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# תשובות ושאלות

# Studies in Responsa Literature

Edited by VIKTÓRIA BÁNYAI and SZONJA RÁHEL KOMORÓCZY



Center of Jewish Studies at the Hungarian Academy of Sciences

**תשובות ושאלות**

**Studies in Responsa Literature**

MTA Judaisztikai Kutatócsoport

ÉRTESÍTŐ

Szerkeszti **Komoróczy Géza**

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STUDIES IN RESPONSA LITERATURE

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Studies in Responsa  
Literature

Edited by  
VIKTÓRIA BÁNYAI and SZONJA RÁHEL KOMORÓCZY

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at the Hungarian Academy of Sciences

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Szonja Ráhel Komoróczy, Judit Kónya, Tamás Turán, Dóra Zsom

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# Introduction

The present volume was conceived in 2006 at the Center of Jewish Studies at the Hungarian Academy of Sciences.

Our Center focuses on research in Jewish culture, history and tradition, particularly with respect to the history of Jews in Hungary. The Center was founded by Professor Géza Komoróczy in 1987 at the initiative of the Memorial Foundation for Jewish Culture and the Academy. This was followed in 1988 by the establishment of Jewish Studies as a university major at Eötvös Loránd University. Ever since, the Center has been physically based at the University, and research fellows of the Center have been involved in teaching as well.

Responsa literature has always been a central element in the research of the fellows of our Center, and close reading and study of responsa has been part of the curriculum at our university program—especially since Hungarian rabbis have excelled in this genre. While responsa literature is studied mostly by rabbis and scholars of *halakhah*, our interest lies in the study of the historical, cultural and literary aspects of responsa sources.

As the result of both the research of our fellows and the coursework of our advanced students at the University, the last couple of years have seen the publication of several volumes, in Hungarian, on aspects of the history of Jews in Hungary, based on, or making extensive use of, responsa literature. The first major book in this series was a collection of historical sources on Hungarian history and the history of Jews in Hungary from the beginnings to 1686, compiled, edited, translated and analyzed by professors Shlomo J. Spitzer of Bar Ilan University, Ramat Gan, and Géza Komoróczy, the founder of both our Center and the Department of Jewish Studies.<sup>1</sup> A compilation

<sup>1</sup> Shlomo J. Spitzer–Komoróczy Géza, *Héber kútforrások Magyarország és a magyarországi zsidóság történetéhez a kezdetektől 1686-ig* (Hungaria Judaica, 16; Budapest: MTA Judaisztikai Kutatócsoport–Osiris Kiadó, 2003).



of four responsa by the Ḥatam Sofer (Moses Schreiber, 1762–1839), rabbi of Pressburg (Pozsony, Bratislava), edited by our fellow Tamás Turán, is the result of university seminars held on the topic of responsa literature, and contains translations and analyses by our (by now: former) students.<sup>2</sup> And the most recent such volume is a collection of responsa by Ezekiel Landau (1713–1793), compiled, translated and analyzed by the present director of the Center, Viktória Bányai.<sup>3</sup>

In 2006, after the publication of the first volume mentioned above, in the last phases of the publication of the second, and with several other ongoing research projects in the field, the Center decided to bring together scholars connected to us with former and current students who work with responsa literature, and to provide everyone with an opportunity to present their research, to talk about matters of research methodology and difficulties, and to discuss paths of further research. As part of this project, the Center organized a conference entitled “Studies in Responsa Literature” in late October 2006. All contributors to the present volume have participated in that conference, and most studies published here are built on papers presented there. Since then, some of the then ongoing projects have been finished, and some papers have become articles, chapters in books, or dissertations. Our students at the time have already finished, or are about to finish their doctoral dissertations, and have become scholars in their own right. Several of the participants have left our Center, continue their studies or have found jobs in other research institutes and universities—nonetheless, they have maintained their personal and academic ties with our Center.

The present volume contains contributions on responsa literature, written by scholars related to our Center. It is interesting and special in its focus on this rich but relatively neglected branch of rabbinic literature, and especially in discussing historical, cultural, and literary aspects of responsa sources, spanning from the early Middle Ages to the Holocaust period. Not all contributors are current fellows or students of the Center, but all have at some point been, and to this day remain connected to it. And not all studies are related to Hungary, though the majority deal with responsa by Hungarian

<sup>2</sup> Tamás Turán, ed., *Moses Schreiber (a Hatam Szofer) négy responsuma*, translated by Tamás Bíró, Szonja Ráhel Komoróczy, András Kövér, Tamás Visi (MTA Judaisztikai Kutatócsoport Értesítő, 17; Budapest: MTA Judaisztikai Kutatócsoport, 2006).

<sup>3</sup> Bányai Viktória, *Ezekiel Landau prágai rabbi döntvényeiből: Magyarországi adatok* (Hungaria Judaica, 22; Budapest: MTA Judaisztikai Kutatócsoport, 2008).

rabbis, or Hungarian aspects of responsa literature. As such, this volume represents the profile of the Center of Jewish Studies at the Hungarian Academy of Sciences in several aspects—and thus we find it especially fitting that this be the Center’s first publication in English.

The editors would like to express their special thanks to David Robert Evans, copy-editor of the English texts, to Anikó Környei and Éva Szalai for the volume’s typography, and to Éva Szili for her invaluable administrative help.

Budapest, May, 2011.

*Viktória Bányai – Szonja Ráhel Komoróczy*

# 1. Terse Analogical Reasoning in Responsa Literature: Four Medieval Examples

Tamás Turán

## INTRODUCTION

Responsa of the early geonim and of many rishonim are often very brief.<sup>1</sup> This brevity—and I mean the brevity of the argumentation in particular—is sometimes strikingly incongruent with the complexity of the issues and sources involved in the given responsum. The argument may seem to be elliptic or even cryptic, often because reference is made to Talmudic terms, concepts or principles, the relevance and applicability of which are not readily recognizable. Such difficulties are related to one aspect of halakhic reasoning that may be broadly termed analogical. By “analogy” I mean conceptual analogy (as opposed to the scriptural-exegetical one usually called *hekkesh* in Talmudic terminology), and I use the term here to include also classificatory statements, explicit or implicit.<sup>2</sup> Analogy—along with distinction, its complementary concept in Talmudic dialectics—plays an essential role in halakhah. The transference or expansion of received legal categories and principles—which has its own Talmudic terminology and

<sup>1</sup> Menahem Elon, *Jewish Law; History, Sources, Principles*, tr. by Bernard Auerbach, Melvin J. Sykes (Philadelphia: The Jewish Publication Society, 1994), vol. 3, pp. 1470, 1474; Shmuel Glick, *Kuntres ha-teshuvot he-hadash. A Bibliographic Thesaurus of Responsa Literature Published from ca. 1470–2000*, vol. 1 (Jerusalem–Ramat Gan: The Schocken Institute for Jewish Research of The Jewish Theological Seminary of America, etc., 2006), p. 32; Shlomo Dov Goitein, *A Mediterranean Society*, vol. 5 (Berkeley, etc.: University of California Press, 1988), p. 486 (on Abraham, the son of Moses Maimonides).

<sup>2</sup> See the survey of the little-studied subject of legal analogy in Talmudic literature by Leib Moscovitz, *Talmudic Reasoning: From Casuistics to Conceptualization* (Tübingen: Mohr Siebeck, 2002), pp. 228–273, and also his chapter “Classification and Legal Definition,” pp. 98–162.

therefore it is often easily recognizable<sup>3</sup>—serves the respondent to put new wine to old tubs, to invest old terms with new meanings.<sup>4</sup> Examples from responsa literature can be cited endlessly.<sup>5</sup>

Heuristically problematic analogies of the mentioned types are referred to in scholarship by terms such as “non-propositional,” “non-principled,” “fuzzy” and the like.<sup>6</sup> These terms have a certain negative connotation and

<sup>3</sup> See Moscovitz (previous note), pp. 235, 246–249; idem, “Legal Fictions in Rabbinic Law and Roman Law,” in Catherine Hezser, ed., *Rabbinic Law in Its Roman and Near Eastern Context* (Tübingen: Mohr Siebeck, 2003), p. 115.

<sup>4</sup> See, for example, the interesting case studies of Samuel Morell, “The Halakhic Status of Non-Halachic Jews,” *Judaism*, 18 (1969), pp. 448–457, and Haym Soloveitchik, “Maimonides’ Iggeret Ha-Shemad: Law and Rhetoric,” in Leo L. Landman, ed., *Rabbi Joseph H. Lookstein Memorial Volume* (New York: Ktav Publishing House, 1980), pp. 281–319.

<sup>5</sup> I briefly mention a few random examples—all of them are taken from the modern period, when innovative conceptual analogy or classification became a particularly poignant and increasingly indispensable tool in halakhah. (1) Printing was discussed widely in responsa literature in the 16–18<sup>th</sup> centuries, in various halakhic contexts. Halakhic opinions (and debates) centered on the question of whether printing is analogous to writing or not; see Yizhak Zev Kahana, *Meḥkarim be-sifrut ha-teshuvot* (Jerusalem: Mossad ha-Rav Kook, 1973), pp. 272–287. (2) The famous responsum of Ḥakham Zevi (*Shu”T Ḥakham Zevi*, no. 93; cf. Jacob Emden, *Shu”T sheelat Yavez*, pt. II, no. 82) on the question of whether a “Golem” can be counted in the *minyān* (prayer quorum) is an extreme case in point. The question was a hypothetical one, posed by the author himself (not an infrequent phenomenon in responsa literature); moreover, it also has no practical relevance whatsoever, since it involves a legendary creature (with a weak footing in Talmudic aggadah). The author approaches the problem with different analogies—none of them particularly fitting or convincing. (3) On a question whether someone can prohibit others to make photographs about him, see R. Menashe Klein, *Mishneh halakhot*, vol. 7 (New York: Mekhon Mishneh halakhot gedolot, 1977), no. 114. Two further, quite widely-known examples, with far-reaching practical consequences: (4) For a summary of the prolonged modern halakhic debate about the nature of electricity and the halakhic classification of its uses in Shabbat, see Michael Broyde and Howard Jachter, “Electricity on Shabbat and Yom Tov,” *Journal of Halacha and Contemporary Society*, 21 (1991), pp. 4–47, esp. pp. 6–8, 12–23. (5) The murderer of Yizhak Rabin (the late Prime Minister of Israel) acted upon the ruling of some rabbis that his planned territorial concessions bring him under the category of the “pursuer” (רודף). See Chaim Povarsky, “The Law of the Pursuer and the Assassination of Prime Minister Rabin,” *Jewish Law Association Studies*, 9 (1997), pp. 161–198, esp. 190–193; Zohar Zion, “*Pulsa de-nura*: The Innovation of Modern Magic and Ritual,” *Modern Judaism*, 27 (2007), pp. 72f, 80–82, 89.

<sup>6</sup> Bernard Jackson, “A Semiotic Perspective on the Comparison of Analogical Reasoning in Secular and Religious Legal Systems,” in Arend Soeteman, ed., *Pluralism in Law* (Dordrecht: Kluwer Academic Publishers, 2001), pp. 297, 307, 312, 314; Moscovitz (above, note 2), pp. 257–265.

reflect modern proclivities and standards of legal reasoning. I prefer to use the more neutral term “terse” to describe the type of reasoning I would like to exemplify. How to name the phenomenon, however, is not the main issue here.

A responsum usually contains argumentative elements—implicit in the decision itself, integrated into it, or in a separate section—which may be rudimentary and sketchy. Respondents (and transmitters, in abbreviating responsa) of course had various reasons to spare their words of argumentation—we will return to this issue towards the end of the paper. However, any argumentation, and concise argumentation in particular, creates legal-hermeneutic problems for the subsequent use of the responsum as a halakhic source. Reasons and motives—be they internal (legal-material) or external (teleological, scriptural or historical)<sup>7</sup>—which are meant to explain and support laws are liable to invite criticism and generate dissent with regard to the argumentation, which may ultimately lead to challenging the ruling itself. Moreover, the reasoning often has legal ramifications. Despite their rhetorical and didactic value, therefore, they often create more problems than they solve: “whoever adds, subtracts.”<sup>8</sup>

Is halakhic reasoning subordinate to halakhic decision, or the other way around? Is the authority of a ruling independent from the power of the argument accompanying it? Was the reasoning of secondary importance to the author to begin with? Alternatively, was, or is, the argumentation an integral part of the decision itself for the author or for the purposes of later halakhists—in which case they may stand or fall together?<sup>9</sup> All these are

<sup>7</sup> For this distinction, see Shimshon Ettinger, “On the Place of Logic (*Svara*) in Maimonides’ Code,” in Hanina Ben-Menahem and Neil S. Hecht, eds., *Authority, Process and Method; Studies in Jewish Law* (Amsterdam: Harwood, 1998), pp. 140f (the article originally appeared in Hebrew in *Shenaton ha-mishpat ha-ivri*, 14–15 [1987/88–1988/89], pp. 1–30).

<sup>8</sup> Cf. bSanhedrin 29a and parallels. Cf. the story about R. Hayyim Soloveitchik (1853–1918), who submitted a difficult case to R. Isaac Elhanan Spektor, and insisted that the reply should be confined to the ruling itself, without any reasoning. Louis Jacobs, *A Tree of Life. Diversity, Flexibility, and Creativity in Jewish Law* (London, etc.: Oxford University Press, 1984), p. 61, pp. 61f, n. 49.

<sup>9</sup> Questions of this sort have been investigated in the past—most notably, with regard to Maimonides’ reasonings in his law code, the *Mishneh torah*; see Ettinger (above, note 7), esp. pp. 139f. On reasons for the commandments in Talmudic literature, see Isaac Heinemann, *Taamei ha-mizvot be-sifrut Yisrael*, vol. 1 (Jerusalem: Ha-maddor ha-dati [...] shel hanhalat ha-histadrut ha-zionit, 1953/54), pp. 30–35. This topic, as well as the problems of the relationship between ruling and its reason(s) in Talmudic literature, would deserve further specialized studies. See also note 11 below.

different forms of essentially the same question that legal history faces in dealing with responsa literature. Approaching our relatively early examples it should be kept in mind that this dilemma has a distinct literary-historical aspect as well. The authority and halakhic importance attached to the argumentative part in a given responsum may shape, and may be shaped by, its textual history.<sup>10</sup>

Similar dilemmas, of course, came up already in Talmudic literature—in the context of giving reasons for the biblical commandments, and, more importantly, in the context of the discussion of halakhic rulings of past or contemporaneous scholars.<sup>11</sup> In a geonic responsum we find an explicit—even if ad hoc—“rule” saying that “we do not expound on the reasons of [Talmudic] legal rulings, because legal rulings are not given for the purpose of expounding them.”<sup>12</sup> Needless to say, this is exactly what most of Talmudic literature, and much of responsa literature (including geonic responsa), do. By “we” the author means “you”: you, and all those unqualified or unauthorized, are not entitled to expound the reasons behind Talmudic rulings.

<sup>10</sup> Halakhists and critical scholars are obviously sensitized to this problem (similarly to the problem of textual variants in rabbinic literature) to very different degrees.

<sup>11</sup> In the light of the Talmudic sources it seems that issuing court decisions in a written form became more common in the amoraic age than it was in the tannaitic period; but even then, as a rule, written practical legal or court decisions (*pesak din/piska de-dina/gezar din*) did not entail argumentation—see Hanina Ben-Menahem, *Judicial Deviation in Talmudic Law. Governed by Men, Not by Rules* (Chur, etc.: Harwood, 1991), pp. 20–32; also bBava batra 130b–131a seems to support this observation. Things were somewhat different in legal discourses of a more “academic” character (which are not always easily distinguishable from a “court”-setting in Talmudic literature). While in tannaitic and early amoraic times the transmission of “apodictic” rulings of the Oral Law—without reasoning or analysis—was preferred and generally seems to have been more authoritative than reasons and motives (see e.g. mYev. 9:4, mKer. 3:9 [אם הלכה] ונקבל ואם לדין יש תשובה; tSan. 7:7; jPesahim 6:1 [Hillel and the Elders of Bathyra]; bKet. 83b and parallels; Tos. bSuk. 24a, s.v. רבי יהודה ורבי יוסי), in later Talmudic times preservation of dialectic analysis gained much importance; see e.g. bBava batra 12a, bGittin 14a, bBava mezia 85b, Rashi to bNid. 7b, s.v. והא קמ”ל; and Jonah Frankel, *Darko shel Rashi be-ferusho la-Talmud ha-Bavli* (Jerusalem: The Magnes Press, 1975), pp. 26–28. In general, see David Weiss Halivni, *Midrash, Mishnah, Gemara. The Jewish Predilection for Justified Law* (Cambridge, MA: Harvard University Press, 1986), pp. 57f, 66–92.

<sup>12</sup> *Teshuvot ha-geonim*, ed. by Abraham Harkavy (Berlin: Itzkowski, 1887), no. 251: ולא דרשינן ולא להדרש טעמא דדינא שלא נתנו דינין להדרש. For a fuller citation (with some inaccuracies), see Simha Assaf, *Tekufat ha-geonim ve-sifrutah* (Jerusalem: Mossad ha-Rav Kook, 1966/67), p. 238.

Terse analogical arguments in halakhic literature have a literary or “aesthetic” quality: they span from the laconic and “telescoped” to the “poetic.” The same holds for general legal literature. When modern law is confronted with issues that do not fit into existing legal frameworks—cases for which neither legal provisions nor real precedents can be found—it also has no choice but to resort to analogy. Simple and “covert” analogies are, to be sure, applied in judicial practice at every corner—based on abstractions, separating “relevant” facts or circumstances from “irrelevant” ones, thereby comparing case to precedent or applying existing legal categories to them.<sup>13</sup> If “simple” analogies do not work, more innovative ones are proposed. Given a lack of sufficient conceptual analysis and exposition of the *tertium comparationis*, analogy can turn into metaphor and innovation may assume a poetic quality.<sup>14</sup> A case in point is the Internet: in dealing with it legal theory and judicial practice were for a good while heavily influenced by spontaneous metaphors: first by that of the “information superhighway,” then by that of “cyberspace.” These metaphoric concepts had distinctly different legal implications—and both of them had literary origins.<sup>15</sup>

Being “creative,” “poetic,” etc. was certainly not on the minds of ancient and medieval editors and authors of halakhic works—and yet these concepts seem to be relevant for a critical understanding of analogical reasoning in halakhah, and in responsa literature in particular.

After commenting on selected responsa, a brief discussion of the origins and nature of the phenomenon briefly outlined above will follow.

<sup>13</sup> For a survey, see Grant Lamond, “Precedent and Analogy in Legal Reasoning,” *Stanford Encyclopedia of Philosophy*, <http://plato.stanford.edu/entries/legal-reas-prec/> (last accessed: 13. December, 2010). See also Jackson (above, note 6), pp. 302–307.

<sup>14</sup> See Bernard Hibbitts, “Making Sense of Metaphors: Visuality, Aurality, and the Reconfiguration of American Legal Discourse,” *Cardozo Law Review*, 16 (1994), pp. 234f, and literature cited on p. 234, n. 33; Jonathan H. Blavin and I. Glenn Cohen, “Gore, Gibson and Goldsmith: The Evolution of Internet Metaphors in Law and Commentary,” *Harvard Journal of Law & Technology*, 16 (2002), pp. 265–268.

<sup>15</sup> Blavin and Cohen (see previous note), pp. 265–285; on the origins of the two mentioned metaphorical characterizations, see p. 269, n. 22; p. 275.

## 1. TORAH-CROWN PUT ON THE HEAD

A brief responsum from the geonic age runs as follows:

יששאלתם עטרה שעוסק בספר תורה ודאי אסור להניחה בראש אדם ולא בראש  
חתן שכן שנו חכמים מעלין בקדש ולא מורידין.

As for your question concerning the crown used for the Torah scroll: it is certainly forbidden to put it on the head of anyone, or on the head of a bridegroom—as the Sages taught: “in holy things we go higher but not lower.”<sup>16</sup>

This brief text is fraught with difficulties. The least of the problems is that we know nothing about the identity of the author and the particulars of the question submitted to him. The response is silent about the shape and function of the “crown (עטרה) used for the Torah scroll,” about its status and implied sanctity, as well as about the situations addressed by the questioner in which the crown is to be put on the head of someone. (If we assume that the question gave some details on these issues, it gives account for this silence.) From a similar responsum, attributed to R. Hai gaon, we know that on the festival of Simḥat Torah, Torah scrolls were adorned with “crowns,” in his time and in some places at least.<sup>17</sup> The Torah as a “bride” for Israel is an ancient rabbinic notion (see e.g. mTaan. 4:8); and the custom of calling people up to the Torah-reading in the festival of Simḥat Torah—a festival that emerged in the geonic period—by honorary titles such as “bridegroom of the Torah” (חתן תורה) or “bridegroom of (*parashat*) *Bereshit*” (חתן בראשית) reflects this notion.

Natural and appealing as it would be to take the responsum as referring to Simḥat Torah (when these “bridegrooms,” and possibly others,

<sup>16</sup> *Teshuvot ha-geonim: Shaarei teshuvah*, ed. by Zev Wolf Leiter (Pittsburgh: Makhon ha-Rambam, 1946), no. 277; *Ozar ha-geonim, Megillah – Taanit – Rosh ha-shanah*, ed. by Benyamin Menashe Lewin (Jerusalem: Hebrew University, 1932), Megillah, p. 51, no. 175. For medieval citations and paraphrases, see note 24 below.

<sup>17</sup> Quoted by R. Isaac Ibn Ghayyat, *Shaarei simḥah*, ed. by Yiẓḥak Dov ha-Levi Bamberger, vol. 1 (Fürth: Judah Sommer, 1860/61), pp. 117f; *Ozar ha-geonim* (previous note), no. 177. The responsum also permits putting the “crown” “on the head of the reader,” and maybe the readers on Simḥat Torah are meant.



are “crowned”)—this is apparently an anachronistic interpretation: uncontroverted evidence shows that the terms “bridegrooms of the Torah / *Bereshit*” were not used (in this context at least) before the 12<sup>th</sup> century.<sup>18</sup> Therefore, “bridegrooms” in the usual meaning of the term are meant, or other people, who, on special occasions other than *Simḥat Torah* (like the *aliyah*—the “ascension” for Torah reading—of a bridegroom in his wedding week) were adorned with Torah crowns. Whether the “crown” mentioned in the responsum refers to an embellishment that was used (or at least, typically used) on *Simḥat Torah* cannot be ascertained, but it is quite likely: this is the way it was apparently understood by most later authorities, from R. Isaac Ibn Ghayyat (11<sup>th</sup>-century Spain) onwards,<sup>19</sup> and this is how the “Torah crown” is defined or described in the other geonic responsum brought by the same Spanish scholar, in the name of Hai gaon, mentioned above.

Straightforward and fitting as it seems, the reasoning—a halakhic principle which already appears in the Mishnah (mShek. 6.4)—proves under closer scrutiny to be incomplete and skimpy. In Talmudic literature the principle is referred to in several contexts. In early (tannaitic) sources it is invoked in relation to persons and the use of Temple utensils vested with a certain “holiness” by laws of the Torah,<sup>20</sup> and also, by implication at least, to laws governing changes in synagogue buildings, the Torah scroll and its

<sup>18</sup> And the expression *חתן תורה / בראשית* may have had nothing to do with “bridegrooms.” For the history of the expression, see Avraham Yaari, *Toldot haq simḥat torah* (Jerusalem: Mossad ha-Rav Kook, 1964), pp. 25, 63–67; Daniel Sperber, *Minhagei Yisrael*, vol. 1 (Jerusalem: Mossad ha-Rav Kook, 1990), pp. 135–137. In his halakhic code, R. Aaron ha-Kohen of Lunel (Provence, first half of 14<sup>th</sup> century) does indeed quote our responsum with alterations that reflect this “anachronistic” understanding: *Orḥot ḥayyim, Hilkhot keriat ha-torah*, ch. 58 (Jerusalem, 1955/56), p. 58.

<sup>19</sup> R. Isaac Ibn Ghayyat (above, note 17), p. 118: *ביום על ספר תורה ביום*. According to Yaari (previous note), p. 26, the anachronistic use of the term “*Simḥat Torah*” in the quotation of the responsum by Ibn Ghayyat indicates the secondary character of this “gloss.” Still, it is unclear whether the source of this “gloss” (1) is a reference to “*Simḥat Torah*,” maybe by another term, in the text of the responsum as he had it before him, or (2) is a reference he found in a similar but different geonic responsum, or (3) is an explanatory remark that reached him in a written or oral form and he accepted it, or (4) it reflects his own understanding. See also R. Shlomo ibn Adret (Rashba; turn of the 13<sup>th</sup>–14<sup>th</sup> centuries), *Sefer teshuvot ha-Rashba ha-meyuḥasot leha-Ramban* (Tel-Aviv: Eshel, 1958/59), no. 260 (p. 219), and cf. R. Abraham ha-Kohen of Lunel, *Orḥot ḥayyim* (above, note 18).

<sup>20</sup> mShek. 6.4 is quoted on bMen. 99a, bTam. 31b; see also bMeg. 9b (=bYoma 12b, bHor. 12b), bMen. 39a.

appurtenances.<sup>21</sup> The reference to the principle in our responsum implies or tacitly assumes: (1) that the crown possesses a certain “holiness” (at least when it is used as an ornament of the scroll or right after it), (2) that putting it on a human head—even (or in particular) of a “bridegroom,” and even on occasion—is a degradation of the object in terms of its “holiness.” As for the first assumption, grades of holiness—of material objects in particular—in Talmudic law are often related to and depend on function, as well as on declared or assumed purposes of its making or dedication.<sup>22</sup> The other geonic responsum attributed to R. Hai gaon, mentioned above—addressing a question apparently very similar to ours but giving a permissive answer—in fact dismisses the notion that the “Torah crown” has any real status of “holiness,” arguing that it is not “dedicated” or “designed” to be a Torah crown; its attachment to the Torah scroll has a temporary or occasional character instead of a permanent one.<sup>23</sup> As for the second implication, even if the “Torah crown” has some status of “holiness,” it is unclear why it should not be placed on a person performing a key commandment such as Torah reading or wedding ceremonies. In sum, the applicability of the Talmudic principle of “in holy things we go higher...” is in the given context far from being evident.

Later medieval rabbinic authors who quote our responsum (its source, or one of its sources, or geonic responsa very similar to it), with some variations, comments and analysis,<sup>24</sup> in fact also had problems with the reference to the

<sup>21</sup> mMeg. 3:1, tMeg. 2:12–13, 16.

<sup>22</sup> bMeg. 26b; cf. tMeg. 2:14, 16.

<sup>23</sup> מותר להניחם על ספר תורה. או [צ"ל אי] משום חשש שמא ישבחו [צ"ל יש בהן] צד קדושה או איבעיא להו כיון שלא הוזמנו אלא עראי בעלמא על דעת שעה הונחו אין בכך כלום דהזמנה זו לאו מילתא היא. For the source, see above, note 17. Rashba argues similarly (see above, note 19).

<sup>24</sup> R. Isaac Ibn Ghayyat (above, note 17), p. 118; *Sefer teshuvot ha-Rashba* (above, note 19); R. Nissim (to Rif, bMeg. ch. 3; in the Vilna-edition: 8b, s.v. “וכתב הרשב"א”); R. Abraham ha-Kohen of Lunel, *Orhot hayyim* (above, note 18). These sources are conveniently quoted (and briefly commented) by Yaari (above, note 18), pp. 24–26; cf. also Sperber (above, note 18), pp. 128f. R. Nissim and Rashba quote the responsum (with some variations) in the name of R. Hai gaon. R. Isaac Ibn Ghayyat (who cites, as mentioned, a similar but permissive ruling in the name of R. Hai gaon) and R. Abraham ha-Kohen mi-Lunel, on the other hand, quote it anonymously (in the name of a “gaon”). See also R. Abraham b. Natan, *Sefer ha-manhig*, ed. by Yizhak Raphael (Jerusalem: Mossad ha-Rav Kook, 1978), pp. 417–418, who does not quote the responsum directly but seems to make use of it. Yaari suggests (above, note 18, p. 25, n. 28) and Raphael

principle of “in holy things we go higher...” in similar cases. Rashba (followed by R. Nissim) and R. Abraham b. Natan who (unlike R. Aaron ha-Kohen of Lunel) take a stand on the custom of putting “crowns” on the head of the “bridegrooms” in *Simḥat Torah*—permitting it, but not without reservations as regards the custom itself—do not consider the principle applicable, at least in this context.<sup>25</sup>

For the geonic author the principle “in holy things we go higher...” was apparently directly relevant and applicable to the given question, intuitively at least. In any case, the terms of the application of this principle are left unspecified in the responsum as we have it now. The reference to the principle lends credibility to the stated opinion or decision, without providing a compelling reason or justification. The principle of “in holy things we go higher...” seems here to have a mainly rhetorical function.<sup>26</sup>

states (*Sefer ha-manhig*, p. 418, in the notes) incorrectly that the responsum in our geonic responsa-collection (*Shaarei teshuvah*) is quoted in the name of R. Natronai gaon; in fact only a previous responsum in close proximity (no. 274) is quoted in his name. (For this type of misattribution, cf. *Teshuvot R. Natronai bar Hilai gaon*, ed. by Yerahmeel [Robert] Brody [Jerusalem: Ofeq Institute, 1994], pp. 32–34; Robert Brody, *The Geonim of Babylonia and the Shaping of Medieval Jewish Culture* [New Haven–London: Yale University Press, 1998], pp. 200f).

<sup>25</sup> There is no need and no space here to analyze the respective halakhic positions of the mentioned medieval authorities; in any case, the spread and popularity of this custom in their days was apparently a decisive factor for their lenient attitude; Rashba (above, note 19) is explicit on this point. R. Abraham b. Natan (above, note 24) makes reference to the principle but only with regard to putting the crowns on women. Rashba makes a halakhic distinction between bridegrooms in the usual sense (for whom putting on the crown is forbidden) and between “bridegrooms” for *Simḥat Torah* (for whom it is permitted); this distinction is also quoted by R. Nissim (above, note 21). (Raphael [above, note 24] incorrectly attributes this distinction to Hai gaon himself—a misunderstanding that may be rooted in the misleading quotation of R. Nissim by Yaari [above, note 18]).

<sup>26</sup> There are other halakhic contexts that could have served as frames of reference for a discussion of the problem and particularly for the negative answer. In the wake of the destruction of the Second Temple, the Sages forbade the wearing of a wreath by the bridegroom—a prohibition qualified by later Talmudic sages; cf. mSot. 9:14, bSot. 49a, bGit. 7a.

## 2. PRAYER OF THE SICK

While prayers for the sick have always been of utmost religious importance in Judaism, prayers of the sick—so fundamental to biblical religion<sup>27</sup>—did not always enjoy a similar status, and posed some halakhic problems. Rashi's school and other medieval authors attest Rashi's practice, and preserved a halakhic norm in this matter:

חולה מהו להתפלל. כך נ"ל שאסור להתפלל מפני שדעתו מטורף ואינו יכול להתפלל. וכך היה נוהג ר' בחליו שלא היה מתפלל אלא קורא ק"ש בלבד. דתניא אבוה דשמואל כי הוה באורחא לא הוה מצלי עד תלתא יומי כלומר [מר] כשבא מן הדרך לא היה מתפלל כל ג' ימים מטרה הדרך שלא היה יכול להתפלל. ועוד תניא שתוי אל יתפלל, אלמ' כל מי שנטרף דעתו אסור לו להתפלל, אבל יכול לומר בקשות ותחנונים (ר[אסור]) להתחנן לשם שירפאנו ויעמידנו מחליו.

Concerning the prayer of the sick: It seems to me that it is forbidden [for him] to pray, since his mind is distracted and he is unable to pray. And it was Our Master's [Rashi's] custom not to pray [the *Shemoneh esreh* / the Eighteen Blessings] when he was ill, except the Reading of the Shema—as it is taught in a *baraita* [bEr. 65a]: “On returning from a journey Samuel's father refrained from prayer for three days”—on account of the strains of the journey. It is also taught [ibid. 64a]: “One

<sup>27</sup> See, for example, about the prayer of King Hizkiyahu: Isa. 38:2–5, II Kings 20:1–7, bBer. 10a–b. Among the praiseworthy things the king did, the Talmudic source mentions that he hid away the “Book of Cures”—which, Rashi comments, he did “in order that [sick] people should pray for mercy” (bBer. 10b, s.v. *שגנו ספר רפואות*). See also II Chron. 16:12 (“Asa [...] ill as he was, he still did not turn to the Lord but to physicians”), I Kings 8:37–39, Ps. 6:3. Cf. Gerhard von Rad, *Theologie des Alten Testaments*, Bd. I (München: Chr. Kaiser Verlag, 1962), pp. 287f; Klaus Seybold, *Das Gebet des Kranken im Alten Testament. Untersuchungen zur Bestimmung und Zuordnung der Krankheits- und Heilungspsalmen* (Stuttgart, etc.: Kohlhammer, 1973); J. D. Bleich, *Contemporary Halakhic Problems*, vol. 1 (New York–Hoboken: Ktav, 1977), pp. 93–96. The wisdom of Ben-Sira (Ecclesiasticus)—the only extra-canonical book quoted in the Talmud—is most explicit: “My child, when you are ill, do not delay, but pray to the Lord, and he will heal you” (38:9; translation according to the New Revised Standard Version, 1990). The sixth blessing in the Eighteen Blessings transforms into the plural what is written in Jer. 17:14 in the singular: “Heal me, O Lord, and let me be healed; save me, and let me be saved.” For the problem of praying in the plural vs. in the singular, see bBer. 29b–30a, bShab. 12b; *Sefer hasidim*, ed. by Jehuda Wistinetzki and Jacob Freimann (Frankfurt a. M.: M. A. Wahrman Verlag, 1924), no. 1023 (p. 257); *Tur and Shulhan arukh*, YD 335:6.

who is under the influence of drink must not pray.” Therefore, if someone’s mind is distracted, he is forbidden to pray. (He is allowed to say petitional prayers and supplications, praying to God that He heal him and help him to recover.)<sup>28</sup>

The last sentence is put in parentheses because it is attested only in the manuscript (dating from the 15<sup>th</sup>–16<sup>th</sup> centuries) on which the quoted version is based, and is likely to be a late interpolation. An important alternative version of this text, published originally in the collection *Teshuvot ḥakhmei Zarefat ve-Loter* (reproducing a manuscript usually considered an early and reliable textual witness), cites and interprets the *baraitot* (tannaitic traditions, introduced here by the expression *tanya*, “it is taught”) somewhat more extensively. In what follows I will refer to this latter version as the “longer version,” and to the version quoted above as the “shorter version.”

There are further differences between the medieval versions which raise questions vis-à-vis the genre of their source. In the beginning of the shorter version there is a switch from the first person singular (כך נראה לי שאסור)

<sup>28</sup> *Teshuvot Rashi*, ed. by Israel Elfenbein (New York, 1943), no. 90 (p. 117). An alternative version, taken from *Teshuvot ḥakhmei Zarefat ve-Loter*, ed. by Joel Müller (Vienna: Loewy & Alkalay, 1881), no. 60, pp. 36f, is printed in a parallel column. (The edition of Müller, in turn, is based on Ms. London, Montefiore 98.) The word at the end of the Hebrew original in parentheses (above) is to be deleted: it appears in Elfenbein’s edition, but not in its Vorlage (Ms. JTS Rab. 1422 = Adler 1508): it is copied erroneously from the end of the previous line in the manuscript. Otherwise the two printed versions contain only minor inaccuracies compared with their manuscript Vorlage. Further references to medieval parallel versions and textual variants are also recorded by Elfenbein in the apparatus. The earliest and most important parallels are: *Issur ve-hetter*, no. 101, ed. by Jacob Freimann (Berlin: Mekitzei Nirdamim, 1935/36?), p. 47; *Shu”T Maharam bar Barukh* (Lemberg, 1860), no. 474 (= R. Meir ben R. Barukh [Maharam] me-Rothenburg, *Teshuvot, pesakim u-minhagim*, ed. by Yizḥak Zev Kahana, vol. 1 [Jerusalem: Mossad ha-Rav Kook, 1957], p. 58, no. 31); see also no. 201 there; R. Aaron ha-Kohen of Lunel, *Orḥot ḥayyim, Hilkhot tefillah*, ch. 40 (above, note 18), p. 35 (cited, with slight variations, in *Kolbo*, vol. 1, ed. by David Abraham [Jerusalem: Feldheim, 2007], cols. 186f.). The text is cited and briefly commented on by Louis Jacobs, *Theology in the Responsa* (London–Boston: Routledge–Kegan Paul, 1975), p. 35, and by Abraham Grossman, *Rashi* (Hebrew) (Jerusalem: Merkaz Zalman Shazar le-toldot Yisrael, 2006), p. 218; idem, *Emunot ve-deot be-olamo shel Rashi* (Alon Shvut: Tevunot, 2007/8), p. 171. On the nature and problems of the written transmission of Rashi’s responsa, and for criticism of Elfenbein’s edition, see idem, *Ḥakhmei Zarefat ha-rishonim* (3<sup>rd</sup> ed.; Jerusalem: The Magnes Press, 2001), pp. 240–244; Haym Soloveitchik, *Shu”T ke-makor histori* (Jerusalem: Hebrew University of Jerusalem–Merkaz Zalman Shazar, 1990), pp. 110–120.

(להתפלל) to a narrative in the third person singular about Rashi's conduct (וכך היה נוהג). (Uncertainties due to similar switches of perspective in the text can also be found elsewhere in Rashi's responsa.) It is unclear who sets the norm or ruling here (in the first person singular: "It seems to me..."). On the other hand, the longer version begins as follows: "Rabbi (or: [our] R[abbi])[=Rashi] used to say concerning a sick person that he is forbidden to pray (היה ר' אומר על החולה שאסור להתפלל) because he cannot concentrate properly on account of his distracted mind, under the burden of his illness [or: caused by his serious condition] (מתוך כובד חליו עליו)."

The phrase "used to say" does not amount to an explicit ruling in concrete cases, or to a general halakhic ruling on the subject— and certainly not to a written one. It seems to refer to recurring oral rulings or instructions. On the other hand, *Orhot hayyim* refers to a written opinion of Rashi (...ז"ל כתב...), and R. Meir of Rothenburg quotes Rashi's ruling, his personal practice and arguments from a "responsum" written by Rashi himself. (His version is otherwise close to the longer version.) It seems that the ruling in the beginning of the shorter version comes not from Rashi but from a student (probably R. Shemayah), or from a later scholar. A "letter" by Rashi, which lacked some formal criteria of what we today call a "responsum," or his oral instructions—or both—may have served as the source, or sources, of the different versions. The core ruling of these versions is based first and foremost on Rashi's practice. Some of the Talmudic arguments may also have been part of the original "letter" or instructions. Clarification of the textual history of the different versions of our text and its genre will be possible if and when critical editions of the relevant medieval texts will be available. Until then—and possibly even then—our text can only tentatively and with reservations be called a "responsum."

Here we focus on argumentation, and therefore the aforementioned issues are of secondary importance: the argumentative part of our "responsum" is cited with relative consistence in the various versions. In the discussion below I will generally refer to the shorter version; differences between the versions which are relevant in the context of this paper will occasionally be mentioned.

Had the basic ruling of our "responsum" been issued by Maimonides, we probably would not find it surprising. It would fit not only his philosophical teachings about prayer, but also, on the face of it at least, his codified halakhic positions.<sup>29</sup>

<sup>29</sup> Facing a similar question, one would expect Maimonides to argue that for a sick person, even if his illness is relatively mild or easy, it is virtually impossible to pray the Eighteen

Blessings (and the 8<sup>th</sup> one, for health, in particular), because he will not have the proper intention: he will either lack it altogether, or if not, it will turn his prayer into personal petitionary prayer—which is very problematic for Maimonides from a philosophical point of view; see Marvin Fox, *Interpreting Maimonides* (Chicago–London: The University of Chicago Press, 1990), pp. 297–321, esp. 298–300, 310–312—and therefore it is forbidden. For an analysis of the role of intention in prayer in Maimonidean thought, see Jakov [Gerald] Blidstein, *Ha-tefillah be-mishnato ha-hilkhatit shel ha-Rambam* (Jerusalem: Mossad Bialik–Ben Gurion University of the Negev Press, 1994), pp. 77–109, where the specific Maimonidean ruling on the prayer of the sick (see below) is also addressed briefly (pp. 99f); on medieval rabbinic positions on the prayer of the “mentally distracted” (and on specific cases of this category), see pp. 109–115. The relevant statements of Maimonides in his code are as follows: “Any prayer uttered without mental concentration (כיוונה) is not prayer. [...] If a person finds that his thoughts are confused and his mind is distracted (דעתו משובשת ולבו טרוד), he may not pray (אסור לו להתפלל) till he has recovered his mental composure. Hence, on returning from a journey if one is weary, or for someone who is distressed (הבא מן הדרך והוא עיף או מיצר), it is forbidden to pray till his mind is composed. The sages said that he should wait three days till he is rested and his mind is calm, and then he recites the prayers.” (*Mishneh torah, Hilkhot tefillah* 4:15). “A sick person may read it [=recite the Eighteen Blessings], even lying down on his side, provided, however, that he can concentrate his mind” (*ibid.*, 5:2). (Interestingly, the Maimonidean rulings were interpolated into one of the two major extant recensions of *Sefer hasidim*, ed. by Reuven Margolioth (2<sup>nd</sup> ed.; Jerusalem: Mossad ha-Rav Kook, 2004), no. 18, p. 75; cf. ed. Wistinetzki–Freimann (above, note 27), “Introduction,” p. 17. The emphasis on *kavvanah*, “mental concentration / (proper) intention,” shared by both works—although with very different meanings—made this interpolation feasible. The Provençal author of *Orhot hayyim* quotes the first Maimonidean passage before he cites Rashi’s ruling / custom (see above, note 28). The second Maimonidean passage is cited also in the *Kolbo* [above, note 28], col. 274). His ruling on the sick, combined with the previous halakhah, seems to be more nuanced than the position adopted by our author and in no way contradicts it. In fact, some medieval scholars tried to harmonize these two positions. A harmonizing effort is implicit in the *Orhot hayyim*; and such an effort is later made explicitly by R. Israel Isserlein (1390–1460), who argues that while Maimonides had in mind mild cases of sickness, Rashi thought of such a serious illness that makes one unable to focus on his prayer properly; see the discussion in *Beit Yosef, Tur*, OH 94:6. (The version of the responsum in *Teshuvot hakhmei Zarefat ve-Loter* [as well as the one quoted or paraphrased by R. Meir of Rothenburg, see below, note 34 may provide some footing for this distinction by mentioning the “burden of illness / serious condition.”) Maimonides’ ruling on the traveler is based on jBer. 5:1 (see below, note 41), as the phrase “[...] or [...] who is distressed” indicates. According to his interpretation, a traveler is forbidden to pray in the event that he is weary and unable to concentrate on prayer; see *Kesef mishneh* to *Hilkhot tefillah* 4:15 and the commentary *Mareh ha-panim* to jBer. ad loc. See, however, *Hilkhot ha-Yerushalmi le-rabbenu Mosheh ben Maimon*, ed. by Saul Lieberman (New York: The Jewish Theological Seminary of America, 1947), p. 34. According to our “responsum,” on the other hand, a traveler is presumed to be distressed and unable to concentrate on prayer. The source in the Palestinian Talmud gives room for both interpretations, and our respondent’s comment on the case of Samuel’s father (cf. note 37), illustrates the proximity of these two formulations to each other.

