes. See my The Royal Reach, chap. 2 ("Neither Here Nor There"), where I develop this idea based upon the talmudic linkage of Purim to Sinai. Hence, this exculpation by Rav Kook would apply selectively, depending upon one's individual circumstances.

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...generation were under the specific Providence that was visible to all. The heretics of that day were particularly spiteful in their rejection (of Torah) and pursuit of hedonistic values and amorality. Then, the eradication of wicked people was a way to protect the world, for everyone knew that the waywardness of the generation brought destruction upon the world: pestilence, war, and famine. However, in a time when God's Providence is hidden and when the masses have lost faith, the act of eradicating unbelievers does not correct a breach in the world; on the contrary, it creates a larger breach, for it will appear to others as nothing more than wanton destruction and violence, God forbid. Since [the purpose of the law of dropping into the well] is meant to repair, this law does not apply when it fails to repair. We must instead woo back [those who have strayed] with love and enable them to stand upright with the strength of Torah insofar as we can. 25

The Hazon Ish thus asserts that in our generation, a time when "God's face is hidden" and when "heresy rules the world," laws which sanction the oppression of heretics are counterproductive and no longer apply. Instead, love and friendship must prevail. The grounds of analysis differ—Rav Kook is more anthropological, focusing on this secular age as one in which the intellectual temptress seduces, while the Hazon Ish is more theological, considering our epoch as an age of the hiding of divine Providence—but the conclusion is the same. And what is true for individuals holds true for the community as a whole.

Indeed, Maimonides himself, in spite of the harsh attitude so evident in his remarks in his Commentary to the Mishnah in Sanhedrin, does mention in his Mishneh Torah that one who rejects the fundamentals of Jewish belief out of force of habit or out of defective education is halakhically not considered a heretic. In Hilkhot Mamrim 3:3, he writes concerning the exclusion of an individual

25Hazon Ish 13:16 (or to Yoreh De'ah, Hilkhot Shehitah, no. 2:16).
from *kelal Yisrael* and the punishment of being cast into a well and not being rescued from it,

that this applies only to one who repudiates the Oral Law as a result of his reasoned opinion and conclusion, who walks lightmindedly in the stubbornness of his heart, denying first the Oral Law, as did Zadok and Boethus and all who went astray. But their children and grandchildren, who were misguided by their parents and were raised among the Karaites and trained in their views, are like a child taken captive by them and raised in their religion, whose status is that of an *anus* (one who abjures the Jewish religion under duress) who, although he later learns that he is a Jew, meets Jews, and observes them practice their religion, is nevertheless to be regarded as an *anus*, since he was reared in the erroneous ways of his fathers. Thus it is with those who adhere to the practices of their Karaite parents. Therefore, efforts should be made to bring them back in repentance, to draw them near by friendly relations so that they may return to the strength-giving source, i.e., the Torah.

Maimonides could not have been any more explicit in exculpating those who were raised by their parents and teachers (and, presumably, society) on a diet of rejection of or indifference to Judaism. The category of *ones* (duress, coercion) thus applies to the realm of religious faith. Indeed, this view is already prefigured by Maimonides in his Commentary to the *Mishnah*, *Hullin*:

Know that the tradition, as we have received it from our forefathers, is that since we are living in an age of exile, we no longer practice capital punishment in all other capital crimes. However, in cases of religious sedition—to wit: heretics, Sadducees, and followers of Boethus—those who initiated the rebellion against the Torah are punished by death. They are to be executed in order that they not mislead Israel and destroy the Jews' faith, etc. But their followers who were born and educated into these ideas are considered as coerced (*ones*), and the applicable law is that of children who were taken into captivity by the heathen. All their sins are deemed inadvertent, as we explained. However, those who initiated the heresy are considered intentional and not inadvertent. [1:1]

The Lack of Proper “Rebuke”

Secondly, we must consider the decision of the *Hazon Ish* relating the mitzvah to hate evil-doers to the commandment to rebuke the sinner: “Thou shalt not hate thy brother in thy heart; thou shalt surely rebuke thy neighbor, and not bear sin because of him” (Leviticus 19:17). The halakah considers the negative consequences that flow from a transgression to be contingent upon prior proper rebuke of the sinner. He quotes earlier halakhic authorities, such as Maharam of Lublin and R. Jacob Molin (or Molin), who rule that the mitzvah of hating the evil-doer applies only after one has properly rebuked the sinner and the latter still refuses to obey. On the basis of the talmudic discussion in *Arakhin* 16b, that nowadays there is no one sufficiently capable of delivering proper rebuke (*tokha.hah*), one arrives at the conclusion that today we must act toward those who have strayed as people who have not yet been rebuked properly, and hence, even though they explicitly reject Torah, as still deserving of love. The lack of proper rebuke places them in the category of *ones*. Thus:

The *Hagahot Ma.miuniyyot* wrote that one may not hate the heretic until he has disregarded rebuke. At the end of his book *Ahavat Hessed* (by Rabbi Israel Meir Ha-Kohen, author of the classic work *Hafetz Hayyim*), the author cites R. Jacob Molin (Molin) to the effect that we must love the sinner. He also quotes the responsa of Maharam of Lublin to show that we must consider the sinners as those who have not yet been rebuked, for we no longer know how to rebuke properly, and
hence one must treat them as transgressors under duress. As a result, we cannot exempt these sinners from [standard Jewish] obligations such as levirate marriage and other halakhot.²⁶

According to this analysis, not only must one love the sinner (even the heretic), but one must desist as well from hating him as an evil-doer. Consequently, to hate such a person is to violate the injunction against hating one’s neighbor in one’s heart (the first part of the same verse in Leviticus 19:17).

It must be noted that the Hazon Ish’s ruling is based on the premise that we are incapable of fulfilling the requirement of rebuke in our generation. Such is, in fact, the opinion of most decisors and most Rishonim. They follow the Mishnaic teachers R. Tarfon, R. Elazar b. Azariah, and R. Akiba, all of whom, for different reasons, arrive at the same conclusion. However, Maimonides (Hilkhot De’ot, chap. 6) decides the law in favor of R. Yohanan b. Nuri, who “called heaven and earth as witnesses” that one may indeed fulfill the mitzvah of rebuke in the present generation.²⁷

Doubt and Denial

I have suggested elsewhere that those who doubt the fundamentals of Judaism should not be classified together with those who categorically reject the truths of Judaism. (The gist of the argument is repeated here, in somewhat different form, because of its obvious relevance to our theme.)

Support for this contention may be found in the Talmud (Shabbat 31a):

²⁶See Hazon Ish, Yoreh De’ah, no. 2:28. See, as well, Hazon Ish on Maimonides’ Mishneh Torah, Hilkhot De’ot 6:3, and references cited ad loc. See too Sefer ha-Hinnukh, no. 238.
²⁷See my chapter on this subject in my Halakhot ve-Halikhot (Jerusalem: Mossad ha-Rav Kook, 1990), 168–75.

Our Rabbis taught: A certain heathen once came before Shamai and asked him, “How many Torahs have you?” “Two,” he replied: “the Written Torah and the Oral Torah.” “I believe you with respect to the Written, but not with respect to the Oral Torah; make me a proselyte on condition that you teach me the Written Torah [only].” [Shamai] scolded and repulsed him in anger. When he went before Hillel, he accepted him as a proselyte. On the first day he taught him [the alphabet:] Alef, bet, gimmel, dalat. The following day he reversed [them] to him. “But yesterday you did not teach them to me thus,” he protested. [Hillel replied:] “Must you then not rely upon me? Then rely upon me with respect to the Oral [Torah] too.”

Rashi comments:

“He converted him” – and relied upon his wisdom, that in the end he will persuade him to accept [the Oral Torah]. This is not to be compared to the case of one who accepts Judaism except for one law. The man (in our case) did not willfully deny the Oral Law; he just did not believe in its divine origin. Hillel was confident that after he would teach him, he would rely upon him.

Rashi clearly draws a line of demarcation between the heretic and the individual who simply does not believe.²⁸

One critic has argued against the thesis here presented, maintaining that Rashi’s focus is on the words “divine origin” (literally, “from the mouth of God”). On this view, the proselyte was willing to commit himself to practice all the mitzvot of the Oral Law, but

was unwilling to grant its divine origin. This idea of the Oral Law's divine origin is thus the content of the "belief" as yet unattained by the proselyte. The phrase "did not willfully deny the Oral Law" then refers to his acceptance of the Oral Law in practice. If so, Rashi's distinction is between belief and practice, rather than between faith and doubt.