In the Ashkenazic milieu that Rashi represents, on the other hand, the answer given is somewhat unexpected.<sup>30</sup>

The radical nature of the ruling is put into high relief if we compare it with other medieval rulings on the same topic. According to a responsum, apparently from the geonic period, a sick person is supposed to recite the Reading of the *Shema*, and is allowed to pray the Eighteen Blessings while sitting, but if this is difficult for him even like this, he is exempt altogether—similarly with the obligation of staying in the *sukkah* (during the Festival of Tabernacles), from which one who feels excessively uncomfortable (מצטער) is exempt.<sup>31</sup> Similarly, R. Meir of Rothenburg rules in a responsum that a sick person is exempt from praying the Eighteen Blessings. Another approach is offered by R. Menahem Meiri from Provence (1249–1310), who instructs one whose mind is still distracted when the time for the prayer is about to pass, to pray a “shortened prayer.”<sup>32</sup> Our responsum goes further: the sick person is *prohibited* from the “prayer” (the Eighteen Blessings).<sup>33</sup> It is to be noted, however, that the difference here between

<sup>30</sup> According to an aggadic source—quoted by Rashi (to Gen. 21:17)—“a sick person’s prayers on his own behalf are more efficacious than those of anyone else” [*Midrash Bereshit rabba. Critical Edition with Notes and Commentary*, ed. by Julius Theodor and Chanoch Albeck (Jerusalem: Wahrmann, 1965), vol. 2, p. 572]. One can argue, of course, that spontaneous or semi-spontaneous “biblical” prayer is meant in the midrash and not formalized or semi-formalized medieval rabbinic prayer, and “intention” has different meanings in the former and the latter.

<sup>31</sup> *Shaarei teshuvah* (above, note 16), no. 108.

<sup>32</sup> *Shu”T Maharam bar Barukh* (see above, note 28). *Tur* and *Shulḥan arukh*, Oḥ 98:2 quotes R. Meir of Rothenburg as saying that “today” we are less concerned about issues of “intention” (see Blidstein [above, note 29], p. 112, and cf. Tos. bBer. 17b, s.v. רב שישא רב ידי בריה דרב אידי, and *Shulḥan arukh*, Oḥ 70:3)—this may explain his “lenient” ruling that exempts from prayer without explicitly prohibiting it. Compared to “mainstream” Talmudic positions, the general tendency among medieval rabbinic authorities is to soften the demands on proper intention in prayer—see Blidstein (above, note 29), pp. 109–115. For Meiri’s ruling, see *Beit ha-behiraḥ, al massekhet Eruvin*, ed. by Moshe Hershler (Jerusalem: Institute for the Complete Israeli Talmud, 1961/62), to 65a (p. 248); cf. mBer. 4:4, bBer. 29b–30a.

<sup>33</sup> I am not aware of any similar halakhic position prior to Rashi. Blidstein (above, note 29), pp. 99f attributes such a view to R. Naḥshon gaon, who in a responsum (*Hemdah genuzah* [Jerusalem, 1862/63], 10a, no. 48; *Ozar ha-geonim, Berakhot*, ed. by Benyamin Menashe Lewin [Haifa: Ozar ha-geonim, 1928], vol. 1: *Teshuvot*, p. 60, no. 161) does not allow a person, who was sick for a long period of time, to make up, after his recovery, for the prayers he missed during his illness: עבר היום בטל קרבנו וכל שכן זה שאסור היה ולא יבטל בביוד ואין עליי בדבר זה עון. It is the term אסור (closer scrutiny reveals that this is indeed the reading in *Hemdah genuzah*, and not אסיר as appears in the bad quality print



exemption from, and prohibition of, prayer (as in many other liturgical issues) is not as clear-cut as it seems at first sight.<sup>34</sup> The cornerstone of the argument is the unqualified claim—a sort of quasi-legal presumption—that the sick person’s mind is a “disturbed” or “distracted” mind (דעתו מטורף / נטרף דעתו),<sup>35</sup> and

at first sight) which is taken to mean that the sick person was “forbidden” (to pray) in the first place. However, the responsum does not address the question of whether a sick person is allowed to pray or not (except, maybe, this word), and it is unlikely that the pious norm (that the sick is *forbidden* to pray) which may have been set and followed by some Talmudic sages (as well as Rashi later on) might simply be taken for granted by the gaon. The word אסור in the text seems to refer to the sick person who is unable to pray due to his physical state; others would use the term אנוס or אונס. Cf. *Orhot ḥayyim* (above, note 28) who writes right after quoting our “Rashi-responsum”: כתב הבעל השלמה בשם הגאונים ז”ל אדם שנאנס בחולי או שהיה חבוס מתפלל אחר אונס ומשלים תפלתו. The word here means “bound” (riveted, bedridden), and its use is similar to the metaphoric use in one of the morning blessings which—originally—is to be said upon moving the “fettered” limbs after waking up: מתיר אסורים (cf. bBer. 60b, Ps. 146:7). It is to be noted that this morning blessing was not universally accepted in the geonic period—see *Seder meah berakhot mi-tokh Seder Rav Amram gaon* (s.l.: 2003/4), pp. ט–י; and the appendix by Robert Brody in Moshe Weinfeld, *Ha-liturgiyah ha-yehudit ha-kedumah* (Jerusalem: The Hebrew University Magnes Press, 2004), pp. 194f. Cf. also the similar imagery in another morning blessing: המעביר חבלי שינה מעיני (bBer. 60b, in some textual witnesses), and the evening blessing before going to bed: המפיל חבלי שינה על עיני. All these blessing-formulae are well attested from the geonic period onwards. A less probable alternative explanation is that the word אסור in the cited responsum means “spellbound, sick”—which may also be one of the possible meanings of the phrase in the Eighteen Blessings.

<sup>34</sup> For example, many early and later authorities (Rashi is not among them) take the “exemption” in mBer. 3:1 (17b) effectively as a prohibition (partly based on jBer. 3:1 [5d]), see Tos. Ber. 17b, s.v. ואינו, Rosh and R. Jonah ad loc., R. Natan Nata Rabinowitz, *Dikdukei Sofrim*, to bBer. 18a (München: E. Huber, 1897), p. 84, n. “samekh”; Tur and *Shulḥan arukh*, OH. 71.1, JD 341.1 and commentators. Particularly instructive is the version in *Issur ve-hetter* (above, note 28) which starts by saying that “the mentally distracted is exempt from praying,” and—after a brief reference to Rashi’s practice in times of illness and the *baraita* about Samuel’s father—concludes that “whoever is mentally distracted is forbidden to pray.” Similarly, R. Meir of Rothenburg rules, as mentioned, that the sick are exempt from prayer, but his argument mainly consists of citing the “prohibitive” position of the “Rashi-responsum”; with regard to the drunken person, he quotes the “exemption” from bEr. 65a as well as the “prohibition” from bBer. 32a (see below, note 51). The main reason for the apparent lack of a clear distinction between “exemption” and “prohibition” in these works was, perhaps, the concern of the authors to deny the obligation of prayer for the sick, which deemed the difference between “exemption” and “prohibition” secondary or even irrelevant.

<sup>35</sup> Cf. mBer. 5:4. The most relevant sources in the Babylonian Talmud (see further on) use a similar but negative formulation: שאין דעתו מיושבת עליו (whose mind is not at ease). The *Issur ve-hetter*-version (previous note) does not operate with such a presumption—

therefore is “unable to pray”—presumably for lack of an appropriate state of mind, “concentration” or “intention.”<sup>36</sup>

Two traditions from the Talmud are brought in the responsum to substantiate this postulate: one is the case-report (of Samuel’s father who did not pray for three days, “on account of the strains of the journey”), the other the halakhic norm (preventing those who drank alcohol from praying). The case-report in itself can not (and case-reports in general, do not) enunciate a clear-cut general halakhic position. It does not tell whether Samuel’s father refrained from prayer because he thought he was *exempted* from prayer, or because he regarded himself *prohibited* from it or for any other reason. The Talmudic report and discussion does not tell clearly why Samuel’s father refrained from prayer.<sup>37</sup> Furthermore, it is unclear whether Samuel’s father thought the norm he followed should be the norm for every Jew, or whether he followed a norm for the “pious” only.

The two Talmudic traditions in the responsum fall short of justifying the core analogy. Both cases of the “distracted mind” mentioned in the responsum, one may argue, are different from the case in point: in those cases a “distracted mind” is a genuine impediment to proper intention. Being sick, on the other hand, should, so common sense would hold, be an incentive to it. The sick person, feeling his life to be in jeopardy,<sup>38</sup> may seek—in fact, is often encouraged to seek—remedy through prayer.<sup>39</sup>

The subsuming of the sick under the category of the “distracted mind” is posited rather than argued. The unqualified application of this category by the author, as well as the sketchy analogies involved, may be regarded as superficial, and/or make a “poetic” impression on the reader. Nevertheless, there are Talmudic sources, unmentioned in the responsum, which could

Rashi’s practice in times of illness is mentioned, but the ruling itself relates only to those having “distracted mind,” without relating to the “sick” at all.

<sup>36</sup> This is explicitly mentioned in the quotation—or paraphrase—of our responsum by R. Meir of Rothenburg; see above, notes 28, 29, 32. There is some ambiguity in *Teshuvot hakhmei Zarefat ve-Loter* (see the quotation above) concerning the mentioned “presumption” and its halakhic implications: whether the prohibition of prayer applies to practically all “sicknesses,” or only to more “serious” ones: those which are objectively dangerous (and cause anxiety) or subjectively painful; cf. above, note 29, and below, note. 38.

<sup>37</sup> Only a brief comment in the “responsum”—in both versions—tries to clarify this point (“... on account of the strains of the journey”).

<sup>38</sup> Cf. jBer. 4:4 (8b): “Every sickness is presumed to be dangerous.” Cf. *Tur*, Oḥ 219.

<sup>39</sup> See above, notes 27 and 30.

have lent further—maybe stronger—support to the position advanced by its author. In the Jerusalem Talmud we read:

ר' ירמיה בשם ר' אבא הבא מן הדרך אסור להתפלל ומה טעם לכן שמעי נא זאת ענייה ושכורת ולא מיין רבי זריקן ר' יוחנן בשם ר' אלעזר בנו של ר' יוסי הגלילי המיצר אסור להתפלל לא מסתברא אלא מן הדין קריין לכן שמעי נא זאת ענייה ושכורת ולא מיין.

R. Jeremia [said] in the name of R. Abba: One who returns from a journey is forbidden to pray. What is the [scriptural] reason? “Listen to that poor woman, drunk and not from wine” (Isa. 51.21). R. Zerikan [and] R. Yoḥanan [said] in the name of R. Eleazar,<sup>40</sup> son of R. Yose ha-Gelili: One who is in pain is forbidden to pray; it can be derived from nothing else than our verse: “Listen to that poor woman, drunk and not from wine.”<sup>41</sup>

These two laws, the proof-text and the argument need some clarification. The cited verse is taken from a prophetic simile addressing “Jerusalem” as a devastated woman who “has drunk the cup of wrath from the hand of God.”<sup>42</sup> “Drunkenness” is used there as a metaphor for the state of mind of a person struck down by calamities and suffering. Hardships associated with travel (“dispersion,” *galut*, in the prophetic context), or physical pain, therefore—taking the case addressed by R. Eleazar son of R. Yose ha-Gelili as independent from the previous case of the traveler<sup>43</sup>—can also be subsumed under the category of “drunkenness.” And prayer is forbidden for

<sup>40</sup> Following Ms. Leiden and other textual witnesses; Ms. Vatican reads “Eliezer”—see *Synopse zum Talmud Yerushalmi*, Bd. I/1–2, ed. by Peter Schäfer and Hans-Jürgen Becker (Tübingen: J. C. B. Mohr [Paul Siebeck], 1991), pp. 134f. As for the name of this sage, both forms are widely attested in Talmudic literature. In mSot. 5:3 (27b in the Talmud), for example, most textual witnesses read ר' אליעזר בנו של ר' יוסי הגלילי—see *The Babylonian Talmud with Variant Readings... Tractate Sotah*, II, ed. by Abraham Liss (Jerusalem: Institute for the Complete Israeli Talmud, 1979), p. 39.

<sup>41</sup> jBer. 5:1 (8d). It is quoted by the Tos. bEr. 65a, s.v. בצר אל יורה, and the second part is cited in *Tur*, Oḥ 98:2.

<sup>42</sup> Isa. 51:17, cf. *ibid.* 22. The expression “drunk and not from wine” also appears in Isa. 29:9. The Targum adds: “who is drunk from distress (מן עקא) and not from wine.”

<sup>43</sup> Maimonides’ understanding of this source apparently was different: he took R. Eleazar son of R. Yose ha-Gelili’s statement as a qualification of the previous statement about the traveler—there is, however, only relatively minor difference between the possible interpretations. See above, note 29.

an “intoxicated” person.<sup>44</sup> The author of our responsum could have made reference to these sayings (in particular, to the second one), classifying the sick person (explicitly or implicitly) as one “in pain.”

A similar argument can be drawn from another part of the discussion in bEr.—which is not cited in the “responsum” in its various versions (but referred to by R. Meir of Rothenburg). According to the opinion of Elazar b. Azaryah, quoted by R. Sheshet, after the Destruction of the Temple all Israel can be exempted from punishments, because they already suffered immense punishments—as the prophet says (and the proof-text is the same one cited by the Jerusalem Talmud): they are “drunk and not from wine.”<sup>45</sup> In close proximity we find the following statement:

אמר רב חייא בר אשי אמר רב כל שאין דעתו מיושבת עליו אל יתפלל משם שנה  
בצר אל יורה. רבי חנינא ביומא דרתח לא מצלי אמר בצר אל יורה כתיב.

R. Ḥiyya b. Ashi, citing Rav, ruled: A person whose mind is not at ease should not pray, since it is said: “He who is in distress shall give no [halakhic] decisions.”

R. Ḥanina did not pray on a day when he was agitated. It is written, he said: “He who is in distress shall give no [halakhic] decisions.”<sup>46</sup>

There are two difficulties with the traditions cited here. One is a textual and philological one: the terms “it is said / written” usually introduce scriptural quotations—but no saying similar to the one quoted here can be found in the Bible.<sup>47</sup> The other difficulty is the tacitly assumed analogy, in both traditions,

<sup>44</sup> On bBer. 31a (end) this prohibition is derived from I Sam. 1:13; it is also derived by the rabbis from scriptural injunctions addressed to the priestly caste (Lev. 10:8–11). A general prohibition for an intoxicated person (not only priests) to render halakhic rulings is derived from these verses (see Rashi ad loc., and cf. Jacob Milgrom, *Leviticus 1–16* [New York, etc.: Anchor Bible, 1991], pp. 611–618), or from other sources (bEr. 64b, bKer. 13b). For “instruction” being one of the Levite or priestly responsibilities / prerogatives, see Deut. 17:8–12, 33:10; Roland de Vaux, *Ancient Israel* (London: Darton, Longman & Todd, 1961), pp. 353–355. It is this prohibition, then, which is extended to include prayer. Interestingly, I Sam. 1:13 serves (bBer., loc. cit.) as a proof-text also for the requirement of proper “intention” in prayer.

<sup>45</sup> bEr. 64b–65a.

<sup>46</sup> bEr. 65a.

<sup>47</sup> An alternative reading is preserved (mainly in some medieval quotations): אמר מר. (The first to draw attention to this reading was Simon Bacher in *Ben Chananja*, 2 [1859], Heft 7, p. 327.) This reading is attested only by secondary witnesses (see *Teshuvot ha-geonim*,

between prayer and “giving decisions.”<sup>48</sup> Scholars—following either the line of Rashi or of the Tosafot—tried to solve these difficulties in various ways, without offering an acceptable solution.<sup>49</sup>

ed. by Simḥah Assaf [Jerusalem: Ha-madpis, 1926/27], p. 81, n. 6), with the exception of the earliest known print (Pisaro, 1511), which reads (on 86a): ‘אמר רב חייא בר אשי אמר: רב כל שאין דעתו מיושבת עליו אל יתפלל משום בצר אל יורה רבי חנינא ביומא דרתח לא מצלי רב אמר בצר אל יורה. The term *אמר מר* usually introduces a quotation from a tannaitic or amoraic source (sometimes a paraphrase)—but we do not have such a source for the saying either. For proper intention as a precondition for prayer, cf. bBer. 30b: “R. Elazar said, A man should always take stock of himself: if he can concentrate his attention, he should say the Tefillah, but if not he should not say it.” Cf. also the concept of “serious frame of mind” (*כובוד ראש*) in mBer. 5:1.

<sup>48</sup> See Tos. bEr. 65a, s.v. *בצר אל יורה*, end (cf. *Tanḥuma, Mikkez*, 10). It is worth noting that on bEr. 64a Ms. Oxford Opp. Add. fol. 23 reads *אל יורה ואל יתפלל*; see also Tosafot here, s.v. *שטה*. For a similar—and similarly phrased—prohibition, see bKet. 10b: “Rav said: He who ate dates shall give no [halakhic] decisions.”—One component of the analogy, the prohibition of drinking alcohol (*שתוי*) and being drunk (*שיכור*) for those serving in various cultic functions (including rendering halakhic decisions and excluding prayer) is well attested in tannaitic sources; see e.g. tTer. 3:1, tTer. 1:20. Unlike the requirement of proper intention in prayer, the specific problem of the prayer of the drunk is not, as far as I know, addressed in tannaitic sources.

<sup>49</sup> Concerning the first difficulty, see David Rosenthal, “Al derekh tippulam shel Ḥazal be-ḥillufei nusah ba-mikra,” in Yair Zakovitch–Alexander Rofe, eds., *I. L. Seeligmann Volume* (Hebrew part) (Jerusalem: E. Rubinstein, 1983), pp. 408–411, and the literature cited on 409, in notes 83–85; Menahem Kister, “Le-ferusho shel sefer Ben-Sira,” *Tarbiz*, 59 (1989/90), pp. 318–320. The riddle of the source (and meaning) of the saying “he who is in distress...” is yet to be solved; the main proposals in past scholarship and their problems are as follows: (1) Taking up Tosafot’s testimony and *Sefer ha-eshkol*’s lead, Victor [Avigdor] Aptowitz (Das Schriftwort in der rabbinischen Literatur [Wien: Prolegomena, 1906], pp. 25f) and Louis Ginzberg (*A Commentary on the Palestinian Talmud*, vol. 4, ed. by David Halivni [New York: The Jewish Theological Seminary of America, 1961], pp. 5f) suggested that the source is actually the tradition in the name of R. Eleazar, son of R. Yose ha-Gelili in jBer. 5:1, where we must read (following some medieval testimonies): *המיצר אסור להורות* (cf. above, note 41), while in bEr. we must read: *דאמר מר*. However, stylistically the saying is much more likely to be a proverb or piece of wisdom than a tannaitic or amoraic statement (on account of *בצר*; the continuation is attested elsewhere in tannaitic and amoraic statements, see above, note 48 and below). Moreover, R. Kalonymos’ reference to the text of jBer. in the Tosafot (see above, beginning of note 48), on which the emendation of this text partly rests, is likely to be a paraphrase (it does not have the words *לא מסתברא אלא*—which, however, is attested by Tosafot (loc. cit.)). (2) Contrary to the opinions expressed in the two articles mentioned above, the verses from Ben Sira (whether in the Hebrew, the Greek or the Syriac versions) have a markedly different meaning and are not likely to be the source of the saying cited in the Talmud (at least as understood by the amoraim who

As for the second difficulty, the analogy or association between instruction and prayer may be better understood against the backdrop of biblical and midrashic links between the two.<sup>50</sup> The two traditions in bEr. complement and reinforce the elliptic argumentation of the responsum: the first (citing Rav) by providing the generic category of “whose mind is not at ease,” which is broad enough to include the sick, and the other (the case, or rather custom, of R. Ḥanina illustrating Rav’s ruling) bringing us closer to the case of the sick than the biblical metaphor of the “drunk.”<sup>51</sup>

quote them). This line of argument also fails to give account of the reading *אמר מר*. (This reading, however, may reflect an understanding that the saying is a paraphrase of earlier tannaitic and amoraic statements on bEr. 64a–b to the effect that an intoxicated person or a drunk “shall give no [halakhic] decisions” [אל יורה]). (3) A medieval source quotes our saying verbatim from a certain “Sefer Aḥiyah ha-Shiloni” (see Rosenthal, op. cit., p. 409, n. 82). Further clarifications are needed both on this book and the medieval source.

<sup>50</sup> (1) According to Sif. Deut., ch. 26 (ed. by Louis Finkelstein [Berlin: Gesellschaft zur Förderung der Wissenschaft des Judentums, 1939], p. 39), the word *בצר* is one of the terms that denote prayer in the Bible; see also the alternative proof-text (Job 36:19) referred to by the Tosafot (above, note 48) in the name of R. Tam. (2) Priests had a central role in healing “serious” illnesses; cf. Gerhard von Rad (above, note 27), p. 287. (3) The common word for prayer and praying (*תפלה*, *התפלל*) also has a “forensic” connotation; cf. I Sam. 2:25 and lexica. See also note 44 above.

<sup>51</sup> The formulation “should not pray” (*אל יתפלל*) used in the quoted traditions on bEr. 65a is slightly different from the categorical formulation “is forbidden to pray” (*אסור להתפלל*) used in jBer. 5:1 and in the responsum. Halakhically this difference may or may not be significant. It may indicate that the prayer remain “valid” if done contrary to the injunction (see the continuation of the quoted *baraita* on bEr. 64a, quoted also in the version of our responsum in *Teshuvot ḥakhmei Zarefat ve-Loter*); or it may indicate that the norm is directed only towards the “pious” (see Ginzberg [above, note 49], pp. 3f; and cf. Blidstein [above, note 29], p. 258, n. 124). In tannaitic works I am not aware of any explicit and unequivocal prohibition on the mentally distracted (in whatever way) praying. (Prohibitions to pray, in general, are rarely found in tannaitic sources; for an example, see tBer. 2:12 [ed. Lieberman, p. 8]). A tannaitic tradition on bEr. 65a rules that a drunken person is not different from ordinary persons in terms of punishments, except that he is *exempt* from prayer. Amoraic halakhic exegesis, on the other hand, *prohibits* the drunken person to pray (bBer. 31a, end). For the proximity between “exemption” from and “prohibition” of prayer, see above, note 34. Prohibitions to pray for the mentally distracted seem to gain importance in the amoraic period—a development which may be related to changed notions about the role of “intention” in prayer. The emerging notions may have had midrashic-homiletic origins; cf. bBer. 17b, *Tur*, OH 70:3 and commentators. The Talmudic sayings (of amoraic origin) that prohibit prayer for certain categories of people (like bBer. 31a, bEr. 64a and 65a), and the “decision / instruction” analogy in particular, seem to imply that “intention” in these cases can be not only lacking but can

In sum, biblical sources use the analogy between suffering and drunkenness (Isaiah); Talmudic sources add to this the analogy between “prayer” and “instruction” (or “rendering legal decisions”); finally, our responsum presents the analogies between “sick,” “suffering / distracted” and “intoxicated.”<sup>52</sup> We have seen that other early respondents who dealt with the same question arrived at a different conclusion (the sick person is exempted, but not necessarily prohibited from praying) with the help of entirely different analogies.<sup>53</sup> Rashi’s “behavior” (and/or the halakhic ruling related to it) might have been based, partly at least, on Talmudic sources other than those quoted in the “responsum” itself. Taking into account the different versions, it is impossible to ascertain Rashi’s sources and reasons for his reported behavior. Many of the responsa produced by Rashi’s school have a “narrative” character: they are organized around a *maaseh rav*, a report on Rashi’s actual behavior, by his students.<sup>54</sup> Moreover, it is difficult to demarcate in the “responsum”—in both of the versions we quoted—arguments attributed to Rashi from arguments offered by the “framer” of the text. The literary form—or rather: forms—in which these responsa or rulings came down to us were in many cases the students’ (and the students’ students’) contributions. And it was their loyalty, their will to perpetuate their master’s practices, rulings and opinions that preserved them for posterity. Rashi himself—like many other medieval Ashkenazic authorities—apparently did not attach

do also “harm” if distorted or perverted (cf. also *jTer.* 1:6 [40a]: “Abba bar Rav Huna said, one who drank [wine] should not pray but if he did pray, his prayer is a supplication; a drunk should not pray, and if he did pray, his prayer is blasphemy” [שיכור אל יתפלל]; [ואם התפלל תפילו גידופין]; cf. Ginzberg [above, note 49], p. 6). The “responsum” as well as Maimonides’ rulings seem to adopt these positions—although, perhaps, with different nuances: our author having in mind “objective” consequences of erroneous prayer or erroneous intention in prayer), and Maimonides regarding improper intention as a serious intellectual flaw (causing the praying person “subjective” harm, reinforcing him in his intellectual error). Different interpretations given to Hizkiyahu’s “Book of Cures” by Rashi (see above, note 27) and by Maimonides (*Perush la-Mishnah*, mPes. 4:9) may be indicative of these respective approaches.

<sup>52</sup> Cf. *Tos. bEr.* 65a, s.v. בצר אל יורה.

<sup>53</sup> See above, at notes 31–33.

<sup>54</sup> Cf. also *Teshuvot baalei ha-tosafot*, ed. by Irving A. Agus (New York: Talpitho-Yeshiva University, 1954), nos. 35–38 (pp. 102–104). On R. Shemayah’s role in the compilation of *Issur ve-hetter* and Rashi’s responsa, see Grossman (above, note 28), pp. 405–410, esp. pp. 406f.

more than momentary importance to his practical rulings and responsa.<sup>55</sup> Arguments may have been dropped or added in the process of editing and transmitting these “reports.”<sup>56</sup>

The argumentation of our “responsum” is neither exhaustive nor compelling (which, of course, is frequently the case in responsa literature) but its halakhic conclusion, as a pious practice at least, has strong Talmudic grounds. Presenting it as a general norm for everyone and without qualifications—subjective or objective—for the sickness, however (whatever Rashi’s role in it), is quite an extreme and even counter-intuitive position. One wonders what connection is there between the radical halakhic stance and the liberal use of metaphors and analogies.

### 3. KARAITES IN THE QUORUM

Problems related to proper intention in prayer also arose with respect to entire groups on the “margins” of rabbinic Judaism. Maimonides is asked whether Karaites can be counted in the quorum (in prayer and in grace after meals), of “mainstream” (Rabbanite) Jews. His answer is as follows:

אסור להשלים בהם מנין, לא עשרה ולא שלשה, משום שאינם מודים בחיוב זה  
(הדבר). והעיקר בזה אומרים בעירוב [!]: ”או ביד מי שאינו מודה בעירוב אינו

<sup>55</sup> As for a similar argument that the Tosafists did not attach lasting importance to their responsa, see Simhah Emmanuel, *Shivrei luhot: Sefarim avudim shel baalei ha-tosafot* (Jerusalem: The Hebrew University Magnes Press, 2006/7), p. 271 and the literature cited there in n. 229. The author’s criticism (endorsing Urbach’s opinion) is directed not so much against this view as against the thesis that the responsa of the Tosafists were not collected and preserved by their students for posterity. Cf. also: Solomon Freehof, *The Responsa Literature* (Philadelphia: The Jewish Publication Society, 1959), pp. 31–33. One of the possible reasons for the lack of sufficient argumentation in a responsum is the practical and short term purposes of its author instead of long-term and more “theoretical” ambitions in writing it.

<sup>56</sup> Cf. the discussion above, in note 28, and the variant versions referred to in that note. Abbreviation of responsa is a well-attested phenomenon in medieval responsa literature; see below in the concluding remarks no. 1. For adding arguments to responsa in the Tosafistic schools, cf. Ephraim E. Urbach, *Baalei ha-tosafot* (5<sup>th</sup> ed.; Jerusalem: Mosad Bialik, 1986), p. 316.



עירוב". וכל דבר שמאמינים בחיובו ובחלותו, רשאים אנו להצטרף אליהם בו, וכל מה שאין מאמינים בחיובו ובחלותו, אסורים שיצטרפו בו. וידוע שאינם מאמינים בחיוב הקדושה ולא בחיוב הזימון, ואינם משגיחים במנין עשרה ולא במנין שלשה, ומאחר שאינם מודים בחוקים אלו, אסור לעשות זאת עמהם ולהשלים המנין בהם, אחרת סומכין בדבר על מי שאינו מאמין בו.

It is forbidden to complete either a [prayer-]group of ten or a group of three [for communal blessing after meals] with such [Karaites] persons, because they do not acknowledge this obligation. The principle in this matter is stated in [the Mishnah-tractate dealing with] *eruv* [matters; mEr. 3:2, bEr. 31b]: "If a man sends his *eruv* by the hand of a deaf-mute, an imbecile or a minor, or by the hand of one who does not admit [the principle of] *eruv*, the *eruv* is not valid." In matters that they believe in as a valid obligation, we are permitted to join them [in its performance], and in matters that they do not believe in as a valid obligation, they are not permitted to join. It is well known that they do not believe in the obligation of *kedushah* and *zimmun*, and do not care about the quorum of ten [*minyān*] or the required number of three [for *zimmun*]. Since they do not admit these rules, it is forbidden to combine with them to make up the quorum—otherwise in some matter we would rely on someone who does not believe in it.<sup>57</sup>

"Belief" as a precondition for the valid performance of a given commandment is set by halakhah relatively infrequently. Maimonides' general approach is quite exceptional in this respect: in consonance with his "intellectualist" stance he emphasizes the importance of proper "intention" in some areas, prayer among them.<sup>58</sup> For him, intention in the performance of a commandment and proper belief in the obligation of its observance are inseparable from each other. His disqualification of the Karaites is based neither on their presumed lack of "intention" in prayer, or on their general antagonism to "rabbinic" lore (their being "heretics" and "sectarians");<sup>59</sup>

<sup>57</sup> I quote the text according to the Hebrew translation in *Teshuvot ha-Rambam*, ed. by Joshua Blau (2<sup>nd</sup> ed.; Jerusalem: Reuven Mass, 1986), no. 265, pp. 502–504 (see also: *Iggerot ha-Rambam*, ed. by Yizḥak Shilat (3<sup>rd</sup> ed.; Maale Adumim: Shilat, 1994/95), pp. 607, 611f).

<sup>58</sup> See for example *Mishneh torah*, *Hilkhot tefillah* 4:1, 15–17.

<sup>59</sup> Maimonides (like Abraham ibn Ezra and others) often call the Karaites "Sadducees": *Perush ha-Mishnah*, Avot 1:3 (*Massekhet avot im perush Rabbenu Moshe b. Maimon*, ed. by

nor is it based on their actual non-compliance with relevant rabbinic laws and practices in prayer in a given time and place. His argument is narrower than the former, and broader than the latter: it is based on the “well-known” Karaite rejection of obligations like *kedushah* and *zimmun*, and the related requirement of the quorum.<sup>60</sup>

This reasoning is a doctrinal-confessional one: it is unequivocal and unconditional, without taking actual practice into account. Karaite attitudes to prayer, in several important respects, were far from being uniform. According to geonic testimony, cited by Maimonides himself in another responsum, there were Karaites (in Babylonia and elsewhere), who followed Rabbanite customs in liturgy.<sup>61</sup> In general, relations between Karaites and Rabbanites varied considerably according to time and place<sup>62</sup>—thus our need is all the greater for information about the provenance of the Karaite community in question and its relevant practices and principles. In his strict standards in matters of attitude in prayer, Maimonides could of course have made reference to Talmudic reasons and precedents.<sup>63</sup> On the other hand,

Yizḥak Shilat [Maale Adumim: Shilat, 1997/98], p. 5, and notes there; *Perush le-massekhet Avot*, ed. by Mordecai Dov Rabinowitz, [Jerusalem: Mossad ha-Rav Kook, 1961], p. 9); *Hilkhot mamrim* 3:3; *Hilkhot avadim* 6:6; *Hilkhot shehitah* 4:16; *Teshuvot ha-Rambam* (above, note 57), p. 499. According to *Hilkhot teshuvah* 3:8, those who deny the validity of the Oral Law belong to the category of “deniers of the Torah” (כופרים בתורה). Sometimes Maimonides compares the Karaites to “sectarians” (מינים) or “Samaritans” (כותים); see idem, *Teshuvot*, pp. 436, 499, 730–732; cf. Isadore Twersky, *Introduction to the Code of Maimonides (Mishneh torah)* (New Haven–London: Yale University Press, 1980), p. 85. Elsewhere he makes only a partial analogy between the Karaites and the Samaritans: *Hilkhot avadim* 6:6. The authoritative early 20<sup>th</sup>-century commentary to *Shulḥan arukh*, OH, the *Mishnah berurah* (OH 55:47), in the footsteps of earlier authorities, labels the Karaites “sectarians,” using our responsum, but replacing the Maimonidean reasoning with a general disqualification of deniers of the Oral law.

<sup>60</sup> The Karaite Judah Hadassi—an older contemporary of Maimonides, living in Constantinople—criticizes the rabbinic preference for congregational prayer and the rabbinic requirement of quorum for certain prayers (*Eshkol ha-kofer* [Guslow / Eupatoria, 1836], 10d–11a; cf. P. Selvin Goldberg, *Karaite Liturgy and Its Relation to Synagogue Worship* [Manchester: Manchester University Press, 1975], pp. 6f). For Maimonides particulars of prayer, for the most part (its times, text, etc.) were of rabbinic origin: *Hilkhot tefillah* 1:1.

<sup>61</sup> *Teshuvot ha-Rambam*, ed. Blau (above, note 57), p. 731; cf. variant readings cited in the apparatus.

<sup>62</sup> Simha Assaf, “Le-toldot ha-karaim be-arzot ha-mizrah,” in idem, *Be-oholei Yaakov* (Jerusalem: Mossad ha-Rav Kook, 1942/43), pp. 181ff., esp. pp. 182–185.

<sup>63</sup> bBer. 47b. On bEr. 31b R. Ḥisda interprets or illustrates the key phrase of the mishnah cited by Maimonides (שאינו מודה) using the category of “Samaritan” (כותי); cf. Louis

the problem he had to cope with was not whether a Karaite could serve as a “precentor” (שליח ציבור), whether one could say “amen” to the prayer or blessing of a Karaite, or whether a Karaite, if present at a Rabbanite communal prayer, was presumed to say the prayers properly. The question submitted to Maimonides dealt rather with the permissibility of Karaites being counted in the quorum (*minyan*)—even if only as the tenth, alongside nine ordinary Jews.

The attitude of Maimonides to Karaism and to Karaites, as reflected in his writings, does not lend itself to simple and unequivocal characterizations, and it has changed over time.<sup>64</sup> He had diverse opinions; in some cases he took very lenient positions, applying to them the Talmudic categories of “child taken captive” (תינוק שנשבה) and “being under duress” (אנוס), urging outreach efforts to make them return to “mainstream” Judaism.<sup>65</sup> Following geonic tradition, he also judged Karaites favorably in several halakhic contexts, regarding them as Jews.<sup>66</sup> Elsewhere, however, he declared

Ginzberg, *An Unknown Jewish Sect* (New York: The Jewish Theological Seminary of America, 1976), p. 136, n. 113. (For a survey of Talmudic attitudes toward Samaritans—also characterized by their non-allegiance to Oral Law—see Sacha Stern, *Jewish Identity in Early Rabbinic Writings* [Leiden, etc.: Brill, 1994], pp. 100–105.) See also below, note 68. Contrary to this doctrinal criterion, mNid. 7:5 offers a different, “behaviorist” test in accepting testimonies of Samaritans in certain issues: “This is the principle: In any matter in which they [the Samaritans] are suspect [i.e. non-observant], they are not believed.” It is also noteworthy that on bMK 12a the laws dealing with Samaritans are characterized as “barren laws,” meaning—according to most commentators—the lack of coherence, lack of principles underlying them.

<sup>64</sup> Gerald J. Blidstein, “The ‘Other’ in Maimonidean Law,” *Jewish History*, 18 (2004), pp. 173–195; our responsum is addressed on p. 183 (see also p. 194, n. 45), and see also, idem. “Ha-gishah la-karaim be-mishnat ha-Rambam,” *Tehumin*, 8 (1986/87), p. 510, n. 31 (= *Iyyunim be-mahshevet ha-halakhah voha-aggadah* [Beer-Sheva: Ben-Gurion University of the Negev Press, 2004], p. 176, n. 33); *Samkhut u-meri be-hilkhat ha-Rambam* (s.l.: Hakibbutz Hameuchad, 2002), pp. 182–184.

<sup>65</sup> *Hilkhot mamrim* 3:3; cf. Radbaz ad loc. and *Shu”T ha-Radbaz*, no. 796 (at the end of pt. II); see Morell (above, note 4).

<sup>66</sup> *Teshuvot ha-Rambam*, ed. Blau (above, note 57), pp. 729–732. For a survey of the Maimonidean treatment of Karaites in the *Mishneh torah*, see also: Chaim Tchernowitz, *Toldot ha-poskim*, vol. 1 (New York: Shoulson Press, 1946), pp. 197–208. In his code (*Hilkhot shehitah* 4:16) Maimonides permits Karaites (who regard “slaughtering” as a commandment) to serve as slaughterers provided that Rabbanites supervise their slaughtering, to make sure they abide by the pertinent rabbinic “technicalities” of slaughtering; cf. Tchernowitz, op. cit., pp. 203f. In principle a similar distinction could be made between “prayer” as a commandment (which is accepted by the Karaites) and particular liturgical laws such as the quorum.

their writs of divorce invalid because they “do not believe in our customs regarding marriage and divorce.”<sup>67</sup> Similarly, in our responsum he relates to them as sectarians—despite the fact that the question implies that Karaites quite regularly attended Rabbanite study- and prayer-houses. His own writings testify to the difficulties of setting a coherent halakhic policy towards Karaites, of solving the dilemma of considering them on the one hand as “sinful Jews” who can be returned to the fold, and on the other hand as “heretics” separated once and forever from “mainstream” Judaism.

At any rate, in our responsum he seems to have adopted a position closer to the second option. Although Talmudic sages had already dealt with the specific problem of the “tenth,” often with leniency (permitting Samaritans, or boys under thirteen, to be counted in the quorum under certain conditions),<sup>68</sup> Maimonides does not leave any room for leniencies, and flatly prohibits the inclusion of the Karaites even in such an extreme case, without considering Talmudic precedents. Instead, he makes reference to a mishnah that requires doctrinal “loyalty” to a commandment from an “agent” participating in its performance.<sup>69</sup> The question arises, however, with respect to the appropriateness and applicability of the category of “agency” in this context.<sup>70</sup>

The phrasing of the question submitted to Maimonides (אם הם באים לבית הכנסת) suggests that at a given time, in a given location it was not a unique or infrequent occurrence that the Karaites wanted—or at least were ready—to join the communal prayer in a Rabbanite prayer-house.<sup>71</sup> Was

<sup>67</sup> *Teshuvot ha-Rambam* (above, note 57), p. 629. It is to be noted that halakhah demands special “intention” in writing and issuing writs of divorce; see e.g. *Hilkhot get*, 1:1, 3, etc.

<sup>68</sup> mBer. 7:1 (Samaritan: *zimmun*), bBer. 47b (Yosi, Joshua b. Levi: infant, slave). For geonic traditions rejecting these lenient Talmudic views, see *Teshuvot Rav Natronai gaon* (above, note 24), pp. 121f.

<sup>69</sup> Cf. the similar expression used in the responsum concerning marriage and divorce, quoted above.

<sup>70</sup> This question is also raised by Blidstein, *Samkhut* (above, note 64), p. 183. Note also that even the mishnaic prohibition quoted by Maimonides is not categorical: “If, however, he instructed another person to receive it from him, the *eruv* is valid.” For another problematic analogical use of the category of “agency,” see Hanina Ben-Menahem, “The Judge-Agent Analogy in the Talmud,” in Ben-Menahem and Hecht, eds., *Authority, Process and Method* (above, note 7), pp. 33–58.

<sup>71</sup> It seems that it was not unheard of, or even exceptional, that Rabbanites prayed in Karaite synagogues either: Marina Rustow, *Heresy and the Politics of Community. The Jews of the Fatimid Caliphate* (Ithaca and London: Cornell University Press, 2008), pp. xxvii–xxviii.

the assumed doctrinal non-admittance of rabbinic laws of prayer the most prominent and relevant feature of the Karaites' attitude and behavior in the given place that had to be taken into account? In Maimonides' judgment, it apparently was. One wonders, however, whether his argument, built on a single, and not fully convincing, analogy, is the real source of his decision, or whether it is presented rather as a conceptual metaphor, a rhetorical device, to impress the reader and to support a conclusion reached by different considerations.<sup>72</sup>

#### 4. MASTER OR BOOK?

One of the Talmudic laws governing the relationship between master and disciple—a relationship which does not depend on the age of the disciple—is that a student is forbidden to issue halakhic rulings in the “presence” of his master. The needs of growing Jewish communities made it more and more difficult to live up to this standard. The medieval halakhic compilation *Orhot hayyim* by R. Aharon ha-Kohen of Lunel (mentioned above several times), probably from the first half of the 14<sup>th</sup> century, quotes a tosafist “letter” from 13<sup>th</sup> century France addressing this issue from an unexpected aspect:

והר' שמואל מאיורא רבו של הר' יונה ז"ל ואחיו של ר' שמואל דאיורא כתבו באגרותיהם: מיום שגלו אבותינו וחרב בית מקדשנו ונשתבשו הארצות ונתמעטו התורה והלבבות אין לנו עוד לומר מורא רבך כמורא שמים. וכל הדינין הראויין לעשות תלמיד לרב נתבטלו כי הגמרות והפירושים והחידושים והחיבורים הם המורים האנשים והכל לפי פקחות הלבבות. ולכך היו רגילי שבעירם יחזיק התלמיד מדרש ולא אמרי' בהא כל המורה הלכה לפני רבו חייב מיתה. וכן יסתור דבריו התלמיד לרב אם יוכל לפי פלפולו. ע"כ מלשונם.

Cf. Shlomo Dov Goitein's summary characterization of Karaite-Rabbanite relations, based on Genizah material which reflects to no small degree the times and place of Maimonides: “The Karaites did not recognize the religious authority of the Gaons [...] but they felt themselves to be, acted like, and were regarded as full members of the Jewish community” (*A Mediterranean Society*, vol. 2 [Berkeley, etc.: University of California Press, 1971], p. 7). This does not mean, of course, that Karaites were accepted by Rabbanites as full-fledged members in their communities in every halakhic respect. For a more detailed account, see Goitein, op. cit., vol. 5 (1988), pp. 366–372.

<sup>72</sup> A similar possibility is cautiously raised by Blidstein, “Ha-gishah...” (above, note 64).

R. Samuel of Evreux, the teacher of R. Yonah, and the brother of R. Samuel of Evreux [R. Moshe], have written in their letters: “From the time our forefathers went into exile and our Sanctuary was destroyed, the lands became chaotic and our lore and knowledge diminished—we can no longer tell disciples “let the fear of your teacher be as the fear of Heaven” [mAvot 4:12]. All the laws governing the behavior of disciple toward his master are abrogated, because it is the Talmudic texts, the commentaries, the novellae and the [halakhic] books that instruct people, and everything depends on one’s mental capabilities.” Thus, in their town it was customary for disciples to maintain [their own] study hall, without concern for [the Talmudic dictum that] “one who rules in matters of halakhah in his teacher’s presence deserves death” [bEr. 63a]. Similarly, a student could contradict his teacher’s opinion by means of superior reasoning.<sup>73</sup>

It is unclear whether the “letter” (or “letters”?) quoted or summarized in this passage was written actually as a response to a question. Despite the fact that it apparently does not fit some typical formal characteristics of responsa literature, in terms of function and character it is reasonable to consider it as belonging to this genre in the present context. The “letter” and the passage quoting or summarizing it offers—maybe *ex post facto*—argumentation for a halakhic position and a historical development: it heralds fundamental changes in modes of learning in a medieval Ashkenazic Jewish community. It also bears witness to the decentralization of rabbinic authority in 13<sup>th</sup>-century France.<sup>74</sup> Referring to historical change (with the help of the powerful distinction between “then” and “now”),<sup>75</sup> the brothers

<sup>73</sup> *Hilkhot talmud torah*, 21 (*Orhot hayyim*, Jerusalem, 1956/57, 64b). For the text, and for information about the brothers of Evreux, see Urbach (above, note 56), pp. 479f. The letter, with some textual variations, is quoted in a responsum by R. Samuel di Medina (Turkey, 16<sup>th</sup> century): *Shu"t Maharashdam*, ḤM, no. 1. For additional relevant later medieval texts, see Hanina Ben-Menahem, et. al., eds., *Ha-maḥloket ba-halakhah*, vol. 1 (Boston–Jerusalem: The Institute of Jewish Law, Boston University School of Law–The Israel Diaspora Inst., 1991), pp. 462–469.