This proposed explanation, however, is untenable. Besides violating the plain sense of Rashi, it offers no explanation as to why Rashi shifted from the phrase "willfully deny" to the phrase "did not believe." Rashi intended with these two different phrases two different and opposite concepts, two sides of the same coin. Moreover, the talmudic passage does not mention at all the phrase "deny" or any similar term. The only phrases used are "I believe you" and "I do not believe you." Furthermore, what would be the source of this bold distinction between the practice of laws of the Oral Torah when accompanied and when unaccompanied by belief in its divine origin, the consequence of which was that Hillel was prepared to convert him even though he did not believe in the Oral Law's divine origin? If one is a heretic, even with regard to the theoretical basis of the Oral Law, his mechanical performance of mitzvot carries no weight.

Our interpretation of Rashi does not suffer from these difficulties. According to our analysis, both "did not willfully deny" and "did not believe" refer to the axiom of the Law's "divine origin," and "to accept" means to consent to this article of faith; there is no reference intended here to the question of whether or not one commits to a course of action without belief in its ultimate authenticity. Rashi proposes a distinction between deliberate apostasy and lack of positive conviction, doubt but not willful heresy.

Most people, especially in our days but in days of yore as well, abandon religion not because they are sure that it is false. They leave it because they are unconvincing, in doubt, and perhaps uncertain whether any kind of certainty can ever be attained. Such pervasive doubt is founded upon the Cartesian principle of de omnibus dubitandum—doubt everything. In other words, they are not "deniers" but "nonbelievers."

On the basis of this distinction, we maintain that the great majority of nonbelievers of today are not equivalent to the apikores of talmudic times.

Love and Brotherhood

Finally, a note on Maimonides' formulation in his Commentary on the Mishnah to Sanhedrin is in order. Maimonides, it will be recalled, there stated that "if a person holds all of these principles to be sound—he is then part of 'Israel,'" but "if a person holds one of these principles to be defective, he has removed himself from the Jewish community." Maimonides thus demands positive theological commitment as the price for inclusion in kelal Yisrael. If we take his words literally, we reach the astonishing conclusion that he who observes mitzvot but has not reflected upon their theological basis would also be excluded from the Children of Israel. Spelling out the consequences of this position, we would be forced to conclude that not only heretics but unreflective and intellectually indifferent Jews, and children, would not be included in the "people of Israel"; as a result, they would not only not receive a share in the world-to-come, but other Jews would not be permitted to love them and would, indeed, be commanded to hate them.

These words of Maimonides, however, are not repeated in his Mishneh Torah, and, except for the citation from R. Menahem ha-Meiri referred to above, to my knowledge this view is not repeated by any other medieval Jewish authority.

From his remarks, especially in Hilkhot Mamrim cited above, we see that with regard to the Karaites of his day, Maimonides did not repeat his position as expressed earlier in his comments to tractate Sanhedrin, requiring positive affirmation of the Thirteen Principles of faith as prerequisite to inclusion in kelal Yisrael, and considering the absence of conscious rejection of such principles as
inadequate. This follows from his ruling that children of the original Karaites and other sectarians are accepted as part of the fellowship of Israel; presumably, no such positive affirmation of rabbinic Judaism can be expected of the later Karaites. "Coercion" as a halakhic category exists as an exception; it does not substitute for a needed prerequisite.

According to the other Rishonim, must one declare his adherence to the principles of Jewish belief as a conditio sine qua non to be counted as a Jew? Alternatively, is one reckoned a Jew from birth, remaining so until he commits a positive act of heresy similar to that performed by the "wicked son" in the Passover Haggadah?

To analyze this controversy which separates Maimonides from most other Rishonim (and which, as was indicated above, may well be Maimonides' position in his later Mishneh Torah as well), we must focus upon the parameters of inclusion in and exclusion from the community of "Israel."

One who does not believe in all the fundamentals of Judaism is certainly still obligated to observe all the commandments incumbent upon a believing Jew. I have elsewhere developed the thesis that in halakhah, especially according to Maimonides, the term Israelite (Yisrael) admits of two different definitions: as an individual per se, a "son" of his heavenly Father with Whom he has a relationship expressed halakhically in the form of specific obligations and prohibitions; and as a brother to other Israelites, which in turn is manifested in a different set of halakhic norms. Only with regard to the second moment, the fraternal aspect of Jewishness, do heretics lose their status as Israelites. Thus, for example, wine that heretics touch is to be considered as wine that a non-Jew handled and hence forbidden; and Jewish courts do not have the obligation to prevent them from committing sins. Their obligations toward

28See my "May A Transgressing Kohen Perform the Priestly Blessing?" Ha-Darom 10 (Eliy 5719 [1959]): 95-103 (Hebrew).

29See Sifrei Kohen, Yoreh De'ah 141, and Responsum Avnei Nazer, Yoreh De'ah, no. 127.

31This conforms with Maimonides' views in his famous Lggeret ha-Shemad. See references in my article, "A Transgressing Kohen." See, too, Keren Orah to Yevamot 17, concerning the talmudic statement that the Rabbis classified the Ten Lost Tribes (who had totally assimilated into their idolatrous milieu) as idol-worshipers. He writes: "Perhaps with respect to marriage laws were they classified as non-Jews; in other respects, however, they could not be classified as such, for halakhically they remained Jews." Our analysis supports his conclusion that the ten tribes became non-Jews only with regard to the brotherhood of the Jewish people, which includes marriage law. Keren Orah (ad loc.) quotes Maharsha, Maharshal, and the Mordekhai on this topic, and suggests that only at the time of the assimilation of the ten tribes, the age of Prophecy and the availability of the divine Spirit, could the reclassification of the ten tribes as idol-worshippers have been effected. See also the surprising comment by R. Moshe Sofer, Haggahot Hatam Sofer to Shulhan Arukh, Orah Hayyim 29:4.

Loving and Hating Jews as Halakhic Categories

God as individual Jews, however, remain in full force. In this limited sense, their status as Israelites remains uncompromised, and their obligation to observe the Torah remains undiminished irrespective of their theological perplexities.

A responsum by R. Israel of Bruna, which distinguishes between the halakhic implications of the terms "Jew" and "Israelite," is most relevant.

There was a case of a young man by the name of Loewe of Passau who vowed never to play (i.e., gamble) with any Jew. . . Now, in Neustadt there was (a converted Jew) and Loewe asked R. Israel Isserlin if he is permitted to play with him. He permitted him to do so, for a Jew who is converted out of the faith is not called a Jew, even though "an Israelite even if he sinned remains an Israelite" (Sanhedrin 44a). Nevertheless, he is not called a "Jew," and therefore the vow does not apply to him. I can support this (ruling) with proof from a talmudic passage in Sanhedrin upon which Rashi comments that, "whoever denies idolatry is called a Jew" (Megillah 13a).
Thus, a converted Jew who denies the God of Israel and worships an idol is not called a "Jew."\(^{32}\)

R. Isserlin does not attempt to distinguish halakhically between the terms Israelite and Jew; he merely observes that with regard to vows (which halakhically follow the common usage of the average person), renegade Jews were not meant to be included in the term Jude, Jew, as used in Germany at that time. Hence, his permission for Loew to gamble with the apostate of Neustadt.

However, R. Israel of Bruna does make an essential distinction that is valid regardless of time and place, as evidenced from his citation of the talmudic passage in Megillah to buttress his position. In his view, "Israelite" designates one's lineage as a Jew, which is essential and eternal and which concomitantly obligates performance of mitzvot, notwithstanding one's apostasy. Jew (or Jude) refers to his relationship with the rest of the Jewish community. The former is what we have referred to as a Jew qua an individual, and the latter as a Jew who is a brother to other Jews, part of the fraternity of Israel. One who apostasizes loses his connections and his rights vis-à-vis the rest of the Jewish people. "An Israelite even if he sinned remains an Israelite," but he is no longer a Jew because he has forfeited the privileges attendant upon such status. Hence, one who vowed not to gamble with Jews did not refer to such an apostate.