<sup>74</sup> For historical background, and for a halakhic analysis of this letter, see Ephraim Kanarfogel, “Rabbinic Authority and the Right to Open an Academy in Medieval Ashkenaz,” *Michael*, 12 (1991), pp. 233–250, esp. pp. 236–243, pp. 248f. See also: idem, *Jewish Education and Society in the High Middle Ages* (Detroit: Wayne State University Press, 1992), pp. 56, 153f, n. 6; Joseph Ahituv, “‘Mi-pi sefarim ve-lo mi-pi soferim’ – le-sugyat ḥofesh ha-horaah,” *Sinai*, 107 (1990/91), pp. 133–150.

<sup>75</sup> Immanuel Löw, “Ha-iddana,” *Hebrew Union College Annual*, 11 (1936), pp. 193–206; Jacob Katz, *Exclusiveness and Tolerance* (London: Oxford University Press, 1961), pp. 29–36; Boaz

from Evreux bluntly reject a whole branch of Talmudic legislation governing the disciple-master relationship. In one sentence (as we have it), this entire branch of laws is deemed virtually irrelevant.<sup>76</sup>

The opinion of the brothers from Evreux was not created out of nothing; E. E. Urbach and E. Kanarfogel have collected evidence that similar rulings were adopted by other scholars of the same period, or even before, in the Tosafist schools and outside them.<sup>77</sup> The exact parameters and meaning of some of these traditions are doubtful; the arguments are quoted or paraphrased by others (like the opinion of R. Moshe and R. Samuel of Evreux), which makes it difficult to reconstruct or to ascertain them.

The comparisons with the similar positions and related arguments mentioned above shed additional light on the historico-halakhic context of the position advocated by the brothers of Evreux, and help put the figurative usage into proper halakhic perspective. At the same time, the comparisons also throw into considerable relief the uniqueness of the halakhic opinion of the brothers and the quasi-poetic power of its formulation. Their formulation (“it is the Talmudic texts, the commentaries, the novellae and the [halakhic] books that instruct people [nowadays]...”) stands out in its sharpness, in form as well as halakhic purport. The Talmudic sage, in many ways, was regarded as an embodiment of the Torah, as a living book.<sup>78</sup> The poignant

Cohen, *Law and Tradition in Judaism* (New York: Ktav, 1969), p. 54, n. 53; Joel Roth, *The Halakhic Process: Systemic Analysis* (New York: The Jewish Theological Seminary, 1986), pp. 237–244, 248–264.

<sup>76</sup> It seems that the term “master” refers here to an actual teacher of the disciple, and not in general to a superior scholar in the same locality. Even in the Talmudic period a disciple could render halakhic decisions in a locality of a superior scholar (who was not his master), provided he did not contradict his ruling; see David Weiss Halivni, “The Role of the *Mara D’atra* in Jewish Law,” *Proceedings of the Rabbinical Assembly*, 38 (1976), pp. 124–129. It is not entirely clear whether this permission, as well as the right to open a study house in a location where there is a superior scholar who is not one’s master, are taken for granted by the authors of our letter. The conditions of opening study houses in Ashkenaz in the 12–13<sup>th</sup> centuries need further research (cf. Kanarfogel [above, note 74], pp. 236f); this issue became more controlled and institutionalized in the Ashkenazic realm in the later Middle Ages, with the emergence and consolidation of the rabbinate. Cf. the literature cited in Aaron Kirschenbaum, “‘Mara de-Atra’: A Brief Sketch,” *Tradition*, 27 (1993), p. 40, n. 15.

<sup>77</sup> R. Isaac of Dampierre (Ri); R. Meir of Rothenburg; R. Isaiah di Trani; see Urbach (above, note 56), Kanarfogel (above, note 74).

<sup>78</sup> For sources and literature, see Sinai (Tamás) Turan, “‘Kol makom she-natnu ḥakhamim eineihem, o mitah o oni’—le-toldot ha-masoret al mabbatam ha-harsani veba-kotel

formulation in fact turns the ancient relation between “master” and “book” upside down. In Antiquity, the sage (or the class of sages) had exclusive authority in interpreting the Book, and his intellectual powers were for many practical purposes a kind of substitute for the Book. With the emergence of a sizeable body of rabbinic literature in the Middle Ages, which became more and more accessible (for, and through, Talmudic learning), the focus shifted from the teacher to the “book”—more precisely, to the books. The quoted letter only gives dramatic expression to some implications of the process of “book production which has no end.”<sup>79</sup>

## CONCLUDING REMARKS

In the four responsa discussed above (two of them can be called “responsa” only with reservations) we have found different types and degrees of terse analogical reasoning. The author of the responsum on the Torah crown invoked a Talmudic legal principle which is “materially” close to the problem he had to deal with. He only hints at it rather than elaborates on its application. The “responsum” about the prayer of the sick is built on a series of analogies, some of them taken from ancient sources. Since these analogies operate with—or rather, take for granted—associations between concepts from widely different fields, being presented without any attempt at conceptual analysis, they should be considered intuitive analogies or conceptual metaphors. The responsum of Maimonides on the Karaites finds a legal principle in a mishnaic context, transferring or applying it to a quite

shel ha-ḥakhamim, dimmuyehen u-leshonoteihen,” *Sidra*, 23 (2008/2009), p. 137, n. 8. For a late anecdote (about R. Akiba Eger), see Yehiel Yakov Weinberg, *Shu”T seridei esh*, vol. 3 (Jerusalem: Mossad ha-Rav Kook, 2003), no. 129, p. 353.

<sup>79</sup> This process of course did not start and did not end in the Middle Ages. The changes in the status of books in Jewish learning documented by the responsum got new momentum and meaning in the past century, when “orthodox” Judaism, a “mimetic” society, became more and more a “textual culture.” For an analysis of this process (and these terms), see Haym Soloveitchik, “Rupture and Reconstruction: The Transformation of Contemporary Orthodoxy,” *Tradition*, 28 (1994), pp. 64–130, esp. 65–72, 94–97. For an attempt to interpret the intense interest of Jewish pietistic circles in Germany in the High Middle Ages (as expressed in *Sefer hasidim*) in formulating rules pertaining the use of books (other than the Bible), see Talya Fishman, “The Rhineland Pietist Sacralization of Oral Torah,” *Jewish Quarterly Review*, 96 (2006), pp. 9–16.



different legal situation, without elaborating on it. As for the Tosafist “letter” on the changed roles of books and teachers, even the cogent explanation provided cannot alter the fact that we are dealing with a powerful quasi-poetic metaphor. Of course we do not know what the actual halakhic weight or impact of this metaphor was in shaping historical reality.

One should not be surprised to find terse and “creative” analogical reasoning in early responsa. Modern (“civil” as well as “common”) law systems cannot dispense entirely with “fictional” elements, despite conceptual precision and consistency being the order of the day. Ancient Jewish law could do so even less.<sup>80</sup> It is replete with symbolic gestures and dramatic elements,<sup>81</sup> legal presumptions,<sup>82</sup> legal fictions,<sup>83</sup> metaphors and analogies<sup>84</sup>—

<sup>80</sup> The much-discussed interface between halakhah and aggadah is outside the scope of our discussion here; see recently: Berekhyahu Lifshitz, “Aggadah u-mekomah be-toldot torah she-bealpeh,” *Shenaton ha-mishpat ha-ivri*, 22 (2001–2003) (published in 2006), pp. 237f and the literature cited on p. 234, notes 6–7. See also: Israel Ta-Shma, “Hitabdut ve-rezah ha-zulat al kiddush ha-shem: Li-sheelat mekomah shel ha-aggadah bi-mesoret ha-psikah ha-ashkenazit,” in idem, *Kneset mehkarim, iyyunim ba-sifrut ha-rabbanit bi-yemei ha-benayim*, vol. 1: *Ashkenaz* (Jerusalem: Mossad Bialik, 2004), pp. 388–394.

<sup>81</sup> See laws regulating ceremonies of halizah; adoption; oaths; modes of transfer and acquisition (cf. Isaac Herzog, *The Main Institutions of Jewish Law*, vol. 1 [London: Sincino Press, 1936], pp. 154–182; David Daube, *Studies in Biblical Law* [New York: Ktav, 1969], pp. 24–39).

<sup>82</sup> See, for example: “the living carries himself” (החי נושא את עצמו) (bShab. 94a; cf. Tos. there, s.v. שיהי נושא את עצמו), and see numerous other examples in *Encyclopedia talmudit*, s.v. “hazakah” (vol. 13 [Jerusalem: Mekhon ha-Enziklopedia ha-Talmudit, 1970], esp. cols. 506–713). See also Roth (above, note 75), pp. 54f.

<sup>83</sup> On legal fictions in Jewish law, see Boaz Cohen, *Jewish and Roman Law* (New York: The Jewish Theological Seminary, 1966), vol. 1, p. 85; idem, “Towards a Philosophy of Jewish Law” (above, note 75), pp. 15–17 (and literature cited on p. 15, notes 42–43a); Leib Moscovitz, “Legal Fictions ...” (above, note 3), pp. 105–132. For an early case study in modern general law, the history of the concept of “juristic person” / “corporate personhood,” a legal fiction of central importance, see John Dewey, “The Historical Background of Corporate Legal Personality,” *Yale Law Journal*, 35 (1926), pp. 657–673, esp. 664; in a Jewish context, see David Fink, “The Corporate Status of *Hekdesh* in Early Sefardic Responsa,” in Bernard S. Jackson, ed., *Jewish Law Association Studies*, vol. 1 (Chico, CA: Scholars Press, 1985), pp. 17–24.

<sup>84</sup> Here is a very limited sample of “metaphoric” and analogical uses of terms and phrases in early rabbinic halakhah, ranging from biblical exegesis to rabbinic coinages, from “civil” to “religious” law, from brief references to more elaborate analogies: (1) the “fatherhood / parenthood”-metaphor; in honoring one’s teachers: Sif. Deut. ch. 34 (to Deut. 6:7; ed. Finkelstein, p. 61); in the laws of proselytes: jBik. 1:4 (64a); cf. also Maimonides’ responsum to Obadiah the Proselyte: *Iggerot ha-Rambam* (above, note 57),

all parts of a religious worldview and a legal tradition quite different from the western legal systems of today. Some of these elements (like legal fictions) can be—and indeed were—put under the heading “conceptualization,” and yet they belong to the domain of the “concrete” and “poetic” no less than to the domain of the “abstract.” Giambattista Vico’s 18<sup>th</sup>-century description of ancient Roman law being “a serious poem, and the ancient jurisprudence a severe kind of poetry” is more than a mere flourish, and may prove to be an adequate characterization of some aspects of Jewish law no less than of Roman and other ancient systems of law.<sup>85</sup>

Halakhic creativity is related to no small degree to exegetical and linguistic ingenuity. Halakhic activity has become more and more compartmentalized, and exegetical creativity has declined since the Middle Ages—and if there is a decline of halakhic “creativity” more recently, as some argue, it is also linked to these broad cultural processes. Terse analogical-metaphorical argumentation in responsa is often an expression of ingenuity or authority, in this way or the other.

p. 235; Solomon B. Freehof, *A Treasury of Responsa* [Philadelphia: The Jewish Publication Society, 1963], pp. 33–34; (2) “do not put a stumbling block before the blind” (Lev. 19:14), see mBM 5:11, bPes. 22b, bMK 17a (and many other places); (3) “removing the neighbor’s landmark” (Deut. 19:14) referring to false attribution: Sif. Deut. ch. 188 (ed. Finkelstein, p. 227); (4) “blood” (“you shall not eat with the blood,” Lev. 19:26) referring to prayer: bBer. 10b; (5) “stealing eyes / minds” (גניבת עין / דעת), meaning deceiving people: mBM 4:12, bHul. 94a; (6) “hurried / curtailed / orphaned amen” (התרמה / קטופה / אמנן חטופה) (bBer. 47a, baraita); (7) “one who becomes a proselyte is like a child newly born” (גרי שנתגייר כקטן שנולד) (bYev. 22a, 48b, cf. Matth. 18:3); (8) “natural soil” (about Esther, bSanh. 74b; (9) bNed. 75b–76a (analogy between annulment of vows and purification in the ritual bath); (10) bBer. 50b (analogy between a law pertaining communal blessing for a meal and a law pertaining beds receiving uncleanness).

<sup>85</sup> *The New Science of Giambattista Vico. Revised Translations of the Third Edition of 1744*, tr. by Thomas G. Bergin and Max H. Fisch (Ithaca: Cornell University Press, 1968), p. 386. Cf. *Vico: The First New Science*, ed., tr. by Leon Pompa (Cambridge: Cambridge University Press, 2002), p. 206 and n. 138 there. In this issue—as well as in many others—Vico was probably influenced by the *Leviathan* of Thomas Hobbes (published first in London, 1651): “And in antient time, before letters were in common use, the Lawes were many times put into verse; that the rude people taking pleasure in singing, or reciting them, might the more easily reteine them in memory” (Pt. 2, ch. 26; ed. by Richard Tuck [Cambridge: Cambridge University Press, 1996], p. 189). See also Jakob Grimm, “Von der Poesie im Recht,” in *Kleinere Schriften*, Bd. 6 (Berlin: F. Dümmler, 1882), pp. 152–191. (He does not make reference to either author. The article appeared originally in *Zeitschrift für geschichtliche Rechtswissenschaft*, 2 [1816], pp. 25–99). Most of the material presented by Grimm is taken from German law.

The phenomenon itself has a distinct literary or rhetorical dimension. According to the Talmud (bSot. 35a), King David was punished for praising the Law as “songs” (Ps. 119:54). Overemphasis on the literary and the rhetorical aspect (and in general, finding all sorts of “reasons” beyond and behind what is written) obviously has its hazards, even in the domain of “*halakhah le-maaseh*.” Hopefully David’s punishment should not be a major concern for those analyzing responsa from a literary or rhetorical point of view. In any case, as far as early and brief responsa are concerned, such an analysis proves to be a very difficult task. Usually not only much-needed explicit “data” in the responsum itself are lacking, but also sufficient literary and historical and halakhic background information from other sources, which would be necessary for any reasonable literary or rhetorical analysis.<sup>86</sup>

The reasons for conciseness in many early responsa are variegated and can evidently only be examined, if at all, on a case-by-case basis. Generally speaking, authority in its various facets plays a crucial role in this phenomenon: the greater the authority of the respondent (*vis-à-vis* the “questioner”) the less the need and room for argumentation. “A responsum remained the authoritative finding of a man who knew; it therefore contained neither citations of previous authorities nor confutations of other opinions, and no, or only very laconic, argumentation”—this characterization, once made with regard to ancient Roman responsa, is to some extent also applicable to early Jewish responsa.<sup>87</sup> More specifically, three possible factors should be considered in explaining the conciseness in early responsa:

(1) First, the textual aspect: scribal interventions in copying responsa (expanding, or, more frequently, abbreviating them), as well as “editorial” changes of similar sorts in the process of compiling them, are well

<sup>86</sup> For a survey of approaches of the Law and Literature “movement” in a Jewish context, see Mark Washofsky, “Responsa and Rhetoric: On Law, Literature, and the Rabbinic Decision,” in John C. Reeves and John Kampen, eds., *Pursuing the Text, Studies in Honor of Ben Zion Wacholder* (Sheffield: Sheffield Academic Press, 1994), pp. 360–390, 400–402, 407–409; Peter J. Haas, *Responsa: Literary History of a Rabbinic Genre* (Atlanta, GA: Scholars Press, 1996), pp. 55–73, 297–318.

<sup>87</sup> Fritz Schulz, *History of Roman Legal Science* (Oxford: Clarendon Press, 1953), p. 125. Cf. Haas (previous note), pp. 79f, 305 (commenting on the “oracular” style of—brief—geonic responsa), and p. 307 (for remarks on how changes in rabbinic “authority” affect the style of responsa). See, however, paragraph (1) below.

documented in the history of early responsa literature.<sup>88</sup> Versions and early quotations of the responsa discussed above (especially of the first two) amply attest the liberty applied in their transmission. Their fluid textual state makes it not only difficult to reconstruct the original form of these responsa, but also raises questions about the very existence of an “original” and “authentic” form.<sup>89</sup> Paradoxical as it may seem, as a rule “editorial” or scribal interventions assume, rather than subvert, the authority of the author and his text.

(2) Next, a literary and halakhic aspect should be taken into account. The borders are blurred between *teshuvah* (responsum, halakhic opinion) and *pesak din* (halakhic decision, court decision), but an important difference between the two—which in the later Middle Ages enjoys more explicit expression in halakhic literature—is that the former usually entails some argumentation, while the latter does not.<sup>90</sup> The existence of reasoning and motive in the response, their scope and depth are affected not only by certain rules of the genre and what the respondent is expected to do, but also by what he is willing, ready and able to do. Accordingly, the written opinion may be influenced by the social position and/or intellectual capabilities of the questioner,<sup>91</sup> the halakhic stature of the respondent,<sup>92</sup> and by his lack of time and other practical factors.<sup>93</sup>

(3) Certain religious-psychological factors should also not be overlooked. Argumentation itself seems to be of secondary importance for some deciders. Medieval respondents often invoke, or give credit to, divine assistance,

<sup>88</sup> Brody, *The Geonim of Babylonia* (above, note 24), pp. 196f; Glick (above, note 1), pp. 41f and earlier literature mentioned on p. 42, n. 211). For additions (of argumentative or explanatory nature) by students and copyists, cf. Urbach (above, note 56), Yizhak Zev Kahana, “Introduction,” in Maharam me-Rothenburg, *Teshuvot* (above, note 28), pp. 13f.

<sup>89</sup> The crucial role of students in creating and transmitting the responsa attributed to Rashi was mentioned above (in note 55). The textual history of Maimonides’ responsa—although Maimonides himself wrote and “authorized” them—is also not free from various kinds of interventions.

<sup>90</sup> Eliav Shochetman, “Hovat ha-hanmakah ba-mishpat ha-ivri,” *Shenaton ha-mishpat ha-ivri*, 6–7 (1979–1980), pp. 339–352. For Talmudic background on the term *pesak din*, see above, note 11.

<sup>91</sup> Brody (above, note 24), p. 190; *Teshuvot R. Natronai bar Hilai gaon* (above, note 24); Glick (above, note 1), p. 32.

<sup>92</sup> Elon (above, note 1), p. 1474.

<sup>93</sup> Glick (above, note 1), pp. 32f.

for helping them to reach a halakhic conclusion.<sup>94</sup> It is often difficult to know whether such phrases are a mere rhetorical fanfare or whether they represent a real component of the respondent's religious outlook and self-awareness. It seems that not infrequently the latter is the case, especially in the Ashkenazic realm.<sup>95</sup> In principle, the greater the significance assigned to divine assistance (inspiration, intuition, etc.) in the decision-making, the less the importance given to actual argumentation.

In ancient and medieval legal discourse it is often difficult to distinguish between condensed analogical reasoning and metaphoric usage. When all is said and done, can we tell which is the case in any of our four responsa and what the meaning, function and background of the terseness of the argument might be? No, we cannot; we could offer only some tentative suggestions. More comprehensive philological, historical, halakhic and literary investigations (veritable commentaries<sup>96</sup>) on other responsa may yield less ambiguous answers about the relation between the written and the not-written in their reasoning—about their “black fire” against the backdrop of their “white fire.” The power of concise analogical-metaphorical reasoning and its filiation with ancient Jewish legal discourse and style, however, stand out clearly in these medieval responsa.

<sup>94</sup> “I was instructed from Heaven” (הראוני מן השמים); “our Rock enlighten our eyes in his Law” (וצורנו יאיר עינינו בתורתו) and similar expressions are frequently found in the responsa of the geonim, R. Gershom, Rashi, R. Eliezer b. Yoel ha-Levi (Ravyah) and others.

<sup>95</sup> For a late example, see Maoz Kahana, “Ha-Ḥatam Sofer: ha-posek be-einei azmo,” *Tarbiz*, 76 (2006/2007), pp. 519–556. This attitude can be traced back to ancient Jewish literature; here is not the proper place to deal with this subject.

<sup>96</sup> Commentaries in the proper sense on individual responsa or on collections of responsa barely exist. The reasons for this phenomenon are manifold, but discussing them here would take us too far afield.

## 2. Wine Produced and Handled by Converts: The Rulings of the Ribash, the Tashbez and the Rashbash

*Dóra Zsom*

At the end of the fourteenth century the Jews of the Iberian Peninsula were afflicted by riots and disturbances that led to the conversion of vast masses of Jews. A great number of responsa written in the subsequent years dealt with the problems that emerged in consequence of the formation of an extensive *converso* community. The issue that was most frequently discussed was the marital status of the converts, but there were other subjects also treated quite extensively. One of these issues is the status of wine produced or handled by converted Jews. In the period between the end of the fourteenth century and the middle of the fifteenth century, there were various responsa written regarding this subject by the most influential halakhic authorities of the time and of the region, namely Isaac ben Sheshet Perfet (the Ribash)<sup>1</sup>, Simeon ben Zemaḥ Duran (the Tashbez)<sup>2</sup> and Solomon ben Simeon Duran (the Rashbash)<sup>3</sup>.

The importance of these responsa lies in the fact that the issue of wine is directly related to idolatry and the observance of the Shabbat. The consumption of wine produced or even touched by a Gentile is prohibited to Jews, and it is also forbidden to draw benefit from such wine, by selling it, for example. The prohibition has two reasons: first, a Gentile might

<sup>1</sup> I have used the following edition of his responsa: *Sheelot u-teshuvot le-rabbenu ha-gadol marana ve-rabbana ha-rav Yiḥṣhak bar Sheshet*, ed. by David Metzger (Jerusalem: Makhon or ha-mizraḥ, 1993)—Henceforth: *Shu"t Ribash*.

<sup>2</sup> I have used the following edition of his responsa: *Sefer ha-Tashbez. Teshuvot rabbenu Shimeon bar Zemaḥ Duran*, ed. by Joel Katan (Jerusalem: Makhon or ha-mizraḥ, 1998)—Henceforth: *Sefer ha-Tashbez*.

<sup>3</sup> I have used the following edition of his responsa: *Sefer ha-Rashbash. Sheelot u-teshuvot le-rabbenu Shelomo ben rabbenu Shimon bar Zemaḥ Duran*, ed. by Moshe Sovel (Jerusalem: Makhon or ha-mizraḥ, 1998)—Henceforth: *Sefer ha-Rashbash*.

use the wine for idolatrous purposes, and thus convert it to *yein nesekh* (“libation wine”); secondly, consuming wine together with Gentiles might lead to intermarriage between Jews and Gentiles.<sup>4</sup> The wine of a Jew that was touched by a Gentile is generally classified as *setam yeinam* (wine of Gentiles), the consumption of which is prohibited.<sup>5</sup>

The *converso* obviously becomes similar to the Gentile to a certain extent. The rabbinic authorities had to define the position of the *converso* in comparison with the Gentile, depending on the conditions of the conversion (whether it was forced or voluntary) and the attitude of the *converso* to the Christian environment and the Jewish precepts. Since intermarriage with *conversos* and their descendants was not forbidden, only the first one of the two reasons for prohibition mentioned above seems to be relevant in this case. On the other hand, a convert who desecrated the Shabbat publicly may be regarded a complete Gentile,<sup>6</sup> and thus if he touched the wine, it would become prohibited. Should the *conversos* be regarded as idolaters and desecrators of the Shabbat? In order to discuss the problem of wine, the authorities had to take a stand on the question of these fundamental matters.

When massive forced conversion was still a new phenomenon, the position of the Jewish community towards *conversos* was far from being well-defined. A certain indecisiveness can be observed regarding questions like whether they can be relied on in such everyday matters as *kashrut*, or in more formal and official issues, such as bearing witness in front of a *bet din* (rabbinical court of law), marriage, inheritance, etc. The problem of *kashrut* is unique in the sense that it is nearly the sole topic that completely disappeared from the subjects discussed in the responsa in a relatively short time. From the decades subsequent to the great persecutions in 1391, there can be found a limited number of responsa that deal with the cheese, meat and wine of the *conversos*,<sup>7</sup> but later this issue disappeared completely.

<sup>4</sup> Cf. Deut. 7:7; bSanh. 106a; bAv. Zar. 36b.

<sup>5</sup> But according to Maimonides, for example, if the Gentile is not suspected of idolatry, it is permitted to draw benefit from the wine. See Maimonides, *Mishneh torah, Hilkhohot maakhalot asurot* 11:7: “And similarly, the idolater [that is, the Gentile], who does not worship idols, like these Ishmaelites—it is prohibited to drink their wine, but it is permitted to draw benefit from it.”

<sup>6</sup> Cf. *Mishneh torah, Hilkhohot gerushin* 3:15.

<sup>7</sup> Apart from the responsa of the three authors discussed in this paper, I could not find legal decisions related to this issue, neither among the decisions written by members of the Duran family (*Yakhin u-Boaz* 1–2), nor among the responsa written by other, later

The tendency of the responsa presented here is evident: they tend from uncertainty to definite prohibition, and the gradual transition from permissiveness to prohibition can be observed excellently in the discussion below.

The following instances shall be discussed: wine made in Valencia (Ribash, no. 4); wine made by Jews in Murviedro, transported by converts via Majorca (Ribash, no. 12); wine sent from Majorca by a convert to Algiers (Tashbez, 1:63); wine made by Jews and guarded by a convert in Majorca (Tashbez, 1:66); wine made by Jews in Murviedro, and transported by a convert via Majorca to Tunis (Tashbez, 2:60); wine made by converts and sent (possibly to North Africa) by ship (Tashbez, 3:312); wine made by Jews in Tortosa, and sent by a convert in Christian ship to Majorca and from there to Bejaia (Bougie) (Rashbash, no. 553).

The texts discussed in the followings mention Valencia,<sup>8</sup> Murviedro (Morbiter, Morvedre, Morviedo),<sup>9</sup> Majorca,<sup>10</sup> Tortosa,<sup>11</sup> Algiers,<sup>12</sup> Tunis<sup>13</sup> and Bejaia (Bougie).<sup>14</sup> The Jews in the Kingdom of Valencia owned rural estates and were engaged in agriculture. In the municipal boundaries of the city of Valencia and Murviedro, these lands were mainly occupied by vineyards and olive groves.<sup>15</sup> Although the commercial activity of Valencian Jews was of primary importance, the exact nature of their activity remains unknown, as the documentation concerning commerce contained in the Archive of the Kingdom of Valencia is limited to the trade with prohibited products.<sup>16</sup> For the same reason, the trade in wine is not mentioned in the records of the archives studied and published by Hinojosa Montalvo in his work of great importance about the Jews of the Kingdom of Valencia.<sup>17</sup> Nonetheless, the

authorities (Elijah Mizrahi, Moses ben Isaac Alashkar, Benjamin Zeev ben Mattathias of Arta, Jacob Berab, David ibn Avi Zimra, Joseph ben Ephraim Caro, Joseph ibn Lev, Moses ben Joseph Trani and Samuel ben Moses de Medina).

<sup>8</sup> Port city in Eastern Spain, the capital of the kingdom of Valencia.

<sup>9</sup> Now Sagunto, city in the kingdom of Valencia, near to the Mediterranean coast.

<sup>10</sup> The largest of the Balearic Isles, part of the Corona of Aragon.

<sup>11</sup> City in north-eastern Spain, which belonged to the Corona of Aragon.

<sup>12</sup> Port city in North Africa, in Algiers.

<sup>13</sup> Port city in North Africa, in Tunisia.

<sup>14</sup> Port city in North Africa, in Algiers.

<sup>15</sup> J. Hinojosa Montalvo, *The Jews of the Kingdom of Valencia. From Persecution to Expulsion, 1391-1492* (Jerusalem: Magnes Press, 1993), pp. 235-238.

<sup>16</sup> *Ibid.*, pp. 193-194.

<sup>17</sup> *Ibid.*



responsa of the three halakhic authorities under discussion here contain references to the trade in wine made in the Kingdom of Valencia: the wine was either made by Jews or by the converts themselves, and it was generally transported by converts.

Algiers, Bejaia and Tunis were important port cities in North Africa and centers of maritime commerce. There was a long tradition of contact between the Jewish population of the North African port cities and the Jewish communities of the Iberian Peninsula.<sup>18</sup> Majorca was of course a flourishing commercial center and a stopping place along the North Africa–Valencia maritime route.<sup>19</sup>

### ISAAC BEN SHESHET PERFET (RIBASH)

R. Isaac ben Sheshet Perfet (1326–1408), known also as the Ribash, from the acronym of his Hebrew name, was born in 1326 in Barcelona and acted as a rabbi there until 1370, when he moved to Saragossa. After spending there some fifteen years he moved to Valencia. The assault on the Jewish quarter of Valencia in 1391 that put an end to the powerful Valencian *aljama* (community) had serious consequences for the life of the Ribash. Practically the whole community was converted by force to Christianity following the sack of the Jewish quarter (that happened on the 9<sup>th</sup> of July, 1391). Isaac ben Sheshet Perfet was baptized on the 11<sup>th</sup> of July, and took the name Jaime of Valencia. Then he left for North Africa, where he reverted to Judaism. He was appointed *dayyan* (judge of a rabbinical court of law) in Algiers by the Muslim authorities. The appointment was criticized by R. Simeon ben Zemaḥ Duran,<sup>20</sup> who regarded it as an improper intervention in the internal affairs of the Jewish community. R. Isaac ben Sheshet Perfet died in Algiers in 1408. His responsa were first published in Constantinople, 1546.<sup>21</sup>

<sup>18</sup> Haim Zeev Hirschberg, *A History of the Jews in North Africa* (Leiden: Brill, 1974), vol. 1, pp. 372–375.

<sup>19</sup> J. Hinojosa Montalvo, op. cit., p. 207.

<sup>20</sup> Regarding his life, see below.

<sup>21</sup> See Hirsch Jacob Zimmels, “Isaac ben Sheshet Perfet,” in *Encyclopaedia Judaica* (Jerusalem: Keter, 1972) (henceforth: EJ) vol. 9, coll. 32–33; Abraham Moses Hershman, *Rabbi Isaac bar Sheshet Perfet and his Times* (New York: Jewish Theological Seminary, 1943).

There are two responsa of the Ribash that deal with the problem of wine produced or handled by *conversos*. Although the questions of the two responsa differ considerably, the answers show great similarity. The question of the first responsum (no. 4) touches on various related subjects connected with dietary laws. The question of the second responsum (no. 12) concerns a particular case of wine sent from Majorca. The answers operate with the same arguments, and they are actually interchangeable, as they are very general and do not contain direct references to the specific cases. This might indicate that the Ribash made use of the same answer twice; or maybe the answers were considerably shortened by later copyists or editors.

#### *Ribash, Responsa, no. 4*

The question, which is anonymous in its present form, concerns four related problems: 1) if a convert can tread grapes in the vat of a Jew; 2) if a convert is reliable regarding the *kashrut* of the wine made by himself; 3) if a convert is reliable regarding the *kashrut* of the wine made by others; 4) if a convert is reliable regarding the observance of the dietary laws. The question itself is worth translating, as it is relevant to the connections between Jews and converts in the years following the mass conversion of 1391 in the Kingdom of Valencia:<sup>22</sup>

עוד שאלת בכתב האחרון אם יוכל אדם מאנוסי הזמן לעבודת ככבים לדרוך ענבים בגת של ישראל ויהיה היין כשר כאלו דרכו ישראל אם אין. גם כן יש מהם רבים עושין יין בביתם או באוצרות מיוחדים להם ואומרים שעשאוהו בהכשר כראוי הנוכל לסמוך עליהם לשתותו. ואם ישאוהו מעבר לים להעיד עליו שהוא כשר. וגם מהם שיזמין ישראל לאכול עמו וישים לפניו בשר ויין, היבטח בו שהוא כשר כדבריו ויעמידהו על חזקתו שלא יניח ההיתר ויאכילהו אסור בידים. ואעפ"י שחטא ישראל הוא ולא יחוש לכליו אולי בשל בהם דבר אסור. ולענין שחיתתן ומגען אם נחשבם כישראלים גמורים אם אין ע"כ.

<sup>22</sup> From the answer it becomes evident that the question came from Valencia. By Valencia they meant not only the city bearing the same name, but also the Kingdom of Valencia, which pertained at the time to the Corona of Aragon.

You asked also in your last letter if a forced convert to idolatry from among the forced converts of our time can tread grapes in the vat of a Jew, and whether the wine will be kosher as if treaded by a Jew, or not. Moreover, a lot of them make wine in their houses or in their own press-sheds, and they say that it was made according to the prescriptions of *kashrut*: can we trust them in order to drink the wine? And what if they bring it from overseas [i.e. from a distant country], and they testify that it is kosher? Again, if one of them invites a Jew to eat with him, and offers him meat and wine, shall he believe him that it is kosher as he says, and shall he [the Jew] suppose that he [the convert] will not forsake that which is permitted and won't feed him with that which is forbidden? And although he [the convert] has sinned, he is still a Jew, and he [the Jew] will not suspect his dishes, that he [the convert] might have cooked in them something forbidden. And can they be deemed as Jews with respect to the handling of the wine and ritual slaughtering?<sup>23</sup>

The term used in the question for the *conversos*—"the forced converts of our time" (*anusei ha-zeman*)—indicates that the question was written after 1391, since this formula was not used before that. On the other hand, in his responsum no. 1:63, the Tashbez<sup>24</sup> states that a certain Moses Amar asked the Ribash if the wine sent to him by his Majorcan *converso* father-in-law could be consumed or not, and there the Tashbez remarks that the Ribash refrained from deciding the problem since mass conversion was still a new phenomenon, and therefore he, the Tashbez, was permitted to answer the question. This indicates that the responsum no. 1:63 of the responsa of the Tashbez was written before the present responsum of the Ribash.

In the city of Valencia, some 200 Jews remained after the mass conversion of July 9–11, 1391, and they continued to live together with the *conversos* in the former Jewish quarter until the end of August. At the end of August, the majority of these Jews were transferred to Murviedo, but some families continued to live in Valencia until 1424, when they probably left the city due to a burdensome tax imposed upon them.<sup>25</sup> The text of the responsum mentions Valencia as the place of the acts and events described in it, without specifying whether the toponym refers to the city or to the kingdom. Although the

<sup>23</sup> *Shu"t Ribash*, no. 4, p. 3.

<sup>24</sup> See below.

<sup>25</sup> J. Hinojosa Montalvo, *op. cit.*, p. 67.

Jewish community of the city of Valencia eventually disappeared completely, and Murviedo became the new center of Valencian Jewry as a whole,<sup>26</sup> the denomination used in the responsum can equally refer to the city or to the kingdom, since Jews and *conversos* still lived together in the city of Valencia in the years subsequent to the riots of 1391.

The answer begins with a summary of the legal judgment of carrying out an act under compulsion in general. The Ribash enumerates the prescriptions and prohibitions regarding the issue in the Torah, and the considerations in the Talmud:<sup>27</sup> If one commits an offence against the law under compulsion, he cannot be punished by the *bet din*. He cannot be disqualified from being a witness, and has to be considered a Jew in every respect. And this is so even if one has committed idolatry, in the case of which Jewish law requires that one sacrifice his life rather than committing it. The Ribash quotes the ruling of Maimonides,<sup>28</sup> which is in agreement with his exposition. He also makes reference to a responsum written by R. Solomon ibn Adret (Barcelona, 1235–1310), which sums up the arguments mentioned above, and rules that *ישראל הם ושחיטתן מותרת ואין אוסרין יין במגען* (“they are Jews and the meat of an animal slaughtered by them is permitted, and the wine touched by them is not forbidden”).<sup>29</sup>

It is emphasized by the Ribash that these statements refer only to those who refrain from transgressions as far as they can. However, if a person violates a percept by his own will (and not under compulsion), the punishment for which, in theory, is flogging, he becomes unfit to testify, even if his transgression was not public. Moreover, he has to be suspected of violating that particular percept regularly. If he publicly violates the Shabbat or worships an idol of his own will (even if in private), he has to be considered as a person who absolutely abandons the laws of the Torah. According to the Ribash, the fact that a person commits an offense privately and not under

<sup>26</sup> *Ibid.*, p. 253.

<sup>27</sup> “And you shall love the Lord, your God with all your heart and with all your soul” (Deut. 6:5); “Do not profane the name of my holiness; I shall be holy among the sons of Israel” (Lev. 22:32); “The forced one is exempted by God” (bBava Kama 28b); “[As it is written concerning the person who sacrifices his son to Moloch:] ‘I will set my face against that man’ (Lev. 20:5)—[...] against that man [who did it willfully], but not against who did it under compulsion” (Sifra Kedoshim 10:13).

<sup>28</sup> *Mishneh torah, Hilkhoh sanhedrin* 20:2.

<sup>29</sup> *Shu”T Ribash*, no. 4, p. 3, c.f. *Shu”T Rashba*, no. 7:41.

compulsion, demonstrates that although at first he might have violated precepts under real compulsion, he finally become accustomed to neglecting Jewish laws and became a voluntary convert.

The conclusion drawn by the Ribash is that converts who remained in a country in which they could not practice Jewish religion freely are as a rule to be suspected of transgressing Jewish law. He mentions that a great number of Jews managed to escape religious persecution by leaving the country. The Ribash states explicitly that it was possible even for the poorest members of the Jewish community to leave the country. For this reason, regarding the legal status of those who remained, it is presumed that they do not behave according to Jewish law. But if it can be ascertained that a given person never violates the precepts by his own will, and that he remains in the country because he really cannot afford the cost of travel, he should be regarded as a proper Jew, who is fit to testify. The wine handled by him and the meat of an animal slaughtered by him is to be permitted for consumption. Unfortunately the Ribash did not expand on how the existence of these circumstances should be verified and demonstrated in practice.

The Ribash distinguishes between two categories of those who commit offenses against Jewish law willfully. If the offense is idolatry or the violation of the Shabbat in public, the person should be regarded as a Gentile, and wine handled by him is thus prohibited. If the offense is something else, he should be regarded as suspicious of committing that specific transgression, but the wine handled by him is not prohibited. However, he is unfit to testify concerning the *kashrut* of the wine in his possession (not necessarily made by him). The reason, as the Ribash formulates it, is the following:

שאינן האנוסים הדרים בבלנסיא"ה או בשאר ארצות נזהרין להשמר מסתם יינן, ואף אם נזהרין בו אין יכולין להזהר במגע עובר ככבים ביינם, וכלם חשודים שאם נגע עובר ככבים ביינם אין אוסרין אותו לא בהנאה ולא בשתיה, וכיון שהם חשודים לאותו דבר אינן נאמנין על של עצמם לכולי עלמא.

The forced converts who live in Valencia and in other countries do not refrain from [the consumption of] the wine of the Gentiles. Even if they refrain from it, they cannot prevent the Gentiles [idolaters] from handling their [kosher] wine. They are all suspicious, that if their wine was handled by a Gentile, they do not disqualify it [their kosher wine] from being consumed or sold. Since

they are suspicious of this [specific] thing, they are unreliable concerning their own wine.<sup>30</sup>

R. Isaac ben Sheshet Perfet explains that it is controversial whether the converts are suitable for testifying concerning the wine which is not their property. The basis for the debate is a discussion in the Talmud between R. Meir and Rabban Gamaliel.<sup>31</sup> According to R. Meir, a person suspected of neglecting a percept is disqualified from testifying concerning it. However, according to Rabban Gamaliel he is reliable concerning that percept if the testimony involves another person but not himself. As the Ribash explains, most halakhic authorities and all later authorities ruled as Rabban Gamaliel, including Maimonides<sup>32</sup> and R. Solomon ibn Adret<sup>33</sup>.

The response of the Ribash does not systematically follow the four distinct questions asked by the inquirer. The answer concentrates on the testimony concerning the *kashrut* of the wine, and touches upon the issue of wine handled by converts. It does not expound on other problems raised by the inquirer, like ritual slaughtering or the dishes used by converts.

### *Ribash, Responsa, no. 12*

The second responsum of the Ribash relating to wine contains a very similar argumentation to the first one. The original question did not survive, but is summed up very briefly in a couple of words:

ומה ששאלת בכתב אחר על היין שהובא מן מיורקה והעידו האנוסים ששלחוהו  
שהוא כשר ממורביטרי.

And what you asked in another letter about the wine brought from Majorca; and the converts who brought it testified that it was kosher [wine] from Morbitere.<sup>34</sup>

<sup>30</sup> *Shu"t Ribash*, no. 4, p. 4.

<sup>31</sup> *bBekh.* 35a.

<sup>32</sup> *Mishneh torah, Hilkhoh edut* 11:8.

<sup>33</sup> *Shu"t Rashba*, no. 1:64.

<sup>34</sup> *Shu"t Ribash*, no. 12, p. 14.

The considerations mentioned in this responsum are identical to those of the previous one, and certain passages correspond word by word. For example, the passage here dealing with wine possessed by converts and their attitude towards the wine of Gentiles is identical to the discussion of the topic in the previous answer, with the only significant difference in the toponym: in the former responsum Valencia is mentioned, in this one Majorca. There are two major differences between the two responsa. This latter responsum lacks the general introduction concerning the violation of precepts under compulsion. But it contains a short excursus with respect to the oath taken by converts, and states that they are unreliable regarding issues of *kashrut* even if they make an oath concerning the matter.

#### SIMEON BEN ZEMAḤ DURAN (TASHBEZ)

R. Simeon ben Zemaḥ Duran (also called the Tashbez, from the acronym of the title of his responsa collection: Teshuvot Shimeon ben Zemaḥ) was born in Majorca in 1361. He studied in Palma with R. Ephraim Vidal and later in Aragon with R. Jonah Desmaestre, whose daughter he eventually married. The Tashbez had a vast halakhic knowledge, and was also skilled in natural sciences such as medicine, mathematics and astronomy. After the massive religious persecutions of the year 1391, he left Majorca, and settled in Algiers with his family, where he joined the *bet din* of R. Isaac ben Sheshet Perfet. As it was stated above, his relationship with the Ribash was not void of tension. After the death of the Ribash (1408), R. Simeon ben Zemaḥ Duran became the most prominent rabbi of Algiers. He died in 1444. The responsa of Simeon ben Zemaḥ Duran were first published in Amsterdam in 1738.<sup>35</sup>

There are five extant responsa written by the Tashbez that deal with wine and converts. The gradual change of his opinion can be observed clearly in the responsa. From a relative permissiveness, the Tashbez eventually moved to a more severe attitude towards converts. This change can be explained by his personal experiences with converts. The motives for the alteration of his view were explicitly detailed by him in the reasoning given with the decisions.

<sup>35</sup> See Hirsch Jacob Zimmels, "Duran, Simeon ben Zemaḥ," in *EJ*, vol. 6, coll. 302–306. See also: Isidore Epstein, *The Responsa of Rabbi Simon ben Zemaḥ Duran* (New York: Ktav, 1968); Abraham Moses Hershman, *Rabbi Isaac b. Sheshet Perfet and his Times* (New York: Jewish Theological Seminary, 1943).

The introduction of the responsum is the following:

זה כתבתי על היין ששלח חמיו של ה"ר משה עמאר ישמרהו צורו. ששלח אליו בהיותו עדיין באונס השמד במיורקה ושאל מזה אל הרב ר' יצחק בר ששת נר"ו וגם לשאר בעלי הוראה שהיו בכאן ולא אמרו בזה לא איסור ולא היתר מפני שהיה בתחלת האונסין. ונתנו הרשות אליו לשאול ממני על זה ולהתנהג על פי הוראתי ולא רציתי להורות בו כי אם על פי הכתב.