The mitzvah to love one's neighbor is, of course, the quintessential mitzvah of brotherhood. At first blush it appears puzzling that the heretic who sinned against God but not against man should be deprived of his halakhic ties of brotherhood to the rest of the Jewish people. We suggest that this punishment does not follow from the heretic's rejection of God; such matters are the concern of the omniscient Creator who alone knows the innermost thoughts

\(^{32}\)R. Israel of Bruna, She'elot u-Teshuva Mahari mi-Bruna, no. 35. The text is slightly corrupted, but the sense of the responsum is unaffected by these textual difficulties.
when the great majority of the Jewish people are religiously observant and God-fearing, such that heresy constitutes a demonstrative denial of Jewish identity, does the corresponding removal of the apostate from the Jewish fraternity make sense. However, when the majority of the Jewish people themselves are ignorant of Torah and indifferent to its commandments, the heretic's denial of Judaism's theological principles is not destructive of the communal Jewish identity per se. On the contrary, many Jewish nonbelievers today affirm their "Jewish identity," are proud of their lineage, and contribute their effort and substance for the welfare of the Jewish people. They certainly cannot be said to intend harm to Jewish fraternity by means of their heresy. They may be classified along with those who have not consciously and positively denied Judaism's tenets; they must be presumed simply not to have paid much attention to matters of faith. Their Jewishness is natural, not intellectual or spiritual; their conscious status as part of the community is intuitively assumed and is not felt to be in need of demonstration or corroboration.

It is not out of place to cite a more recent source, one which explicitly confirms the Jewishness of any Jew who calls himself a Jew, regardless of the content of such self-identification. What follows is a passage by R. Zadok ha-Kohen of Lublin, a profound and influential hasidic rebbe of the nineteenth century:

The essence of Judaism is the name of "Israel" (Jew). This is what Isaiah says: "One shall say, I am the Lord's, and another shall call himself by the name of Jacob and designate himself by the name of Israel" (Isaiah 44:5). This means that a Jew who has no greater distinction than this, that he calls himself a Jew—that is enough.

We find in the Talmud that a non-Jew who was converted amongst Gentiles (and thus failed to observe the commandments), later has to bring a sin-offering for eating non-kosher food, drinking blood, violating Shabbat, and bowing to idols (Shabbat 68b). Obviously, he was unaware that these things are forbidden—even Shabbat and idolatry; thus he knew nothing at all about Torah. In what way, then, is he considered a Jew such that he must bring a special sacrifice for these infractions? Obviously, it is because he calls himself a Jew.

Thus we may understand as well why the law requiring martyrdom applies to one who converts to Islam, even though that religion prohibits idol worship, immorality, and the shedding of blood. . . . So: abandoning the name (or: identity) of "Jew" alone, is considered as serious as the violation of all the other commandments of the Torah, including the three most heinous of all sins, namely, idolatry, immorality, and murder. . . . So too, [our ancestors] once worshipped idols but they never denied they were Jews [and so they remained Jews indeed].

One can hardly make a more cogent case for breaking the necessary bond between theological error and membership in "kelal Yisrael."

For this reason we can assume that in our contemporary era, even one who consciously rejects the principles of Judaism (but still maintains his "Jewish identity") is not halakhically defined as an apikores of the kind that flourished in the talmudic period.

**CONCLUSION**

To summarize, there exist four reasons why the stringency of the laws concerning treatment of a heretic should not apply to nonbelievers in our age:

1. Heretics today are "coerced" by the Zeitgeist we live in, which ineluctably affects their Weltanschauung.

irrelevant the second principle which we have enumerated), most Jews today should be classified as fully within the Jewish people and therefore exempt from the onus of being hated, according to the other three parts of our analysis.

A NOTE ON TRANSLATIONS

Translations of many of the Maimonidean and other rabbinic texts cited in this article were derived from the following sources, with occasional changes for purposes of clarity or emphasis:


On the basis of all of the above, we may conclude that according to most Rishonim, the mitzvah of hating “evil-doers” does not apply to the overwhelming majority of nonobservant and nonreligious Jews in our times. (Indeed, the prohibition against hating a fellow Jew in one’s heart might apply to those who practice hatred of the sinners.) Such Jews are indeed full members of kelal Yisrael. Even if we grant Maimonides’ early position on the need for explicit commitment to the Thirteen Principles in order to be accepted in the Jewish fraternity and thereby merit neighborly love, and hence affirm the relevance of the mitzvah of hatred of evil-doers in our generation, the mitzvah to love one’s fellow Jew applies universally (except in the case of one who tempts his fellow Jew to worship idols) simultaneously with the mitzvah to hate evil-doers.34 And even if we grant Maimonides’ acceptance of the applicability of the mitzvah of rebuke in our day and age (and thereby rendering

34See the beautiful and uplifting comments of R. Naftali Tzevi Yehudah Berlin (the Netziv), Teshuot Meseiv Davar, vol. 1, no. 44. His words deserve wide dissemination. The Netziv here exemplifies the truthfulness of the saying of the Sages that “Torah scholars bring peace to the world."
Some of my translations of passages from Maimonides' *Commentary to the Mishnah* received the benefit of critical review by Prof. Joshua Blau of the Hebrew University and Prof. Richard Steiner of Yeshiva University. I am grateful to them for their wise suggestions.\(^{35}\)


The obligation of one Jew to be responsible for the spiritual well-being of another is as old as the Bible itself. "And they shall stumble over one another" (Leviticus 26:37) was understood by the rabbis to mean, "not [literally] over one another, but over one another's sins. This teaches us that all Jews are responsible for one another (melamed she-kol Yisrael arevim zeh ba-zeh).\(^{91}\) The Talmud further clarified (and restricted) this principle so that "it applies only if they have the ability to prevent the sin, and do not do so" (Shevuot 39a). This is spelled out in a celebrated talmudic passage: "Whoever is able to prevent the members of his household from sinning and does not do so is held accountable for their sins; [if one is able to prevent] the members of his city [from sinning, and does not,] he is held accountable for their sins; [and if he is able to prevent the sins]..."

\(^{91}\) *Sifra* on Leviticus 26:37.
of the entire world [and does not,] he is held accountable for their sins" (Shabbat 54b).

From the continuation of the Talmud's treatment there, it is clear that the expression "the entire world" should not be taken literally. Rab Papa had stated that the Exilarch was held accountable "for [the sins of] the entire world," and Rashi, in his commentary on that passage, understood the term to mean "the entire Jewish world, such as the case of a king or nasi who can prevent [violations of the law], for the populace fear them and follow their commands."

The Rambam also accepted this view, for he cited this passage in the context of the mitzvah of rebuking one's neighbor (mitzvot tikhah), a mitzvah which applies only to Jews. He also slightly altered the talmudic text to read: "and whoever has the ability to prevent the sin and does not do so is held accountable for the sins of everyone whom he was able to prevent." The Rambam leaves out the category of "the entire world," for that would be misleading. It is thus clear that the basis for holding accountable someone who neglects to prevent another's sin is the concept of arevut, as the aforementioned verse from Leviticus and talmudic commentary indicated.

This concept of arevut also has other, more positive, implications. The Talmud states: "Ahavah the son of R. Zera taught, Any blessing which one has already recited on behalf of himself, he can recite again on behalf of others" (Rosh Hashanah 29a). Rashi explains that the reason is because all Jews are responsible (arevin) for one another's fulfillment of mitzvot. The Ritva goes even further, stating that "all Jews are responsible (arevin) for one another. They are all like [parts of] one body and like a guarantor (arev) who repays the debt of his friend."

This notion of arevut lies at the heart of a cluster of commandments which the Rambam presented together in Hilkhot De'ot, and

which he incorporated into his list of the commandments included in the introduction to his Mishneh Torah as follows:

Positive precept no. 206: To love everyone of the covenantal community (mi-benei berit), as it says, "and you shall love your neighbor as yourself" (Leviticus 19:18);

Negative precept no. 302: Not to hate in the heart, as it says, "Do not hate your brother in your heart" (Leviticus 19:17);

Positive precept no. 205: To reprove the sinner, as it says, "Indeed shall you reprove your neighbor" (ibid.).

One may add to this list a commandment of much wider scope which, unlike the notion of arevut, is not limited to the Jewish people:

Negative precept no. 299: Not to cause the naive (tam) to err while on his way, as it says, "Do not put a stumbling block before the blind (lifnei iver lo titen mikhshol)" (Leviticus 19:14).

There is a great deal of discussion among rabbinic authorities as to whether the biblical prohibition of lifnei iver applies only if the abettor's assistance is actually indispensable for the violation to have occurred, or if it is applicable even if his involvement merely

4From the full Maimonidean formulation in the Sefer ha-Mitzvot, it would appear that this tikhah could only be done with words and not through physical force. See Netziv, Hamaek Shemolah, Parshat Vayeshev, She'illa 27, nos. 6–7, who identifies this also as the opinion of the She'ilot and the Geonim. See, too, idem, Merorei Sadeh, Baba Kamma 28a. Cf. Rama, Hoshen Mishpat 42:1, 6, 13. There is also a discussion as to whether this obligation applies only to a bet din of mamhin or to every individual Jew as well. See Ketot ha-Hoshen 3:1; Netivot ha-Mishpat, Berurim, no. 1; Meshovev Netivot, ed. loc.

5For the relevance of lifnei iver to Gentiles, see Pesahim 22b; Rambam, Guide for the Perplexed 3:17.
facilitates the potential violator in committing a sin which he could otherwise also have committed unaided. There are those who maintain that if the person can commit his sin without the Jew's assistance, then this prohibition does not apply. Others maintain, however, that anyone who even minimally assists a sinner in the performance of his averah (afilu bi-dibbur ma'at) is guilty of lifnei iyer, even if the sin could have been committed anyway without this outside help. Another issue that is raised in this context relates to when the assistance takes place: while the sin is being committed (certainly prohibited), before it is done (possibly permitted).

6 This is Tosafot's understanding of the talmudic discussion in Avodah Zarah 6a, which requires a situation of "two banks of a river," where the sinner is on one side, the instrument of violation is on the other, and someone is needed to get the object across the river. Since the sin cannot be committed without this assistance, then the one who offers it violates the prohibition of lifnei iyer. See Tosafot, loc. cit., s.v. min'ayam; Shabbat 3a, s.v. ba'a; Hagigah 13a, s.v. ein; Kiddushin 56a, s.v. avol. See, too, Ramma, Yoreh De'ah 151:4.

7 This is Rabbenu Hananel's interpretation of the passage in Avodah Zarah, ad loc. It is clear that this is also the Rambam's opinion. He discusses the prohibition of lifnei iyer in a number of places in his writings. See Peshah ha-Mishnah, Shevi'it 5:6; Terumot 6:3; Demai 3:2, 5; 6:12; Avodah Zarah 1:7; Sefer ha-Mitzvot, Lo Tose'ah nos. 236, 299; Mishneh Torah, Hilkhot Avodah Zarah 9:8, Hilkhot Ro'eh 12:12-14, Hilkhot Issrei Biah 22:5-6; Hilkhot Kilayim 10:31; Hilkhot Nezirah 5:20 (and Radbaz, ad loc.); Hilkhot Gezelah ve-Avodah 5:1; Hilkhot Hovel u-Mazik 5:13; Hilkhot Maleh ve-Leveh 2:7, 4:2; Hilkhot Avel 3:5 (and Radbaz, ad loc.). Rashi also agrees with this position. See Rashi, Kiddushin 56a, Avodah Zarah 22a. See, too, She'el'ot, Parshat Noah, no. 6; Sefer Halakhot Gedolot (Warsaw, 1874), 135b, no. 68; Hiddushei ha-Ran, Avodah Zarah 6a, s.v. ibaya; Shulhan Arukh, Yoreh De'ah 151:1 and Biur ha-Gra 151:8.

For more on this opinion, see my "Sho'el ki-Inyan," Ha-Darom 30 (5730): 61-64, and my Yad Peshutah (Jerusalem: Maaliyot Press, 1990) to Hilkhot Avodah Zarah 9:8.

there is still a possibility that it will not come to pass), or after it is done (certainly permitted).

As noted earlier, the obligation to reprove a sinner (tokkahah) is related to the notion of averat. We are responsible to see to it that another person does not sin, and, if there is a reasonable chance that he or she will sin, we are obligated to try to prevent it. But what if it is clear that the rebuke will not be effective and the sinner will proceed with his or her behavior anyway? It would appear from the Rambam that, in such a case, tokkahah would not be required. The act of rebuke itself would be a violation of lifnei iyer and therefore counterproductive for, thereby, the violator will be informed of the sinful nature of his act, and "better they be unintentional [siners] than be intentional ones." In such a circumstance, reprimanding the person will yield the opposite results, effectively rendering him or her a deliberate sinner.

There is, however, one opinion that makes a distinction between a law that is derived from the text (mi'di de-atu mi-derashah) and one that is expressly stated in the Torah. If the law is merely derived, then the individual about to violate it is best left in ignorance. But if an explicit Torah prohibition is at stake, then there is always an obligation to reprimand, even to punish, until the person desists

8 See Mishnah Gittin 5:9 and Avodah Zarah 4:9 and Rambam, Peshah ha-Mishnah, ad loc.; Mishneh Torah, Hilkhot Shemittah ve-Yovel 8:1-7; Hilkhot Bikkurim 8:13; Hullin 107b; Hilkhot Berakhot 6:19; Shulhan Arukh, Oran Hayamim 169:2 and commentaries of Taz and Lezish Mordechai, ad loc.

9 See Sefer ha-Mitzvot, Aseh no. 205: "It is incumbent upon every person to rebuke him and to stop him (le-hokhso u-lemono)." It would appear from this that the obligation only applies if the rebuke will lead to stopping. See also Mishneh Torah, Hilkhot De'ot 5:7, 6:7, based on Yevamot 65b. See, too, Haggahot Maimoniyot, Hilkhot De'ot 6:3.

10 See Rambam, Mishneh Torah, Hilkhot Shevitah Aseh 17. See, too, Tosafot, Baba Batra 60b, s.v. mutav; Shabbat 55a, s.v. ve-af al gav.
from his violation of the law.\textsuperscript{11} The basis of this distinction between a derived law and an explicit law requires explanation. Indeed, why should the source of a law determine the scope of the mitzvah of tokhahah relevant to it?

It would appear that this distinction stems from a dispute over the definition of the mitzvah, which in turn lies in differing perceptions of the essence of arevut. In the normal case of arevut, there are two possible ways of understanding the responsibility of a third person who serves as the guarantor of a loan from one party to another. One way is to see the arevut as being essentially for the benefit of the borrower, because the guarantor (arev) makes it easier for the borrower to obtain the money. It is even likely that the arev himself would have lent his friend the money, but at the time did not have the cash available. In order to help his friend, the arev is prepared to convince the lender to supply the needed money to the borrower. The alternative is to see the arevut as primarily serving the interests of the lender. The latter is concerned that he might not get back his money, and he has no desire to get involved in a complex legal process to retrieve it once the loan comes due. Therefore, he seeks further guarantees for his money, and that is provided to him by the arev. At times, the guarantor is even paid to accept this responsibility, for he is not interested in helping the borrower, but rather is prepared to offer a guarantee to the lender, for the latter's benefit, for a small profit. Thus, from this perspective, the goal of having a guarantor is to secure the return of the lender's money, and it is the guarantor who will determine how, ultimately, to extract the money owed him by the borrower.

Similarly, the concept of arevut of one Jew for another can be understood in two ways. One may view this as a responsibility incurred essentially for the benefit of the other Jew. Since every Jew must love every other Jew and actively work for his or her benefit, one is obligated to act in a way which will benefit him or her spiritually and certainly should try to prevent the serious negative consequences of sinning. According to this understanding, the commandment to reprove one's neighbor is an expression of one's arevut, which is, by definition, done only for the other's benefit. It is therefore obvious that, if in a specific situation the rebuke will be counterproductive, then it is better that the other Jew be left in ignorance and not be turned into a deliberate sinner. After all, it is forbidden to create any obstacle even for a non-Jew for whom there is no notion of arevut, all the more so in the case of a Jew where that concept is very much relevant.

But there is also another possible approach. One may view the arevut relationship as one in effect between man and God, as it were. In other words, all Jews are responsible for one another in order to ensure the complete observance of the Torah and its commandments, thereby sanctifying God's name in the world. One way of fulfilling this obligation is through the commandment of tokhahah, which requires one Jew to prevent another from sinning. Just as a guarantor who is unsuccessful in getting the borrower to pay the loan must pay it himself, so too the reprover who has no possibility of persuading the sinner of correcting his ways is nonetheless still responsible to reprove him, for he must at least demonstrate his concern for the violation and, as it were, pay something of the loan.