I have written this one about the wine that was sent by the father-in-law of Moshe Amar—may his Rock protect him. He [the father-in-law] sent it to him while still under the compulsion of the persecution in Majorca. He [Moshe Amar] asked R. Isaac b. Sheshet—may the Almighty protect and bless him—and the other authorities that were here, but they did not determine [whether it was] prohibited or permitted, since it was at the beginning of the persecution. They gave him permission to ask me about this issue and to follow my instructions, and I wanted to commit the instructions to writing.<sup>36</sup>

The abbreviation that appears next to the name of the Ribash (נר"ו: "נטריה רחמנא ופרקיה"; "may the Almighty protect and bless him") shows that he was still alive at the time when the responsum was written, which suggests that it was written before 1408. It is also possible that this responsum is the earliest of the texts discussed in this chapter, and that those of the Ribash were written after this one (as according to the Tashbez, the Ribash did not wish to answer the question at the time, though as seen above, he did answer similar questions later, and that is why the Tashbez himself undertook the task).

The two major subjects of the responsum are converts handling the wine and converts testifying concerning the *kashrut* of the wine. The basis for the discussion is the ruling of Maimonides:

אבל אם יכול למלט נפשו ולברוח מתחת יד המלך הרשע ואינו עושה הנה הוא ככלב שב על קיאו והוא נקרא עובד עבודה זרה במזיד והוא נטרד מן העולם הבא ויורד למדרגה התחתונה של גיהנם.

<sup>36</sup> *Sefer ha-Tashbez*, no. 1:63, p. 135.



But if he could flee and rid himself of the wicked ruler's hand, and does not do that, he is like a dog that returns to his vomit, and he is called a willful idolater, and he will be banished from the world to come, and will descend to the lowest step of Hell.<sup>37</sup>

The basic statement of the Tashbez is that it should not be automatically supposed that the converts could have left the land of persecution. It should be assumed that they stayed in Christian territory under the pressure of the prevailing circumstances. The Tashbez enumerates some possible reasons, like financial problems or fear: maybe they could not cover the expenses of the transfer; maybe they were afraid that they would be severely punished if it was discovered that they wanted to emigrate. Consequently, he claims that the statement of Maimonides does not apply to these converts. The Tashbez draws attention to the wording used by Maimonides, and especially that he mentioned divine punishment only, but did not specify the worldly consequences. According to the Tashbez, the reason for this is that only divine omniscience can determine whether a particular person was a voluntary convert who stayed in the land of the persecution by his own free will, or whether he stayed for a reason unbeknownst to human observers.

The Tashbez took a further step, explaining that even if it was certain that the converts could have left the country without having endangered themselves, they should not be treated as willful idolaters. The example given by him is theoretical, and is based on biblical precedent:

ועוד אני אומר שאפילו נודע לנו שאין לזה יראה מלברוח כגון שהמלך הרשע  
ההוא העביר קול בכל מלכותו מי בכם בכל (עמי) [עמו] יהי אלהיו עמו ויעל אפילו  
הכי אין לחוש למגעו של זה הנמנע מלצאת ועומד שם.

And I say, furthermore, that even if it is clear to us that there is nothing to fear in escape, like [a situation in which] the wicked king made a proclamation throughout all his kingdom, "whoever is among you of all his people, may the Lord his God be with him, let him go up."<sup>38</sup> Even in a situation like this, the wine

<sup>37</sup> Quoted by the *Sefer ha-Tashbez*, no. 1:63, p. 135, Cf. *Mishneh torah, Hilkhot yesodei ha-torah* 5:4.

<sup>38</sup> Cf. II. Chron. 36:22-23.

handled by a person who refrained or was withheld (*nimna*) from leaving, and who stayed there, should not be suspected of being prohibited.<sup>39</sup>

The situation described here seems to be a hypothetical one. The Catholic rulers in general did not permit converted Jews to leave the country, since it was evident that they would then return to the Jewish faith. According to Catholic belief, baptism is a sacrament that has an irreversible effect in all cases, no matter whether the conversion took place voluntarily or under compulsion. Thus, returning to the former faith was considered a sin of the utmost severity, and had to be prevented by all means. The Christian authorities in Majorca issued subsequent decrees forbidding forced converts to leave the island. In spite of this, a great number of converts did leave Majorca and returned to Judaism in North Africa.<sup>40</sup> The Tashbez may have alluded to this emigration.

The Tashbez differentiates between the passive act of staying in a place where one would possibly commit transgressions, and the active act of going to a place of the same kind. As an analogy, he considers the halakhah regarding captured women. Women who were captured by criminals are permitted for their husbands, since they acted under compulsion. But if they followed the criminals by their own will, they are prohibited for their husbands, because in this case the state of compulsion does not apply.<sup>41</sup> However, according to the Tashbez, converts are not comparable to such women, because the act of following the criminals is an active deed, whereas staying in the land of persecution is a passive one. It is emphasized in the argumentation of the Tashbez that this approach to converts is not particularly permissive, but it is in accordance with the strict sense of the law.

In the opinion of the Tashbez, coercion is a key factor in establishing the status of converts. As converts began to violate religious law under compulsion, they should be deemed as forced converts, and their legal status as such should not be changed until evidence is produced of the willful alteration of their status. The mere fact of staying in the land of persecution is, according to him, not such evidence. Consequently, they ought not to be treated as voluntary converts on the basis of bare presumptions, because:

<sup>39</sup> *Sefer ha-Tashbez*, no. 1:63, p. 135.

<sup>40</sup> See Haim Beinart, "Majorca," in *EJ*, vol. 11, coll. 795–804.

<sup>41</sup> Cf. *bKet.* 51b.

דחוקה מבוררת היא זו כחזקת נשואה וכחזקת פנויה שאין להוציאן מחזקתן אלא בדבר ברור.

Their legal status is unambiguous as the legal status of a married or a single woman, that cannot be questioned unless evidence is produced.<sup>42</sup>

In the continuation of the discussion, the Tashbez put forward that if the converts themselves said that they had stayed in the land of the persecution for financial reasons (*ones mamon*), they should not be treated as voluntary converts;<sup>43</sup> and that a person who himself claimed that he had committed a transgression purely for financial reasons should not be trusted with his claim, but rather it had to be supposed that he had other reasons for the transgression as well.<sup>44</sup>

What follows from this discussion is that the wine handled by a convert is to be considered kosher unless it is known for sure that the person has violated Jewish law of his own will. Staying in the land of persecution is not to be considered evidence of willful transgression.

The second subject of the discussion in the responsum is wine made or possessed by converts. Two arguments are cited by the Tashbez that could result in the prohibition of such wine, and both arguments are eventually refuted by him. The first one is the view of R. Meir, according to whom a person suspicious of transgressing a percept is disqualified from testifying concerning it.<sup>45</sup> The Tashbez claimed that this assertion did not apply in case of a general, not well-established suspicion. Then he moved on to the explication of another statement of R. Meir, according to which a person suspected of neglecting one religious law is suspected of disregarding the whole Law.<sup>46</sup> The Tashbez made a distinction between a general suspicion and a well-established assumption, and drew a comparison between the case of the converts and the *kohanim*. He claimed that if a convert could be disqualified based on a general suspicion only, so too could the *kohanim* be disqualified from passing judgments. One of the obligations of the

<sup>42</sup> *Sefer ha-Tashbez*, no. 1:63, p. 136.

<sup>43</sup> Cf. bSanh. 61b and bShab. 72b.

<sup>44</sup> Cf. bKet. 18b.

<sup>45</sup> Cf. bBekh. 30a.

<sup>46</sup> *Ibid.*

*kohanim* is to pass judgments,<sup>47</sup> but they can do so only if they themselves are impeccable. Yet the general assumption regarding *kohanim* is that they blemish the sacrificial animal, because only then can they eat it themselves instead of having to sacrifice it. Nonetheless, the *kohanim* as a group cannot be regarded as suspicious of committing a certain transgression, and therefore they cannot be disqualified because of one person who did actually commit that transgression. Similarly, the converts as a group cannot be suspected of neglecting religious laws on account of some individuals who did in fact neglect them. One should be deemed suspicious only in case of some specific, well-established suspicion.

The second argument cited and refuted by the Tashbez is that converts did not care if Gentiles handled the wine, and that they were similar in this respect to Cutheans (Samaritans). It is an important aspect of rabbinic tradition that Cutheans themselves did not offer libations, but at the same time they did not care if Gentiles handled their wine.<sup>48</sup> However, the Tashbez explains that converts differ from Cutheans in two respects. First, Cutheans are allowed to drink wine handled by Gentiles, so it is reasonable to suppose that it does not bother them if Gentiles have handled that wine. Converts, on the other hand, know that wine handled by Gentiles becomes forbidden for them, and they would not drink such wine. Secondly, the precept of **ולפני עור לא תתן מכשול** (“you shall not put a stumbling block before the blind”)<sup>49</sup> does not apply in the case of Cutheans, but it is binding for converts, and consequently, converts would not give forbidden wine to a fellow Jew. As the Tashbez explains, even if one rejects the first argument, and holds that converts are suspected of drinking wine handled by Gentiles, it must be accepted that they would not give such wine to a Jew:

יין ששולחין לישראל ואומרים שהם עשאוהו בטהרה הן נאמנין דהא קיימא לן  
כרבן שמעון בן גמליאל דאמר נאמן הוא על של חברו ואינו נאמן על שלו.

[Concerning] the wine that they are sending to a Jew, and when they say that they have made it in [i.e. observing the rules of] cleanness, they are reliable,

<sup>47</sup> Deut. 21:5: “And the priests the sons of Levi [...] according to their word shall every controversy and every stroke be.”

<sup>48</sup> Cf. bAv. Zar. 31b.

<sup>49</sup> Lev. 19:14.

since it is established for us according to Rabban Gamaliel that he is reliable concerning his fellow Jew's [wine] but not reliable concerning his own.<sup>50</sup>

In contrast to the responsum of the Ribash<sup>51</sup> discussed above, Ribash (no. 4), the Tashbez does not mention here that some authorities do not accept the view of Rabban Gamaliel, and follow that of his opponent, R. Meir. The reason for the statement of Rabban Gamaliel, according to the interpretation of the Tashbez, is that testimony concerning the wine of another person does not imply profit and benefit for the witness. In consequence, a suspicious person is reliable, even with regard to his own property, if the testimony does not imply profit and benefit for him. And this is exactly the case here, regarding wine sent as a present: since the wine is a present, the sender does not obtain any profit. The Tashbez adds, that the kind of benefit that may result from a present, such as returning the kindness, etc., is not in the category of profit, because it is not an imminent and secure benefit (as the price of an article sold would be, for example).

Summing up the discussion, the Tashbez establishes as follows:

אלו האנוסין בחזקת כשרות הם מסתמא אלא אם כן נתברר לנו שהורעה חזקתן והיותם בלתי נזהרין מדברים אסורים אבל מן הסתם אין לנו להוציאן מחזקתן וכל שכן שנאמנין הם להעיד בכל איסורין שבתורה וכל שכן באיסורין דרבנן כסתם יינם והרי הם כישראלים גמורים.

The presumption concerning the legal status of these converts is that they are *kosher* in general, unless it becomes clear that their legal status has changed because of failing to refrain from forbidden things. But their legal status should not be questioned without a specific reason. Therefore, they are reliable concerning all prohibitions in the Torah, and all the more so concerning rabbinical prohibitions, such as [against] the wine of Gentiles, and they are like Jews in every respect.<sup>52</sup>

At the end of the responsum, there are two further arguments, which were added later. The first one cites the opinion of R. Aaron ha-Levi of Barcelona

<sup>50</sup> *Sefer ha-Tashbez*, no. 1:63, p. 137. Cf. bBekh. 35a.

<sup>51</sup> Cf. above, *Shu"t Ribash*, no. 4.

<sup>52</sup> *Sefer ha-Tashbez*, no. 1:63, p. 138.

(1235-ca. 1290), according to which a person suspected of consuming forbidden food is not suspected of feeding others with forbidden food.<sup>53</sup> The Tashbez points out that the view of R. Aaron ha-Levi is based on an interpretation of a Talmudic passage,<sup>54</sup> which is contrary to the interpretation of Rashi<sup>55</sup> and the Rashba.<sup>56</sup> The Tashbez adds that the interpretation of Rashi and the Rashba is better than that of R. Aaron ha-Levi. Nevertheless, since the view of R. Aaron ha-Levi is also widely accepted, it supports his decision.

The second argument to be considered is a reaction to a passage of *Maamar kiddush ha-Shem*,<sup>57</sup> according to which those who could escape from the land of persecution, yet who stay there because they fear for their children, are to be regarded as staying almost voluntarily. The Tashbez does not challenge this statement, but he does comment on it. In his opinion, even if a person remains there for this reason, it should be supposed that he is prevented from leaving the country by another reason, too. The Tashbez refers back to his former discussion of the subject, according to which only divine omniscience could determine why exactly a person does not escape, and claims that Maimonides also mentions only divine punishment for the same reason.<sup>58</sup> Besides, the Tashbez adds that Maimonides ruled that a person who committed idolatry because of love or fear was exempt from punishment until he accepted the idol as a deity.<sup>59</sup> According to the Tashbez, it is evident that a person who stays because he fears for his children does not accept the idol as a deity, and therefore he is exempt from the charge of idolatry. He adds that his wine might still be forbidden, because the idolatrous act committed by him is indeed an effective act. Accordingly, just as the offering of a person who does not accept the idol as a deity becomes forbidden, so too should the wine of converts. The Tashbez does not elaborate on this proposition;

<sup>53</sup> Cf. Aaron ha-Levi, *Bedek ha-bayit*: Bayit 4, Shaar 2.

<sup>54</sup> bAv. Zar. 39b.

<sup>55</sup> Rashi ad loc.

<sup>56</sup> Cf. Solomon ibn Adret: *Torat ha-bayit*: Bayit 4, Shaar 2; *Shu"t Rashba*, no. 1:64.

<sup>57</sup> *Maamar kiddush ha-Shem* (Tractate Concerning Martyrdom) is an alternative title of the *Iggeret ha-shemad* (The Letter about Religious Persecution) written by Maimonides concerning forced conversion to Islam at the time of the Almohad persecution in al-Andalus in the 12<sup>th</sup> century. The passage referred to is at the end of the letter—on p. 119 in the edition of Joseph Kafih. See R. Moshe ben Maimon, *Iggeret* (Jerusalem: Rav Kook, 1994), p. 119.

<sup>58</sup> Cf. above, and *Mishneh torah*, *Hilkhot yesodei ha-torah* 5:4.

<sup>59</sup> *Mishneh torah*, *Hilkhot avodah zarah* 3:6, cf. bSanh. 62b, bShab. 72b.

he confines himself to mentioning it. Finally, the Tashbez remarks that the statement of Maimonides in *Maamar kiddush ha-Shem* might indicate that Maimonides supposed that those who stayed out of fear for their children did in fact accept the idol as a deity, since it is evident that the love of God is prior to the love of the family. Or maybe Maimonides wrote the said passage for didactical reasons, in order to give impetus to converts to make decision as difficult as that of leaving behind their family.

The main point of the responsum is that converts ought to be regarded as *kosher* until proven otherwise. According to the arguments of the Tashbez, the mere fact of staying in the land of persecution does not fall into the category of proof.

*Tashbez, Responsa, no. 1:66*

The question of this responsum was sent by a certain Moshe Naggar from Majorca. It concerns wine kept in a store-house in the courtyard of a Gentile woman.

The wine was guarded at first by a Jew who was staying in the store-house. Then, the majority of the wine was carried away, and the Jew left, too. The store-house was closed, and the keys were handed over to a second Jew, who was living in the village. The Gentile woman offered the rest of the wine for purchase to the father of the first Jew, and he bought it. At the same time, the second Jew, who was guarding the keys, returned the keys to the woman, saying that the wine was not kosher, and reported this to the buyer as well. The second Jew testified that although the doors of the store-house were closed, one of the doors that led to the courtyard of the woman was in such a poor condition that it was impossible to close the door in a proper way, so anyone could have entered. In his testimony he gave a detailed description of the doors and the locks. He also said that the woman kept her utensils in the store-house, and therefore she definitely entered it, and did so through the door that was in poor condition. He claimed that when he saw this, he cast the keys to the woman without anyone being present there.

Despite these obvious statements in the Jew's testimony, the wine was still not prohibited unambiguously, as there were other circumstances that left the situation unclear.

The keys were at some point handed to a convert, who later testified that he was present when the Jew returned the keys, and that the keys were not returned to the woman, as the Jew had stated, but rather to him. This way, the wine was theoretically under continuous Jewish attention. The doors of the store-house were examined, and it turned out that the situation did not match the situation described by the Jew who had formerly guarded the keys: the locks were in a different position, and none of the doors was in bad condition.

Thereupon, some relied on the testimony of the Jew and declared the wine to be forbidden, and others trusted the convert. Those who trusted the convert claimed that the Jew was bribed by the person who bought the wine. They argued that the wine acetified, and the Jew did not want to pay for it. And if the wine was declared prohibited, the buyer could say that the purchase was invalid, since he purchased the wine on condition that it was kosher, and thus the Jew would not have to pay. In the meantime, he refused to pay the woman, who in turn denounced the buyer to the Gentile authorities. Those who trusted the convert backed their opinion with a hearsay, according to which the buyer tried to come to a compromise with the woman, and offered the woman to stop spreading rumors about the wine being prohibited if she agreed to settle for a partial payment of his debt.

Those who trusted the Jew argued that the wine was prohibited. They argued that the convert might have been bribed by the Gentile woman to change the position of the locks so that reality would contradict the words of the Jew. Moreover, they claimed that the wine was not acetified yet when the Jew returned the keys, so the buyer had no reason for bribing the Jew at the moment of his testimony. The wine acetified precisely during the long discussion about it. They stated furthermore that converts were unfit for guarding wine, despite being reliable as regards wine made or offered by them:

ולענין נאמנות האנוסים הם אומרים שאף על פי שהם נאמנין אצלם כשאומרים מפלוני יהודי קנינו זה היין או כאשר הם עושים אותו בביתם אבל בשמירת היין אין מנהגן להאמינן כי מפני אונסן אינן יכולין למנוע הגוי מליגע ביין ואינם מקפידין במגע גוי. ומעשים הם בכל יום שאינם נאמנין בשמירת היין אף על פי שהם דורכים בגת עם ישראל והמנהג הוא להפקיד היין ביד ישראל ולא ביד אנוס.



As regards the reliability of the converts, they say that although they believe them when they say that “we bought this wine from a Jew called so-and-so,” or when converts make the wine in their houses, it is nevertheless not the custom to rely upon converts in guarding the wine, for as a result of the pressure on them, converts cannot detain Gentiles from handling their wine, and they themselves do not care about Gentiles handling [their wine]. It is common that they are not held reliable for guarding the wine, although they tread [grapes] in the wine-pressing vat alongside Jews. But the custom is to entrust the wine to Jews and not to converts.<sup>60</sup>

In his answer, the Tashbez first discusses the problem regardless of the fact that the wine was guarded by a convert, and then examines also the subject of converts. In the general discussion of the case (regardless of the matter of converts), he puts forward several reasons for the prohibition of the wine. The most important point of the exposure is that in order to ensure the *kashrut* of the wine, the use of a seal is required. If they did not use a seal on the wine or the barrel, the wine is forbidden in any case.

In his discussion concerning converts, the Tashbez repeats the principles exposed previously by the Ribash<sup>61</sup> and by himself:<sup>62</sup> If a convert commits idolatry or profanes the Shabbat in public, without being forced to do so, the wine handled by him becomes forbidden. If he drinks the wine of Gentiles, he is reliable concerning the wine of another person, but unreliable concerning his own. But if he receives payment for guarding the wine, it becomes similar to his own, and therefore he becomes unreliable concerning its *kashrut*. If he does not drink the wine of Gentiles, but does not care about Gentiles handling kosher wine, his wine is forbidden. The Tashbez quotes the passage written by Maimonides regarding those who could escape from compulsion and persecution but refrain from doing so, where these persons are compared to dogs returning to their vomit.<sup>63</sup> He does not interpret the passage, but remarks the following:

יש בענין נאמנותן ומגען דבר קשה מאד לא אסבור סברות בזה, אבל אכתוב לך  
לשון הרמב"ם.

<sup>60</sup> *Sefer ha-Tashbez*, no. 1:66, p. 144.

<sup>61</sup> See above, *Shu"t Ribash*, nos. 4, 12.

<sup>62</sup> See above, *Sefer ha-Tashbez*, no. 1:63.

<sup>63</sup> See above, *Sefer ha-Tashbez*, no. 1:63. Cf. *Mishneh torah, Hilkhoh yesodei ha-torah* 5:4.

There is something very difficult regarding the reliability of converts and the handling of wine by them, and I shall not put forward logical arguments concerning this, but I will quote Maimonides for you.<sup>64</sup>

The Tashbez discusses the subject of the relationship between converts and Christians. He emphasizes that the converts must prove to be attached to Christians and dissociated from their former religious and ethnical environment:

שאלו היה ביד ישראל השומר הי' מותר, השתא דהוי ביד אנוס אסור לפי מה שאתם רואים מענינים וממנהגם עם הגוים. שהרי זה האנוס בודאי כיון דבחזקת גוי הוא אצל הנכרית היה שומע לה שאם יעמוד בפניה תאמר לו עדיין אתה יהודי ודעתך קרובה אל היהודים יותר מהגוים וכיון שכן אינו נאמן בשמירתו. [...] בודאי אחר שנכנס שם האנוס אם רצתה הנכרית ליכנס באוצרה [...] לא היה מונעה וכיון דמירתת מינה שלא תאמר לו עדיין אתה נוהג מנהג יהודי מחפי עלה אם נגעה ביה.

If the wine was in the hands of a Jew, it would be permitted; but now that it is in the hands of a convert, it is prohibited, in accordance with what you see from their behavior and custom with Gentiles. As the convert is deemed as Gentile by the Gentile woman, he must listen to her, for if he defied her, she would say to him: "You are still a Jew, and your heart is closer to the Jews than to the Gentiles!" For this reason, the convert is not reliable regarding guarding the wine. [...] Obviously, if the woman wanted to enter her store-house after the convert [...], he would not prevent her from doing so, because he would be afraid that she would say that he still behaves according to the custom of the Jews, and he would cover for the woman who touched the wine [he would act as an accomplice].<sup>65</sup>

The Tashbez discusses at length the custom of the community, namely that it relies on converts with respect to wine made by them, but considers them unfit for guarding it, claiming that they would not be able to prevent Gentiles from touching it. The Tashbez criticizes this custom, stating that if converts do not care about Gentiles handling their wine, then apparently

<sup>64</sup> *Sefer ha-Tashbez*, no. 1:66, p. 136.

<sup>65</sup> *Sefer ha-Tashbez*, no. 1:66, p. 136.

wine made by them should also be prohibited. He remarks that not all converts behave the same way, and adds:

אנו רואים מאותם הבאים בכאן שיש מהם שהם גוים גמורים ואם כן מי מפסי מי הוא כשר ומי הוא פסול. ועוד נראה שאינכם חוששים לחלול שבת בפרהסיא לפי הנשמע רובן וקרוב לכלן ואפילו אותן שהיו נזהרים מזה החמיצו ואינן נזהרין כלל. ועוד נראה שאין אתם חוששין כלל לעיכוּבן שם אחר נתינת רשות לצאת אפילו לאותן שהן מהרהרים בליבין יציאה כלל ובנו להם בתים ולקחו לבניהם נשים ובנותיהם נתנו לאנשים ועוד אותם שהיו בכאן וברצונם חזרו לשם מה יהא עליהם דינם כדין אותם אנוסים או לא.

We see that some of those who come here are Gentiles completely, and who shall decide who is worthy and who is disqualified? Moreover, apparently you do not have reservations because of the profanation of the Shabbat in public, though according to the hearsays, their majority or even almost all of them [desecrate the Shabbat publicly], and even those who had refrained from this have changed for the worse, and do not refrain from this at all. Apparently you do not have reservations if they stay there after they have received permission to leave [the country], or if they do not consider leaving [the country] at all, and have built houses for themselves, and have chosen women for their sons, and have given their daughters in marriage to men. Not to mention those who have been here and returned there of their own accord—should they be treated as forced converts or not?<sup>66</sup>

The Tashbez explains that the community of Majorca obviously believes that a person who stays in the place of persecution does not become a voluntary convert. He also offers an interpretation of the passage from Maimonides mentioned earlier,<sup>67</sup> which makes this position possible. The statements of Maimonides refer to a situation in which the ruler keeps the converts under continuous and strict control. Accordingly, the Tashbez adds the following argument:

אבל בגזרות אלו ובפרט באותו מקום הם מקילין על האנוסים שיעשו כרצונם ואין אונס אותם לעבוד עבודה זרה וכמעט שבחזקת יהודים הם אצלם עד שהם נותנים

<sup>66</sup> *Sefer ha-Tashbez*, no. 1:66, p. 140.

<sup>67</sup> Cf. *Mishneh torah*, *Hilkhot yesodei ha-torah* 5:4.

להם רשות לצאת כחפצם ואילו היה גוי אחד רוצה לצאת משם לשוב לדת משה ויהודית אפילו היה נותן כל ממון שבעולם לא היו מניחים אותו ואדרבה היו ממיתין אותו ומוזה נראה שהם בחזקת יהודים גמורים אצלם אלא שמחויב דתם הוא שמי שנשתמד אפילו באונס אינו יכול לחזור לדת ישראל להכי הם מעלימים עינם מהם ואין להם בשמדותם אלא ששמותיהם כשם הגוים [...] ולפי שהאנוסים הם רואים כן נחשב בעיניהם היתר גמור העכוב שם.

But in case of these persecutions, and especially in that place [in Majorca], they let converts do whatever they want, and they are not forced to commit idolatry, and they are almost deemed by them [Christians] to be Jews, to such an extent that they give them permission to leave the country if they wish. But if a Gentile wanted to emigrate and to become a proselyte, they [Christians] would not let him do that. On the contrary, they would kill him, even if he gave them all the money in the world. It is obvious from this that they are completely considered as Jews by Christians, but according to the principle of their religion [Christianity], even if a person converted under the duress of force, he cannot return to Judaism. And for this reason, they pretend that they did not see [the behavior of the converts]. The only effect of the persecution is that they have to use Gentile names [...], and, seeing this situation, the converts think that it is permitted to stay there.<sup>68</sup>

The Tashbez clarifies that according to the community of Majorca, a convert who desecrates the Shabbat publicly in order to pretend to be a Gentile, but observes it in his house as much as he can, is apparently not considered a person who disregards the entire Law, and wine handled by him is therefore permitted. He adds that it is evident that converts drink the wine of Gentiles willfully, and claims that for this reason it is surprising that the community of Majorca relies on them as regards wine made by them. The Tashbez resolves this contradiction by suggesting that according to the community of Majorca, converts are suspected to eat forbidden food, but they are not suspected to feed Jews with such forbidden food.

Compared to the former responsum, the reader has the feeling that the opinion of the Tashbez regarding converts has undergone some changes. He is more skeptical about them. His reservedness is based on personal

<sup>68</sup> *Sefer ha-Tashbez*, no. 1:66, p. 140.

experience (converts arriving in Algiers and neglecting Jewish Law, or even willfully returning to Christian territory), and on information about the circumstances of converts on the Iberian Peninsula (they gave up observing the Shabbat, they drank prohibited wine, they did not want to leave the peninsula, etc.). Although the prevalent customs seem controversial to him, the Tashbez still suggests ways to explain and legitimize them.

*Tashbez, Responsa, no. 2:60*

The question was sent by a certain Mordecai Naggar<sup>69</sup> from Tunis. It concerns a wine made in Morbiter that was sent to a Jew by a convert from Majorca. The wine was stored in sealed barrels, and the convert promised that he would send a letter written by that Jew of Morbiter who had made the wine that would certify the provenance of the wine. The question was whether the seal and the statement of the convert was sufficient to regard the wine as kosher.

The answer of the Tashbez contains some general considerations regarding converts. First, that it is evident that converts are unreliable concerning the *kashrut* of their own wine. Secondly, that converts as a rule do not consume forbidden food if permitted food can be obtained easily. Likewise, they do not trade in forbidden wine.<sup>70</sup> Although it is not stated explicitly, it can be assumed from the answer that the Tashbez holds that wine does not become forbidden if touched by a convert. This opinion of his becomes obvious from his evaluation of the case. He maintains that the provenance of a wine can definitely be established on the basis of its smell and color:

<sup>69</sup> A certain Moses Naggar was mentioned before in *Sefer ha-Tashbez*, no. 1:66, as the inquirer of the question sent from Majorca. Naggar, meaning “carpenter,” is a very widespread Arabic family name also used by Jews. It cannot be assumed that two bearers of this same popular name are necessarily relatives, although it is of course possible.

<sup>70</sup> This proposition of the Tashbez is interesting. From the statement that “they do not trade in forbidden wine” it follows that they do trade in permitted wine. Now, as the Tashbez just declared that they are unreliable concerning their own wine, which implies every wine from which they make profit, it might be expected that he would ban the wine trade completely. Nevertheless, he does not add any further considerations to his statement cited above. A possible solution to the apparent contradiction here is that the wine in which a person trades does not become the trader’s property in any sense, and his activity is restricted to the transport of the goods, without obtaining any share in the goods themselves (although he does gain profit from their transport).

אבל מה שאפשר לומר בזה היין הוא שהיין הזה ודאי לא עשאו האנוס הזה שהרי לא נעשה במיורקא והכל מכירין במראהו וטעמו שממלכות באלנסייה הוא.

It can be said concerning this wine that it is evident that it was not made by this convert, since it was not made in Majorca, as everybody can recognize by its appearance and smell that it is from the kingdom of Valencia.<sup>71</sup>

The Tashbez explains that since the wine was certainly made by Jews, and held in sealed barrels, it could become forbidden only in the event that the convert opened the barrel, offered libation offering from it, and then sealed the barrel again. But as converts do not like to offer libations, he holds that this possibility can be rejected. Therefore, states the Tashbez, all wine transported by converts from Morbiter to North Africa could, in theory, be permitted. But this is not the case, he continues, since a minority of converts do eat forbidden food even if permitted food can be found easily. Consequently, one should not rely on general presumptions, but on the specific person who sends the wine:

ואני רגיל לומר למי שבא לו יין אם אתה סומך על המשלחו שתהו אתה בביתך והיזהר שלא תמכרנו לישראל שאינו בקי במשלחו.

I usually say to those who receive wine that if you trust the person who sent it, drink it in your house, but beware from selling it to a Jew who does not know the sender well.<sup>72</sup>

But in this specific case, the Tashbez says that the wine is permitted in any case, since its origin can be cleared and attested. In this sense, wine is similar to eggs claimed by the Gentile seller to be eggs of a ritually clean bird.<sup>73</sup> As the origin of the eggs can be clarified, so the origin of the wine can be determined too, and consequently the wine is permitted. All the more so, since the convert would not allow himself to sell forbidden wine to the Jews if the truth could be found out easily:

<sup>71</sup> *Sefer ha-Tashbez*, no. 2:60, p. 62.

<sup>72</sup> *Sefer ha-Tashbez*, no. 2:60, p. 62.

<sup>73</sup> bHul. 63b.

וגם האנוס יחוש שמא יאסרו הקהל יינו אם בתירווש יכחש בם.

And also, the convert will be anxious that the community will prohibit his wine “if the new wine shall fail them” (Hos. 9:2).<sup>74</sup>

*Tashbez, Responsa, no. 3:227*

The text is not a proper responsum, but a letter of admonition written to the community of Majorca before its general conversion. The letter contains an addition at the end, which goes as follows:

אחר שכתבתי זה לא שמעו לקולי ותוך ימים מועטים פגעה בהם מידת הדין  
ונשתמדו כולם בשביל המחלוקת ואני את נפשי הצלתי.

After I had written this, they did not listen to me. Within a short time they were struck by Divine Justice, and all of them converted due to the dissensions. But I have saved my soul.<sup>75</sup>

The letter touches on various problems, such as quarrels in the community, negligence of the precept of wearing ear-locks, etc., and it also discusses the issue of wine at length.

The Tashbez severely criticizes the community on account of its custom of drinking wine sold by an Arab woman, who might have undergone ritual immersion, but, as the Tashbez assumes, not in the presence of three Jews, and who never accepted the precepts of Jewish Law—all of which are requirements of conversion to Judaism in the case of women. The Tashbez appears to be sure about the invalidity of the immersion, and he justifies his view by reminding the community that the activity of proselytizing was absolutely forbidden by Christian authorities, and that the community really should refrain from it for fear of the consequences.

Moreover, the woman sells the wine to Jews and Gentiles alike, and she uses the same vessel for measuring it. The Tashbez explains that the wine would be prohibited for this reason alone, even if it was measured out by

<sup>74</sup> *Sefer ha-Tashbez*, no. 2:60, p. 63.

<sup>75</sup> *Sefer ha-Tashbez*, no. 3:227, p. 233.

a Jew. His reasoning is that the wine in the vessel of the Gentile and in that of the seller forms a continuum, and thus the wine that remains in the vessel of the seller becomes forbidden. If the seller immerses his vessel in the barrel of the *kosher* wine again, that also becomes forbidden. Therefore, the Tashbez suggests the rinsing of the vessel after each usage.

And another charge the Tashbez brings up against the community is that according to the information he received, it let Gentiles put the cane of measurement into the barrel of their *kosher* wine. As the Tashbez says:

לא נשאר אלא שתלכו לחנויות של גוים לקנות משם יין.

There is nothing left, but that you go to the shops of the Gentiles in order to buy the wine there.<sup>76</sup>

This letter is most important from the point of view of the prevalent customs in the Jewish community of Majorca. It probably sheds even more light on the reality than the responsa discussed earlier. It might be suggested that those who disregard Jewish precepts to such an extent, would normally not send questions to an authority similar to the Tashbez, or to any halakhic authority at all. Therefore, the likelihood of evidence of their customs and manners surviving in responsa literature is relatively limited.

*Tashbez, Responsa, no. 3:312*

The last responsum of the Tashbez to be discussed here concerns wine made and sent by converts. The formulation of the question is interesting, since it contains the phrase **האנוסים האחרונים אשר עדיין לא יצא עליהם שם שהם מחללים שבת בפרהסיא** (“the last converts who have not yet become notorious on account of desecrating the Shabbat publicly”),<sup>77</sup> which means that most converts were by this time evidently considered to be profaners of the Shabbat. The question is as follows:

<sup>76</sup> *Sefer ha-Tashbez*, no. 3:227, p. 232.

<sup>77</sup> *Sefer ha-Tashbez*, no. 3:312, p. 310.



עוד שאלת מאלו האנוסים האחרונים אשר עדיין לא יצא עליהם שם שהם מחללים שבת בפרהסיא אם הם נאמנים על עצמם ששולחים יין בספינה ויאמרו שתו יין זה כי אני עשיתי בביתי אם הוא מותר לשתות.

Another question regarding these last converts who have not yet become notorious on account of desecrating the Shabbat publicly: whether they can be trusted when they send wine by ship, and they say: “drink this wine, because I have made it in my house”—if it is permitted to drink it.<sup>78</sup>

The answer reveals the considerable change of opinion of the Tashbez regarding converts. In the first responsum discussed above<sup>79</sup> he ascertained that just because of some general suspicion the converts as a group should not be treated as suspicious of committing certain transgressions. In this responsum, however, he holds that even in the case of a general suspicion they are suspected of disregarding the Law. For this reason, even wine handled by them has to be prohibited. The Tashbez adds that some might not accept the view of treating converts as suspicious because of a general suspicion (as he himself did not hold this view earlier). In this case, although wine handled by converts would be permitted, they were not reliable with regard to wine made and sent by them (but they could be trusted concerning the wine of another person). The Tashbez explained his opinion by adding some ironic remarks:

לפי שאפילו האנוסים הראשונים שהיו ודאי אנוסים מפני חרב שלופה לא היו נשמרים מהתגאל ביין משתייהם ואפילו החכמים הגדולים וכל שאלותיהם לא היו אלא אם יברכו עליהם ברכת הנהנין וכן אם יכולין לבטלו מעט מעט במים וקמא קמא בטיל. וכל שכן באלו, שלא נאנסו אונס גמור שאין ספק שאין נשמרים מלשתות סתם יינם. [...] ולפי זה אסרתי היין הבא מאצלם אפילו אותו שנעשה קודם הגזרה וכל שכן מה שנעשה אחר הגזרה [...] ומה שראינו מהם ושמענו מפייהם וכתבו לנו משם מחזיקים חשודים גמורים וכיון שהם חשודים אין להאמינם.

Since even the first converts, who were evidently forced converts, compelled to conversion by naked sword, did not refrain from redeeming themselves by the

<sup>78</sup> *Sefer ha-Tashbez*, no. 3:312, p. 310.

<sup>79</sup> *Sefer ha-Tashbez*, no. 1:63.

wine of their [the Gentiles'] banquets.<sup>80</sup> And even the great rabbis did not have questions other than whether they had to say the blessing for things enjoyed [*birkat ha-nehenin*] over it [the wine], and whether they could neutralize it in water, and what the required quantities were. All the more so these [converts], who were not forced by real compulsion, and who undoubtedly drink the wine of the Gentiles. [...] And therefore, I prohibited wine coming from them, even wine that was made before the persecution, and all the more so wine that was made after the persecution. [...] And according to what we have seen from them, and what we have heard from them, and what they have written to us from there, they are to be held as absolutely suspicious, and as they are suspicious, they should not be trusted.

### SOLOMON BEN SIMEON DURAN (RASHBASH)

Solomon ben Simeon Duran, known also as the Rashbash, from the acronym of R. Solomon ben Simeon (ca. 1400–1467), the son of the Tashbez, was born around the year 1400 in Algiers. He joined the *bet din* headed by his father, whom he succeeded after his death. He died in 1467. His responsa were first published in Livorno in 1742.<sup>81</sup>

#### *Rashbash, Responsa, no. 553*

This is the only responsum written by the Rashbash that deals with wine sent by a convert. It discusses wine that was made by a Jew in Tortosa, sent by a convert on a Christian ship to Majorca, and from there to Bejaia. The barrels were sealed with two seals, and on the seals it was written that the wine was kosher. A convert was guarding the wine during the journey, who testified that the wine was and remained kosher. The wine was declared permitted, on the basis of the principle that converts were unreliable concerning their own wine but reliable concerning the wine of another person.

The great novelty of the responsum is that according to the Rashbash the converts were unreliable even concerning the wine of someone else:

<sup>80</sup> Redeeming themselves by the wine of their banquets: מהתגאל ביין משתיהם. Maybe it can be read as מהתגעל ביין משתיהם: polluting themselves with the wine of their banquets.

<sup>81</sup> See Hirsch Jacob Zimmels, "Duran, Solomon ben Simeon," in *EJ*, vol. 6, coll. 306–307.

ואעפ"י שנמצא בתשובת הרב ר' יצחק בר ששת ז"ל גם בתשובת אדוני אבי מורי הרב ז"ל שיש להאמינם על של אחרים, זהו בראשונים שלא היו מחללי שבתות בפרהסיא, אבל היום שכלם מחללי שבת בפרהסיא אין להאמינם כלל.

Although it is written in the responsa of R. Isaac bar Sheshet, and in those of my master, my father [the Tashbez], that they are to be trusted concerning the possession of someone else, this referred to the first converts, who did not desecrate the Shabbat in public. But today, all of those who desecrate the Shabbat publicly are not to be trusted at all.<sup>82</sup>

The Rashbash permitted the consumption of the wine because of the seals that guaranteed its *kashrut*. His reasoning was based on the principle of majority: since the majority of the barrels on which the phrase *yayin kasher* ("kosher wine") is written in Hebrew script is indeed kosher and permitted, the wine in question is also permitted.<sup>83</sup> He raised the possibility of the falsification of the seals by the convert, but rejected the suggestion. He argued that although the convert could write Hebrew letters, it was not worthwhile for him to falsify the seals. Since wine made in Tortosa could be distinguished from wine made in Majorca, it was certain that the wine was made in Tortosa (by a Jew) and not in Majorca (by a convert). The Rashbash apparently supposed that wine made in Tortosa was obviously made by Jews, and not *conversos*, whereas wine proceeding from Majorca might have been made by *conversos*. This reasoning seems to be strange, since the wine could have been made by a convert even in Tortosa, and in this case the falsification of the seals remains possible. In any case, the Rashbash did not raise this latter possibility.

וכן היין הזה שבא מטרטוש"ה למאירוק"ה והדבר ניכר שאינו יין של מאירוק"א בלא ספק דלא טרח זה וזיין, הילכך היין הזה כשר הוא על פי אותן דרכים שכתבתי. וכל שכן שבכאן עמדנו על הכתב שבא מטרטוש"ה ושתינו מאותו היין שבאו לכאן מקצת חביות ומקצתן הלכו אצלכם, והחתום שנמצא אצלכם ואצלנו הוא כמו שנמצא בכתב, ויצא הדבר להיתר תהלה לאל.

<sup>82</sup> *Sefer ha-Rashbash*, no. 553, p. 464.

<sup>83</sup> The discussion is based on bBava Batra 24a, where the barrel (without a seal of *kashrut*) is found in the river.

[In the case of] this wine that arrived from Tortosa to Majorca, and it is evident that it is not from Majorca, he [the convert] won't make pains to falsify the seals, and therefore the wine is *kosher* for the reasons I have given. And all the more so for our relying on the script that it is from Tortosa and our drinking from this wine, because some of the barrels arrived here and some to your place, and for the seal that you have and what we have being like what is in the script, and the thing has become permitted, thank God.<sup>84</sup>

## CONCLUSIONS

The responsa presented in this article show an evident tendency towards the prohibition of the consumption of wine made or handled by *conversos*. The opinion of the halakhic authorities concerning *conversos* underwent a gradual change; the initial hesitation and perplexity in view of the new phenomenon of mass conversion was followed by a slow consolidation of their position regarding the converts. The decisive factor in this respect was the fact that vast masses of *conversos* remained in Christian territory where they inevitably underwent a gradual assimilation to the norms and customs of the surrounding Christian society. They could not avoid profaning the Shabbat and letting the Christians exert control and influence upon their private life. Therefore, as long as they remained in Christian kingdoms, they became disqualified as regards the halakhic issues related to wine: its production, handling, and testimony concerning it.

<sup>84</sup> *Sefer ha-Rashbash*, no. 553, p. 465.

### 3. Fight for a Dowry in Buda, 1686: A Responsum from the Reverse

Géza Komoróczy

The text that I am trying to interpret here survived in the responsa<sup>1</sup> collection of a famous rabbi from Buda in the seventeenth century, R. Zevi Hirsch ben Jacob Ashkenazi, the Ḥakham Zevi (1660–1718). The first part of the text, the question itself, was first published by the historian Samuel Kohn (1841–1920) in 1881, and then a few years ago by Shlomo J. Spitzer and myself in our volume entitled *Hebrew Sources*.<sup>2</sup> Compared to our great forerunner, we published the text in greater length, including the Hebrew original as well. To the best of my knowledge, the text has not yet been studied in depth.

The identity of “Reuben,” the person who asked the question from the Ḥakham Zevi, is not revealed in the responsa collection. I shall first make an attempt to unravel this problem, and I shall then interpret the responsum in light of the result. Let us see the text of the responsum first, in the original and in an English translation, followed by my remarks and analysis.

בודון דמתקריא אובן שנת תמ"ו לפ"ק.

שאלה

ראובן נשא אשה בבודון, ושם אין נוהגין תקנת שו"ם ולא תקנת טוליטולא,  
אלא כותבין שטר חזרה וקורין אותו שטר עידור, וזה נוסחו.

<sup>1</sup> *Responsum*, plural *responsa*: “response” (in Hebrew: *teshuvah*) is a response using Talmudic argumentation written by a rabbi to a question addressed to him regarding the application of some religious ruling (*sheelah*). The original edition of the text discussed here: *Sheelat u-teshuvot (Shu"t) Ḥakham Zevi* (Amsterdam, 1712), no. 61 (it had two later editions already in the seventeenth century).

<sup>2</sup> Samuel Kohn, *Héber kutforrások és adatok Magyarország történetéhez* (Budapest: Zilahi Sámuel, 1881; reprint, Budapest: Akadémiai Kiadó, 1990), pp. 128–129, no. XXVIII; Shlomo J. Spitzer–Géza Komoróczy, *Hebrew Sources Relating to the History of Hungary and Hungarian Jewry in the Middle Ages (from the Beginnings until 1686)* (Hungarian) (*Hungaria Judaica*, 16) (Budapest: MTA Judaisztikai Kutatócsoport–Osiris Kiadó, 2003), pp. 777–782, no. 187.

בפנינו עח"מ בא פב"פ וא"ל הוּו עלי עדים כשרים וכו' וכתבו לשון של זכות ויפוי כח ובאופן המועיל ואף חתמו ותנו ליד זוגתי מרת פב"פ להיות בידה וביד בי"כ לזכות ולעדוּת ולראיה, מחמת שרציתי מרצון נפשי שלא באונס והכרח כלל, כ"א בלב שלם ובנפש חפצה ובדעת מיושבת, והנני מודה בפניכם היום איך אמת ויציב הוא, שאם ח"ו אעדר אני או תעדר זוגתי הנז' ולא ישאר ממנו זש"ק, הרי אני וב"כ מחוייבים להחזיר לזוגתי הנז' ולירשיה אחריה כל מה שהכניסה לי בנדוניא, דהיינו סך כך וכך. ואם ח"ו אעדר אני או תעדר זוגתי וישאר ממנו זש"ק אז הדין חוזר לסיני שהבעל יורש את אשתו כו', והכל דלא כאסמכתא כו' וקניינא מן פב"פ על מאי דכתוב ומפורש.

ומנהג פשוט בבודון שאפילו הכותבין שטר זה אינם מחזירין נכסי מלוג שלה כיון שאיננו מוזכר בשטר. וראובן הנז' נתנו לו מתנה הגונה כדי שיתרצה לכתוב אף הנ"מ של אשתו בשטר הנז' וכן עשה. וראובן הנז' היה נשוי עם אשתו כשבע שנים והיתה לו ממנה בת אחת משתי שנים וחצי. ויקר המקרה בלתי טהור כשהיתה העיר במצור השליך הצר על העיר קומבאר"ה א' שקורין בלשון אשכנז בומב"א על אשתו ועל בתו ומתו גם שתיהן, ולא נודע מי מת תחילה. וראובן טרם מיתת אשתו כעשרים או שלשים יום הפקיד את אשר יש לו בין כסף וזהב ומטלטלין ובגדי ובגדי אשתו ביד שנים או שלשה בני אדם להטמינם במערות צורים. והיה אחרי הרג רב הנז' הלכו האפוטרופ' של היתום אחי האשה המומתת ועכבו ביד רמה הפקדון אשר הפקד ביד האנשים מחמת שטר עידור שיש להם על ראובן בענין הנדוניא קודם שיתבעו את ראובן לדין.

וכאשר נודע הדבר לראובן שאל את פיהם למה עכבתם את שלי טרם עמדי לדין. והיו דבריהם שבאו עדים, שיש להם מנהג שכל שלא חי הולד אחר אמו כ"ד שעות צריך להחזיר הכל. ועדות זו קבלוה אחרי מות הנוכרים שלא בפני ראובן ובלתי ידיעתו עם היותו עמהם בעיר אחת. וראובן חקר ודרש על אודות העדות הנזכר ויודע לו שענין העדות היה, שזה כמו כ' או ל' שנה מתה אשה א' בזמן המגפה, ואחר ב' או ג' שעות מת ולדה. ונהיה קטטה בין אבי האשה ובעלה ופשרו ביניהם שיחזיר הבעל לאבי האשה מאה זהובים.

ועתה ראובן צווה ככרוכיא על קבלת העדות שלא בפניו, ועוד טוען ראובן את"ל שהעדות קיימת יחדיו למשפט נקרבה, אם כח עדות זו יפה להוציא מראובן או לעכב את שלו ביד הנפקדים. כי אפשר שמעולם אין כאן מנהג כזה, אלא באותו הזמן לחמלתם של אבי האשה שלא היה אמוד בנכסים עשו דרך פשרה שיתן לו הבעל סך ממון או כדי להשקיט הריב. אבל היתום הזה הוא אמוד בנכסים יותר מראובן, וראובן אינו רוצה כלל בפשרה. ועוד אם היה מנהג כזה היה ראוי שידעוהו כל בני העיר וקונים, וגם היה ראוי שיהיה כתוב וחתום בפנקס הקהל ששם כתובים כל הסכמותיהם. ועוד כשם שהם כותבים עיקר תנאי החזרה בשטר למה לא כתבו ובארו שתניח זש"ק שיחיה אחר אמו כ"ד שעות, אלא כתבו סתם. וכי בשביל א' שהחזיר לזה יקרא מנהג להפקיע ירושת הבעל שהיא מדאורייתא. וירנו מורנו הדין עם מי.

Budun, which is called Oven,<sup>3</sup> in the year 446,  
according to the short reckoning.<sup>4</sup>

Question.

Reuben<sup>5</sup> married a woman in Budun, where the community does not follow either the Ashkenazi regulations regarding inheritance (*takkanot Shum*)<sup>6</sup> or the Sephardi ones (*takkanot Toletula*).<sup>7</sup> Instead, they write a contract of return,<sup>8</sup> which they call a nullification bill (*shetar iddur*)<sup>9</sup>. The text of this bill is as follows:

“In front of us, signed witnesses, so-and-so appeared, and said: you shall be my official witnesses, etc., and shall write me a document of title and a letter of authorization to my appointee, on the most favorable terms. You shall sign it and give it to my spouse, the lady so-and-so. It shall thus be in her hands and in the hands of her appointee, as a document of title, certificate and proof, that this is my desire, without any pressure and force, with my full heart and soul, and with a sober mind. So, on this day I acknowledge in front of you, that it is true and steady, that if—God forbid—I die, or my aforementioned spouse dies, and we do not leave descendants that survive, then I and my appointee shall be liable to return to my aforementioned spouse and her descendants everything that she had received as a dowry, that is, such-and-such a sum. And if—God forbid—I die or my spouse dies, and we do leave descendants that

<sup>3</sup> The names of Buda in traditional Hebrew texts, based on the Turkish and the German forms, respectively.

<sup>4</sup> 5446, which corresponds to 1686. “Short reckoning” refers to the Jewish calendar that starts counting from the Creation, without the digit of the millennium.

<sup>5</sup> Reuben: in rabbinic literature, and especially in responsa literature, if for some reason the author wanted to conceal the real identity of someone, the name(s) of the son(s) and daughter(s)-in-law of the Biblical Jacob (Gen. 35,23ff) were substituted for the real names. In some delicate cases it was in fact justified to conceal the real identity of the people concerned. The problem could thus be discussed impersonally, concentrating on its legal or halakhic aspects only. This procedure would today be considered the defense of personality rights.

<sup>6</sup> *Takkanot Shum*: the ancient statutes of three cities on the river Rhine (Shum: from the Hebrew initial letters of Speyer, Worms, Mainz).

<sup>7</sup> *Takkanot Toletula*: the statute containing the Sephardi customs of inheritance, passed in the 13<sup>th</sup> century in Toledo. According to this, if the woman died without descendants that survived, half of her dowry was to be returned to the family from whom she had originally received that dowry. There was no time limit in this statute, as opposed to the Ashkenazi regulation, and it differed from that also in relation to the sum that was to be returned.

<sup>8</sup> I.e. returning the dowry.

<sup>9</sup> Hebrew *shetar*, Aramaic *shitra*: “bill,” “certificate.”

survive, the husband shall be the heir of the woman, as it is prescribed by the law from Mount Sinai,<sup>10</sup> etc., as is all else that is not specified by the present decree. All that is mentioned and described here shall apply to acquisitions from other people as well.”

And in Budun they follow the simple custom that even those who signed such a contract do not return the possessions of the wife if it is not made explicit in that contract. The aforementioned Reuben received a respectful present in order to include these possessions of the woman in the contract, and he did indeed do so.

The aforementioned Reuben married his spouse some seven years ago, and they had a daughter who was two and a half years old. It is not clear what exactly happened to them while the city was under siege, but the enemy threw a *kumbara*<sup>11</sup> on the city, called *bomba*<sup>12</sup> in the language of Ashkenaz,<sup>13</sup> [which hit] both the woman and the daughter, and both died, and it is not clear which one died earlier. Reuben had entrusted all of his possessions that he owned, including silver, gold, his personal belongings, his clothes and his wife’s clothes, to two or three men some twenty or thirty days before the death of the woman, for them to hide in caves. After the great massacre mentioned above, the guardians of the orphan, brothers of the deceased woman, got their hands on the deposit—that Reuben owed them from the dowry according to the nullification bill (*shetar ittur*)—without having claimed it from Reuben in front of a court.

And when Reuben found out, he asked them: “Why have you barred me from my inheritance before I went to court?” According to their words, witnesses came forward, [claiming] that the custom was that if the child did not survive twenty-four hours after the mother’s death, everything was to be returned. And this witness testimony was recorded after the death of those mentioned, and Reuben was not there, and did not know about it, despite the fact that at the time he was staying in the same city with them. And Reuben researched and examined the witness testimony mentioned above, and found out that it referred to a case in which, some twenty or thirty years earlier, during the famine,<sup>14</sup> a woman had died, and, two or three hours after the woman, her child

<sup>10</sup> Referring to both the Torah and the Oral Law.

<sup>11</sup> *Kumbara*: Turkish, meaning “explosive bullet,” “bomb.”

<sup>12</sup> From German *Bombe*.

<sup>13</sup> I.e. in Yiddish.

<sup>14</sup> In 1656/1666, according to the date calculated by the Ḥakham Zevi. See below.



had died as well; and there was a debate between the father of the woman and her husband, and they reached an agreement, according to which the husband was to return a hundred gold coins.

And now Reuben is shouting from the top of his voice<sup>15</sup> because of the witness testimony that was taken in his absence. Furthermore, Reuben claims that even if the witness testimony was valid, they should go to court to find out if the testimony was sufficient to bar him from his property, because there might have not been such a custom at all, but at the time,<sup>16</sup> out of pity for the father of that woman, who was not well off, they agreed that the husband should give a certain sum to him, or they did so simply in order to evade the debate. Anyhow, this orphan is rather wealthy, more so than Reuben, and Reuben is not willing to reach an agreement. And if there really was such a custom, everyone in the city would know about it, and especially the elderly, and it would have to be written and signed in the *pinkas*<sup>17</sup> of the community, where all their agreements are written. Also, if the main conditions of returning the possessions are specified in the contract, why didn't they include, [why did they] leave out that if she left a descendant that survived and outlived the mother by 24 hours, and [why did they write] generalities instead. May we call this a custom even if it is based on just one person who returned [the possessions], and thus expropriate the husband from his inheritance as prescribed by the Torah?<sup>18</sup>

Our master should give us guidance and tell us whose side the law takes.

I could have given the present article the title “Escape from Buda.” The text discussed here mentions two actual events: R. Zevi Ashkenazi’s escape during the siege of Buda, and his fight with his brothers-in-law about the inheritance of his wife’s possessions—her dowry.

So what was the historical setting of the events?

As it is well known, in 1686 the *Liga Sacra*—the alliance of Austria, Poland, Venice and Malta against the Ottoman Empire, at the initiation of Pope Innocent XI—took Buda under siege, after the city had been under Turkish occupation since 1541. The siege lasted 77 days, and ended on September 2.

<sup>15</sup> Literally: “cries like a crane.” The expression is commonly for indignation or objection. See bKiddushin 44a etc.

<sup>16</sup> I.e. at the time of the case mentioned earlier.

<sup>17</sup> *Pinkas*: record book or register of a Jewish community.

<sup>18</sup> For the laws of inheritance in the Torah, see Num. 27:7–11, etc.

On this day, after a considerable artillery preparation, the Brandenburgian troops penetrated the city under siege from the direction of today's Bécsi Kapu (Vienna Gate). The houses in the Jewish Street (today Táncsics Mihály Street) were demolished by the missiles, and Jews had to seek refuge elsewhere. Many of them took refuge in the synagogue, and were eventually killed by the walls of the collapsing building. Others were massacred by armed Christians on the street, and the rest were collected and taken into captivity.

There is a detailed description of the events and the cruelty of the triumphant Christian forces in the memoir called *Megillat Ofen*, written by R. Isaac ben Zalman Moscheles Schulhof ha-Levi / Isaac ben Solomon ben Moses / Isaac Schulhof (1645/48–1733).<sup>19</sup> In 1886, 1936 and 1986, on the occasion of the anniversaries of the siege, Hungarian historiography—namely, studies by Árpád Károlyi, Ferenc Szakály, Katalin Péter and others—discussed the vast amount of source material in Latin, German and other languages from several aspects. Recently, thanks to the translation of the Schulhof text by László Jólesz<sup>20</sup> and the few modifications by György Haraszti,<sup>21</sup> the Jewish sources have also received more attention.<sup>22</sup> So far, the responsum of the Ḥakham Zevi quoted above, by no means to be considered a historical source of primary importance, has been ignored in relation to the siege of Buda.

It is personal history, but so is Schulhof's memoir. Nonetheless, if the text is examined with scrutiny, the Ḥakham Zevi can also contribute to the greater historical picture. Besides, this is the only source relating to his own personal history. Yet the biographers of the rabbi have not examined it, neither in the past nor in our day: it has been decently overlooked.

So what is the main event described in this responsum?

“Reuben”—a common pseudonym in rabbinic literature—married a woman from Buda some seven years before the siege, in around 1679/80. They

<sup>19</sup> David Kaufmann, *Die Erstürmung Ofens und ihre Vorgeschichte nach dem Berichte Isak Schulhofs (1650–1732) (Megillath Ofen)* (Trier: Sigmund Mayer, 1895) (Hebrew part, pp. 3–26: the edition of the original Hebrew text).

<sup>20</sup> Izsák Schulhof, *Budai krónika (1686)* (Budapest: Magyar Helikon, 1979, 1981<sup>2</sup>) tr. by László Jólesz, conclusion by Ferenc Szakály.

<sup>21</sup> György Haraszti, *Századok*, 115 (1981), pp. 236–240 (review of the first edition of the translation by László Jólesz).

<sup>22</sup> For two other Hebrew works by Schulhof, and other Hebrew sources relating to the siege of Buda, see Spitzer–Komoróczy, *Hebrew Sources*, p. 827ff, no. 193; p. 831ff, no. 194, etc.

had one child, a two-and-a-half-year-old daughter. 20–30 days before the seizure of the city, that is, 30–40 days after the encirclement and siege of Buda, sometime at the end of July or beginning of August, 1686, he gave all his wealth (“all possessions that he owned, including silver, gold, his personal belongings, his clothes and his wife’s clothes”) to two or three men to hide in a cave. During the siege, the place where the woman and the child were hiding was hit by a *kumbara*—some kind of an explosive bullet or mortar-bomb, called *bomba* in Yiddish (“the Ashkenazi language”), and *bombi* in other Hebrew texts of the period. Both of them died. Afterwards, the brothers of the woman seized the possessions—or to be more exact, the dowry of the woman (which, according to Jewish law, is the personal property of the woman)—that had previously been hidden by the husband, without having clarified in front of a court who the rightful inheritor was. “Reuben” demanded the possessions of his deceased wife. He claimed: the father is entitled to the possessions of the daughter (“this orphan is rather wealthy, more so than Reuben”). This is the essence of the story itself. But, as we shall see, the responsum mentions other relevant concurrent events as well.

The action taken after the death, as far as can be made out from the responsum, seems to have been standard procedure. The brothers found the possessions in the cave where they had been hidden, and took them. They found witnesses, who most probably did not only testify about the fact of the death, which was obvious, but also about the time. When did the woman die? And the child? Who died earlier, the mother or the daughter? It cannot be established exactly. Nonetheless, by Jewish law, the exact time of death of each of the two victims determines who shall inherit the private possessions of the woman. Based on the context, we can assume that the daughter might have survived the mother, albeit only by a little, definitely by less than 24 hours—if it were more, she would definitely have been the legal inheritor of her mother, and consequently her father of her. “Reuben” himself, though, demanded a judicial process, a court case—obviously, in front of a rabbinical court, a *bet din*.

The reference case used by the brothers in the debate was a previous case from Buda: a woman had died in a famine, and the father and the widowed husband agreed on a decision regarding the inheritance. “Reuben” looked into this case of some 20 or 30 years earlier. Based on external evidence, the time of the case can be identified as probably the famine of 1656/57. The

Ḥakham Ževi could argue on the basis of the custom in Buda, comparing this with general Ashkenazi and Sephardi practice.

The caves where “Reuben’s” possessions were hidden can easily be identified: they must have been the caves underneath Buda castle. According to a responsum by R. Ephraim ha-Kohen (1616–1678),<sup>23</sup> it was in these caves that the Jews of Buda used to keep—or rather, because of Turkish prohibitions, hide—their wine, which they used for sacrificial purposes, and occasionally even sold to the Turks. A recent excavation<sup>24</sup> proved that one of the cave tunnels—to the west of today’s Lutheran church—originally started from under the northernmost houses of the Jewish Street, and the Hebrew inscriptions, names scraped into the wall, prove that it was used by Jews.

If we consider at least the main information in Schulhof’s description of the siege to be trustworthy, the legal case must have taken place two or three days after the fall of the city (September 2) at the latest. However, there was gunfire of various intensity throughout the siege. The Jewish Street was an easy target: it was on the side of the Castle facing the Danube, immediately alongside the Castle wall. There is a contemporary cityscape that shows Buda from this angle,<sup>25</sup> and the roof of the synagogue dating from the times of King Matthias in the fifteenth century, rebuilt in 1541 or 1551 and destroyed in 1686,<sup>26</sup> can clearly be seen behind the Castle wall. The situation in which mortar-bombs fell on the city but business went on almost as usual was probably in August 1686, during the weeks or days before the final storm of the city. The responsum does not say whether the city was already taken when the woman and her daughter died.

<sup>23</sup> Spitzer–Komoróczy, *Hebrew Sources*, p. 765f, no. 183.

<sup>24</sup> Excavation of the Budapest History Museum, led by Eszter Kovács (2000/2001).

<sup>25</sup> A copper engraving by Johann Sibmacher (?–1611) from Nürnberg. His siege depictions were published, among others, by Hieronymus Augustanus Ortelius [Oertel / Oertl] (1543–1614), *Chronologia oder Historische Beschreibung aller Kriegsemperungen und Belagerungen der Stätt und Vestungen...* (Nürnberg: Gedruckt bey Valentin Fuhrmann Inn Verlegung, 1602); idem, *Der Ungarischen Kriegs-Empörungen Historische Beschreibung...* (Frankfurt a. M., 1665). In the case of Buda, he depicted the siege of 1598. Copper engraving, colored, 160x265. The picture often features separately at auctions.

<sup>26</sup> After a partial exhibition with spectacular results in 1964 (Lászlóné Horváth / Melinda T. [Turjányi] Papp, László Zolnai, Istvánné Feuer / Rózsa Tóth, István Gedai), the building (Táncsics Mihály Street 23, in the garden of one of the houses of today’s Babits Mihály Promenade) was reburied, and has remained intact.

So who is this “Reuben”?

In our case, “Reuben’s” story is remarkably similar to the line of events during the days of the siege in the biography of R. Zevi Ashkenazi / the Ḥakham Zevi. He himself wrote in the introduction to his collection of responsa:

בהפוך את העיר בודון דמיתקריא אובן בשנת תמ”ו, כי אז ספו תמו כל ספריי ומחמדי הטובים, גם כספי גם זהבי או נשבר או נשבה. ויוציאני טרם נלכדה העיר, וישלחני אלהים לרעות צאן קדשים בק”ק שאראי הבירה אשר בארץ בוסנייא במדינת טורקייא.

When the city Budun, which is called Oven, was rummaged in the year 446, all my books and my dearest beloved were lost and destroyed. My silver and gold was also either lost or taken. But God rescued me before the city was captured, and sent me to pasture the holy flocks in the holy community of Saray, the capitol of the country of Bosnia, in the state of Turkia.<sup>27</sup>

Saray is actually Sarajevo, which was under Turkish rule in those days. There are several elements that are common in the two biographies, especially the family that died during the siege (“Reuben’s” wife and daughter, R. Zevi Ashkenazi’s “my dearest beloved”), and the loss of all assets, which was taken both from “Reuben” and from R. Zevi Ashkenazi.

Would this be enough to conclude that the “Reuben” of the responsum is the Ḥakham Zevi himself? In fact, I am convinced that this is a case of “self-responsum.” I think that the question was asked anonymously by R. Zevi Ashkenazi: he was the “Reuben” of the responsum, and he himself answered the question as “Zevi from Buda.” The answer was, naturally, in favor of “Reuben.” According to the answer, the claims of the husband, “Reuben,” were justified, the dowry of the woman shall not be inherited by her brothers, but instead by “Reuben,” that is, by R. Zevi Ashkenazi. The Ḥakham Zevi quotes the rabbi of Cracow, R. Moses Isserles (the Rema) (ca. 1525/30–1572), “whose words are followed by all of Ashkenaz, Polonia (Poland) and Buda.” That is, even if the local custom in Buda was different, the decision of the Rema definitely overrides it.

<sup>27</sup> Spitzer–Komoróczy, *Hebrew Sources*, p. 781f.

According to the responsum, “Reuben” was not present when the witnesses testified regarding the death of the woman, and did not even know about it (the procedure), despite the fact that “he was staying in the same city with them.” We know from the passage quoted from the Ḥakham Zevi’s introduction to his responsa collection that he left the besieged Buda already “before the city was captured,” and arrived in Saray / Sarajevo. This statement is in apparent contradiction with my suggestion that “Reuben” and the Ḥakham Zevi are the same person. Nonetheless, in a city under siege, with some two thousand Jews, when the community is trying to collect the dead and resume everyday life after the fall and explosion of mortar-bombs, it can well be imagined that in urgent cases, the officials of the community could not immediately find all the parties concerned. And we know from German descriptions of the siege that it took several days for the Brandenburgian troops to evacuate the Jewish captives from the city. So it is probably not stretching the limits of interpretation too much to assume that it was in the days following September 2 that R. Zevi Ashkenazi was “rescued,” as he himself wrote. The Jews of Buda, who were to be driven out of the city, probably tried to take with themselves as much of their possessions as possible: their lives might depend on whether they were able to ransom themselves or not. “Reuben” could not have sued his brothers-in-law regarding his possessions months or years after the fall of Buda. The Jews of Buda dispersed in Germany and Europe. Their money, if they had any, was spent on the ransom, and moldered.

When was R. Zevi Ashkenazi rescued from Buda? In Vienna, Samuel “Heidelberger” / Oppenheimer (1630–1703), the rich and influential court Jew, war profiteer and the main financier of the siege of 1686, ordered a Jewish youth from Prague, Sender Tausk / Alexander Taussig, to help the Jews of Buda. The young Sender travelled to Buda by boat, and entered the city on September 2, together with the besieging troops. He did not know where the Jewish Street was, until three Jewish children showed it to him. He checked whether the people who turned to him for help were really Jewish: they were, if they knew the *Shema Yisrael*. If they did, he sent them to the synagogue. After some time, he arranged for one of the captains to place guards in front of the synagogue, under the imperial flag. Charles V, the Duke of Lorraine (1643–1690), commander-in-chief of the imperial army, promised that the Jews taken captive would be left alive. Sender Tausk—the “Raoul Wallenberg” of the siege of 1686—selected the Jews from each procession of war captives

led by soldiers. He took them to the Danube. Altogether, he managed to save 274 Jews. Later, in order to collect money for the redemption of the captives (*pidyon shevuyim*), he wrote a Yiddish poem about what he saw and what he did. The poem, “Eyn sheyn nay lid fun Oyfen” (“A Fine New Song from Ofen”) mentions that Sender also saved a rabbi called Zevi from the hands of Christian soldiers who were chasing him with weapons. This R. Zevi, even though Zevi / Hirsch is a rather common name, might have been R. Zevi Ashkenazi himself. In his introduction to the responsa collection, the Ḥakham Zevi might have meant that the siege did not end on September 2. By the time he reached Sarajevo, it must already have been autumn.

So who was R. Zevi Hirsch ben Jacob Ashkenazi, or the Ḥakham Zevi, as he came to be widely known in the rabbinic world? The famous rabbi of Buda was the grandson of R. Ephraim ha-Kohen of Vilna, the son of his older daughter Neḥamah and R. Jacob ben Benjamin Zeev Ashkenazi (Jacob Sak). Neḥamah was married in Vilna, and then escaped from the Cossacks from Poland-Lithuania (1656), together with her father. Her husband found them only later, after much adventure. Their son was born in Moravia. The family stayed together: R. Ephraim ha-Kohen paid much attention to helping his sons and daughters, and they in turn all followed him, even when he was invited to Buda and moved there in 1665. Isaac Schulhof, who originally came from Prague and who recorded the events of the siege of Buda, was the husband of his younger daughter. (I might mention here that the Buda of the 1670s, including the Jewish world of R. Ephraim, has recently been evoked in the great novel *Könnymutatványosok Legendája* (1999) by contemporary Hungarian writer László Darvasi.) R. Zevi Hirsch ben Jacob Ashkenazi (1660–1718), who came to be called the Ḥakham Zevi (“R. Zevi”) from his responsa collection of the same title (Amsterdam, 1712), grew up in his grandfather’s house, and acquired the basis of his rabbinic knowledge during his childhood years there. Still an adolescent, he went to Saloniki (1675/76) to continue his studies in the famous yeshiva of R. Elijah Covo (?–1689), where, among others, he became acquainted with Sephardi customs. He then spent a year in Belgrade. Despite being of Ashkenazi origin, he was accepted as a Sephardi rabbi (*ḥakham*).<sup>28</sup> His son later wrote of him that he knew Hebrew, German, Hungarian, Italian, Spanish and Turkish equally well. He already gained

<sup>28</sup> Sephardi Jews call their rabbis *ḥakham*.

significant authority in his early years; his first responsum dates from 1676. He was barely 17 or 18 years old when R. Solomon Amarillo (1645–1720), the rabbi of Saloniki, who must have been closely acquainted with him, called him *Ateret Zevi* (“tiara / crown of glory”), and wrote about him that he was “a great scholar, the father of wisdom, despite being of tender years, and could be my younger brother.” He returned to Buda in 1680, after the death of his grandfather. He married a rich girl there: the responsum rightly says of “Reuben’s” wife that she was “rather wealthy, more so than Reuben.” It was not hard to find a rich wife in Buda in the years before the siege: Jewish merchants from Buda travelled the entire Turkish world. Already R. Ephraim ha-Kohen had known how to find a rich wife for his two sons: the daughter of one of the wealthiest families in the city for one, and a rich orphan for the other, whose inheritance was trusted on him. Based on the information in the responsum, the wife of R. Zevi Ashkenazi must have given birth in 1683/84 to her first and only child, to the little girl who was to die together with her mother during the siege.

As we already know, R. Zevi Ashkenazi managed to get from Buda to Sarajevo. He was elected to be the rabbi (*ḥakham*) of the Sephardi Jewish community there. He heard only years later that his father, R. Jacob Ashkenazi, and his mother, Neḥamah, were still alive, at which point he travelled to Berlin via Venice and Prague (1689), and redeemed his parents from Brandenburgian captivity there. His father, R. Jacob, went to Erez Israel, and lived there the rest of his life. R. Zevi Ashkenazi stayed in Germany, and remarried there. The father of his second wife, R. Meshullam Zalman Neumark-Mirels / Mireles was the chief rabbi of Altona-Hamburg-Wandsbeck, also known as the “three cities” (ר"א אה / *AHU* cities). At his initiative, the Ḥakham Zevi was invited to be the rabbi of the *kloyz* / *Klaus*—the Ashkenazi synagogue—of Altona. After the death of his father-in-law, R. Zevi Ashkenazi became the rabbi of Hamburg-Wandsbeck (1707), while still keeping his yeshiva in Altona. In 1710 he became the rabbi of the Ashkenazi holy community of Amsterdam. In all these places, he was a strong opponent of the Sabbatean movement—the late followers of Shabbetai Zevi (1626–1676), who all over the Jewish world was believed to be the Messiah, even decades after his death, despite having become an apostate.<sup>29</sup> Being of Ashkenazi origin, yet acquainted with

<sup>29</sup> The vitality of Sabbatean beliefs is described by Isaac Bashevis Singer in his novel *Satan in Goray* (in Yiddish: 1935 in book form; in English: 1955).



Sephardi customs as well, the Ḥakham Zevi's word had significant weight, especially in the post-Sabbatean debates. Nevertheless, his situation became critical when the kabbalist R. Nehemiah Ḥiyya ben Moses Ḥayon / Ḥayun (ca. 1655–1730), who remained a secret believer in Shabbetai Zevi all his life, arrived in Amsterdam. Besides others, the Portuguese-Sephardi community of Amsterdam also asked R. Zevi Ashkenazi for his opinion on Nehemiah Ḥayon. He was, of course, damning, and the kabbalist was excommunicated by Gabriel ben Judah Loew Eskeles (?–1718), the chief rabbi of Moravia, as well (1712).

To defend himself, R. Nehemiah Ḥayon brought a very serious accusation against the Ḥakham Zevi: he spread the rumor that the Ḥakham Zevi's father, R. Jacob Ashkenazi, had sent a Jew to death in Buda in 1666, because he had refused to say a blessing on Shabbetai Zevi as a messiah.<sup>30</sup> Nonetheless, it was not this rumor that damaged the authority of R. Tsvi Ashkenazi, but rather Solomon ben Jacob Ayllon (ca. 1655–1728), Amsterdam's Portuguese rabbi (*ḥakham*), who had himself been a Sabbatean in his youth, and a friend of Nathan of Gaza, the life-long advocate of the teachings of Shabbetai Zevi. Out of jealousy, the *ḥakham* of Amsterdam made it a point of honor whether in Amsterdam, the city of Portuguese Jews, an Ashkenazi rabbi could be right against the Sephardi Nehemiah Ḥayon. R. Zevi Ashkenazi resigned from his position (1714) before the unappealable court of Sephardi Jews in Amsterdam (the *Mahamad*) could announce the verdict. He went to London, and from there to Emden (Lower Saxony), both of which were inhabited by Portuguese-Sephardi Jews. He was not accepted at either place, despite his background and fame as a *ḥakham*. He almost had to flee from Emden, first to Opatów in Poland, and then to Lemberg (1718), where he died a few months later.

Even without being closely acquainted with the responsa collection of the Ḥakham Zevi—as I myself am not—it is already obvious from his external biography that he was well-versed in both the Ashkenazi and the Sephardi tradition. It cannot not have caused him any difficulty to write an expert question for the present responsum, concealing his own personal interest.

And the expertise of the question is in fact evident. The first sentences of the responsum already mention that the Jewish community of Buda

<sup>30</sup> See Spitzer–Komoróczy, *Hebrew Sources*, p. 668ff, no. 158/4.

did not follow either *takkanot Shum*, the Ashkenazi regulations, or *takkanot Toletula / Toledo*, the Sephardi ones, regarding inheritance. The contract about returning the dowry / nullification bill / *shetar iddur* used in Buda is quoted accurately. The question is aware of the *Mappah* (“Cover”), the commentary that Moses Isserles of Cracow wrote to the *Shulhan arukh* (“The Set Table”),<sup>31</sup> which is generally accepted everywhere in the world (*tefuzot*), as he points out—meaning the Ashkenazi Diaspora, including Buda. It is worth mentioning that the question talks about the Rema’s work as a recent publication; the Ḥakham Zevi obviously did not have the first publication at hand, which had appeared in the Rema’s life in Cracow (1569–71), but a later publication from Cracow (1640) or Berlin (1642–1643).

According to the customs of inheritance in the Jewish community of Buda, if the husband or wife of a married couple died, the surviving partner was to inherit all assets and possessions, including the wife’s dowry—but only if they left descendants that survived. If there were no descendants that survived, the wife’s dowry was returned to her original family. The partners even signed a document about this custom, called “nullification bill” (*shetar iddur*), or “letter of renunciation.” As opposed to this theoretical rule, the responsum argues that the common practice was not to return the dowry, even despite the nullification bill. The opponents of “Reuben”—R. Zevi Ashkenazi—referred to one single case, as he himself found out: 20–30 years earlier, in time of famine, a woman died, and two or three hours later her child died as well, and then the husband, after a debate, gave 100 gold coins back to the father of his deceased wife. But, the Ḥakham Zevi adds, he might have done so merely out of compassion, because the father was not well off, and the husband wanted to avoid litigation.

In the appendix of his still indispensable Budapest book,<sup>32</sup> the historian Alexander Büchler collected enough regulations from Buda, from responsa and other sources, for the compilation to appear to be *takkanot*, and himself claimed the series of excerpts to be the charter of the community. I do not believe that he was right: the Ḥakham Zevi generally referred to *takkanot Shum*, and specifically to a ruling that derived from that. What we know of

<sup>31</sup> The laws in the book of Joseph Caro (1488–1575) were adjusted to the Ashkenazi tradition by the Rema.

<sup>32</sup> Sándor Büchler, *A zsidók története Budapesten a legrégibb időkől 1867-ig* (Budapest: Izr. Magyar Irodalmi Társulat, 1901).

the rulings in Buda is case-law: they are rulings brought in a specific case, which remained valid even if there was no similar case for a long period of time. The most famous ruling from Buda was a 17<sup>th</sup>-century decision by R. Or / Uri Shraga, who was on his way via Buda from Vienna to Jerusalem, according to which one could not become a rabbi in Buda if one had relatives in the city. The appointment of R. Ephraim ha-Kohen to his position a decade later was against this ruling, but the ruling came into force just in the last third of the 19<sup>th</sup> century, and even then only in moderate form.

We do not have any reason to doubt that the ruling regarding inheritance brought a couple of decades earlier was considered valid in Buda in 1686. Yet R. Zevi Ashkenazi went against it, and used all his knowledge to try and prove that it was not valid in his case.

So what is it that actually happened? A *kumbara* killed the wife and daughter of R. Zevi Ashkenazi. His assets that had been hidden earlier, or parts thereof, were taken by his brothers-in-law, with reference to the nullification bill and the case-law. It is not explicit in the responsum, yet we can assume that R. Zevi Ashkenazi hid his possessions with the agreement of the family, and this is how his brothers-in-law knew of the caves. Since R. Zevi Ashkenazi was not present at the death, and so they could not negotiate, the action taken by the brothers-in-law was reasonable given the circumstances of the siege. However, “Reuben” / R. Zevi Ashkenazi was in the city in the days when the death happened, as the responsum also tells us. In his indignation, he started to demand his possessions, calling it his legal inheritance (“prescribed by the Torah”). He challenged the restriction that the husband could inherit the wife’s dowry only if they had an offspring that survived; he argued that it was unclear what had happened exactly, that the exact meaning of survival was not defined in the *pinkas* of the community, especially not whether there was a time limit of at least one day; he argued that it was not obvious who had died earlier, the mother or the daughter. “Reuben” claimed that if it was the mother who died earlier, his demand was rightful; but if it was the daughter, or if the two of them died together (which is not impossible if a *bomba* hit), then he was right again, because the one-off ruling of Buda did not have the force of a statute, and anyhow, the *Mappah* overrides local customs.

When could all this have happened? It seems certain that a few days after the siege it was no longer possible to conduct a case in front of a rabbinical court, there would have been no court to demand the inheritance. It is hard

to imagine that R. Zevi Ashkenazi escaped from Buda sometime in August, before the fall of the city, got to Sarajevo, and then returned from there after September 2, to retrieve the hidden family possessions, and to question his brothers-in-law. The only logical conclusion is that the case took place during the siege, during its last days, before the occupation of Buda. R. Zevi Ashkenazi, even if not identical with the Zevi saved by Sender Tausk, could have reached his old-new city only after the fall of Buda.

R. Zevi Ashkenazi, the Ḥakham Zevi—under the pseudonym of “Reuben”—thus himself asked the question regarding his own case, and gave a rabbinic response favoring himself, in order to acquire the inheritance of his deceased wife, which was not his due according to the laws and customs of Buda. It is not known if he did indeed come by the assets.

It is not impossible that the responsum form was simply a literary fiction for the Ḥakham Zevi. I recognize the wide range of his rabbinic knowledge, I appreciate his exquisite argumentation, and I welcome his contributions to our knowledge of legal practice in Buda and of the siege in 1686. Nonetheless, I have to admit that after having tried to read his responsum from the reverse and having taken the case described there for what it really was, his personality did not win my sympathy.

## 4. The Responsa of Ezekiel Landau as Source Material for the History of Hungarian Jewry

Viktória Bányai

The material involved in my study is circa 110 responsa of the much-respected chief rabbi of Prague, R. Ezekiel Landau (1713–1793),<sup>1</sup> written in reply to pleas and questions which were sent to identifiably Hungarian addressees. Besides, I have also included some cases (typically those of husbands who had disappeared), whose setting is Hungary, even though the addressees themselves are not residents of Hungary.

The collection of Landau's responsa was published under the title *Noda bi-Yehudah*, edited by Landau himself (Volume 1, Prague, 1776) and his son Shmuel (?–1834) (Volume 2, Prague, 1811). The responsa were written in the three decades or so between ca. 1760 and 1793. The majority of the answers sent to Hungarian addressees were written in the 1780s and early 1790s (though some of them are impossible to date). The fact that material from the earlier period is sparse can be put down to three reasons. First of all, it is by the 1780s that Landau's fame and authority started to attract questions left unresolved by other rabbis or to induce the parties in a disputed case to seek his resolution and accept his ruling as definite. Secondly, by that time Landau's former pupils had risen to certain higher positions, yet still tended to seek his advice on complicated issues. Thirdly, it also needs to be taken into account that by the last third of the 18<sup>th</sup> century there is an increase in the number of Jewish communities in Hungary that have a rabbi

<sup>1</sup> Landau, Ezekiel ben Jehuda Segal (1713–1793) was one of the most famous rabbis, a halakhic authority and writer of responsa, in the second half of the 18th century. He was born in Opatów (Poland), and came from a wealthy and distinguished family. At the age of 21 he was already *dayyan* (rabbinic ruler, judge) in Brody, and from 1745 rabbi of Yampol. From 1754 until his death he was chief rabbi of Prague and the whole of Bohemia. (Moshe Shraga Samet, "Landau, Ezekiel ben Juda," in *Encyclopaedia Judaica*, vol. X [Jerusalem: Keter, 1972], coll. 1388–1391).

of their own and wish to run their community life on an autonomous basis; the conflicts and halakhic problems resulting from this fact also increased the number of unresolved cases.

My main objective when studying the documents was to find hitherto unknown data concerning the history of Jews in Hungary in the given period and the everyday life of the communities in question. Landau's responsa mention 33 place names and 47 persons pertaining to Hungary, several of which, of course, are mentioned repeatedly. Generally, we have little information on the internal life of Jewish communities in this period, and also it is unclear how exactly many contemporary rabbis functioned (how they brought decisions, what they thought, what their aims were). My focus of study was exactly this area: the communities involved, on the one hand, and the way of thinking of the rabbis and dayyans who addressed their questions to Landau, on the other. Doing this, I have been following the example set by Mózes Richtmann (1880–1972), who studied the same texts a hundred years earlier.<sup>2</sup>

In the course of such study, the question inevitably arises as to what extent these documents yield reliable information. The methodological problems arising when using these responsa to gain historical insights in part overlap with those presented by other textual sources, but in part they are specific to the documents in question.

One specific problem is that of linguistic interpretation, which is similar to the problems presented by medieval Latin sources, i.e. the fact that language use varied greatly from period to period and from region to region. On the one hand, the meaning of certain terms changes with time and place. And, on the other hand, the authors were also influenced by the vernacular of the region of their residence, and thus named the same phenomena differently, or termed institutions, ranks or social and technological phenomena in different ways.

Another oft-quoted problem is that, unlike the usual court records, responsa tend to present the cases without making reference to the actual persons, places and dates involved. The descriptions focus on the halakhic aspects of the cases presented, as their aim was precisely to provide precedence for similar situations arising at different places and times,

<sup>2</sup> Mózes Richtmann, *Landau Ezekiel prágai rabbi (1713–1793) és a magyar zsidók. Adalék a magyar zsidó községek és rabbijaik történetéhez a XVIII. században* (Budapest: Athenaeum, 1905).

involving different individuals. Nevertheless, there are questions and cases which, even without reference to such specifics, reveal new information, and are characteristic of the given historical period. Thus, for example, the question sent to Landau in 1787 by R. Alexander Meisels (?–1819), rabbi of Szerdahely (Dunaszerdahely / Dunajská Streda, Slovakia), concerning “the synagogue in the town near their place,” makes it impossible to identify either the town or the count in question, yet the behaviour of the count’s prefect in threatening to pull down the synagogue is revealing in itself.<sup>3</sup>

Yet another question concerning the reliability of the responsa as historical source material is how well-versed the given rabbis were in mundane matters. Some of them are described in the sources as completely withdrawn from worldly matters, spending all their time poring over dusty old volumes and as a result being hopelessly lost in practical, everyday issues. These descriptions, intended as praise, are no doubt somewhat exaggerated, yet it raises the question how reliable their knowledge of everyday life actually was. Another aspect of this same question, which concerns R. Ezekiel Landau’s activity as well, is how much they could possibly know about the customs and lifestyle of other countries. The rabbis of Central and Eastern Europe were geographically quite mobile: they would pursue their studies or set up their residence in settlements in Germany, Bohemia, Moravia, Poland, the Ukraine or Hungary, as need be. Therefore they were knowledgeable about the linguistic, cultural and geographical background of these regions. However, unless there is biographical evidence to show that the respondent had spent any amount of time in a given region, it is highly doubtful how much they could have known about the circumstances of distant localities.

## LANDAU’S KNOWLEDGE OF HUNGARY

The region of Ezekiel Landau’s activity, as reconstructed on the basis of his biographical data, was north of Hungary, and included parts of Poland, Volhynia and Bohemia. He never travelled to Hungary and he was the first to admit his lack of background knowledge on the situation in Hungary. Obviously, he spoke no Hungarian either, thus, for instance, he

<sup>3</sup> *Noda bi-Yehudah*, II OḤ, no. 19.

was incompetent to judge whether the correct way of naming a Hungarian town in a given divorce document was Bonyhád or Bonyhádi.<sup>4</sup> His linguistic treatise on such questions is more of a historic curiosity, while the issues raised by the addressee and the general principles of problem resolution presented in the responsum are none the less revealing.

On another occasion, it was Landau himself who apologized for being geographically uninformed when the much-respected rabbi of Pressburg, R. Meir Barby (1729–1789), reproached him for resolving a problem pertaining to a place near Pressburg.<sup>5</sup> Responsa in general offer a sketch of an intricate network of relationships, where the range of authority of a given rabbi can be precisely mapped. The more authority a certain rabbi had, the wider geographical range the pleas and questions addressed to him would have. The respondent, however, was supposed to respect the range of authority of other significant rabbis. And this is precisely why Landau had to apologize: he was late to realize that on the given question R. Barby had already issued a resolution and the local rabbi turned to Landau exactly because he did not agree with Barby's ruling. Landau, unaware at first that he was thereby contesting Barby's standpoint, agreed with the local rabbi. Unfortunately, the responsum does not specify the name of the place: it is actually a conscious means of public offence to hide the name of the place and the rabbi involved.