Given this second approach, it is now possible to understand the distinction made above between a law which is explicitly mentioned in the Torah and one which is only derived from it. In the former case, since the law is commonly known, even if the sinner may be unaware of it, the transgression assumes a public character, God's name becomes desecrated, and it therefore behooves the rebuker/guarantor to correct this to at least some extent, even if he knows that his action will not be efficacious. However, a law which is derived by the rabbis is not generally known, and its violation is not as widely recognized. As a result, as long as most people are unaware that such conduct is sinful, then no desecration of His name will have occurred, and therefore there is no arevut for the sake of God. On the other hand, if we were to

\textsuperscript{11}See Rosh, Betzah 4:2, citing the Baal ha-Ittur.
publicize the fact that a violation has taken place, and if those responsible were nevertheless to persist in their rebellion, then, indeed, God's name would be desecrated. Therefore, from the perspective of arevut with respect to God, in those cases where the law is derived by a derashah and therefore not well known, better that the sinners be left in ignorance rather than be rendered deliberate transgressors by the act of tokhahah.

**WHO IS INCLUDED IN AREVUT?**

According to Rambam:

Those who are included in the category of Israel—we are obligated to love them and care for them and do everything God has commanded us concerning love and brotherhood. Even if a Jew committed any sin due to his lust and the overpowering nature of his evil inclination, he is punished according to the severity of his transgression, but still has a portion [in the world-to-come], and he is deemed a "sinner of Israel (mi-poshe'ai Yisrael)."12

On the other hand, he ruled elsewhere that those labeled heretics, deniers, or apostates "are not of the community of Israel (enam bi-khelal Yisrael)."13 Since we are not concerned here with these exceptions, we will focus on those Jews who, despite being called "sinners of Israel," are nevertheless considered Jews in every regard.

The starting point for any discussion of this nature is the ruling of the Rambam in Hilkhot Mamrim:

.... [Zadok's and Boethus's] children and grandchildren, who, misguided by their parents, were raised among the Karaites and trained in their views, are like a child taken captive and raised by them [ki-tinok she-nishbah benehem]. Such a person is not anxious to observe mitzvot for he is like an anus (one who abjures the Jewish religion under duress). Although he later learns that he is a Jew, and observes Jews practice their religion, he is nevertheless to be regarded as an anus, since he was reared in their erroneous ways. Thus it is with those whom we are discussing, who adhere to the practices of their Karait parents who have erred. Therefore, efforts should be made to bring them back in repentance, to draw them near through words of peace that they may return to the strength-giving source, the Torah. [3:3]

There are also two extant responsa of the Rambam dealing with the Karaites. In the first, he maintains that as long as they respect the Rabbinite tradition and do not demean either its bearers or its laws and customs, Karaites should be treated as full Jews. Other Jews should honor them, go to greet them (even in their homes), circumcise their sons (even on the Sabbath), bury their dead, comfort their mourners, distribute charity to them, and even drink their wine. Since they have not denied God, they should not be treated as heretics or non-Jews, for their children may one day return to the true tradition. The Rambam notes that such a reasoning was already expressed by Rav Hai Gaon and Rav Ye- hudah Gaon who allowed for the circumcision of Karaites sons on the Sabbath.14

There are those who denied the authenticity of this responsum, claiming it to be inconsistent with what is known to be the Rambam's view regarding Karaites.15 However, a second responsum of the Rambam belies this assertion. In that text, he

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12Peshut ha-Mishnayot, Sanhedrin, Perek Helek, beginning.
13Mishneh Torah, Hilkhot Mamrim 3:2.
addresses the question as to whether Karaites may be included in the required quorum of ten for prayer or of three for Birkat ha-Zimmun. In response, the Rambam determines that their inclusion vis-à-vis a particular commandment depends solely on whether or not they accept its validity and are prepared to follow its dictates correctly. In these cases, therefore, since they do not believe in the concept of a quorum of ten for prayer or of three for zimmum, they cannot be included in any of these practices. However, the ruling that they can participate in any activity that they do accept and acknowledge is consistent with the stipulation made in the previously cited responsa. That is why the Rambam there added the condition that the prayer service that takes place at the home where the child is to be circumcised is to be conducted “according to our custom, with nothing of it being altered” and that the mohel be appointed by the local (Rabbinite) Jewish court. Clearly he did not mean to allow them to be counted to the minyan, for if the prayer service were to proceed according to their customs, no minyan would be required. In those areas where they do accept the Rabbinite tradition they are to be treated as full-fledged Jews, he ruled.

Rabbi Eliyahu Mizrahi points to a statement of the Rambam in his Perush ha-Mishnahot where he treats Karaism harshly and that he considers to be, to some degree, contradictory to the impression forthcoming from his responsa. However, in a manuscript of that passage in the Perush ha-Mishnahot, written in the Rambam’s own hand, we find a treatment of the Karaites entirely consistent with his discussion in Hilkhot Mamrim:

Those born into this tradition and trained in accordance with it are to be seen as anusim. They must be treated as children taken captive (tinok she-nishbah) among non-Jews, whose every transgression is inadvertent (shegagah), as we have explained (Shabbat 68a). But the first person [to deviate] is considered a deliberate transgressor and not an inadvertent one.

What clearly emerges from all the above citations of the Rambam is that someone who was raised and trained in a religiously nonobservant or theologically incorrect atmosphere is still included within the concept of areut, and all Jews are responsible for him or her as well. Consistent with his view, the Rambam maintains that even if that person later hears or learns of proper Jewish behavior and does not immediately begin to act accordingly, he or she is still deemed a tinok she-nishbah, “whose every transgression is inadvertent.” As a result, one who wants to reprove such individuals must be aware that, due to their background and upbringing, they will not accept direct rebuke regarding specific violations. On the contrary, if one does reprimand them in this fashion, not only will it achieve nothing positive but it will most likely cause them to deliberately continue their sinful behavior. That is exactly why the Rambam wrote in Hilkhot Mamrim (cited above): “Therefore, efforts should be made to bring them back in repentance, to draw them near by words of peace (bi-divrei shalom) that they may return to the strength-giving source, the Torah.” The Rambam thus carefully instructs us how to handle those who commit sins due to ignorance, habit, and poor education. It is obvious that telling them that “such and such an action is against halakhah” will not motivate them to repent. On the contrary, such specified reproach only causes them to sin deliberately, resulting in the rebuker having violated the commandment against “putting a stumbling block before the blind.” Rather, such transgressors must be “drawn by words of peace . . . to the strength-giving source.” We must draw them near to Torah and observance in general, and only as they slowly progress in their acceptance of its binding nature does it become appropriate to specify the details which they should

16 See Teshuvot ha-Rambam 2:502–04, no. 265; Iggeret ha-Rambam, 611.
17 See She'elot u-Teshuvot Rabbi Eliyahu Mizrahi, no. 57, citing Perush ha-Mishnahot, Hullin 1:2. Yet, when it comes to practical halakhah, he relies on the position as reflected in the responsa.

18 See Rabbi Y. Kapah’s translation of the Perush ha-Mishnahot.
begin to observe. But without first attracting them to the Torah in general, they will never come to full repentance.

In his commentary to the Tur, Rav Yosef Karo cites the Rashbi's statement that, if someone is suspected of violating a law of which most people are unaware, he will not be held accountable ("kasher hu la-kol"). It is true that in the Rashbi's time, this notion could never have been applied to the public desecration of the Sabbath, which all knew to be prohibited. But R. Karo continues:

Furthermore, Rabbeinu Yonah quoted French scholars who ruled regarding an apostate (mumar le-avodah zarah) who travels from place to place, acknowledging in one the idolatrous deity in the presence of non-Jews and in the other place entering Jewish homes and claiming to be a Jew, that since he informs us that he is a Jew, he is taken to be one and does not render wine unfit for use... and when he tells us that he is a Jew, he is speaking honestly.

His contrary actions do not disqualify him. Rather, we assume that in the presence of non-Jews he acts as if under duress, or as if unaware of the serious nature of his transgressions. As a result, even apostasy can, under certain circumstances, be viewed as unintentional.

"CHILDREN TAKEN CAPTIVE"

In our generation, the majority of Jews were raised and educated in the absence of Torah and mitzvot and consequently are not aware of most of the Torah's prohibitions. Nevertheless, many of them wholeheartedly want to be affiliated with the Jewish people, some proving this with great dedication and sacrifice in the rebuilding of the State of Israel and in its defense against its enemies. Over the last two hundred years, many Torah scholars have dealt with the status of such Jews, focusing primarily on the fact that they do desecrate the Sabbath publicly. After all, the law has already stated:

The observance of the Sabbath and the prohibition against idolatry are each deemed equivalent to the entire corpus of commandments. The Sabbath is the eternal sign of the covenant between the Holy One, Blessed be He, and us. Therefore, anyone who violates any of the other commandments is considered one of the transgressors of Israel (bi-khelal risheti Yisrael), but the public desecrator of the Sabbath is identical with an idol worshipper, and both are considered as non-Jews (goyim) in all respects.