Other cases suggest that R. Barby felt competent in issues pertaining to Körmen or Bonyhád in the west of Hungary, apparently considering the Transdanubia region and the western half of Oberland (in Hungarian: Felvidék, present-day western Slovakia) to be the wider geographical region of Pressburg.<sup>6</sup> Landau accepted and even supported Barby's ambitions to become the (informal) chief rabbi of the entire region. Apart from his much-emphasized respect for Barby, Landau was also inspired by the (mistaken) supposition that if there existed a formal institutional framework of supra-communal leadership in the regions he was familiar with—that is, Poland, Galicia, Bohemia and Moravia—this must also have been the case in Hungary. Even though there was no chief rabbi in Hungary at the time,

<sup>4</sup> *Noda bi-Yehudah*, II EE, no. 118.

<sup>5</sup> *Noda bi-Yehudah*, II YD, no. 70.

<sup>6</sup> Letter of Divorce in Körmen: *Noda bi-Yehudah*, II EE, nos. 105–106; Bonyhád: *Noda bi-Yehudah*, II EE, nos. 127–128.



it is understandable that Landau supported the ambitions of the rabbi of Pressburg, and even used his own influence to strengthen his positions and his control over the activity of the other rabbis in Hungary.<sup>7</sup>

Thirdly, I shall present the case of a misunderstanding arising from the specificity of the Hungarian legal framework, on many points diverging from those in other parts of the Habsburg Empire. Landau's resolution of a patrimonial dispute was contested by the rabbi of Abaújszántó, R. Cvi Hirsch Löw (?–1797).<sup>8</sup> Landau's response contained a bitter reproach to Hirsch on account of the latter being unversed in the legal system of Hungary:

וגם בלא"ה אני תמה עליו וכי הוא נתגדל ביער או במדבר ואינו יודע נימוסי  
המדינה וחוקי המלכות.

However, I am not even surprised at your ignorance, as you must no doubt have been brought up in the wilderness or at some hamlet, and that's why you are unaware of the norms and laws of the [Hungarian] Kingdom.<sup>9</sup>

Knowledge of the specific legal framework of the country became an issue after Joseph II issued three bills, one in 1783 and two in 1785, abolishing the autonomy of Jewish communities in the resolution of their legal disputes.<sup>10</sup> According to these, rabbis were not allowed to make any resolutions that would conflict with the pertaining general legal norms valid for the whole of the country. To abide with these, however, rabbis were supposed to know these very norms just as thoroughly as the halakhic code in order to find solutions that harmonized with both or at least did not contradict either.

In the case quoted here, the potential heir had come of age according to Jewish tradition but was still considered a minor by the worldly authorities. Although this does not concern Landau's decision, he also proved himself "ignorant of the norms and laws of the Hungarian Kingdom" when he

<sup>7</sup> On the history of the chief rabbinate in Hungary, see Sándor Büchler, "Az országos főrabbi-hivatal Magyarországon a XVII. és XVIII. században," *IMIT Évkönyv*, 1896, pp. 271–286.

<sup>8</sup> *Noda bi-Yehudah*, II הַמ, nos. 25–26.

<sup>9</sup> *Noda bi-Yehudah*, II הַמ, no. 26.

<sup>10</sup> The dates are August 25, 1783, April 18, 1785 and May 23, 1785. Lajos Venetianer, *A zsidóság szervezete az európai államokban* (Budapest: Izraelita Magyar Irodalmi Társulat, 1901), pp. 61–63, 198–200.

referred to the age of 18 as relevant in Bohemia and other parts of the Monarchy, while Hungary at the time still kept to the informal norm set down in Werbőczy's *Tripartitum*,<sup>11</sup> setting the limit of coming of age at 24 years for men and 16 for women.

Even considering these generic and personal characteristics of the texts we must say that Ezekiel Landau's collection of responsa is an invaluable historical document for the light it sheds on the life of the Jewish communities of the region in the late 18th century. It gives us unique insight into numerous moments of everyday life and provides information on the functioning of otherwise unknown rabbis and *dayyans*. The majority of rabbis left behind no similar collection of letters, so in their case we can only catch glimpses of their activity using such secondary sources.

## THE LETTERS BEHIND THE RESPONSA

The manuscripts of the Landau family were preserved by the Hasidic Stoliner-Karlin family of Lithuanian origin in their private collection in Jerusalem. The corpus, however, is accessible on microfiche in the National and University Library of Jerusalem. The collection includes the manuscript versions of some of the printed work of Ezekiel and Shmuel Landau, some of the family correspondence, and numerous letters received by the Landau family as well as the drafts and copies of letters sent by them. This body of texts provides insight into the technical aspects of the correspondence of the rabbis in Hungary with Ezekiel Landau. Thus, for instance, the microfiche shows how the sheet of paper with the letter on one side was folded into four or eight, and the address was written on the "envelope" thus created. The address was in German, which indicates that the letters were forwarded with the aid of non-Jewish outsiders.

Studying these manuscripts has yielded significant results in two fields. Firstly, it has brought to light some cases that were not included in the *Noda bi-Yehudah*: the collection contains some questions that Landau probably

<sup>11</sup> István Werbőczy (c. 1460–1541) a Hungarian jurist and statesman, mostly known for his work *Opus tripartitum juris consuetudinarii inclyti regni hungariae* (short form: *Tripartitum* = *The customary law of the renowned Kingdom of Hungary: a work in three parts*), which was the de facto law-book of Hungary until 1848.

did answer, letters where the draft of the reply is actually written on the back side of the original letter, yet did not get included in the edited and printed version of the collection. As mentioned above, the first volume of *Noda bi-Yehudah* was edited by Landau himself, the second by his son. The omissions might be for various reasons. In some cases it is possible that they did not think it was of particular interest for readers, or decided to include only a certain number of examples of a given type of case. Or, on the contrary, they deemed a given case too particular to make it public, because the decision was based on the specific circumstances and did not lend itself to generalization.

It is also possible, however, that some omissions were due to tactical considerations, as exemplified by Landau's reply to R. Lemil Glogau (1709–1789), rabbi of Eisenstadt, who had expressed his astonishment at the publication of one of his resolutions in the first edition of *Noda bi-Yehudah*.<sup>12</sup> In the case in question, based on R. Jacob ben Meir Tam (1096–1171), Landau's opinion was that men could be allowed to shave off their beards on the intermediate days of holidays (*hol ha-moed*), even if this was generally prohibited. Glogau considered the publication of such a lax decision dangerous in itself, fearing that even small allowances like these could lead to a general disregard for prohibitions.

זה ובפרטות בדור פרוץ שבימינו יש לחוש שפושעים יכשלו גם בכמה ענינים  
אחרים אם יראו שמתירין נגד הש"ע וכל האחרונים ועכ"פ לא היה לפרסם היתר זה  
בספר.

Especially with today's unruly young generation it is a cause for concern that they might fail on other questions if they see us making allowances contradicting the *Shulhan arukh* and the later decisors (*ha-aḥaronim*). This decision, if at all made, should not at least have been published.<sup>13</sup>

In his reply, Landau admits to being much in doubt himself as to whether or not to make his resolution public. "Damned if I do, damned if I don't!" (אוי לי אם אומר אוי לי אם לא אומר),<sup>14</sup> as he put it.

<sup>12</sup> *Noda bi-Yehudah*, I OḤ, no. 13.

<sup>13</sup> *Noda bi-Yehudah*, II OḤ, no. 99.

<sup>14</sup> bBava batra 89b.

Finally, however, Landau realized that it was precisely this generation that needed such allowances to make it possible for them to find solutions for the problems presented by the novelties of their lifestyle and yet still keep to the traditions of their forebears. This is why, in the end, he decided on the publication of his ruling.

The items of Landau's correspondence with Hungarian addressees preserved only in manuscript form in the Karlin Collection in Jerusalem are the following:

- Karlin 229.—R. Jeremiah of Mattersdorf (1786)—the reply written on the back of the original letter
- Karlin 230.—a draft by Ezekiel Landau (1786), on the divorce case of Homonna (Humenne, Slovakia)
- Karlin 245.—the rabbinical court of Isaac ha-Levi of Pressburg (1760) against Sabbathianism
- Karlin 381.—Reuven Rakonitz of Veszprém—on a theoretical issue concerning the temple cult of Jerusalem
- Karlin 399.—Wolf (Benjamin Zeev) Boskowitz of Alt-Ofen (Óbuda) (1791)—on the case of an *agunah* in Aszód, the daughter of Eliezer Katz
- Karlin 400.—Wolf (Benjamin Zeev) Boskowitz—the case of an *agunah*

Another area where the manuscripts yield extra insight beyond the information gained from the printed version is the set of original questions and replies. The new (critical) edition of the *Noda bi-Yehudah* published by Makhon Yerusalayim<sup>15</sup> contains these additional items in an appendix. This appendix provides further information on the background and details of the cases, as the original questions might well contain data that Landau himself omitted from the text of the responsum itself.

This is how, for example, we learn about the background of a resolution sent in reply to R. Alexander Meisels, rabbi of Szerdahely, from a letter found also in the Karlin Collection (no. 407). From Landau's resolution only the following facts can be gathered:<sup>16</sup> the validity of a divorce document (*get*) of a woman called Tolže is called into question. Having compiled the *get*,

<sup>15</sup> Ezekiel Segal Landau, *Sheelot u-teshuvot noda bi-Yehudah ha-shalem*, ed. by David Aharon Freundlich (Jerusalem–Ashkelon: Makhon Yerushalaim, 1990–2008), 5 vols.

<sup>16</sup> *Noda bi-Yehudah*, II EE, no. 124.

R. Meisels finds out that the woman spelled her name differently from the way that he, the rabbi, had ordered it to be written in the get. He had it written using an *alef* for the “e” sound, whereas she wrote it with a *yod*. Besides these, Meisels’ original letter also gives the date of the event, 1792; he even apologizes for having to disturb the old and ailing Landau, but he claims that the case requires urgent resolution. Besides, the letter also reveals that Meisels had compiled the divorce document in question for the daughter of the rabbi of Rechnitz, R. Aharon Spitz, who himself had asked him to do the job. This, in turn, gives us implicit information on the relationship between the two rabbis. Moreover, it is also revealed that the same case had apparently been already dealt with by the rabbis of Alt-Ofen (Óbuda) and Nikolsburg (R. Mose Münz and R. Mordechai Benet, respectively), and both had voiced standpoints contesting that of Meisels. This detail is also revealing in showing us who became the definitive authority in the region following the death of R. Meir Barby of Pressburg and R. Lemil Glogau of Eisenstadt (both deceased in 1789), at least to such an extent as to induce the rabbi of Szerdahely to ask for Landau’s opinion to counter their resolution. Thus, with all this background information, the case of the spelling of a name, quite insignificant in itself, becomes a truly valuable source regarding the relationships between the rabbis of that period.

The last example I wish to include in the present paper is also that of a divorce letter, involving several letters and resolutions. R. Joshua Mordechai Falk, the rabbi of Körmend, and of Polish origin, issued a divorce document in his own community in the summer of 1780. The much respected rabbi of Pressburg, R. Meir Barby, declared the document invalid, however. His main argument was that in a community where no such document had been issued previously, there had not evolved a traditional way of spelling the name of the place in Hebrew, a fact which might give rise to misunderstandings. R. Joshua Falk asked the rabbi of Rechnitz, R. Eleazar Kallir (1741–1801), to give his opinion and even sent him a copy of the divorce letter. Kallir, however, did not feel up to the task and forwarded the letter to Landau, who approved of Meir Barby’s resolution and even imposed a seriously humiliating punishment upon the rabbi of Körmend:

ההדיוט הזה לא יסדר גיטין כלל ולא חליצות משך שלש שנים מהיום ואחר שלש שנים אם יהיה מחובשי בית המדרש וילמוד היטב בהלכות גיטין וחליצות אז יצא לחפשי וברא יבוא ברנה לקבל סמיכה מאחד מגאוני הזמן וינסה אותו אם הגון לזה יסמוך ידיו עליו.

The ignorant [rabbi] should not be authorized to deal with cases of divorce or *ḥalīzah* for three years from this day, and should be freed again after three years if he spends his time learning about the laws of divorce and *ḥalīzah* in the *beit ha-midrash* as a hermit. Then he should “come with joy” (Ps. 126:6) to seek his initiation (*semikhah*) from one of the wise men of our time on condition of having his knowledge tested. If he sees him fit, he shall receive his initiation.<sup>17</sup>

Kallir let R. Joshua Falk know about Landau’s resolution—we have some sections of this letter dated the month of Av in the year 5540 (summer of 1780).<sup>18</sup>

Falk at this point decided to cut out the middle man and wrote straight to Landau. His argument can be reconstructed from Landau’s response: according to him, every tradition has a starting point, and consequently, even the settlements that now do have a history of issuing divorce documents locally, had at some point had a first one. In his second responsum concerning the case, Landau refutes this argument.<sup>19</sup> There is also a third letter, which enriches our knowledge of the story by adding some fine detail. This document was written by R. Lamil Glogau, the rabbi of Eisenstadt, to R. Eleazar Kallir, and in this he somewhat softens Landau’s highly unfavorable opinion of Falk (portraying him as ignorant, arrogant and impertinent):

בא המורה הנ"ל היום לביתי, בכה ויתחנן לי, ושאלתיו על שני דברים העיקרים שראוי לפסול הגט בשבילם, והשיב על הראשון שכן ראה המנהג בפולין מכמה רבנים שמסדרים ביחידות. [...] לכן הנני ממליץ עבורו לפני כבוד רום מעלתו נ"י שאם ימצא כן שהאמת אתו בשני דברים הנ"ל לאחר בירור צדק, יחוס עליו שלא לבזותו כ"כ, כי ראיתי שאינו בכלל הדיוטים כאשר דמיתי מקדם, אלא הוא צנא מלא ספרא, ויש לו כמה כתבים מכמה רבנים מפורסמים המספרים בשבחו, ושהי כמה שנים רב בפולין.

The teacher mentioned came to my house today to weep and plead. When asked about the two main things which make the divorce paper unacceptable to you, he said regarding the first issue that he saw this among the traditions

<sup>17</sup> *Noda bi-Yehudah*, II EE, no. 105.

<sup>18</sup> In German translation published in Ignaz Reich, *Beth El. Ehrentempel verdienter ungarisches Israeliten*, II. (Pest: Aloiz Bucszánszky, 1868), pp. 555–556.

<sup>19</sup> *Noda bi-Yehudah*, II EE, no. 106.

of Polin, where some rabbis will compile [such documents] independently. [...] Therefore, I recommend him to Your Most Respected Highness – may Your light shine. Should it turn out after true investigation that he was right about the aforementioned two issues, have pity on him, and do not humiliate him. I find that he is not ignorant, as I have thought previously. Quite on the contrary, that he is “a basket full of books.” Also, he is in possession of some letters of recommendation from well-known rabbis, who speak highly of him and praise his efforts when acting as rabbi in Polin.<sup>20</sup>

Thus, behind the whole dispute concerning the divorce document of Körmend, the considerations are not purely halakhic. By the late 18<sup>th</sup> and early 19<sup>th</sup> century, more and more Jewish communities in Hungary that had previously hardly existed, or had numbered but a handful of families, now increased in size and influence to such an extent as to employ a rabbi of their own and to strive for full independence in their religious affairs. These struggles for independence clashed with the intention of the most influential rabbis of the region, who tried to retain their authority. So this kind of conflict was not at all an isolated, exceptional occurrence.

<sup>20</sup> “Be-esek get she-hayu bo kamah pesulim,” *Kerem Shlomo*, IV/10 (1981), p. 12.

## 5. Language Assimilation and Dissimilation in the Works of R. Hillel Lichtenstein

*Szonja Ráhel Komoróczy*

R. Hillel Lichtenstein (1815–1891) was one of the most outspoken and controversial figures of Orthodox Jewry in the nineteenth century. He was born in Vágvecse (today Veča, Slovakia). He studied in the Pressburg (Pozsony; today Bratislava, Slovakia) yeshiva in the years 1832–37, with the Ḥatam Sofer (R. Moshe Sofer, Moses Schreiber, 1762–1839) himself, the figure who influenced most rabbis and decisions in the battle against reform and assimilation. After his marriage, Lichtenstein spent thirteen years with his in-laws in Galánta (today Galanta, Slovakia), opened a yeshiva, and already mustered a group of followers there. In 1850 he was appointed rabbi in Margaretten (Margitta in Hungarian; today Marghita, Romania), and was subsequently invited to Klausenburg (Kolozsvár; today Cluj Napoca, Romania). But there, his approach proved to be too strict for the community, so he was compelled to leave, and he returned to Margaretten. From 1865 he became the rabbi of Szikszó, and finally from 1867 until his death in 1891, he was the rabbi of Kolomea (Kołomyja, Galicia; today Kolomiya, Ukraine). Based on these biographical data, he is traditionally also known as the *Vetsher*, *Sikser*, *Kolomeyer*, or—from the abbreviation of his last name—as *Hillel Lesh* / *Lash*.

His life and personality are known from various sources. There are some pious books compiled by his descendants and followers, such as *Sefer beit Hillel*, by a student of his,<sup>1</sup> and *Toldot ve-zikhronot*, by his grandson.<sup>2</sup> He is also often mentioned in the major Jewish papers of the time, most notably in the German-language *Ben Chananja* (1844 / 1858–1867), edited by Leopold Löw in Szeged, or the *Allgemeine Zeitung des Judentums* (1837–1922) in Leipzig

<sup>1</sup> Written by Zevi Hirsch Heller, published first in Munkács: Bleier & Kohn, 1890.

<sup>2</sup> Written by Haim Jacob Lichtenstein; published first in Szatmár: Meir Leib Hirsch, 1931.



and Berlin, and *Die Neuzeit* (1861–1903) in Vienna. In these papers, there are lengthier articles, as well as short accounts sent in by correspondents from all around the region, that mention Hillel Lichtenstein—not surprisingly, given the affiliation of these papers—always in a critical, sarcastic tone, appalled by his rulings and statements.

From all these sources it is known that Lichtenstein was famous for his extreme rigidity, in which he surpassed even his master, the Ḥatam Sofer. He took upon himself every possible stringency, even at the price of personal discomfort or sacrifice. Parallel to this, he fought with full devotion against all traces of reform in Jewish life, and sharply criticized those—and especially the orthodox rabbis—inclined to any kind of innovation in religious practice. For example, he fought against Azriel Hildesheimer (1820–1899), the rabbi in Eisenstadt, for integrating secular scholarship into his teachings. And he attacked even the Ketav Sofer (Abraham Samuel Benjamin Sofer, 1815–1871), son, follower and heir of the Ḥatam Sofer. He was thus not only strict, but also peculiarly confrontational.

He was known as a terrific preacher: he traveled around the region—especially the small communities of the *Unterland*<sup>3</sup>—giving passionate and powerful sermons calling for religious awakening, repentance and the fight against reform.<sup>4</sup>

Among the infamously strict rulings of Hillel Lichtenstein is his prohibition of the force-feeding of geese, a widespread custom in the region ever since, and the kosher slaughtering and consumption of such geese. And from

<sup>3</sup> *Unterland* (“Lowland”) is the Jewish name of one of the two most important geographical areas in Hungary, *Oberland* (“Upland”) being the other. These terms have a parallel in Hungarian: “Felvidék” and “Alföld,” which refer to the northern parts of Hungary, characteristically mountainous, and the flat and low southern, south-western region of the country, respectively. Compared to this, however, the Jewish names seem to have undergone a ninety-degree rotation towards the west: for Jews of the region, *Oberland* has always meant the north-western parts of the country, and *Unterland* the north-eastern regions. The Jewish terminology thus does not reflect the vertical location of the areas anymore, but rather their distance from Vienna, the most important point of reference in Hungarian Jewish history. Cf. Miklós (Claus Jürgen) Hutterer, “Adalékok a felföldizmus kérdéséhez,” *Magyar Nyelv*, 57:2 (1961), pp. 213–214.

<sup>4</sup> For modern, scholarly literature on Hillel Lichtenstein, see Isaac Joseph Cohen, *Ḥakhmei Transilvaniah 1730–1944: Ḥelek a) Perakim be-toldot yehudei Transilvaniah, ḥakhameha, ve-ha-yezirah ha-toranit bah; Ḥelek b) Ḥakhmei Transilvaniah ve-ḥiburehem* (Jerusalem: Makhon Yerushalaim, 1989), pp. 142–143; Jacob Katz, *A House Divided: Orthodoxy and Schism in Nineteenth Century Central European Jewry* (Hanover: Brandeis UP, 1998), esp. pp. 56–69.

among the most common reforms in synagogue architecture and ritual, he repeatedly and vehemently opposed moving the *bimah* (elevated platform in the synagogue, from which the Torah is read; traditionally in the middle of the building) to the front, lowering the level of the *mehizah* (wall separating men and women in the synagogue), or the introduction of a choir. He even forbade to eat meat slaughtered by a *shohet* (“ritual slaughterer”) who prayed in such a synagogue, or to use the *tefillin* (“phylacteries”) written by such a scribe, and, of course, the rulings and decisions of the rabbi of such a synagogue were also to be considered void.

Lichtenstein had an important role in organizing the rabbinical assembly in Michalowitz (Nagymihály; today Michalovce, Slovakia) in 1865, against religious reforms of this kind, and in composing, publishing and spreading the decision accepted there.<sup>5</sup> The first and most important of the nine rulings passed at the assembly in Michalowitz is a prohibition against non-Jewish languages:<sup>6</sup>

אסור לדרוש דרשה בלשון אוה"ע, וכן אסור לשמוע דרשה האמורה בלשון אוה"ע, ע"כ צריך כל בר ישראל אשר ישמע שרב או אחר דורש בלשון נכרי לעזוב בהכנס ולצאת חוצה. והדורש צריך לדרוש בלשון יהודית שמדברים בו ישראל הכשרים אנשי המדינה הזאת.

It is forbidden to give a sermon in the language of the people [i.e. non-Jewish language], and similarly, it is forbidden to listen to a sermon given in the language of the people. Therefore, every son of Israel who hears a rabbi or anyone else give a sermon in a non-Jewish language has to leave the synagogue and go outside. And the preacher should give the sermon in the Jewish language that is spoken by the kosher Jews in this country.

This ruling follows the teachings of the Ḥatam Sofer, who had repeatedly disapproved of the use of non-Jewish languages and language assimilation. For example, he warned communities from employing someone who used

<sup>5</sup> Nathaniel Katzburg, “Pesak bet-din shel Mikhaloviz 1865,” in Immanuel Etkes, ed., *Perakim be-toldot ha-ḥevrah ha-yehudit bi-yemei ha-benaim u-va-et ha-ḥadashah* (Jerusalem: Magnes, 1980), pp. 373–386; Katz, *A House Divided*, pp. 77–85.

<sup>6</sup> The quotation is based on the facsimile reprint in Jacob Katz, *Ha-kera she-lo nitahah: Perishat ha-ortodoksim mi-kelal ha-kehilot be-Hungariah u-ve-Germaniah* (Jerusalem: Zalman Shazar, 1995), p. 94.

non-Jewish languages,<sup>7</sup> and in his last will he commanded his followers to refrain from changing their name, language or clothing.<sup>8</sup> But going beyond the Ḥatam Sofer's directive, the *pesak beit din* ("judicial decision") of Michalowitz prohibits not only actively using a non-Jewish language, but also listening to a sermon delivered in such a language, or entering a synagogue where this happens.

In order to understand the stringency of this ruling, it is worth casting a look at the linguistic situation in contemporary Hungary, and especially regarding Hillel Lichtenstein himself. In terms of social, religious and linguistic tendencies within Jewish society, Hungary lay on the border between Western and Eastern Europe, from where the differences between west and east could at the time obviously be seen. On the one hand, there was the example of German-speaking lands, where all strata of Jewish society used German as their spoken language, where modernization and reform made their way into most fields of Jewish life, and where assimilation and acculturation became more and more widespread, even among the orthodox. On the other hand, there was Galicia and the rest of Eastern Europe, where Yiddish was still the general spoken language, where the majority of the Jewish population remained traditional, and where Hasidism became increasingly influential. In this contrast, language came to be seen as an important factor: cultural and religious assimilation was perceived as a direct consequence of linguistic assimilation.

The wave of reform and modernization and thus also acculturation and language assimilation was gradually spreading from west to east. In the 1860s, German was already the prevalent language in most of *Oberland*,<sup>9</sup> or at least in bigger cities such as Pressburg. Only the less educated, lower strata of society showed some linguistic conservatism or backwardness, but even they did not use Yiddish anymore. For this audience, the University Press of Buda and the Hebrew printing houses of Pressburg produced numerous chapbooks and popular narratives in the late nineteenth century, in Judeo-German—in German, but printed with Hebrew characters. They thus already spoke German, but still preferred the Hebrew script. The territories of the

<sup>7</sup> *Shu"t Ḥatam Sofer*, HM, no. 197.

<sup>8</sup> See Akiva Joseph Schlesinger, *Sefer lev ha-ivri*, 2 vols. (Jerusalem: Schlesinger, 1990), vol. 1, pp. 62–71. And for a bibliography of the editions of the Ḥatam Sofer's last will, see Meir Hildesheimer, "Defusei ha-zavaat ha-Ḥatam Sofer," *Alei sefer*, 19 (2001), pp. 121–140.

<sup>9</sup> See above, note 3.

Unterland, on the other hand, still remained intact at the time, with Yiddish as the spoken language, and the influences of Galicia and Eastern Europe being more dominant.

In this atmosphere, Hillel Lichtenstein moved eastwards, from Pressburg to Szikszó and eventually to Galicia, thus fleeing the influences of the wave of reform originating in the west, and also moving away from linguistic assimilation. Only in Michalowitz, or at least in the Unterland, and only by someone who had witnessed the linguistic and cultural developments in the west, could such a decree be issued and implemented.

Being an impassioned preacher, Hillel Lichtenstein also often spoke impetuously against any sign of assimilation in his sermons, and especially against the use of non-Jewish languages in synagogues. For example, he attacked and forbade people from attending the new synagogue in Miskolc, where there were significant changes and modernizations,<sup>10</sup> or he forbade eating meat slaughtered by a ritual slaughterer who prayed in a synagogue where the sermon was in German, such as the one in Makó, where he had already previously denounced change.<sup>11</sup> Or, in Galánta, he is said to have delivered a sermon attacking those who preached in German (given here in the Germanized transliteration of the correspondent from Komárom in *Die Neuzeit*):<sup>12</sup>

Warum saagen (saugen) die Kinder? Weil sie keine Zähne haben. Die moderne Prediger sagen (sprechen) auch, folglich benöthigen sie keine Zähne. Nachdem sie daher keine Zähne brauchen, nun—was zaudert ihr so lange, schlägt den Predigern die Zähne ein.

In this untranslatable sermon, he asks the rhetorical question of why babies suckle, and answers that it is because they did not have teeth. In his dialect of Yiddish, the verb for “to suckle” sounded like *zagn* (as opposed to the standard Yiddish *zeygn*). And then he continued, stating that since the German preachers also *zagn* (“to say,” cf. German *sagen*, as opposed to Yiddish *zogn*, or *darshenen*, “to preach”), they do not need teeth either. So, he told his listeners that they “should not delay in going and knocking out their teeth.”

<sup>10</sup> *Ben Chananja*, 6 (1863), p. 846, cf. Katz, *A House Divided*, pp. 56–69.

<sup>11</sup> *Ben Chananja*, 9 (1866), p. 572, cf. Max Weinreich, *Geshikhte fun der yidisher shprakh: bagrifn, faktn, metodn*, 4 vols. (New York: YIVO, 1973), vol. 3, p. 308; Katz, *A House Divided*, p. 67.

<sup>12</sup> *Die Neuzeit* (1879), p. 244, cf. Weinreich, *Geshikhte*, vol. 3, p. 308.

Hillel Lichtenstein had numerous rulings regarding language usage in the same vein as the decree of the Michalowitz conference; the issue is raised practically in all of his works. In his collection of responsa entitled *Teshuvot Beit Hillel*,<sup>13</sup> for example, there are many instances where he criticized his contemporaries for using German. In one of the letters,<sup>14</sup> actually an attack from 1863 against the Ḥatam Sofer's son, the aforementioned Ketav Sofer, he argued—quoting various texts of the Ḥatam Sofer as proof-texts, including his last will<sup>15</sup>—that even if it was easier for the community to understand German, and the rabbi's chances of keeping them within Judaism were thus greater, one should not do so, because then the people would think that the German language itself was credible, and would therefore believe everyone who spoke German, and would thus go astray. In another letter,<sup>16</sup> an answer to a request for his approbation, he complained that the previously rejoicing city of Pressburg “has become a harlot,”<sup>17</sup> a “stone of stumbling and a rock of offence,”<sup>18</sup> because it had a preacher who delivered sermons in German. In yet another letter,<sup>19</sup> in 1864, he envisioned the Ḥatam Sofer moaning that he “nourished and brought up children, and they have rebelled”<sup>20</sup> when he sees his pupils disregard his prohibition against using the non-Jewish language.

In *Maskil el dal*,<sup>21</sup> a collection of his ethical teachings, sermons and articles on daily political and religious issues, Lichtenstein provided a more detailed rabbinic grounding for his prohibition against language assimilation, setting it in the wider context of Jewish tradition. First of all, he refers to various sources by the Ḥatam Sofer regarding language change, including those already mentioned above. From among the traditional sources, he cites a famous midrash, according to which the Jews of Egypt could remain a people and achieve the exodus from Egypt only because they did not assimilate to the Egyptians, among others, in their names and language.<sup>22</sup>

<sup>13</sup> Ed. by Ḥaim Jacob Lichtenstein; published first in Szatmár: Schwartz, 1908.

<sup>14</sup> *Teshuvot beit Hillel*, 39.

<sup>15</sup> See above, p. 110, note 8.

<sup>16</sup> *Teshuvot beit Hillel*, 35.

<sup>17</sup> Isa. 1:21.

<sup>18</sup> Isa. 8:14.

<sup>19</sup> *Teshuvot beit Hillel*, 35.

<sup>20</sup> Isa. 1:2.

<sup>21</sup> First published in four volumes, Ungvár: Karl Jäger / Lemberg, 1867–1871.

<sup>22</sup> Midrash rabba, *Bamidbar* 13:20, etc.

And he also mentions a narrative in the Jerusalem Talmud, which also the Ḥatam Sofer had already referred to, according to which the notoriously stringent students of Shammai in first-century Babylonia introduced eighteen measures to protect Jews from assimilation, and among others, they forbade non-Jewish women, cheese, wine, clothes, bread, oil and languages.<sup>23</sup>

It is of no surprise that Lichtenstein refers to his master, the Ḥatam Sofer: his rulings and teachings became decisive factors in Hungarian Jewish history, and the basis of the later development of the extreme orthodox or *haredi* (“trembling, pious”) movement of Judaism. The use of a midrash as an undisputable proof-text for a rabbinic ruling, however, is rather uncommon. And even more curious is the story from the Jerusalem Talmud. First of all, in the constant debates of the students of Shammai and the students of Hillel—which has been paradigmatic in Jewish tradition ever since the Talmud as the debate between strict and lenient—traditional halakhah usually follows the rulings of Hillel, so choosing a ruling by Shammai is original in itself. Moreover, as done often by the Ḥatam Sofer and his followers, the Jerusalem Talmud is elevated here to a level equivalent to any other source of halakhah and rabbinic ruling, which blurs the traditional hierarchy of laws and principles, and is also an innovation of a kind.

Yet, Hillel Lichtenstein’s most remarkable discussion on language assimilation is a combination and adaptation of all these teachings and sources, published as a responsum in *Es lasoys* [*Et laasot*] in 1870:<sup>24</sup>

שאלה פ: דיא מצוה דאָס מיר פֿון יעדע אומה אין שם און לשון און מלבוש אום  
געצייכענט זיין זאָלן, אָב דיזעס איין גרונדשטיין איז דיא גאַנצע ייִדישקייט צו  
באַפֿעסטיגען אודר ניכט.

תשובה: דער ריינער אמת איז דאָס דיא חומה מויער וואָס אין איהר כח שטעהט  
צו בעשיצן און צו באַפֿעסטיגען דיא גאַנצע ייִדישקייט אין כלל און אין דער פרט,  
און זיא איין קשר אמיץ פֿעסטער בונד איז דאָס מיר איין עם ה' זינד און זיין  
ווערדען עד עולם ביז אוף עוויג איז. דאָס מיר אויסגעצייכענט זיין זאלן פֿון אַנדערע  
פֿעלקר מיט שם ולשון ומלבוש מיט דען נאָמן און שפראַך און קליידונג, און  
דאָדורך פֿון זיא גאַנץ אָב געזאָנדערט און געטיילט זיין ווערדן, ווייל ווען יידען  
דיא אייגענע שפראַך האָבן אַלס וויא דיא אומות העולם נעמליך דאָס מאַן זאָל

<sup>23</sup> jShabbat 9b.

<sup>24</sup> Quoted here according to the second edition (Lemberg: Kugel, Lewin et Comp., 1873), vol. 1, pp. 113b–114b.

מקפיד זיין אַכט געבן גענוי דיא ריינע שפראַך אזו צו רעדן אָהנע שום שינוי וגרעוון ענדערונג, דאָס הייסט קיין שפראַך פֿעלער וויא זיא רעדן, דאָס פֿעראוהרזאכט שפעטר היען דאָס דיא אמונה און דער דת אויך זיך פֿעראייניגט. דאָריבר דאָ אונזערע אַכות אין מצרים זאָלכעס פֿאָר אום גזעהן האָבן דאָ זיא יעצט ניכט מעהר זינד איין לבדך ישכון איין אָב געזאָנדרט פֿאָלק וויא פֿריער אין ארץ העברים אין דען לאַנד פֿון עברים, זאָנדרען זיא מיסן שוין האָבן פֿילען פֿלקער און פֿרוויקלונג מיט אומות העולם דיא אַנדערע אמונות ודתות גלויבען און געברייכע בעזיצן, און דאָדורך דיא ייִדישקייט געשוואַכט ווערדן קאָן, דאָרום אום דאָס צו פֿרהיטן האָבן זיך אַלע פֿערזאָמלט און האָבן איינשטימיג כורת ברית גוועזן איין בונד גמאַכט דאָס זיא ניכט פֿערלאַסן ווערדן דיא ייִדישע שפראַך, און דאָס זיא ניכט לערנן ווערדן דיא שפראַך פֿון דיא מצרים אום זיך צו ערוויטערן פֿון דיא דרכי ע"ז (ווייל אָבער דיא קינדר דיא דאָרט געבאָרן אונ ערצאָגן ווערדען, איז יאָ ניכט מעגליך דאָס זיא זיך צוריק האַלטן קאָנען פֿון דיא שפראַך וואָס זיא תמיד הערן, זאָ האָט מאָן מיט כוונה אין מיט אַבזיכט איהר לשון משבש גוועזן גפֿעלשט אופֿ צווייערלייאַ אַרט. ערשטענס דאָס מאָן פֿערמישט אין צווישן פֿיעלע ווערטער פֿון לשון הקודש און תרגום, וויא צום בייאשפּיל אפֿשר, חלילה, איין שעה, האַלבע שעה, ברכה זאָגן, ח"ו, בלי נדר, מזל טוב, חתימה טובה, שנה טובה, בעוה"ר, חרטה אד"ג. צווייטענס דאָס מאָן דיא ווערטער זעלבסט פֿרדערבט און אַנדערס אום שפּריכט פֿאַטר פֿאַטר, גראַספֿאַטר דעדע, בראַט ברויט אד"ג. [...]) פֿון דען קבלות ברית פֿון אונזערע פֿאָר עלטערן ווייל דער נכרי דער פֿון זיינער יוגענד נור ריינע דייטשע שפראַכע רעדעט, פֿרשטעהט יאָ ניכט און איז איהם יאָ אונ עקעל דיא ייִדיש טייטשע שפראַך ווייל זיא פֿרדאָרבן גרעדעט ווירד, און פֿרעמדע ווערטער דאָבייא פֿרמישט זינד, דאָדורך ווען גלייך דאָס זיא איין שפראַך רעדן, זינד זיא דאָך זעהר ערווייטערט איינר פֿון דען אַנדערן.) און דאָמיט דיא ייִדישע אמונה און דאָס דת נימאָהלס פֿערקירצט ווערדן זאל. אויף דען אליהו הנביא האָט עדות געזאָגט דאָס דיזער קבלות ברית איז בייא השי"ת זעהר אַנגענעהם און טייערער אַלס פֿיעלע אַנדערע מצות. [...]) דיזעס האָט זיא בייא גטראָגן דאָס ווען גלייך דאָס זיא זינד גוועזן אין גלות בייא דיא מצרים דיא שטופי זימה אום שוויפֿענד זינד, און איינה צייט לאַנג פֿון (רד"ו שנה) צווייא הונדערט און צעהן זינד זיא דאָך געבליבן איין עם קדוש הייליג פֿאָלק, דאָס השי"ת האָט עדות גזאָגט אויף איהר יחוס, דאָס זיא איינגעציימט און ערווייטערט פֿון עריות און זנות גוועזן זינד.

80<sup>th</sup> question: The commandment that we have to be different from all people with our names, language and clothing, and whether or not this is a foundation stone that secures the entirety of Judaism, or not.

Answer: The actual truth is that this is the wall that has enough strength to protect and secure the entirety of Judaism in general and in particular, and which is a safe bondage that shows that we are the people of the Almighty,

and we will remain to be that and nothing else. Because by being different from other people in our name, language and clothing, we distinguish and segregate ourselves. Since if the Jews use the same language as the people of the world, that is, if one makes an effort to speak the exact same pure language, the same way as they do, without any change or distortion, without making any linguistic mistake, then eventually faith and religion will become the same, too. Our forefathers in Egypt realized that Judaism is not a people that dwells alone anymore [cf. Num. 23:9], as had been the case previously in the land of the Jews, so they would have considerable contact and business with the people of the world, who are of a different faith and religion, and who have different customs, so their Judaism might get weaker. In order to prevent this, they convened and unanimously entered into a covenant that they would not abandon the Jewish language, and that they would not learn the language of the Egyptians, in order to seclude themselves from the ways of idolatry. (But it was impossible to expect from the children, already born and bred there, to hold themselves back from the language they constantly hear, so they deliberately distorted the language in two ways. On the one hand, they mixed in many words from the holy tongue and the language of the Targum, such as *efsher* (“maybe”), *kholile* (“God forbid”), *eyn sho* (“one hour”), *halbe sho* (“half an hour”), *brokhe zogn* (“say a blessing”), *khas ve-sholem* (“God forbid”), *bli neder* (“without making a promise”), *mazl tov* (“congratulations”), *khsime toyve* (“may you be sealed in the good book”), *shono toyvo* (“happy New Year”), *bavonoseynu harabim* (“due to our great sins”), *kharote* (“regret”), etc. On the other hand, they pronounced the words themselves differently, too: *Vater – foter*, *Grossvater – dede*, *Brot – broyt*, etc. [...] Since the times of the giving of the law to our forefathers, the non-Jew, who has spoken the pure German language since childhood, has not understood this, and the Jewish German language is even disgusting for him, because it is spoken in a distorted way, and because there are foreign words mixed into it. Therefore, even if they speak the same language, they are very distanced one from the other.) Thus, the Jewish faith and religion shall never be truncated. Elijah, the prophet himself proved that this covenant is very dear, and more important to God, may his name be blessed, than many other commandments. [...] This is what contributed to the fact that even though for 210 years they were in Diaspora in Egypt, where there is an abundance of wickedness, they remained a holy people, and the Almighty confirmed their ancestry, because they were walled in and distanced from adultery and lust.



This text, no doubt, seems rather frivolous and amusing at first. But although there are no sources or any background material mentioned here explicitly, they are all easily traceable in light of Lichtenstein's other works, and so it becomes obvious that the text can actually be considered a summary of his opinion on language assimilation. First of all, Lichtenstein states here that the prohibition to change or modernize one's name, clothing or language—the ruling in the Ḥatam Sofer's last will—is actually an essential part of the fence that protects Judaism. The main principle that lay behind this image is that according to the Mishnah,<sup>25</sup> one should build a fence around the laws. This principle was traditionally used to introduce extra stringency and broaden the actual meaning of the law in order to avoid misunderstanding or accidentally transgressing it, but the Ḥatam Sofer and his followers also saw the fence as a protective measure against any influence from the world at large, against any reform or change.

Lichtenstein then continues to elaborate on an idea of the Ḥatam Sofer, which came to be commonly accepted throughout the ultra-Orthodox world: that in previous generations the rabbis deliberately changed the non-Jewish vernacular into a Jewish language. The original context of the Ḥatam Sofer's statement was a letter scolding R. Löw Schwab (1794–1857), the chief rabbi of Pest, and his *bet din* (“rabbinical court”) for using the name of the city of Pest in an inconsistent way, deviating from tradition, which would render the divorce document invalid.<sup>26</sup> There, the Ḥatam Sofer explains there that in previous generations the rabbis could have adopted the local non-Jewish language (i.e. German) had they wanted to, but—complying with the prohibition in the Jerusalem Talmud introduced by the students of Shammai<sup>27</sup>—they chose to change the language instead, and thus created a specifically Jewish language (i.e. Yiddish). Lichtenstein takes the Ḥatam Sofer's idea a step further, and assumes that this had always been the case, and that the development of Jewish languages had always been a deliberate decision of the rabbis, thus protecting the Jewish people from non-Jewish influences.

Combining this idea with the midrash about the Exodus,<sup>28</sup> Lichtenstein eventually concludes that the Jews of Egypt spoke Yiddish. Initially, one

<sup>25</sup> mAvot 1:1.

<sup>26</sup> *Shu"t Ḥatam Sofer*, EE 2:11.

<sup>27</sup> See above, p. 113.

<sup>28</sup> See above, p. 112.

might assume that Lichtenstein means Judeo-Egyptian by *yidishe shprakh* (“Jewish language”), but the examples listed for the special characteristics of the exact Jewish language are clearly from Yiddish. Absurd and incongruous as it might sound to the modern, historically-oriented ear, this conclusion fits in well with the exegetical principle in rabbinic literature that “there is no before or after in the Torah,”<sup>29</sup> i.e. that there is no chronological order in tradition. His contemporary and like-minded readers would not have found this idea any more puzzling than the fact that by tradition all psalms are ascribed to King David, including, for example, “by the rivers of Babylon, there we sat down and there we wept when we remembered Zion,”<sup>30</sup> or the midrash where Moses was sitting in the yeshiva of R. Akiva in the first century,<sup>31</sup> etc.

Lichtenstein’s language itself and his linguistic comments are also interesting. According to Zalman Rejzen, the text is written in a highly Germanized language.<sup>32</sup> Max Weinreich said that although it is Germanized, it does have a Western Yiddish basis, or at least Western Yiddish elements.<sup>33</sup> Anyhow, despite all the ideological dedication and obvious effort, Lichtenstein clearly could not resist the linguistic influences of his environment. The language he used is an apparent example of a transitional language, a temporary phase somewhere on the path between Western Yiddish and Judeo-German. As such, it would be worth further attention and analysis. His linguistic comments in the text, nevertheless, still emphasize characteristics of the original regional dialect, and Western Yiddish in general. He mentions and uses only the Semitic component of Yiddish and not the Slavonic one, as typical of Western Yiddish. And the vocabulary and vocalization differences he names are specific to Yiddish in the region.

The book *Es lasoys* is itself allegedly a collection of responsa in two volumes. It was first published in 1870–72 in Kolomea and Lemberg (Lwów; today Lviv, Ukraine), and became extremely successful, with several editions ever since, including one in Szatmár (Szatmárnémeti; today Satu Mare, Romania)

<sup>29</sup> Cf. bPesahim 6b, 49b, etc.

<sup>30</sup> Ps. 137:1.

<sup>31</sup> bMenaḥot 22b.