Nevertheless, modern decisors have not been as extreme toward them as this ruling would warrant. Already in 1861, Rabbi Jacob Ertlenger dealt with this dilemma and ruled:

As to Jewish sinners (posheh Yisrael) of our time, I do not know how to treat them now that, due to our overwhelming sins, the disease has spread so widely that the majority of them deem the desecration of the Sabbath to be permissible. Perhaps they have the status of one who thinks what he is doing is permitted (omer mutar) and who is considered to be only close to the status of a deliberate sinner (karov li-mezid). Some of them pray on the Sabbath and recite the Kiddush, and then violate the Sabbath by performing activities forbidden both by biblical and rabbinic law. Now, a Sabbath desecrator is considered a heretic because by denying the Sabbath he denies Creation and the Creator, but this individual [obviously] acknowledges [these beliefs] by virtue of his praying and reciting the Kiddush.
Moreover, their children who follow after them, who never heard of the laws of the Sabbath, are identical to the Sadducees, who were not deemed heretics even though they violated the Sabbath, for they are merely acting as they were trained by their parents. They are considered like a child taken captive (ki-tinok she-nishbah) among non-Jews. . . .

Many of the sinners of our generation are similar to them, and are [even] better than they. The reason Rabbi Shimshon was stringent with respect to the Karaites, to the point of treating their wine like the wine of non-Jews (yayin nesekh), was not that they kept a different calendar of holidays, which is tantamount to [desecrating] the Sabbath. Rather, the reason was that they denied many of the fundamental principles of Judaism, such as the way they circumcise, and their rejection of the laws of marriage or divorce which consequently turn their children into bastards. [However,] with regard to these [laws], the majority of today's sinners have not breached [them].

Many great scholars followed this lead, and the late Chief Rabbi Isaac Halevi Herzog summed up this approach as follows: "Recent Torah authorities distinguished between those countries where the majority of Jews desecrate the Sabbath, so that the violator cannot be seen as denying Creation, [and others where this is not the case]."

An important precedent for this notion can be found in the words of the Rambam at the conclusion of his Iggeret ha-Shemad.

21See his She'elot u-Teshuvot Binyan Tzion ha-Hadashot, no. 23. R. Ettlinger cites R. Isaiah di-Trani, who writes (Mabih, no. 37): "It is also possible that Sadducees who were not accustomed [to living] among Jews, do not know the essentials of the faith, and do not speak with disrespect about the scholars of the generation, are not deemed to be deliberate sinners."

22She'elot u-Teshuvot Hekhal Yitzhak, Orah Hayyim, no. 2.

All Jews Are Responsible for One Another

where he writes about a country in which the number of observant Jews has decreased due to harsh persecutions against them:

It is also inappropriate to distance Sabbath desecrators or treat them repugnantly. Rather, one should draw them near and encourage them in the observance of mitzvot. Our rabbis have already instructed us that when a deliberate violator comes to the synagogue to pray he is to be accepted and not treated with disdain. They linked their advice to the words of Solomon: "Do not despise a thief even if he steals" (Proverbs 6:30), [which they interpreted to mean] do not despise Jewish sinners when they come to pray secretly and "steal" some mitzvot.23

If we are required to adopt this attitude toward deliberate sinners, all the more so must we do so with regard to Sabbath violators who transgress inadvertently as a result of never having been trained properly, for they are similar to anusim.

The Hazon Ish concurred with this assessment of contemporary nonobservant Jews, writing that "we are obligated to bring them back with bonds of love (bi-avotot ahavah) and to place them in the rays of the Torah's light, to the extent we possibly can."24

In conclusion, there is no doubt that the vast majority of today's Jews who do not observe mitzvot have the status of "children taken captive." Even if they subsequently see observant Jews, the latter appear to them to be an abnormal, strange group, God forbid, and not those who are the true bearers of the original Sinaitic tradition. Therefore, even if we inform them of certain specific mitzvot and reproach them with regard to their observance, the admonishment is futile. We have already noted that such rebuke only serves to distance them further and arouses bitterness.

23Iggerot ha-Rambam, 59.

24See Hazon Ish, Yoreh De'ah 2:16; see also 2:28.
and anger, thus fostering a terrible hatred against religion. Neverthe-
less, as we have already explained, we are still not absolved from
the obligations toward them associated with the notion of arevut
and we therefore must deal seriously with the question of how to
bring them closer to Torah and Jewish observance in positive,
constructive ways.

THE EXAMPLE OF THE KARAITES

The Rambam provided us with a general guiding principle in one of
the responsa cited above. He ruled that “any [Torah] observance
whose obligation and authority they affirm, we are permitted to
have them participate jointly with us. And anything whose obliga-
tion and authority they do not affirm, we are forbidden to allow
them to participate with us.” Most secular Jews in Israel or Conser-
vatve and Reform Jews in the Diaspora arrange to have their sons
circumcised by an observant mohel, just as the Karaites of Babyl-
onia and the Islamic countries did, as the Rambam reports in the
name of Rav Hai Gaon. Therefore, in keeping with this principle,
we are allowed to circumcise their sons, and to do so even on the
Sabbath.

However, there are significant differences in other areas between
“secular Jews” today and the medieval Karaites as there are between
“secular Jews” in Israel and those who identify with non-Orthodox
denominations in the Diaspora. For instance, the overwhelming
majority of secular Jews in Israel turn to the official rabbinate
regarding matters of marriage and divorce, thereby eliminating any
cause for concern in these areas. In contrast, outside of Israel, there
are those who perform marriages that are not halakhically valid and
there are couples who divorce civilly, but without a Jewish get. The
matter of marriages performed by Conservative and Reform rabbis
has been the subject of much attention by Torah authorities of the
previous generation and Rabbi Moshe Feinstein’s decision not to
deem their marriages valid\(^{25}\) has been widely accepted in Orthodox
circles. This is in contrast to the case of Karaites marriages, which
the Rambam ruled were legitimate and required a divorce, while
considering the Karaites writ of divorce to be invalid.\(^{26}\)

One of the more frequently encountered problems is that of a
prayer service that includes people who are not Sabbath observers.
The Rambam maintained that we should not rebuff them if they
come to pray in the synagogue. Moreover, the Talmud (Keritut 6b)
considers the list of ingredients of the incense offered on the altar
in the Temple as symbolic of the constituency necessary for a
complete ritual act: some with a pleasant aroma (i.e., righteous
people), but one (helbenah) with an unpleasant odor (i.e., a sinner).
It states: “R. Hana b. Bizna said in the name of R. Shimon Hasida:
Any fast day which does not include the transgressors of Israel
(mi-posheh Yisrael) is not a proper fast day, for helbenah odor is foul,
and yet Scripture counted it as one of the spices of the incense.”
However, the Maharsha comments that the malodorous spice
could only be included if without it there were still ten other
fragrant ones in the recipe, indicating that ten observant Jews were
required to constitute a quorum, only after which could nonobser-
vant Jews be included. He wrote: “It can be learned that there were
eleven types of spices in the incense, ten whose aroma was
pleasant, and one—helbenah—whose odor was foul. Therefore, the
sinner may be included, provided there is a quorum of righteous
Jews (edah kedoshah) without him, but he is not to be included in
the ten.” He goes on to say that this is suggested by the behavior of
Abraham, who, when bargaining with God over the fate of
Sodom, stopped after asking God not to destroy the city if there
were ten righteous persons there, but did not pursue the matter
beyond that.\(^{27}\)

Many have addressed this issue of including Sabbath desecrators

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\(^{25}\)See Iggerot Moshe, Even ha-Ezer, nos. 76-77.

\(^{26}\)See Teshuvaot ha-Rambam 3:140, no. 351; Iggerot ha-Rambam, 613.

\(^{27}\)Maharsha, Hiddushei Aggadot, ad loc., s.v. she-harei.
in a quorum. Rabbi Herzog permitted their inclusion. 26 Rabbi Moshe Feinstein also did, with the qualification that, although Kaddish and Kedushah may be recited, the service will not technically be considered a "tefillah bi-itzibbur." 29 However, in my opinion, all this is irrelevant to our subject. After all, we have already noted that the Rambam ruled that Karaites may not be included in the quorum, either for prayer or for Birkat ha-Zimmun, only because they do not consider these practices as a valid part of the tradition, since their origins lie in the Oral Law which they reject. The fact that the Karaites violate the Sabbath and Festivals alone is insufficient to disqualify them because, in this regard, they are to be treated as "children taken captive." 30 Were it not for the fact that they did not subscribe to the notion of a quorum, they would have been acceptable for inclusion even though they were mekalelei Shabbat.