<sup>32</sup> Zalmen Rejzen, *Leksikon fun der yidisher literatur, prese un filologie*, 4 vols. (Vilna: Kletskin, 1926–1929), vol. 2, pp. 147–150.

<sup>33</sup> Max Weinreich, “Rashe-prokim vegn mayrevdikn yidish,” in Yudl Mark, ed., *Yuda A. Yofe bukh* (New York: YIVO, 1958), pp. 158–194; Weinreich, *Geshikhte*, vol. 3, pp. 309–310.

and Szinérváralja (Waroli; today Seini, Romania) in 1909–1925, and a recent reprint edition in Brooklyn (s. d.).

The questions and answers in the book are all entirely in Yiddish, and the text is printed with quadrate characters in every edition. There are altogether 170—most probably fictitious—questions in the book that address ethical issues, with lengthy answers and explanations, characteristically demonstrating Lichtenstein’s conservative, uncompromising worldview. Among the questions raised there are such general ones as how strongly a pious Jew can love God (no. 8), how a woman should learn Torah (no. 12), how to engage in business (no. 51), or how to repent (no. 59); and there are ones that are more specific to the time and circumstances, for example why one should not allow teachers who are not entirely pious to teach children (no. 33), whether a religious leader who is not absolutely pious and trustworthy is to be considered a murderer (no. 74), whether one can regard a country where Jews have equal rights as a homeland (no. 85), etc. The prohibition against the use of non-Jewish languages reappears in several of these texts.

The book is exceptional in the sense that—although it is allegedly a collection of *respona*, and as such it is intended to be seen as a part of the corpus of sacred literature—it is entirely in Yiddish. Traditionally, the use of Yiddish had been restricted to certain functions and spheres. Primarily, it was considered the natural spoken language among Ashkenazi Jews. But in writing, it was used for the most part only as an aide to understanding the sacred texts, or for themes that could not be expressed in the holy tongue (*loshn koydesh*), in Hebrew or Aramaic. Rabbis, or the intellectual élite, used Yiddish in writing even less. The sermon (*derashah*), for example, which was delivered by the rabbi in the synagogue in Yiddish, was later written down in Hebrew. The oral argumentation (*pilpul*) in the yeshiva about Hebrew and Aramaic holy texts was in Yiddish, but the commentaries and novellae (*hiddushim*) born out of it were already published in Hebrew. Members of the community turned to the rabbi with their questions (*sheelah*) regarding religion and ritual in Yiddish, and the response (*teshuvah*) was also given in Yiddish. But if the rabbi or his pupils ever wrote down the answer and the argumentation and collected them in a thematic volume (*sheelot u-teshuvot*, *respona*), this was done in Hebrew. Yiddish was excluded from ritual functions and from scholarly aspirations altogether. With the publication of *Es lasoys*, Hillel Lichtenstein thus widened the sphere where Yiddish was used, and elevated Yiddish to be a language suitable even for rabbinic literature.

In addition, Lichtenstein did not find it necessary to set his work apart from other holy books in typography either: he had it printed with quadrate characters, and not the Ashkenazi cursive type that had been traditionally used for printing Yiddish texts in order to set it apart even visually from the holy tongue. Uniquely, *Es lasoys* was thus printed just as any other prestigious rabbinic work in the holy language would have been. Moreover, Lichtenstein asked to be referred to on his gravestone only as the author of this book—apparently considering this to be his most important work, thus ranking a Yiddish book above his numerous works in the holy tongue.

In general, the book came to be seen as a point of reference—by himself, by ultra-Orthodox Jews and by outsiders alike. It was of such significance that sections of it were quoted even in the Hungarian parliament: Aladár Molnár (1839–1881), minister of the Reformed Church, member of the Hungarian Academy of Sciences, politician, member of Parliament from 1872, used the quotations with reprimand, during a debate in 1880 regarding the founding of the Rabbinical Seminary, as arguments against the objections of the Orthodox to it.<sup>34</sup> These quotations, and through them Lichtenstein himself, were referred to several times in parliamentary debates for years thereafter. Curiously, the quotations were in the original language, and thus through *Es lasoys*—albeit unintentionally—Yiddish was used in yet another unconventional sphere: that of parliamentary debates and general state politics.

All in all, Lichtenstein's approach to language usage marks a significant, symbolic change in the sociolinguistics of Yiddish. He not only followed the Ḥatam Sofer's prohibition against linguistic assimilation, but also went a step further than his master: he created an ideological background for the Ḥatam Sofer's teachings and implemented this ideology. Lichtenstein was among the very first people who actually took deliberate steps towards the ideological approval of Yiddish and towards language maintenance within traditional Jewish society. He was joined and endorsed by several other influential rabbis in Hungary who made efforts to preserve Yiddish in the course of their mission against linguistic assimilation,<sup>35</sup> most notably his

<sup>34</sup> On 12 March, 1880. See *Az 1878–81. évi országgyűlés képviselőházának naplója*, vol. 11, pp. 54–58.

<sup>35</sup> See for example Samuel Hiley, "Halokhishe asmakhtes far oyfhitn yidish bay frume yidn," *Oksforder yidish*, 2 (1991), pp. 171–174; Dovid Katz, "Dos 'yidishistishe' bukh fun Khsam Soyfers talmid R. Akiva-Yoysef Shlezinger," *Yidische Kultur*, 59:3–4, 5–6 (1997), pp. 33–40, 34–40.

son-in-law, R. Akiva Joseph Schlesinger (1837–1922).<sup>36</sup> Whereas, throughout history, in most parts of the Jewish Diaspora the general opinion regarding language has been that it is not an important part of Jewish tradition, it did thus become a significant issue in late nineteenth-century Hungary. Undoubtedly, it was due to the authority and endeavors of these rabbis that the extreme orthodox leaders and their communities fought to reverse, or at least to halt, linguistic assimilation in the Oberland, and to prevent it in the Unterland.

Consequently, Western Yiddish and Judeo-German were preserved in certain communities in the Oberland for considerably longer than anywhere else in Europe. Even where it could not be reversed anymore, linguistic assimilation did in fact come to a standstill for some time among the devout orthodox there. The rabbis and spiritual leaders chose to see their vernacular as the language which it was now forbidden to change. Accordingly, they tried to freeze the language in whatever state it was, and preserve it in that state. Thus, it could happen that they used almost pure German, with hardly any remnants of Yiddish, but wrote it with Hebrew characters—even inventing diacritical marks to represent German characters otherwise non-existent in Hebrew—while at the same time referring to the Ḥatam Sofer’s last will. And so, decades after the disappearance of Judeo-German books from printing houses in Vienna or Prague, and even in the early years of the twentieth century, there were still such books and newspapers being published in Budapest, in Paks and in Vác.

In the Unterland, the influence of the Ḥatam Sofer and his followers on language use has been even more efficient and long-lasting. The population at large was *ab ovo* less inclined towards a language shift there, due both to their affiliations with Galicia, rather than with Austria or Germany, and to their somewhat different dialect of Yiddish. These communities became strongholds of extreme Orthodoxy and Hasidism. Here, the prohibition against language change really referred to the language shift from Yiddish, and thus the use of Yiddish became symbolic. The extreme orthodox from these regions have become more conscious of their language choice and

<sup>36</sup> Michael K. Silber has been doing extensive research on Akiva Joseph Schlesinger. See for example Michael K. Silber, “Paamei lev ha-ivri be-erez Hagar,” *Katedra*, 73 (1994), pp. 84–105; Michael K. Silber, “Paamei lev ha-ivri be-erez Hagar: R. Akiva Joseph Schlesinger ben ultra-ortodoksiah ve-leumiut yehudit be-reshitan,” in Avraham Sagi–Dov Schwartz, eds., *Meah shnot zionut datit*, I–III (Ramat Gan: Bar Ilan, 2003), vol. 1, pp. 225–254.

language use in general, than anywhere else in the Yiddish-speaking world, and the strong attachment to Yiddish has been characteristic of Hasidim from the region ever since. In the streets of the ultra-orthodox neighborhoods around the world—most notably Williamsburg and Boro Park in Brooklyn, New York; the Mea Shearim in Jerusalem; Bnei Brak, near Tel Aviv; Stamford Hill in London; Antwerp, etc., i.e. the only places where Yiddish still remains the spoken language—one gets entangled in a peculiar “Little Hungary”: Hungarian geographical names, cities and towns that once had a significant Hasidic population appear one after the other in Yiddish and Hebrew signs on the synagogues, restaurants, schools, or even school buses: *Erloj* (i.e. Eger), *Kalev* (i.e. Nagykálló), *Kloyznborg* (i.e. Kolozsvár), *Minkatsh* (i.e. Munkács; today Mukacheve, Ukraine), *Mishkolts* (i.e. Miskolc), *Puppa* (i.e. Pápa), *Satmer* (i.e. Szatmárnémeti), *Siget* (i.e. Máramarossziget; today Sighetu Marmăției, Romania), *Tosh* (i.e. Nyírtass), *Tseylem* (i.e. Németkeresztúr; today Deutschkreuz, Austria), *Uhel* or *Ihel* (i.e. Sátoraljaújhely), *Visheve* (i.e. Felsővisó; today Vișeu de Sus, Romania), to name but a few.

# 6. Halakhah and Micro-History: Anti-Jewish Legislation in Hungary (1938–1944) as Reflected in the Responsa Literature

*Judit Kónya*

## INTRODUCTION

Anti-Jewish laws issued by the Hungarian government between 1938 and 1944 affected the life of Hungarian Jewry to a great extent. The restrictive laws overwhelmed every Jew who worked in the economy. They also made the observance of religious customs difficult. The frequency of halakhic questions that arose as a consequence of the laws show that in many cases the discriminative laws made it impossible, or at least very difficult, for observant Jews to continue with their religious traditions.

Rabbinic literature written in this period is primary source material that adds a halakhic aspect to the individual and collective narratives that can be learnt from other Jewish sources on the Holocaust (e.g. Jewish religious press, interviews, memoirs). These sources represent the particular perspective of observant Jews who had to cope with the new circumstances and to balance their strict religious practice with historical, economic and legal reality.

Reporting particular problems and cases, and attempting to solve them, the so-called responsa literature provides information that can be analyzed in micro-historical research. This literature is totally inadequate for reconstructing history in the usual sense, since the texts are mainly built up by halakhic argumentations and never claim to give a general, coherent narrative of the events. Nonetheless, since they were direct responses to the persecution, these sources are quite revealing regarding the effects of anti-Jewish legislation on Jewish—mainly Orthodox—society.

In this paper I shall present a few halakhic matters that arose as a consequence of the discriminative laws. The rabbinic treatment of these matters does not discuss the anti-Jewish acts as such: they rather address the new difficulties of everyday life from a halakhic point of view.

## THE RESPONSA LITERATURE CONCERNING ANTI-JEWISH LEGISLATION IN HUNGARY

In the 19<sup>th</sup> century, rabbis active in Hungary attained greater significance in the field of Jewish law than ever before. Hungary became a recognized center of halakhic studies and decision-making, and it became a separate entity from territories under German influence. One of the leading halakhic authorities during the nineteenth century in the Ashkenazi territories was a “Hungarian” rabbi, R. Moses Sofer or Schreiber, more often referred to as “the Ḥatam Sofer” (1762, Frankfurt a. M.—1839, Pressburg). After many years of activity in Boskovice and Prostějov, he became the rabbi of Pressburg (Pozsony, the capital of the Hungarian Kingdom in those times, today Bratislava) in 1806 and kept this position until his death. The rabbinic academy (*yeshivah*) of Bratislava became very influential under his direction: many of its alumni became orthodox rabbis all over the region and continued to work in the spirit of their master. Besides that, the Ḥatam Sofer left behind huge volumes of responsa, which had considerable impact on the further development of Ashkenazi halakhah in his time and afterwards. Many of the twentieth-century responsa I deal with refer to his decisions, and draw analogical inferences from them.

Besides its legal importance, responsa literature also provides information about the history of the Jewish people. In Hungary, unlike in other European countries, ghettoization and deportation took place in a relatively short period of time between May and July, 1944. The quick and unexpected destruction of Hungarian Jewry in the spring and summer of 1944 did not allow for the development of halakhic discussions concerning topics subsumed under the category of “life-danger” (including such problems as survival at the cost of endangering others, cooperation with or disobedience to the persecuting authorities, and many other life-and-death dilemmas in the ghettos and concentration camps), as was the case in Poland or Latvia due to the persisting terrible circumstances in the ghettos.

In Hungary, from 1938 to 1944, anti-Jewish legislation was the official form of the persecution of Jews. As these discriminative laws influenced mostly the economic position of the Jewish people, the relevant responsa are dominated by problems created by economic persecution.

The rabbis who wrote these responsa elaborated on and showed the possible ways of continuing Jewish religious life according to the halakhah



even after the enactment of the anti-Jewish laws. One of the main purposes of these halakhic discussions was to reconcile state law with halakhah. For example, after the local authority of a city ordered every shopkeeper to open their shops on Saturdays, the Jewish grocer could obey the order only by transgressing the religious commandments. These circumstances pressed him to turn to the rabbi and ask him what to do. If the local rabbi could not answer, he turned to another rabbi who could presumably find a solution—not violating either state or religious laws—on the basis of analogies offered by earlier sources of halakhah.

These texts from the 1930s and 1940s share many features of earlier Ashkenazi responsa literature: for example, new rules are derived from already codified material through analogies. Establishing analogies between past decisions and present matters was a way of comprehending the current situation that emerged as the consequence of the anti-Jewish legislation through the intellectual means of Jewish tradition.

A remarkable sign of the continuity with earlier traditions is the reiteration of the medieval term *gezerah* (“decree, persecution”) as a name for anti-Jewish laws. The responsa of the 1930s and 1940s employ the phrase *et ha-gezerah* (“time of persecution,” “time of [anti-Jewish] decrees”) to signify the period of anti-Jewish legislation in Hungary.

The Hebrew root *GZR* appears in the Aramaic text of the Book of Daniel, meaning “to decree.”<sup>1</sup> In the Middle Ages, this word was the synonym for massacres against Jews. The phrase was probably chosen intentionally to describe the new laws, and it expresses the attitude of the rabbis towards them. The ban on ritual slaughter, which was put into force in Hungary in 1938 (following Germany, Poland and Latvia), is called *gezerah shel ha-shehitah* (“the prohibitive edict of the ritual slaughter”) in the responsa. Similar are the terms *gezerah shel petiḥat ḥanuyot* (“the edict that rendered the shops to be open [on the Shabbat]”) and *gezerah shel ha-arizirung* (“the edict of aryанизation”). The municipal orders were named *dat ha-memshalah* (“the government’s order”), *pekudah* (“order”) or *zivvuy* “command.”

In the responsa discussed below, the questioners are local rabbis who received inquiries from members of their communities. If there arose a question in their local communities that they were unable to answer, or if

<sup>1</sup> Dan. 2:27; 4:4; 5:7 and 5:11. The Hebrew form *nigzar*, “was decreed,” appears in verses 2:34 and 2:45.

the problem was so complex that the question needed further investigation, the local rabbis usually referred the matter to a leading halakhic authority, who then decided on the basis of analogies offered by halakhah.

In general, a decision made by a rabbi has no universal validity: it concerns only the specific case. As a consequence, different halakhic authorities could make contradictory decisions or solutions about the same matter. Nonetheless, the opinion of a great authority stated in a similar, earlier case may influence the decisor and may serve as an analogy and precedent.

We will look at three different cases from Hungary in detail, representing three different approaches of rabbis to balancing halakhah, historical circumstances, and dealing with earlier precedent cases.

## HALAKHIC PROBLEMS OF PERSECUTION

### *Handicraft*

A major purpose of the anti-Jewish legislation in Hungary was to exclude Jews from economic life. On the surface, it might seem that the so-called “Jewish laws” achieved this goal. However, responsa literature evidences the strengthening of economic partnership between Jews and non-Jews due to the persecutions. Contrary to their intention, the discriminative laws actually strengthened and widened economic relations between Jews and non-Jews. This fact is also reflected in the responsa literature.

A frequent topic of contemporary responsa literature is the so-called “straw man system.”<sup>2</sup> Anti-Jewish laws prescribed that all sorts of enterprises (e.g. grocers, innkeepers and landholders) had to work on Saturdays—something strictly forbidden by Jewish law. Many Jewish owners responded to the new situation by passing their businesses over to non-Jewish guarantors (*stróman*, in German *Strohmann*, “straw man”), who thus became the nominal leaders of the enterprises, but in practice everything continued to be led by the

<sup>2</sup> For example, the responsa regarding the decree that forced the baker to bake bread on Saturdays (*Shu"t Mahari Steiff* [New York: 1968], no. 89), the innkeeper who had to open his inn on Saturdays (*Shu"t Maharam Brisk* [Tasnád: 1939–1942], I, no. 71), the landholder who had to enter into partnership with a non-Jew as a consequence of a similar decree (*Shu"t Maharam Brisk*, I, no. 75), and the case of the lorry driver who also had to look for a non-Jew partner to continue his occupation (*Shu"t Maharam Brisk*, II, no. 36).

original Jewish owners. As such, since a non-Jew had been included in the business, it was possible for the Jewish owners to rest on the Shabbat in accordance with the halakhah. There were other cases when a law or state order prevented the enterprise from working in accordance with halakhic prescriptions, although the Jewish owners could influence the course of business with regard to halakhic considerations too.

## *Industry*

Industry was quite a different matter from this point of view. The so-called “first Jewish Law” was enacted on May 29, 1938. The law prescribed that the rate of Jewish employees in the management of industrial companies should not exceed 20 percent. The same rate applied to the Chamber of Advocates, Engineers, Doctors and other “intellectual” occupations as well.

The so-called “second Jewish Law” was issued on May 4, 1939. Act 4 of the law reduced the rate of Jewish employees to 12 percent. Paragraph 20 of Act 4 extended the force of the law to legal entities including leaders of enterprises. Consequently, the enterprises of Jewish owners closed down or were passed over to non-Jewish “partners.”<sup>3</sup>

The laws had dramatic consequences. The proportion of Jews among industrial workers had been higher than for any other social group. Jews were over-represented primarily in the cloth, food, leather and paper industries, and in typography. In the 1930s, Jews worked mainly in industry, handicraft and trade. According to Yehuda Don’s researches, 44 percent of Hungarian Jews worked in trade, 35 percent in industry and 9 percent were free workers.<sup>4</sup>

Factories where the leadership was entirely non-Jewish could not work in accordance with the halakhah in the same way they used to work under Jewish leadership before the persecution. Consequently, a number of new halakhic problems emerged.

<sup>3</sup> For the economic effects of the first and second Jewish laws see Nathaniel Katzburg, *Hungary and the Jews. Policy and Legislation 1920-1943* (Ramat-Gan: Bar-Ilan University Press, 1981), pp. 103-104 and 139-142.

<sup>4</sup> Yehuda Don, “Patterns of Jewish Economic Behavior in Central Europe in the Twentieth Century,” in Michael K. Silber, ed., *Jews in the Hungarian Economy 1760-1945* (Jerusalem: The Magnes Press, 1992), pp. 243-247.

One of them concerned violations of the Shabbat. The employees did not stop working on Saturdays and on Jewish holidays. The former owners of the factory, who were Jews, now became stockholders and had a share in the profit—including the profit produced on Shabbat and on holidays. This practice was problematic from a halakhic point of view.

In the food industry, a further problem arose regarding the status of *ḥamez* (“leaven,” “fermented dough”) that was not sold before Passover (*pesah*). Any food from five species of grain, namely wheat, barley, spelt, rye, and oats, which is risen (e.g. bread) or has the potential to become risen (e.g. flour), is considered by halakhah to be *ḥamez*. During the 7 (or, in the Diaspora, 8) days of the holiday of Passover, Jews are prohibited to eat and to own *ḥamez*. Every Jew must remove all *ḥamez* from his property before the beginning of the holiday.<sup>5</sup> Rabbinical regulations enable owners to get rid of their great quantity of *ḥamez* by formally selling it to a non-Jew before the holiday. In practice, this means signing a legal sales contract that assigns the ownership of the *ḥamez* to a non-Jew. If separated from other types of food, the *ḥamez* can even remain in the house of the Jew once it was sold. After the holiday, the Jew can repurchase all *ḥamez* from the non-Jew. Not only is a Jew permitted to consume or own *ḥamez* during Passover, but, according to the halakhah, after Passover it is forbidden to benefit from *ḥamez* that had remained in Jewish property during the holiday.<sup>6</sup> This prohibition applies also to cases where the owner was detained from selling his *ḥamez* or where he was not aware of his obligation to sell it. Consequently, such *ḥamez* cannot be consumed or sold after Passover.

In food factories owned by Jews, the usual practice for solving the problem of *ḥamez* during and after the holiday had been to sell the *ḥamez* to a non-Jew for the days of Passover, and then repurchase it after the holiday. But after the enactment of the anti-Jewish laws in Hungary, such factories' new, official leadership did not pass *ḥamez* to non-Jews before Passover. It thus became dubious whether such a factory could provide food for observant Jews after Passover, since following the strict halakhah its products were no longer *kosher* (“consumable”) after Passover.

<sup>5</sup> See the command in Exodus 13:7: “Throughout the seven days unleavened bread shall be eaten; no leavened bread shall be found with you, and no leaven shall be found in all your territory.”

<sup>6</sup> *Shulḥan arukh*, OH 448:3.

In spite of the explicit prohibition, some of the responsa that deal with the problem in the specific context of Hungarian anti-Jewish legislation rule leniently, and are inclined to permit the use of the *ḥamez* if it could not be sold because of the new laws. The rabbis argued that the “new” cases differed from the earlier ones discussed by their predecessors. A solid basis for refusing to apply the previous decisions in the new situation was the following analogical inference: if the kosher *ḥamez* that was non-Jewish property during Passover could have been used (both for eating and selling) after the holiday (for example the leaven that was stored in the shop of a non-Jew during Passover), then why could the same rule not apply to the cases where the ownership of the *ḥamez* could not be clarified unequivocally? For example, in cases where a non-Jew took over the factory legally, but in fact the factory, and thus the leaven remained common property of the original Jewish owner and the new non-Jewish leaders of the factory.

In factories originally owned by Jews, the factory’s new non-Jewish leaders did not write a symbolic contract for sale of the leaven before Passover. According to the halakhah, the leaven thus remained Jewish property, as its original and real owners were Jews even if it was no longer “Jewish property” according to Hungarian laws.

The responsa discussed whether the fact that the Jewish owner had been detained from selling the leaven could be used as an argument for permitting such *ḥamez*.

In many cases the original Jewish owners became stockholders of the factories that continued to function without abruption, thus suggesting that in halakhic terms no real change of ownership took place. Their profit from such industries, which could no longer operate without violating Jewish laws, became another subject for halakhic discussions.

The responsa analyzed below discuss halakhic questions related to food factories where *ḥamez* was stocked in great quantity. In all these cases, had the rabbis not decided leniently on the basis of the arguments mentioned above, the financial loss would have been enormous.

## THE THREE RESPONSA

The first responsum to be analyzed was written by R. Shulem (Salamon) Widder.<sup>7</sup> It was published in *Yerushat peletah*, a collection of responsa published in Budapest in 1946, as a homage to the memory of Hungarian martyr rabbis who perished in the Shoah.<sup>8</sup> The questioner was R. Ephraim Fishel Sofer Sussmann, the head of the orthodox Jewish religious court (*av bet din*) of Budapest. The exact date of correspondence is not known. Since Sussmann died in 1942, it probably took place between 1939 and 1942.

R. Widder was asked about the case of a food factory lead by new, non-Jewish owners. The inquiry contained three questions: (1) whether the original Jewish owners of the factory, whose status recently changed to “stockholders,” could draw profit from the enterprise in spite of the fact that human labor in the factory did not stop on Saturdays as required by the halakhah; (2) the same question concerning animal labor violating the law of *shevitat behemah* (literally “the rest of the animals”), the prohibition on making animals work on Saturday; and finally (3) whether the products of the factory were permissible if the management of the factory did not sell the *hamez* before Passover.

R. Widder regarded the factory as Jewish property. Therefore, he prohibited the use of the leaven after Passover, referring to the fact that the majority of the stockholders were Jewish.

In the second responsum, R. Yisrael Abraham Alter Landau<sup>9</sup> was asked by R. Yuda Gottlieb, *av bet din* of the Sephardi community of Miskolc (city in north-eastern Hungary) on May 3, 1940<sup>10</sup> about the leaven that was not sold in several factories in Pest (Budapest) before Passover.<sup>11</sup> “May this leaven be used after Passover?”—asked R. Gottlieb.

<sup>7</sup> *Av bet din* (“head of Jewish religious court”) of Nyíregyháza (city in Szabolcs-Szatmár-Bereg county, eastern Hungary) for 50 years, died in Auschwitz in 1944. The collection of his responsa, *Shu"t mashmia Shalom* was published in New York in 1971.

<sup>8</sup> *Yerushat peletah*, no. 11 (Budapest: Hēvrat Shas, 1946).

<sup>9</sup> *Av bet din* of Edelény (city in Borsod-Abaúj-Zemplén county, eastern Hungary) since 1921. R. Landau was a pupil of R. Yehuda Grünwald. He died in 1942. His collection of responsa, *Shu"t beit Yisrael* was published in 1994 in New York.

<sup>10</sup> According to the Hebrew text, the response was written on the eve of *Shabbat Kedoshim*, on the 10th day of the omer-counting, i.e. on the 25<sup>th</sup> day of Nisan.

<sup>11</sup> *Shu"t beit Yisrael*, OḤ, no. 89.

According to R. Landau's decision, the answer was yes, as long as the Jewish stockholders were in a minority. Landau pointed to the famous Gschwind company that produced food for Jews but was owned mostly by non-Jewish stockholders. According to Landau, this particular company—though it intended to produce kosher food—could not be considered Jewish property. The leaven produced by the Gschwind company was suitable for eating after Passover. However, Landau emphasized that the permission was valid for this company only.

The last responsum is of R. Yissachar Shlomo Teichthal.<sup>12</sup> Teichthal was asked by R. Raphael Blum<sup>13</sup> about the same halakhic problem.<sup>14</sup> The text is dated May, 1940, just like R. Landau's response.

R. Teichthal did not address the question of whether the Jewish stockholders outnumbered the non-Jewish stockholders or not. He permitted the use of the *ḥamez* regardless of the ratio of Jewish stockholders. According to R. Teichthal, stockholders were not responsible for the actions of the management because they were not able to influence them. Therefore, they were not obliged to sell the *ḥamez* before Passover. R. Teichthal thus concluded that the *ḥamez*, which had not been sold before Passover was permissible after the holiday.

This remarkable decision was based on several responsa written a few decades earlier.<sup>15</sup> R. Simeon Gruenfeld, another Hungarian orthodox rabbi active in the first third of the 20<sup>th</sup> century, permitted *ḥamez* on an occasion when the Jewish owners were still able to write sale contracts selling all leavened food to non-Jews but the persons involved in the case failed to do so.<sup>16</sup> R. Gruenfeld permitted them to sell the *ḥamez* and make profit from it after the holiday, but his permission was only *be-diaavad* ("post factum"),

<sup>12</sup> R. Teichthal served as av bet din in Pöstyén (today Piestany / Piešťany, Slovakia) until 1942, when he escaped from the first wave of the Slovakian deportation to Budapest. He returned to Slovakia after the Nazi occupation of Hungary in March, 1944. He was caught and deported to Auschwitz, where he died on January 24, 1945. The volumes of his responsa, *Shu"t mishneh sakhir* were published again in Jerusalem between 1974 and 1994.

<sup>13</sup> Rabbi of Nagymihály (today Michalovce, Slovakia).

<sup>14</sup> *Shu"t mishneh sakhir*, OH, no. 14.

<sup>15</sup> One of Teichthal's sources of reference was R. Isaac Aaron Ettinger's collection of responsa (*Shu"t Maharya ha-Levi*, II, no. 124), published in 1893 in Lemberg.

<sup>16</sup> Av bet din of Büdszentmihály, present Tiszavasvári in Szabolcs-Szatmár-Bereg county, Hungary. He died in 1930, ten years before R. Teichthal's response. Teichthal refers to *Shu"t Maharshag* II, no. 37 (Vranov, 1931; Jerusalem, 1974).

meaning that one should not count on this ruling before the holiday and should not deliberately follow this example, even if there was some basis for not banning it completely.

Gruenfeld's permission originally referred only to the particular case of the questioners, and it was not meant to be a general statement.<sup>17</sup> However, following Gruenfeld's decision, R. Teichthal broadened the scope of the argument: he claimed that R. Gruenfeld's lenient decision could be extended in the new situation, which emerged after the enactment of the anti-Jewish laws, since the reason for not selling the *ḥamez* was the incapacity of the Jewish "owners"—that is, the stockholders of the company—to influence the management of the company. Therefore, R. Teichthal argued, the permission was valid not only *be-diavad*, but also *le-khatehillah* ("from the very beginning"): since the Jews had hardly any means to enforce halakhic laws on the new management of the factory, they were not responsible for transgressing them, either. R. Teichthal remarked that R. Gruenfeld of blessed memory would have certainly agreed with this decision had he encountered the new reality. Thus, R. Teichthal permitted both the sale and consumption of any leavened food from such factories, and, consequently, also agreed to the Jewish stockholders benefiting from this business.

R. Teichthal's decision is in striking contrast with the other two responsa. R. Teichthal took into consideration the general threat that the new laws of the Hungarian state meant to traditional Jewish life. His lenient decision was more the result of his comprehension of historical reality than his considerations of the halakhic implications of the analogies mentioned above.

## CONCLUSION

The responsa analyzed in this paper discuss the alarming problems caused by Hungarian anti-Jewish legislation from the point of view of traditional Jewish law. The decisions were generally based on the *Shulḥan arukh*, the standard compilation of Jewish law from the sixteenth-century. But on particular

<sup>17</sup> The term *be-diavad* indicates an after-the-fact perspective towards an act whose performance may have been forbidden. According to the Babylonian Talmud, this term in a *mishnah* or a *baraita* indicates that an act is regarded as an acceptable procedure after the fact—even though it was not proper for it to have been performed *le-khatehillah* (literally "from the beginning," "in the first place").



points they also referred to the authority of rabbis who had written halakhic replies in analogous cases just a few decades earlier. Based on all these sources, the respondents worked out apparently traditional solutions in the situation caused by the anti-Jewish laws in Hungary, attempting to interpret the reality surrounding them within the framework of halakhah. Thus, these texts are evidence of the liveliness of halakhic tradition: the rabbis looked for, and generally managed to find, a solution in virtually every halakhic matter, and thus the system continued functioning as it always had done, even in times of unusual hardship. In other words, halakhic tradition attempted to address all the phenomena that we retrospectively collect under the label “Holocaust” and pointed out analogies of historic and halakhic nature between these events and earlier cases.

The events of oppression and destruction that we refer to as the Holocaust did not appear to the correspondents as something extraordinary; they did not feel a necessity to compromise or modify halakhic tradition in general. According to my observations, the orthodox writers of these texts did not perceive their situation as unique: their main goal was to provide conditions for continuing an observant Jewish life under the changed circumstances as well. Therefore, referring to these texts in their original context as Holocaust *responsa* is misleading.

I hope that the examples convincingly show that *responsa* literature should be considered an integral source of Holocaust research. I hope that showing the different halakhic problems of the period contributes to understanding the considerable effect anti-Jewish legislation had on Jewish society in Hungary.

# 7. Rescuing Jews during the Holocaust with the Help of Aryan Papers: A Rabbinic Perspective

*Yehuda Friedlander*

## INTRODUCTION

Rescue during the Holocaust with Aryan papers presenting their bearers as Gentiles has been discussed in responsa literature. In this period of uncertainty and helplessness neither the community nor the individual could guess what would happen next. As a result of Nazi ideology Jews in most European countries became outcasts. Reality was experienced as totally different from what had been encountered ever before. It was impossible to apply lessons learnt in the past and to organize life accordingly. There had been no precedent for the terrors of the *Shoah* (Holocaust) in Jewish history. Consequently, the means necessary for coping with the new realities were missing. Life was chaotic, and helplessness surfaced in everyday life both on the ideological and on the theological level. Jewish leadership, rabbinical and secular alike, had no idea how to deal with the situation. Rabbis referred to it as an era of *hester panim*, the “concealment of the Divine Countenance,” a period of God’s wrath.<sup>1</sup>

*Kiddush ha-Shem*, or sanctifying the Divine name, is a concept in halakhah, according to which it is better to be killed than to denounce God and the belief in God. *Kiddush ha-Shem* is compulsory for all Jews, and even more so for

<sup>1</sup> According to the religious beliefs of Ultra-Orthodox rabbis, the term *hester panim* means that the Creator has hidden himself so that Man should search for divine self-revelation, that is, one should find Him and observe His commandments in order to reveal His presence. The Shoah period is described by Ultra-Orthodox rabbis as a period of *hester panim*. In the days of the Shoah, several rabbis wrestled with the complexity of this difficult religious question: How could God abandon his people? In fact, this question has been troubling observant and non-observant thinkers throughout history, and has been dealt with by many since the time of the biblical Job.

believers.<sup>2</sup> On the other hand, Judaism sanctifies life, and halakhah permits, indeed obligates, every Jew to violate the commandments to the extent necessary to save one's own life. Nevertheless, there are three prohibitions that one should observe even at the cost of one's life. These prohibitions—termed “better to be killed than to violate them” (יהרג ואל יעבור)—are the following: idolatry, adultery, and murder.<sup>3</sup> The phenomenon of getting killed rather than betraying one's faith and religion has accompanied the Jewish people throughout history. The question of *kiddush ha-Shem* gained prominence as a halakhic issue during the Crusades, referred to in rabbinic literature as *gezerot tatnu*,<sup>4</sup> and pogroms, referred to as *gezerot tah ve-tat*.<sup>5</sup> The issue of getting killed or betraying one's religion was being grappled with in the Shoah period as well.

There has been a discussion of the written evidence concerning the rabbinical treatment of the issue of *kiddush ha-Shem* since the Talmudic period. For instance, the issue of the prohibition on denying God and *kiddush ha-Shem* was already brought up in the days of Hadrian's edicts, in the second century of the common era. The decision “better to be killed than to violate them” is mentioned in the Babylonian Talmud, in Tractate *Sanhedrin* 74a. This source states that a Jew is allowed to commit all kinds of transgressions in order to survive, with the exception of three: idolatry, adultery, and murder. In the Talmudic period this prohibition was extended, and it was pointed out that even at a time of forced conversions it was prohibited to commit a transgression which would imply denying God. According to the opinion of several sages grappling with the problem, the existence of Judaism depended on an uncompromising adherence to the Torah, down to its minutest detail. Debates about limits or price should be avoided. This approach was expressed

<sup>2</sup> The concept of *kiddush ha-Shem* is analogous to a certain extent to martyrdom in Christianity and *istashad* in Islam.

<sup>3</sup> bSanhedrin 74a.

<sup>4</sup> The *gezerot tatnu*, “edicts (or events) of 1096” (4856 according to the Jewish calendar) actually referred to a series of events that happened in Europe during the First Crusade, which included the massacre of Jews by Christians. In specific cases Jews were offered the opportunity of saving their lives by converting to Christianity. The majority of Jews preferred death sanctifying the Divine Name to conversion.

<sup>5</sup> *Gezerot tah ve-tat* refers to the pogroms and massacres committed against Jews in 1648/49 during the revolt against Polish oppression by Cossacks and bondsmen in the southern part of the Ukraine, under the leadership of Bogdan Chmielnicky (called “Hmel the Terrible” by the Jews).

in responsa literature in relation to our topic. An opinion concerning the theme of “better to be killed than to violate them” can be found in the responsa of the Ribash (R. Isaac bar Sheshet, 1326–1408).<sup>6</sup> The responsa of R. Joseph Saul Nathanson (1810–1875) already reflects the modern era, his words representing the trend of integrating Jews into the life of the country they lived in.<sup>7</sup> The *Shulḥan arukh* also deals with our topic, in the spirit of making things as easy as possible. The *Shulḥan arukh* permits changing attire in order to avoid being identified as a Jew, since it does not involve the express denial of being Jewish.<sup>8</sup>

From the point of view of Judaism, using false documents which enable their bearers to pose as Christians implies the denial of God. Our further discussion deals with the question of whether in the Shoah period it was justified to use Aryan papers in order to be saved. I shall discuss the concealment of Jewish identity and swapping it for false Christian identity. The new identity had nothing to do with the person’s beliefs, since the change was only a fake one, with the sole purpose of reducing substantial risks lurking for each and every Jew during the Shoah. Posing as a Gentile, living in a Christian environment with Aryan papers, conducting daily life in a Christian disguise—these were components of the attempt to survive.

Changing Jewish identity evoked painful questions from the aspect of religion, theology, and sheer belief, such as: whether it was allowed

<sup>6</sup> *Sheelot u-teshuvot ha-Ribash*, no. 171, s. v. *Kalir*, *Le-ḥakham*: “Even if he did not observe the commandment that ‘you shall love ha-Shem your God with all your heart, with all your soul,’ etc. (Deut. 6:5), if he did so in public, in front of ten Jews, failing to observe ‘that I may be sanctified in the midst of the Israelite people’ (*ve-nikdashhti be-tokh benei Yisrael*; Lev. 22:32), and transgressed the commandment ‘do not profane my Holy name’ (*lo teḥolelu et shem kodshi*; Ez. 20:39), in any case, since the profanement took place under coercion, he is still eligible as a witness.”

<sup>7</sup> *Shoel u-meshiv*, I, ḤM, no. 10, s. v. *teshuvah mi-sevarah*: “These days we are scattered and dispersed to the four winds among other people in the Diaspora, so we must preserve the dignity of the Jewish people and the peace of the state, within that framework, keeping its laws. No transgression against religion is implied; there is no question of the term ‘better to be killed than to violate them,’ nothing of the sort. It is not a time of forced conversion when it is preferable to die holding out staunchly. Their purpose is not at all identical with the one that wild and despotic nations used to have in previous generations. They only aim at law and order, civilized manners of liberty and freedom, so that no one can force a fellow being in religious matters.” R. Joseph Saul Nathanson chose his wording to be acceptable for both Jews and Gentiles.

<sup>8</sup> *Shulḥan arukh*, YD 157:1,17.

to hide among Gentiles, to be like one of them, to dress and to live like a Gentile. In order to demonstrate that one belonged to the Gentile public, it was important to wear a cross around the neck and to go to church. Did this behavior actually mean the recognition of their religion? Do these customs, the adoption of a Gentile lifestyle, involve the denial of the Ten Commandments: “you shall have no other gods besides me” (Ex. 20:2)? According to the norms of Jewish religion, Jews should opt for “better to be killed than to violate them.” Issues concerning observant Jews posing as Gentiles are questions of first-rate importance from a religious aspect. For the religiously devout, even pretending to be a Gentile is of quite reasonable religious significance. Rabbinic authorities were asked to give their opinion on these subjects and provide “practical halakhah.”<sup>9</sup>

The halakhah, as described in the *Shulḥan arukh*, forbids Jews to lie about their identity, and thus to claim to be atheists or Christians. On the other hand, it is permitted to give an evasive answer or to deny being Jewish, though without claiming to be a Christian. Although it is certainly not an ideal situation, evasion implies the component of *shev ve-al taaseh* (abstention from action),<sup>10</sup> offering solution for troubled times in answering the question of whether it is permitted to pose as a Christian in order to survive.

I decided to present the use of false papers in the Shoah period, thus showing an aspect of observing the duty of *kiddush ha-Shem*. The purchasing and carrying of false papers may possibly be interpreted as idolatry, that is,

<sup>9</sup> The prohibition against claiming to be an idolater is discussed in detail by the R. Israel ben Pethahiah Isserlein (1390–1460), one of the greatest Ashkenazi rabbis in the 15<sup>th</sup> century. He said the following: “One must not say that he is an idolater in order to avoid getting killed. However, he is allowed to change clothes, so that he is not recognized as a Jew at the time of *ha-shemad* (forced conversion) [...]. Although it is prohibited to say that he is an idolater, he can use ambiguous language. The idolaters would consider him as one of them, when in fact the intentions of the person in disguise are different. It is permissible as long as he can mislead them into thinking that he is an idolater, [...] but only when facing danger. When there is no real danger, for example, if he only wants to pass a customs examination, or something of that kind, he is not allowed to act this way.” See *Shu”T terumat ha-deshen*, no. 196–197.

<sup>10</sup> The halakhic concept of *shev ve-al taaseh* means abstention from action in each and every context, involving positive or negative commandments. It was found that scholars sometimes invalidated Torah prohibitions by *shev ve-al taaseh*, by abstention from all action. Often, in cases of opposing considerations, it is said that *shev ve-al taaseh* is preferable, since usually non-action involves less prohibitions than the prohibited act.

it can be judged as a case of “better to be killed than to violate them.” Jews using papers testifying that their bearers are not Jewish are thus placed in the category of idolaters. Concerning idolatry, the prohibition “better to be killed than to violate them” is in force in all generations, irrespective of place.

I will discuss some cases treating the topic in connection with the use of false papers during the Shoah, as they appear in the writings of three rabbis: R. Yissakhar Shlomo Teichthal (perished in the Shoah), R. Ephraim Oshry (survived the Shoah), and R. Isaac ha-Levi Herzog (personally not involved in the Shoah, since he lived in Erez Israel at the time).

### R. YISSAKHAR SHLOMO TEICHTHAL (1885–1945)

R. Yissakhar Shlomo Teichthal (1885–1945) was born in Kiskunhalas, Hungary. He was first educated by his father, then after his bar mitzvah by R. Shalom Wieder (1865–1944) at Nyíregyháza, R. Shalom David Ungár at Zabne, Slovakia, and at the yeshivah of R. Moshe Grünwald at Huszt (Chust, Ukraine). Since early youth his gift for learning and memorizing was recognized; he was known as a child prodigy and a hard-working student. At the age of 21 he received his *semikhah* (rabbinic ordination) to teach from three well-known rabbis: R. Abraham Isaac Glick (1826–1909),<sup>11</sup> R. Mordecai Leib Winkler (1845–1932),<sup>12</sup> and R. Shmuel Rosenberg (1842–1919).<sup>13</sup>

From 1920, R. Teichthal served as a *dayyan* (religious judge), the head of a rabbinical court, and the rabbi of Pöstyén (Piešťany, today in Slovakia). He issued halakhic rulings on ritual and other matters. He did not receive secular education in any organized framework, only studying as an autodidact; he taught himself spoken German this way. In 1930 he founded a yeshivah called *Moriah*, headed by him. The yeshivah had about fifty students and

<sup>11</sup> A. I. Glick, author of the responsa collection *Beer Yizhak*, served about fifty years as the rabbi of Tolcsva (north-eastern Hungary). He was greatly respected as a brilliant Torah scholar, and a large number of people approached him with questions.

<sup>12</sup> M. L. Winkler, author of the responsa collection *Levushei Mordekhai*, was well-known as an excellent teacher in the time period 1910–1932. He was considered as one of the greatest *poskim* in Hungary.

<sup>13</sup> Sh. Rosenberg, author of the responsa collection *Beer Shmuel*, served as a rabbi in Hunfalva (Hunsdorf / Huncovce, Slovakia) for about 35 years. His yeshivah produced many rabbis and teachers.

operated until 1942, when the Jews of Slovakia, including those of Pöstyén, were liquidated. In the summer of 1942 he fled to Budapest, Hungary. At the end of the summer of 1944, he stole back to Pressburg (Pozsony, today Bratislava, Slovakia), where he was caught and sent to Mauthausen. He was killed shortly before the arrival of the Red Army.

His responsa and halakhic discussions are arranged according to the four parts of the *Shulhan arukh*. His legacy consists of more than 1,200 answers to questions he was asked, in addition to *divrei torah* (sermons) included in the responsa collection *Mishneh sakhir*. His books bear witness to his proficiency in the sources and in the commentaries. His responsa, found after the Holocaust, were published by his sons in Israel.