Applying this principle to our contemporary situation, we would conclude that, while contemporary nonobservant Jews desecrate the Sabbath, they do come to the synagogue to pray and they do accept the requirement of praying with a quorum to be binding. As a result, they should be allowed to be included in it. However, a corollary of this is that if there are some groups today who, like the Karaites of old, do not believe in the binding nature of a quorum for prayer, and who require neither ten, nor adults, nor men, then these individuals, like the Karaites, are not to be included in the quorum. Furthermore, based on this principle, if someone does not believe in prayer but is willing to help make a minyan as an act of kindness, neither may he be included as one of the requisite number of ten men required for public prayer to take place. 31

EDUCATION: THE ROAD BACK TO TORAH

It is, however, not possible for us to fulfill our obligation of arevut merely by welcoming nonobservant Jews when they happen to enter the synagogue. Our essential task is to go out and attract them to Torah and religious observance. Here, too, our rabbis provided us with very useful guidelines and we need only to follow their advice.

In many respects, our age parallels that of the return to Zion in the era of Ezra and Nehemiah. An explicit verse describes the experience of those days: "Also at that time I saw that Jews had married wives of Ashdodite, Ammonite, and Moabite women. And their children spoke half in the speech of Ashdod and they could not speak in the Jews' language, but according to the language of each people." (Nehemiah 13:23-24). How did the men of the Great Assembly cope with all those children born from these intermarriages who clearly did not have any concept about Judaism?

The Rambam explains:

When the people of Israel went into exile in the days of the wicked Nebuchadnezzar, they mingled with the Persians, Greeks, and other nations. In those foreign countries, children were born to them, whose language was confused. Everyone’s speech was a mixture of many tongues. No one was able, when he spoke, to express his thoughts adequately in any one language, otherwise than incoherently, as it is said,

26 See Iggerot Mosheh, Orah Hayyim, vol. 1, no. 23; vol. 2, no. 19; vol. 3, no. 14. Rabbi Feinstein also cites the interesting and novel ruling of R. Israel Rozin (the author of the Toifrat Pame'ah) that sinners may be included in any quorum except for the Musaf service, which is recited today in lieu of the sacrifice brought in ancient times. That is because a sacrificial offering must be accompanied by penitence to be acceptable.

29 See Igerot Mosheh, Orah Hayyim, vol. 3, no. 12; vol. 2, no. 51, for rulings allowing sinners to receive alyot and other synagogue honors.

30 The Rambam himself made this clear. See Perush ha-Mishnayot, Hullin, above, n. 17.
“And their children spoke half in the speech of Ashdod and they could not speak in the Jews’ language, but according to the language of each people” (Nehemiah 13:24).

Consequently, when any one of them prayed in Hebrew, he was unable adequately to express his needs or recount the praises of God, without mixing Hebrew with other languages. When Ezra and his council realized this condition, they ordained the Eighteen Benedictions in their present order.

The first three blessings consist of praises of God and the last three of thanksgiving to Him. The intermediate benedictions are petitions for the things which may stand as prototypes of all the desires of the individual and the needs of the community. The object aimed at was that these prayers should be in an orderly form in everyone’s mouth, that all should learn them, and thus the prayer of those who were not expert in speech would be as perfect as that of those who had command of a chaste style. For the same reason, they arranged in a fixed form all the blessings and prayers for all Jews so that the substance of every blessing should be familiar and current in the mouth of one who is not expert in speech.

They similarly instituted that the number of prayers

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The scholars of that generation implemented a wide-ranging educational campaign in an effort to draw those distant from Torah back to it. If we look at the daily life of an average Jew (and even not such an average Jew) throughout the generations, we see that the majority of the time he devotes to mitzvah observance and serving God is connected with prayer. There even developed a term known as a prayerbook Jew (a Siddur Yid), describing one who was not learned at all but who was nevertheless deeply rooted in Judaism because he was raised from his childhood on the prayer book. This was not always so. The Men of the Great Assembly placed great emphasis on prayer as a mass educational vehicle and formulated the prayers and the text of blessings by incorporating into them the essentials of the faith and basic Torah values.

Although our generation is much weaker than previous ones, we should still follow the same course plotted by the Men of the Great Assembly, and, if we do, Divine Providence will surely assist us. This route is education. As Rabbi Mizrahi writes: “And how will they return to the strength-giving source of the Torah if we do not inform them of the rationale of the Torah (taamei ha-Torah)?”33

All efforts must be focused on education, primarily of children, but also of adults. It is critical not to give up on anyone, not even those furthest from Torah. We must not deceive those who claim that whatever resources available to us are better devoted to educating those who are already observant, and that pursuing the nonobservant will necessarily come at the expense of the potentially greater gains than might be accomplished with the already committed. Isn’t it preferable, they argue, to devote more effort and energy to the education of the elite few and forego the masses who are anyway so hard to attract to Torah?

Yet, historical precedent argues against this position. When the standardized prayers and blessings were first instituted, there were undoubtedly a few Jews who had previously been able to reach great heights in their private worship and who were now constrained by the newly imposed formal nature of the prayers and blessings made incumbent upon all Jews, rendering their personal prayers more routine and less inspired. Nevertheless, the benefit to the group at large was determinative, even at the expense of these elite few. The Talmud (Sanhedrin 111a) already addressed this idea by relating that Rashi Lakish took the verse “and I will take you, one from a town and two from a family, and I will bring you to Zion” (Jeremiah 3:14) literally, implying that the others would be lost.

32Mishneh Torah, Hilkhot Tefillah 1:4-5.

33She’elot u-Teshuvot R. Eliyahu Mizrahi, no. 57.
Rabbi Yohanan rebuked him, explaining the verse to mean that even “one from a town” can bring merit to an entire town, and two members of a family can bring merit to the entire group. From a practical standpoint as well, the presence of children from nonobservant homes in a classroom contributes to an overall improvement in the level of the studies there. Rabbi Mizrahi attests to the fact that the presence of Karaite children in Rabbinite schools created a competitive spirit in the classroom which raised the level of learning there.34

Jewish day schools must make an effort to attract students from all backgrounds and cannot be content with classrooms composed exclusively of children from observant homes. Obviously, in every community, differing circumstances will determine whether to maintain one school for everyone, where all the children study together, to have different tracks within one school, or even to have different schools. What is critically important, though, is that the Torah education establishment compete effectively with all other factors influencing adults and children in today’s world in order to be able to attract the public to Torah and mitzvot. This is what the Rambam meant when he wrote, “to draw them near through words of peace that they may return to the strength-giving source, the Torah.”35 Attracting them with words of peace is the first step.

It is worthwhile to cite here the instructive words of Rabbi Mizrahi, in his aforecited responsum, stating his strong opposition to the ban imposed by extremists against teaching Karaites:

This ban was not instituted for the sake of Heaven, nor with the intention of improving the world (tikun ha-olam). . . . But it was created out of a sense of jealousy and hatred which some had against the teachers who were respected by Karaites, or against the Karaites themselves. . . . Were it not for the jealousy and anger which they had, they would never have been motivated to act this way.

There are indeed many problems, particularly with regard to the children of intermarriages; but these too can be solved if only there is the proper intention of “drawing them near through words of peace” and if the parents are prepared to commit themselves to having their children study in a Torah-observant school. Torah scholars in the last generation have already dealt with the criteria necessary to convert a child born of a Jewish father and non-Jewish mother, requiring that the father agree, with the mother’s consent, both to circumcise his son and to have him (or his daughter) undergo a ritual immersion for the sake of conversion.36 Their ruling applies even if he cannot guarantee that the children will study in a Torah-observant school, how much more so would it apply when such a guarantee could be forthcoming. Clearly, all factors must be carefully considered, especially whether the school is of the sort which can influence the child positively. Indeed, it was on the basis of such a positive consideration that Rabbi Yehiel Yaakov Weinberg permitted the acceptance of such a child to a Jewish school, provided that at the age of thirteen he convert halakhically.37 One must also take into account the fact that if the children will not be converted at a young age but will nevertheless continue to live within a Jewish society and appear as Jews, then in

34See She’elot u-Teshuvot Maharam Shik, Yoreh De’ah, no. 248; R. David Tzevi Hoffman, She’elot u-Teshuvot Melamed le-Ho’el, Yoreh De’ah, nos. 82, 87; R. Abraham Isaac Hakohen Kook, Daat Kohen, nos. 147–49; Iggerot Mosheh, Yoreh De’ah, vol. 2, no. 128; vol. 3, no. 105; and R. Hayyim Ozer Grodzinski, She’elot u-Teshuvot Ahri’ezar, vol. 3, no. 28.
35See Rabbi Yehiel Yaakov Weinberg, Seder D’Sh, vol. 2, no. 91. There is also the potentially negative influence on other students, which must be seriously considered as well. See Iggerot Mosheh, Orah Hayyim, vol. 2, no. 73.
all likelihood other Jews will inadvertently marry them, and there is no greater tragedy than this. My colleague, Rabbi Gedaliah Felder, also suggested that if both parents agree to raise the child as a Jew and have him (or her) undergo a halakhic ritual conversion, the child should be accepted, but it should be done while the child is still young.38

It seems appropriate to summarize with a quote from Rabbi Herzog: "If, in the Rabbi's assessment, there is a good chance that the parents will observe Judaism, and there is a concern that they may distance themselves further from Judaism if we do not accept them... then we may accept [the child into the school]."39 This concern that the Jewish parent may himself or herself also become further alienated from Judaism if his or her child is rejected brings us back once again to the issue of "putting a stumbling block before the blind," particularly if we are talking about a person who intermarried out of ignorance, without any rebellious intention, as is so common today. It goes without saying that this is the case with so many Russian immigrants either in Israel or America, but it is the case even across America where many men marry women whom they think are Jewish because one of her parents is Jewish, and they have children whom they want to educate and be considered as Jews.

However, in the final analysis, it is impossible to establish any general rules in this area. Everything depends on the assessment of those rabbis who are sensitive to all the issues concerned, who are well versed in all the details of the halakkhah, and whose intentions are exclusively for the sake of Heaven.

"A JUST WEIGHT AND BALANCE"

We have seen that the notion of arevut vis-à-vis another Jew obtains even in a case where the mitzvah of tokhahah does not apply, such as

a Jew who sins but who is considered to be "a child taken captive." In such a case, direct rebuke is unlikely to succeed, but we are still obliged to expose our fellow Jews to Torah and Jewish observance through the medium of a coordinated educational effort.

Our Rabbis said:

Moses and Samuel are deemed equivalent to one another, as it says, "Moses and Aaron among his priests, and Samuel among those who call His name" (Psalms 99:6). Now come and see the difference between them. Moses used to enter and come to God [in the Tent of Meeting] and hear God speak whereas, in the case of Samuel, God would come to speak to him, as it says, "And the Lord came, and stood" (1 Samuel 3:10). Why was this so? The Holy One, Blessed be He, said: I relate to a person in a just and equitable way. Moses would sit, and whoever had need of a judgement, would come to him and be judged. . . . But Samuel would make an effort to go to every region and judge, so that they needn't trouble to come to him. . . . Said the Holy One, Blessed be He: Moses would sit in one place and judge Israel—let him come to Me to the Tent of Meeting to hear the Word; but Samuel who traveled to the Jews in cities to judge them—I will go and speak to him, in fulfillment of what it says, "A just weight and balance are the Lord's" (Proverbs 16:11).40

Clearly, the rabbis did not come, God forbid, to find fault with Moses. Their aim was to point to the fact that in different situations, the demands are different. In the times of Moses, the entire Jewish people were concentrated in a small area, several miles square. Therefore, Moses could afford to stay in one place and have anyone seeking the word of God come to his tent. The situation was different in the times of Samuel, when Jews had settled in all parts of their land. In his generation, it was necessary for him to take the

38 See Rabbi Gedaliah Felder, Nahalat Tzvi (New York, 1959), 132.
39 See Rabbi Herzog, Heikhal Yitzhak, Even ha-Ezer, no. 21.
40 Shemot Rabbah 16:4.
trouble to travel to the farthest borders of the land in order to spread Torah. Had Samuel conducted himself as did Moses, he would not have discharged his obligation as leader. A leader must respond to situations he confronts not only by following the model of earlier generations, but also by assessing the special needs of his own generation.

In this way I would like to explain the following tale from the Talmud:

Rav Aha bar Rav Hanina said: The Holy One, Blessed be He, never retracted a beneficent decree to exchange it for a bad one except in this case, as it is written: "And the Lord said to him, Go through the midst of the city, through the midst of Jerusalem, and set a mark upon the foreheads of the men that sigh and that cry on account of all the abominations that are done in her midst..." (Ezekiel 9:4). The Holy One, Blessed be He, said to Gabriel, "Go and mark a taw of ink on the foreheads of the righteous so that the angels of destruction do not have control over them, and mark a taw of blood on the foreheads of the wicked so that the angels of destruction may have control over them." Justice pleaded before God: "Master of the Universe, in what way do the latter differ from the former?" God answered her, "The former are thoroughly righteous while the latter are thoroughly wicked." Justice said: "Master of the Universe, the former had the opportunity to protest the latter's conduct [to change them], but did not!" God said: "It is revealed and known to me that had they protested, it would have gone unheeded." Said Justice: "Master of the Universe, You may have known, but did they know that?" And this is what it says: "... and begin at My Sanctuary (mikdash)." And it says "And they began [to slaughter] the old men who were before the House." Rav Yosef taught, "Do not read it 'my Sanctuary (mikdash),' but 'those sanctified to Me (mekudash)—these were the people who observed the entire Torah from A to Z." [Shabbat 55a]

There are many interpretations of this selection, and I will add my own to them. One cannot suggest that those considered by God to be thoroughly righteous, of whom it was said that they observed the entire Torah from A to Z, did not also fulfill the commandment of rebuking their neighbors. Rather, they wanted to do so in a direct fashion, making reference to specific sins, as rebukers had done in earlier generations. However, they immediately discovered that their reproof was ignored and they therefore thought that they were exempt from having to admonish any further. They did not take the trouble to recognize that their generation was different from earlier ones, and that now indirect paths had to be taken to draw nonobservant Jews of their time back to Torah and Jewish observance. It was inappropriate for them, at that time, to remain in the sanctuary but, rather, they should have travelled the length and breadth of the land in a serious attempt to influence their coreligionists. True, in the generation of the Temple's destruction, God was aware that such activity by the righteous would have been fruitless, but they themselves were not aware of this, since they had not even attempted to do it. As a result, they were punished, and all their merits did not protect them, for "all who have in their ability to protest and do not do so are held accountable for the sins of those whom they were able to prevent from sinning."

On the other hand, how great must be the reward awaiting those righteous like Samuel who know how to adapt their actions to their particular time and place. For the Divine Presence came to him, in fulfillment of the verse, "A just weight and balance are the Lord's" (Proverbs 16:11). The rabbis have already commanded us to love all Jews without distinction, and draw them near to Torah. This is the way of God Himself, as the Rambam explained in his Letter to Yemen:

God informed and promised us that He will never hate us altogether, even though we might rebel against Him and violate His commandments. He has said: "Thus says the Lord, If heaven above can be measured, and the foundations of the
earth searched out beneath, then I will also cast off all the seed of Israel for all that they have done, says the Lord God" (Jeremiah 31:36). And it says, "And they who turn many to righteousness are like the stars, forever and ever" (Daniel 12:3). A more elaborate version of this essay appeared in Tehumin 11 (1990): 41-72.

Ahavat Yisrael: A Selected Bibliography

Nathaniel Helfgot

The following is a selected bibliography of books and articles, both in English and Hebrew, on the general topics of ahavat Yisrael (love of fellow Jews), kiruv rhekim (outreach to the unaffiliated), tokhahah (the obligation to rebuke), and the general relationship of the Orthodox community toward nonhalakhic Jews. These sources treat the topics both legally and conceptually.

I AHAVAT YISRAEL

17. ______. “Ve-Ahavta le-Re’akha ka-Mokha,” ibid., 300–04.

II KIRUV REHOKIM

5. Hartman, David. “Halakhah as a Ground for Creating a Shared Spiritual Language.” Tradition 16:1 (1976): 7–40. This article generated a number of rejoinders and responses by Rabbis Solomon...
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IV RELATIONSHIP TO NONHALAKHIC JEWS

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