Some of his theological ideas were collected in his book *Em ha-banim semeḥah*.<sup>14</sup> The events of the Holocaust influenced his views concerning the position of Erez Israel as a place of refuge and the role of Zionism in rescue. Previously he had been opposed to nationalistic Zionism and considered it a secular phenomenon. As a result of the Shoah, he changed his opinion and became a supporter of Zionism. This change was expressed in his open support for political Zionism and its implementations. His book has been widely discussed by historians and philosophers.<sup>15</sup>

### *The Decision of R. Teichthal on the Case of Purchasing Conversion Papers During the Days of the Shemad (Forced Conversion)*

R. Teichthal was asked to give his halakhic opinion for the *bet din* (religious law court) in Pressburg concerning the purchase of papers presenting their owners as Gentiles. The question tackles the issue of what the *gabbai* in the synagogue is supposed to do when a Jew who wants to be called up

<sup>14</sup> Y. Sh. Teichthal, *Em ha-banim semeḥah* (Jerusalem, 1983). The book appeared in several editions: the first one in Budapest, 1943; the second in New York, 1969, published by the son of the author, Shimon Teichthal. The third edition was published in 1983 by Makhon peri ha-arez. The fourth edition was published in 1996.

<sup>15</sup> For example Rivka Shatz, "Confession on the Threshold of the Crematoria and an Afterword" (Hebrew), *Kivunim*, 23 (1984), p. 50. According to his opinion, R. Teichthal was motivated by two impulses to write the book: on the one hand, he wanted to provide a halakhic foundation for the idea of the settlement in Erez Israel, (and under the influence of the Rambam) intending to turn it into the first commandment that a Jew should observe. On the other, it was intended to proclaim his ideological recognition of Zionism.

to the Torah is known to have purchased documents presenting him as a Gentile. Should the man be called up to the Torah? Some members of the congregation demanded a staunch protest against the widespread practice of buying Aryan papers. One of these protest measures was the denial of the right to go up to the Torah in the case of those who had purchased such documents. The dispute between those in favor of permitting going up to the Torah and their opponents aggravated internal strife within the congregation.

The question concerning the purchase of Aryan papers and the ruling for their users is far from easy. The problem touches upon one of the key principles of faith in Judaism. The answer, shedding light on the halakhic view and presenting a moral consideration of the question, is as follows:

הנה עוד ביושבי על מקומי נשאלתי בזה מהבד"צ דק"ק פרעסבורג יצ"ו [...] והשבתי להם דתיכף שנתרבה זה המכה בהלכת של קניית שטרות כאלו שם במדינה מחמת גזירות הקשות ר"ל, דרשתי במקהלות והודעתי להם חומר האיסור שיש בזה ומהדין אסור לקנות שטר כזה והוא בכלל יהרג ואל יעבור כיון דבזה הוא מודה שמכיר דת זרה ר"ל והוי כאומר בפירוש שהוא עכו"ם וזה לשון הרמב"ם בספר המצות מ"ע דקידוש השם אבל נמסר עצמינו למיתה ולא נתעהו לחשוב שכפרנו אעפ"י שבלכותינו מאמינים בו יתעלה עכ"ל הצריך לעניינינו. [...] ועתה בשטר ההמרה הוזה כשהוא מראה לגוי הוא מתעהו לחשוב שמכיר דת זרה וכופר בעיקר ח"ו וא"כ פשיטא ופשיטא דאסור לעשות כן והוא בכלל דיהרג ואל יעבור.

I was asked this question while still in office, from the the rabbinical court of the holy congregation of Pressburg – may its rock and redeemer protect it [...]. I told them immediately that the plague of buying these papers became widespread in that country because of the harsh laws, God forbid! I spoke about it in the congregations and informed them about the gravity of the halakhic prohibition (*issur*) against it, that it is forbidden by the law to purchase such documents, that it is a case of “better to be killed than to violate them,” because this way one admits to recognize another religion, God forbid, and so it is as if one has explicitly admitted to be an idolater. This is what the Rambam says in the *Sefer ha-mizvot* in the section of positive commandments about *kiddush ha-Shem*: “but we must positively rather submit ourselves to death; and they shall not be misled into supposing that we have denied Him, even if in our hearts we continue to believe in Him, exalted be He”—so far does the quotation concern us. [...] And now regarding this conversion certificate:



if it is presented to a Gentile, he is misled into believing that it means the recognition of another religion, which is heresy, God forbid! Therefore, it is as clear as daylight that it is forbidden to do so; it is in the category of “better to be killed than to violate them.”<sup>16</sup>

R. Teichthal’s prohibition, clear and unanimous on the whole, was first presented orally, and committed to writing only later, during his stay in Hungary as a refugee in 1943–44. He was severely struck by the events of the Shoah. The ties with his family were cut off and his heart was filled with heaviness. His worries about the fate of his congregation were not unfounded: from his hiding place in the attic of the *beit midrash* (study house) of his town he was able to see with his own eyes how members of his congregation were deported to their fate. When giving his answer, he was influenced by the harsh conditions of Jews in this new reality.

After explaining the prohibition against the use of Aryan papers, R. Teichthal supported his argument with the ruling of the Rambam, the brightest halakhic authority of the decision-making world. Then R. Teichthal switched over to answers given by other *poskim* (decision-makers) to similar questions, which did not conform to the Rambam’s ruling. The system of argument methods applied by Teichthal, that is, the reference to other *poskim*, is quite characteristic in the decision-making world. Apparently, Teichthal prepared the background to the decision he was about to make at a later point in the given responsum, and it was to be well embedded in the halakhic sources. His decision was probably influenced by the new conditions of cruelty and deep hatred towards the Jews, the denial of their most basic rights. His words acquire a new meaning in the light of these things:

לענין אם לדחות אלו האנשים שלא עצרו חיל לעמוד בניסיון וקנו לעצמם אלו השטרות אם להנהיג שלא לקרותם תורה וכדומה לזה, שקלתי בדעתי להיות בשב ואל תעשה [...] ושתקתי ולא אמרתי דבר והנחתים לקרות בתורה.

As for the case of people who did not have the inner strength to withstand the trial and did purchase these documents for themselves, whether to reject them, to deny of them the going up to the Torah, etc., I considered the matter

<sup>16</sup> Y. Sh. Teichthal, *Mishneh sakhir* (Jerusalem, 1991), YD, part 3, no. 111. Published also in *Yerushat peletah* (Budapest, 1946), no. 27.

and decided to follow *shev ve-al taaseh* [...]. And I remained silent, did not say a word, and I let them be called up to the Torah [...]<sup>17</sup>

According to the halakhah, the ruling as such should present a clear answer to the question that was asked. Naturally, the question that was asked was a practical one, not a theoretical one. This, in halakhic terms, is *halakhah le-maaseh*, or “practical halakhah.” After all the considerations and halakhic discussions accompanying the process of answering the question that had been asked, there was no doubt that one should prohibit the use of Aryan papers for Jews. Teichthal preferred the evasive strategy of not giving an answer. He knew that by not answering, the owners of Aryan papers would profit from the *safek* (the dubious, unclear state of affairs), and could be called up to the Torah *be-di-avad* (after the event, *ex post facto*), which should have been prevented *mi-le-khatehillah* (in the first place).

The approach of Teichthal demonstrates sophistication and resourcefulness. In that hour of danger it was preferable to keep calm and to avoid interfering with the social balance as much as possible, and not to follow extremism, even at the price of sacrificing the full application of halakhah in this case.

Within the same responsum, Teichthal went on and widened the platform for the *hetter* (permit) on a significant scale, under the impact of the harsh conditions, the events he went through. He was wise enough to find a halakhic argument for permitting the use of Aryan papers. As a result of this approach, he avoided branding buyers of these papers as offenders. These persons remained within the Jewish community in every respect. In his phrasing:

ועיין במנ"ח במ"ע דונקדשתי רק אם עובר על לאו דולא תחללו ועל עשה דונקדשתי רק אם עובר בעשרה מישראל אבל באין שם עשרה מישראל מיקרי בצנעה דאינו עובר רק על עשה דואהבת לחוד דמחויב למסור נפשו מכח עשה דואהבת עי"ש וא"כ באלו הקונים שטרות כנ"ל שהוא רק להראות לגויים בעת שיצטרכו להראות לפניהם ועפ"י רוב לא שכיחים שם בעת הזאת עשרה מישראל נמצא דלא עבר רק על עשה של ואהבת לחוד ומשום זה ודאי דעוד אין דינו כגוי ודינו בישראל כשר לכל דבר ע"כ כדי שלא לידחי אבן אחר הנופל לדעתי עדיף בהיות בשתיקה.

וגם כמו שכתבתי שכל זמן שלא קיבלו עדות ע"ז בהב"ד אינן יכולין לפסלו משום רינון בלחוד כן דעתי העני' בזה וכן עשיתי להלכה ולמעשה וד"ק, כן השבתי בזה להבר"ץ דק"ק הנ"ל.

<sup>17</sup> Ibid.

See in *Minḥat ḥinnukh*, positive commandment *ve-nikdasti* [commandment no. 296 in the book]; only if one transgresses the negative commandment of *ve-lo teḥolelu* (“do not profane...”) and the positive commandment of *ve-nikdashti* (“and I shall be sanctified...”), and only if he transgresses in the presence of ten Jews [a minyan]. But if there are not ten Jews present, it is in *zinah* (“in private”), so he transgresses just the positive commandment of *ve-ahavta* (“and love...”), which should obligate him to sacrifice his life for the sake of the positive commandment of *ve-ahavta* (“and love...”), *ibid*. In that case, those who buy such aforementioned documents—which are only meant to be shown to Gentiles when they must show them, which usually does not happen in the presence of ten Jews—transgress only the positive commandment of *ve-ahavta* (“and love...”); consequently they are not considered Gentiles, they are kosher Jews in every respect. For that reason I think it is better to keep silent, in order to avoid adding insult to injury [literally: throwing a rock at a person who fell].

Also, as I have written, as long as there are no testimonies about it from the rabbinical court, they cannot be disqualified on account of gossip. This is my humble opinion regarding this; I have brought my ruling accordingly; please consider it. For the rabbinical court of the aforementioned holy congregation.<sup>18</sup>

As usual, the discussion in the answer begins with replies offered by practical halakhah: it is not about a theoretical question, but a question that was asked *de facto*. The answer consists of three parts: 1. presentation of the halakhic infrastructure for the answer and the ruling; 2. discussion of the sources; 3. halakhic conclusion.

According to Teichthal’s halakhic approach, the presence of a *minyan* is necessary in order to accuse someone of carrying Aryan documents and using them. Under the existing conditions there was no chance of the presence of ten kosher Jews who would testify to the transgression. The conclusion is obvious: the transgressor cannot be condemned according to the formal procedural rules of halakhah.

Despite the unequivocal halakhic conclusion, according to which this prohibition falls into the category of prohibitions of the type “better to be killed than to violate them,” a severe transgression has been committed for which the offender must be declared unambiguously *pasul* (not kosher,

<sup>18</sup> *Ibid*.

ritually unfit), with all its implications. In spite of this, Teichthal continues to expound the question, analyzing it according to the Talmudic *pilpul* and halakhic discussion.

Further on, R. Teichthal makes the following statement: “And now regarding this conversion certificate: if it is presented to a Gentile, he is misled into believing that it means the recognition of another religion, which is heresy, God forbid!” However, his halakhic conclusion corresponded to the existential conditions of the Shoah period, and made it possible to use false documents in order to survive in those circumstances. Maybe not all the *poskim* would have ruled like this, and a decision so blatantly in contrast with halakhah was not to be accepted from just a regular *posek*. However, because of his halakhic authority, his answer did not evoke protest.

R. EPHRAIM OSHRY (1914–2003), AUTHOR OF *MI-MAAMAKIM*, *DIVREI EPHRAIM*, AND OTHER BOOKS OF RESPONSA

R. Ephraim Oshry was born in Kupishok (Kupiškis, Lithuania) in 1914 and died in New York in 2003. He studied in Lithuanian *yeshivot* and received a *semikhah* to serve as rabbi and to give halakhic rulings. During the Shoah he was active at the side of his rabbi, R. Avraham Duber Kahana Shapiro, the rabbi of Kovno (Kaunas, Lithuania) and even answered questions that his rabbi had been asked. Oshry served as a rabbi of the Kovno ghetto and set up a *beit midrash* there. After the liberation of Kovno from German occupation, he served there as the only rabbi. Most Jews who returned to Kovno soon came to realize that they were not welcome in their city. The solution for most survivors was to leave the city and the country, together with their rabbi. R. Oshry went to Austria and founded a yeshivah there in the refugee camp at Welsh, near Salzburg. In 1946 (5706) he moved to Rome, where he worked hard to improve conditions for the refugees and for Judaism. In Rome he founded a yeshivah for Shoah refugees, called *Meor ha-golah*. From Rome he continued to the US, where he stayed until his death. He settled in New York, and served as the rabbi of the congregation *Beit ha-midrash ha-gadol*.

From a halakhic aspect, his books *Divrei Ephraim* and *Sheelot u-teshuvot mi-maamakim* (New York, 1959), containing commentaries and *hiddushim* in Talmudic issues, are the most comprehensive ones dealing with the Shoah period. They contain answers given to questions asked during the Shoah.

Most questions and answers were reconstructed from memory. He was a man of extraordinary memory. Long after the event, during his years in the US, he succeeded in recalling typical cases that had raised doubts in the days of the Shoah.<sup>19</sup>

*R. Ephraim Oshry's Discussion of Self-Rescue with the Help of the Documents of Idolators*<sup>20</sup>

Jews in Poland were imprisoned in ghettos in different places for months, even for years. During their stay in the ghettos, there arose questions on different religious topics. Some of the questions dealt with current events, others with probable future events. Here is one, for example: On Nissan 1, 5702 (March 1942), R. Oshry was asked in the Kovno ghetto whether it was permitted for a Jew to save himself by purchasing documents presenting their bearer as a Gentile, in order to escape from the ghetto and join the partisans. So it is the case of a person who wanted to rescue himself, and for that purpose he intended to buy forged documents that would prove that he was a Gentile. It is a question concerning the future: whether it would be permitted for a Jew to present himself as a Gentile so that he might survive. This question is different from the one put to Teichthal in Hungary. The question put to R. Teichthal involved a case that had actually happened, and wondered how to deal with the transgressors *be-di-avad*. In the present case doubts of transgression are raised about an action before its realization.

<sup>19</sup> Some examples to illustrate this point: (1) *Mi-maamakim*, part 4, no. 6: whether it is possible to observe the commandment of *sukkah* by taking wood without the permission of the Germans. The answer: it is permitted. (2) *Mi-maamakim*, part 5, no. 1: whether it is permitted to save oneself at the price of a friend's life. Case history: 5,000 permits were received, entitling their owners to remain in the ghetto and offering them a chance to survive. There were 30,000 Jews in the ghetto. Should they distribute the permits to some of the Jews? The answer says that they should distribute to 5000, because at least some of them survive this way, which is preferable to all of them getting killed. (3) *Mi-maamakim*, part 3, no. 6: is it permitted to say the blessing "for not having made me a slave" during the morning service in the ghetto? The answer: the blessing "for not having made me a slave" was not prescribed because of the work itself; thus, when the prisoner says it, he does so because he does not have to do slave labor as a slave, [...] for that reason a prisoner who is a good Jew is obligated to say this blessing.

<sup>20</sup> E. Oshry, *Shu"t mi-maamakim* (New York, 1959), part 1, no. 15.

We shall discuss the question of whether it is permitted to escape from the ghetto and join the partisans by means of Aryan papers bought from Gentiles. The person wanted to join the partisans with a Gentile identity. The purpose of joining the partisans was motivated by the intention to fight against the Nazis. The question is interpreted by R. Oshry as a matter of observing the commandment of *kiddush ha-Shem*.

The inquirer presumed he would get a positive answer to his question: that is, get permission to buy Aryan papers for the purpose of identification. However, R. Oshry's answer to the above question was different from the inquirer's expectations:

התשובה: דבר זה אסור שהרי כתב הרמב"ם בספר המצות וז"ל: מצוה ד' היא שצונו לקדש את שמו והוא ממה שנאמר ונתקדשתי בתוך בני ישראל, וענין זאת המצוה אשר אנחנו מצווים לפרסם האמונה הזאת האמתים בעולם ושלא נפחד בהיזק שום מזיק, ואע"פ שבא עלינו מכריח לבקש ממנו לכפותינו שלא נשמע אליו, אבל נמסור עצמנו למיתה ולא לתעהו לחשוב שכפרנו אע"פ שלכותינו מאמינים בו יתעלה עכ"ל הטהור.

The answer: It is forbidden. This is what Rambam wrote in the *Sefer ha-mitzvot*: "we are commanded to sanctify God's name. It is contained in His words: 'But I will be hallowed among the children of Israel.' The purport of this Commandment is that we are by duty bound to proclaim this true religion to the world, undeterred by fear of injury from any source. Even if a tyrant tries to compel us by force to deny Him, we must not obey, but must certainly rather submit to death; and we must not even mislead the tyrant into supposing that we have denied Him while in our hearts we continue to believe in Him (exalted be He)"—so far this is his pure speech.<sup>21</sup>

The prohibition on using these documents is rooted in the Jewish faith: according to the Torah of the Jewish people, it is a duty to sanctify God's name. Sanctifying and proclaiming the Divine Name in the world is a commandment that should be observed at all times and in all places. This mitzvah stays valid also when conditions at a certain place question its observance, in a place where it would be more useful to refrain from observing the commandment. We are obligated to observe it at any price; we should not yield even in that

<sup>21</sup> Ibid.

case. This commandment should be observed unconditionally, at its highest level, at the level of sacrificing our life. R. Oshry's opinion is expressed in a clear and unambiguous form:

ומזה נראה שחייב אדם למסור עצמו למיתה ואסור לו להתעות את הגוי שיחשוב שכפר ח"ו באלקי ישראל אף שבלבו הוא מאמין בהשם יתברך שמו, וכמו שכתב הרמב"ם בלשונו הטהור "אבל נמסור עצמנו למיתה ולא נתעהו לחשוב שכפרנו, ועי' בתוס' ע"ז נ"ה.

From this it is apparent that one should submit to death, and it is forbidden for him to mislead the Gentile into thinking that he has denied the God of Israel (God forbid), even if in his heart he believes in Him, blessed be His name, as the Rambam wrote it in his pure language: "but must certainly rather submit to death, and should not mislead him into thinking that we denied God" see Tosafot, Avodah zarah 55.<sup>22</sup>

R. Oshry's words leave no doubt that it is forbidden to mislead Gentiles into thinking that the owner of the document was a Gentile, like them, and not a Jew. There is no choice between sacrificing one's life and feigning Gentile identity. The halakhic ruling is unambiguous: one should observe the commandment of *kiddush ha-Shem* even if it means submitting to death. His words are supported by a profound and exhaustive halakhic discussion on the topic of *kiddush ha-Shem*. From R. Oshry's answer it can be deduced that he was aware of the fact that the question had been asked before committing the transgression. From the aspect of the timing of the question, R. Oshry's position was more pleasant than R. Teichthal's, who was asked after the transgression had already been committed. In his ruling R. Oshry wanted to prevent a transgression from being committed in the future. Consequently, he ruled as follows: "but must certainly rather submit to death."

The answer takes into account the fact that the man intending to buy Aryan papers would have done so in order to fight against the enemy by joining the partisans. The concept of ambiguity as it is mentioned in the answer is explained by the author by saying that the purchase of the document was not the purpose itself, since the real goal was fighting against the Nazis. The document would only provide the means to realize his intention to fight

<sup>22</sup> Ibid.

together with the partisans. Nevertheless, according to R. Oshry the desired document had another aspect: it would mean conversion. The original owner of the document had actually denied his faith, which is forbidden even if the person who wanted to buy the document believed whole-heartedly in God. Each and every Jew is obliged to observe the commandment of *kiddush ha-Shem*, “one should submit to death, and it is forbidden for him to mislead the Gentile” This is what he says:

תבנא לדינא שאין שום היתר כלל בנידון דידן לרכוש תעודת התנצרות ושמר אף שהוא חשוב שעל ידי זה יצליח להנצל, אלא מצווה הוא לקדש את שם השם וכמו שנאמר ונתקדשתי בתוך בני ישראל.

According to halakhah, there is no permission whatsoever to buy baptism or *shmad* [conversion] certificates, even if one thinks that it can help him survive. On the contrary, there is a commandment to hallow the name of God. As it is written: “I will be hallowed among the children of Israel.”<sup>23</sup>

R. Oshry prohibited misleading Gentiles, so in our case the questioner should choose the alternative of *kiddush ha-Shem* and submit to death, and he is not allowed to buy documents to pose as a Gentile.<sup>24</sup>

The halakhic discussion deals with similar, but not identical problems concerning self-rescue by Aryan papers. One of the cases discussed tackles ambiguous statements, when a Jew pretends to be an idolater by various hints. His words have double meaning: seemingly he is an idolater, but in his heart the Jew is thinking of something else. In the discussion reference is made to the view of R. Joseph Haviva, the author of *Nimmukei Yosef*, a Sephardic halakhic authority from the beginning of the 15<sup>th</sup> century. R. Oshry emphasizes that the case discussed in *Nimmukei Yosef* does not

<sup>23</sup> Ibid.

<sup>24</sup> See also the responsa collection *Divrei Ephraim me-emek ha-bakhah*, no. 5, concerning the question of whether *kiddush ha-Shem* is obligatory for minors. It tells of parents intending to save their children by means of buying birth certificates from Gentiles. Their method was the following: “they dropped their children into orphanages of the idolaters [meaning Gentiles], so that the idolaters would think the child was also an idolater. They also gave their children to priests, writing to them that the children were converts. Is this permitted?” In his answer R. Oshry says that the commandment of *kiddush ha-Shem* is obligatory for all Jews, including children. Nevertheless, he discusses other sources as well, and his answer is ambiguous.



resemble ours. No proof should be taken from there, and it is not right to compare the cases. With these words he justifies his decision on the matter of the prohibition concerning the purchase of Aryan papers which prove that their buyer abandoned Judaism: this is an unambiguous statement. On the other hand, *Nimmukei Yosef* discusses a case that concerns an ambiguous statement with different possible interpretations, one for the Jew, and another for the Gentile. In addition to the view of *Nimmukei Yosef*, the Rambam's opinion is also expounded in order to assert the validity of the ruling.

*R. Ephraim Oshry's Discussion of Whether it is Permitted for an Ashkenazi Jew, in Possession of a Passport and Willing to Use it to Save Himself, to Add the Abbreviation Rk. for Religion, so that He Would be Taken for an Idolater*<sup>25</sup>

The question was asked in the Kovno ghetto, and it refers to a Jew with a foreign name from Germany, who was deported to Poland because his parents or grandparents were originally from there. He had a passport in his possession issued in Germany that he had received as a German citizen. The owner of the passport came to Kovno and was imprisoned in the ghetto of the city, together with all other Jews. Life in the ghetto was very difficult because the Germans intensified the oppression of their prisoners. The owner of the passport planned to escape from the ghetto, hoping that he could hide among the Gentiles, among the Christian population outside the ghetto.

The passport in his possession had been issued in Germany before the Nazis came to power. The owner of the passport was aware of the fact that the passport could save him, that he would not be considered Jewish. Neither his name nor his looks would reveal his being a Jew and the Gentiles would be convinced that he belonged to them from birth. However, the passport would be useful for him only on the condition that he added the letters Rk. (*römisch-katholisch*, "Roman Catholic" in German) to it. The added letters would probably be interpreted to mean that the owner of the passport was a Christian and belonged to the Roman Catholic Church.

R. Ephraim Oshry was asked whether by adding these two letters the owner of the passport would seem to acknowledge idolatry, and whether

<sup>25</sup> E. Oshry, *Shu"t mi-maamakim* (New York, 1979), part 5, no. 3.

this was forbidden. After a detailed halakhic discussion based on halakhic sources, R. Oshry came to the following conclusion, clear as day:

חדא בכדי להציל את עצמו מסכנת נפש מותר לו להטעות את הגויים שלא יכירוהו שהוא יהודי, ואינו דומה כלל למה שכתב הרמב"ם בספר המצות [...] אבל היכא שהגויים אינם מכירים בו ואינם יודעים שהוא יהודי מותר לו להטעות אותם ככל טעדיקי ואמצעים אפילו באמירה שהוא כאחד מהם מאז ומעולם, וכמו שכתבתי לעיל.

In order to save himself when his life is threatened he is allowed to mislead Gentiles so that they would not recognize him as a Jew, and this case does not resemble what the Rambam writes in the *Sefer ha-mitzvot*: [...] but where the Gentiles do not recognize him and do not know that he is a Jew, he is allowed to mislead them by all kinds of devices and means, even saying that he has always belonged to them, as I have already mentioned above.<sup>26</sup>

In the case we are dealing with, there is no denial of God, and the owner of the passport would simply use tricks that might help to save his life. It is permitted to use such methods, because they do not concern buying documents that prove that one is a Gentile.<sup>27</sup> The man's passport was issued in Germany during the years when Jews with German citizenship were entitled to passports; that is why the religion was missing. So this case would not involve the denial of God:

ועוד הרי הרמ"א העלה להלכה שמותר לו לומר לשון דמשתמע לתרי אפין בכדי להנצל, וביארנו לעיל ששתי אותיות הללו נמי משתמעין לתרי אפי, לכן נראה דשרי, וה' יצילנו משגיאות ושלא נדע מצרה ויגון עוד.

The Rema (R. Moshe Isserles) also made it a halakhah that it was permitted to use ambiguous language in order to be saved. As explained above, these two letters are also ambiguous, and therefore apparently permitted. God save us from making mistakes, so that we would not know misfortune again.<sup>28</sup>

<sup>26</sup> Ibid.

<sup>27</sup> Ibid. R. Oshry found it suitable to quote the Rema, Rabbi Moshe ben Israel or Isserles, 1520–1572, a great Ashkenazi posek of the 16<sup>th</sup> century, whose authority was recognized for generations to come.

<sup>28</sup> Ibid.

It is clear from the answer that R. Oshry's halakhic ruling was influenced by war events, including the suffering in the ghetto he was to share as well. We should remember that the meaning of the concept halakhah comes from the root *halakh*, meaning "to go." Maybe this concept was accepted because decision-makers understood that it was worth adopting legislation that, with the changing of time, would be as flexible as possible. Since the life experience of European Jews completely changed in the period of the question, it was possible for R. Oshry to give his ruling as he did, yet still rooted in halakhah. That is, he permitted adding the requested letters to the passport of the questioner.

*R. Ephraim Oshry's Discussion of Whether it Is Permitted to Receive Without Reproaches and Penitence Those Who Saved Themselves by Behaving as Idolaters and After the Liberation Returned to Judaism*<sup>29</sup>

The question relates to the period, immediately after the liberation, when survivors started to return home. Some of the Jews were saved by hiding as Gentiles. They dressed and behaved like Gentiles. They had obviously copied the Gentile image in order to survive. Jews adopting the Gentile image had to follow Gentile patterns and customs in order for the camouflaging of their Jewish identity to work. It meant going to church, wearing a cross around the neck, etc. They had to adopt Gentile behavior patterns, dress code, they had to drink their alcohol, sing their songs, etc.

After the Shoah, these people, saved on account of changing their Jewish image for a Gentile one, wanted to return to Judaism. Their actions were likely to be interpreted as having been actions of denial (denying God). Their actions were against their will, but nevertheless they did what they did. When these people wanted to return to Judaism, to be Jews again, to belong to the Jewish community, doubts were raised as to whether to accept "yesterday's Christians" as "today's Jews," and, if so, whether to accept them as Jews easily, without penitence. R. Oshry answered the following:

ויש לנו לעשות הכל כדי לקרבם ולגאול אותם מחלאת טומאת הגוים שנדבקה בהם [...] וכתב שאין לדחותו גם מחמת בניו.

<sup>29</sup> Ibid, part 5, no. 15.

We have to do everything to approach and save them from the impurity of the Gentiles that infected them; [...] they should not be rejected, if only for the sake of their children.<sup>30</sup>

The answer given by him is based on relevant halakhic considerations. After a detailed halakhic discussion he comes to the conclusion that these people should be accepted as Jews and should be drawn near to the bosom of Abraham.<sup>31</sup> Besides the halakhic considerations, there was another case to illustrate that the religious establishment had to be more liberal after the Shoah as well, because of the circumstances during the Shoah period. Only a few survived, and very many people perished, so if they failed to receive some of the survivors, the consequences of the Shoah would be even more severe. These Jews would be lost as Jews, and, God forbid, the evil work of their enemies and the plans of the wicked would be even more fully realized.

R. ISAAC HA-LEVI HERZOG (1888–1959), THE AUTHOR OF  
*SHEELOT U-TESHUVOT HEIKHAL YIṢḤAK*

R. Herzog was born in Poland and died in Jerusalem. He was considered a brilliant Talmudic scholar and a highly cultured man, with a doctorate from London University. From 1936, after R. Abraham Isaak ha-Kohen Kook had passed away, he was the Ashkenazi chief rabbi of Erez Israel. He took an

<sup>30</sup> Ibid.

<sup>31</sup> For another responsum discussing a case of buying Gentile documents, written after the Shoah, see *Mi-maamakim*, part 4, no. 12. The question was whether the purchase of Gentile identity documents was considered as a denial of one's people and faith, and whether one who purchased such documents should be judged as a convert. When these people want to return to Judaism, are they are obligated to do *tevilah* (ritual immersion in the *mikveh*)? Description of the case: a Jew found refuge together with his family in the house of a Gentile, and to be safe when searches were made for Jews in hiding, he bought Aryan papers for himself and for his family, proving them to be Christians. While in hiding, they did not have to use these identity papers. In fact, he never changed his faith, and behaved as a kosher Jew: he laid *tefillin*, observed the Shabbat, and carefully avoided the consumption of forbidden food. R. Oshry answered as follows: the Rema wrote in *Shulḥan arukh*, YD, at the end of paragraph 12: for a Jewish convert returning to his original faith, *tevilah* is required only *mi-de-rabbanan*, together with the resolutions of a three-member rabbinical court.

active part in the rescue operations in Europe during and after the Shoah period. His posthumously published responsa describe halakhic problems that the Jewish public had during these two periods, as a result of the state of emergency. R. Herzog dealt with many of these cases, and was trying to find solutions to release *agunot*<sup>32</sup> who survived the Shoah. In the cases brought to him, he demonstrated courage and expertise concerning the halakhot dealing with the release of *agunot*.

When a husband dies without children, his brother is obligated to marry his sister-in-law (*yibbum*), or release her from the marriage (*ḥalīzah*). We shall discuss the case of a surviving brother who was saved by Aryan documents.

*R. Isaac ha-Levi Herzog's Discussion of a Jewish Convert Who Considered Himself a Gentile, but Did Not Undergo Conversion by a Priest, and Denied the Performance of Ḥalīzah*<sup>33</sup>

In our case, a Shoah survivor was saved by a document testifying that he was not Jewish. The survivor took the Christian religion on himself, stopped behaving as a Jew, and did not observe halakhah or Jewish customs. His brother perished in the Shoah, and left a wife behind him. According to Jewish religion, a brother who survives is obliged to do either *yibbum* or *ḥalīzah*. However, this man announced that he was a Christian and had nothing to do with Judaism. His sister-in-law wanted to know whether she needed *ḥalīzah* to remarry as she pleased. This is how the question was formulated in the source:

אשה צעירה לימים עגונה נשארה זקוקה ליבום לאחי בעלה שנשאר בחיים ע"י תעודה ארית שהשיג שהוא אינו יהודי.

A young woman, presently an *agunah*, is in need of *yibbum* from her husband's brother, who survived because of the Aryan papers he had acquired, which proved he was not Jewish.<sup>34</sup>

<sup>32</sup> *Agunot*: "chained women," i.e. women who remain "chained" to their marriage even after their husbands have disappeared, because they had not been granted a divorce document, or because it is unknown whether their husbands are still alive, and who are thus forbidden to remarry.

<sup>33</sup> Isaac ha-Levi Herzog, *Shu"t heikhal Yizhak*, EE, no. 88.

<sup>34</sup> *Ibid.*

R. Herzog clarified matters and found out that it concerned a man who stopped identifying with Judaism:

העידו לפני שלשה אנשים נאמנים ומדייקים בעדותם ומכירים אותו היטב שהוא נתק כל קשריו עם היהודים, אינו נפגש אתם בשום פעם, אינו בא לבית הכנסת בשום חג, מחלל שבת בפומבי, הן במלאכתו והן בעישון וכתיבה ושאר חילולי שבת. נולד לו בן ולא מל אותו!

Three trustworthy men, who are also reliable witnesses, and who know him well, testified in my presence that he cut all his connections with Jews, never met Jews, did not go to synagogue on holidays, desecrated the Shabbat in public with work, smoking, and writing, etc. A son was born to him and was left uncircumcised!<sup>35</sup>

When the question was asked, Jews who had been using Aryan papers during the Shoah had already stopped doing using them and were returning to their Jewish identity, to their Jewish names, and behaving as Jews in every respect. In contrast, the man in question, the brother-in-law of the woman who needed either *yibbum* or *halizah*, continued using his Gentile name and behaving as a Gentile.

R. Herzog reviewed the discussion of the question by other rabbis and *poskim* who had dealt with similar problems in the past. According to him, the central problem was the following: are we dealing with a Jewish convert, or with a Jew who does not observe the commandments? R. Herzog's answer is not unambiguous:

שצריך עוד להתישב בדבר, ובפרט שיש כאן תרתי לרעותא: (א) שעדיין לא נתברר שיש לו דין מומר ממש. (ב) אפילו כך הלא חלתה ההמרה לאחרי הנישואין של אחיו. ועוד חזון למועד אי"ה.

However, it needs more consideration, especially because of the following aspects: (1) it is still not clear whether he is to be considered a convert; (2) even if he is [a convert], whether the conversion occurred after his brother got married. It needs to be clarified, with God's help.<sup>36</sup>

<sup>35</sup> Ibid.

<sup>36</sup> Isaac ha-Levi Herzog, *Shu"t heikhal Yizhak*, EE, no. 89.

In the absence of an unambiguous definition of the status of the dead man's brother, the halakhic solution to the question appears to be complex. Was the brother obligated for *yibbum* or *ḥalīzah* considered Jewish when the husband died? Was the man who denied the *yibbum* to be considered Jewish after the Shoah?<sup>37</sup>

This responsum demonstrates the halakhic difficulties that rabbis had to face.

## SUMMARY

Chances of rescue by means of denying Jewish identity were discussed during and after the Shoah period. The cases raised doubts about the act of denying Judaism. The halakhic rulings weighed up the specific circumstances of each case. There is no unambiguous ruling: some of the answers permit, others prohibit the changing of identity. There are answers adopting the method of *shev ve-al taaseh*, by avoidance of giving a straight answer. Each *posek* had his own considerations. We have seen rulings apparently deviating from the way of halakhah, some of them even more lenient than mainstream halakhah. The common features of the answers can be summed up in the fact that all the rabbis ruled according to the best of their understanding, and in consideration of the circumstances. In a few words, the *poskim* referred to the difficult conditions of the Shoah period, which required, despite the mortal danger, clear vision in terms of halakhah and the consideration of harsh realities. R. Teichthal brought his rulings with outstanding consideration of the conditions marked by the events of the Shoah. Concerning the

<sup>37</sup> R. Herzog was asked a question on the same matter, no. 89: מה נעשה לאלה היראים שהשתמשו באותה ההערמה לקבל פספורטים בתור איריים, און הדבר כ"כ קשה. שתשובה מועילה אפילו למומר שהיוו עליו המים הטמאים, ואלה השומרים שבת ונוזהרים בכל האיסורים, אופן ביום הכיפורים, כבר הם בעלי תשובה, ונתכפרו שהם לא חטאו במזיד אלא שטעו שדבר זה מותר הכיפורים, במקום סכנת מות ("What should be done with the pious ones who used this trick of getting Aryan passports? The answer is not so difficult. *Teshuvah* (repentance) is useful even in the case of a convert who was sprinkled with impure water, while those who keep Shabbat, avoid transgressions carefully and fast on *Yom kippur*, are already considered as *baalei teshuvah* (repentants), and they have already atoned for their crimes committed by mistake, and not on purpose, which are permitted when facing the danger of death.") In the responsa above, the approach of R. Herzog is strikingly patient and understanding.

transgression of denying God by means of Aryan documents, R. Oshry ruled to “better to be killed than to violate them.” In less radical cases involving doubts about the act of denying God and Judaism, he tended to be more lenient in his ruling. R. Herzog strived to find all solutions that were possible for carriers of Gentile documents and *agunot*.

The commandment of *kiddush ha-Shem* remained valid indefinitely, and the aforementioned *poskim* testified to it in the responsa discussed here.



# 8. Memorial Books and Responsa Literature: Merging Genres in Rabbinic Literature in the Aftermath of the Holocaust

*Kinga Frojimovics*

From 1945 on, many Holocaust survivors, dispersed all over the world, considered it a duty of utmost importance to record the events of the Holocaust, to write the history of their destroyed community, to depict the flourishing communal life in the pre-Holocaust era, and thus to document the ravages of the Holocaust. It was this same need to record the events of the Holocaust and the lives of its victims that had motivated the inhabitants of the ghettos to write diaries and chronicles as well as to collect systematically the documents of what was happening. Examples of such ghetto archives are the famous *Oneg Shabbat Collection* headed by Emmanuel Ringelblum, documenting the Warsaw Ghetto,<sup>1</sup> and the *Mersik-Tenenbaum Collection* of the ghetto of Bialystok. A similar, but much smaller documentation project was carried out in the so-called Glass House (No. 29 Vadász Street, 5<sup>th</sup> District) in Budapest.<sup>2</sup> Between the end of November 1944 and the middle of January 1945, viz. in the midst of the Arrow Cross reign of terror in Hungary,

<sup>1</sup> For the history of this collection see Samuel D. Kassow, *Who Will Write Our History? Emanuel Ringelblum, the Warsaw Ghetto, and the Oneg Shabbat Archives* (Bloomington–Indianapolis: Indiana UP, 2007).

<sup>2</sup> The official name of the Glass House after 24 July 1944 was the Swiss Embassy's Office for the protection of Foreign Interests, Emigration Division (*Svájci Követség Idegen Érdekek Képviselete Kivándorlási Osztály*). Artúr Weiss was a glass wholesaler. Nearly 3,000 Jews found refuge in his office building, which was protected by Switzerland. Various Zionist organizations worked there from the summer of 1944 onward, and the Glass House became the center of the Halutz movements and rescue operations. (Asher Cohen, "The Halutz Resistance as a Revolt Against Assimilation," in Randolph L. Braham and Attila Pók, eds., *The Holocaust in Hungary: Fifty Years Later* (New York: Columbia UP, 1997), pp. 425–440.) On December 31, 1944, Arrow Cross men broke into the building and murdered several people on the spot. They dragged Artúr Weiss away; he was never seen again. The overwhelming majority of those who found their way to the safe haven of the Glass House, however, lived to see the liberation.

altogether 35 testimonial protocols were recorded, mainly with Jews who had just escaped from the ghetto of Pest, from forced labor service, death marches, or from the firing squads on the bank of the Danube.<sup>3</sup>

The initiators of the post-war large-scale historical-memorial projects simultaneously aimed to document the destruction and to commemorate both the individual victims and their communities that had been wiped out. This double aim gave rise to a typical post-Holocaust genre, that of the memorial books (in Yiddish, *yizker bikher*). In less than three decades following World War II—between 1945 and 1972—approximately 400 memorial books were written about various European Jewish communities mainly in Eastern and Central Europe. The majority of these books were published by the *Landsmannschaften* (associations of immigrants who had come from a certain locale or region) about their own former communities.<sup>4</sup> Memorial books are still being published. The memorial book of Máramarosziget (today: Sighetul Marmăției, Romania) entitled *The Heart Remembers Jewish Sziget*, for instance, was published in Israel in 2003 in Hebrew and English by the Association of Former Szigetians in Israel.<sup>5</sup>

Besides the special genre of the memorial books devoted solely to remembering the vanished Jewish world together with its individual victims, many other genres of post-Holocaust Jewish literature register the overwhelming need for commemoration, and thus took on the function of memorial books. In this article, based on works of Hungarian rabbis, I will examine the profound changes that occurred in responsa literature—viz. in one of the most traditional, consequently, the most well defined genres of rabbinic literature—as a consequence of the Holocaust.<sup>6</sup> Similarly to Yad

<sup>3</sup> See the protocols: Yad Vashem Archives (Jerusalem) O.15H/181.

<sup>4</sup> For the bibliography and the characteristics of memorial books published between 1945 and 1972 turn to: Abraham Weil, “‘Memorial Books’ as a Source for Research into the History of Jewish Communities in Europe,” *Yad Vashem Studies*, 1973, pp. 255–271. For the bibliography of the memorial books compiled by David Bass see pp. 273–321. See Rita Horváth, “The Role of the Survivors in the Remembrance of the Holocaust: Memorial Monuments and Yizkor Books,” in Jonathan C. Friedman, ed., *The Routledge History of the Holocaust* (New York, London: Routledge, 2010), pp. 470–481.

<sup>5</sup> Yitzhak Alfassi, Eli Netzer and Anna Szalai, eds., *The Heart Remembers Jewish Sziget* (Association of Former Szigetians in Israel, 2003).

<sup>6</sup> For a short summary about the history of responsa literature see the entry “Responsa” in the *Encyclopaedia Judaica CD Rom Edition*; and in the Central-European context see Viktória Bányai, “A rabbinikus responzumirodalomból nyerhető történeti adalékok,” in Nóra

Vashem's *Pinkas Ha-Kehillot* series, many post-Holocaust responsa became also memorial monuments for a destroyed community or a rabbi murdered in the Holocaust.

Why did the memorial book genre invaded the genre of the responsa, viz. rabbinic literature? Esther Farbstein, who has collected and examined introductions written to rabbinical works published after the Holocaust, came to the conclusion that since autobiographies command little respect in the Orthodox rabbinic world and historical works do even less, rabbis and scholars aiming at commemorating the victims of the Holocaust quietly insert biographical and historical works as introductions or appendices to works of prestigious rabbinical genres such as commentaries, collections of responsa or sermons.<sup>7</sup> Yizhak Iliovits, the former Orthodox rabbi of Hajdúsámson, for instance, said in an interview:

in the books [meaning works of rabbinic literature] there is an introduction in which it is possible to record whatever one wants to tell about oneself and his family. [...] here, in the beginning of the *sefer* ("book") he wrote what happened during and after the war, how they survived the war.<sup>8</sup>

Thus, besides being traditional scholarly halachic works, the majority of responsa collections published in the aftermath of the Holocaust perform additional tasks as well. The introductions are often separate, self-contained writings relating the life of a martyr rabbi or that of the rabbi's destroyed community. In both cases, the events of the Holocaust are described in great detail. In addition to the responsa of martyr rabbis, which are usually published after 1945 by their descendants, there appear also volumes by survivor rabbis who, in many cases, add narratives of their own survival and depict the fate of their communities during the Holocaust. These volumes are not only invaluable sources of the history of individual communities during the Holocaust but also major means of remembrance and commemoration. In other words, these books perform the role of memorial monuments, and

Kovács, Anna Osvát and László Szarka, eds., *Etnikai identitás, politikai lojalitás (Tér és Terep, 4)* (Budapest: Balassi Kiadó, 2005), pp. 317-332.

<sup>7</sup> Esther Farbstein, "Rabbinical Introductions as Historical Texts of the Holocaust" (Hebrew), *Dapim*, 20 (2006), p. 82.

<sup>8</sup> Sándor Bacskai, *Az első nap: Emlékek az ortodox zsidóságról* (Budapest: Múlt és Jövő, 2004), p. 53.

thus they become memorial books. Next, I will present examples of both kinds of responsa collections.

The responsa of R. Naftali Hirzka Hönig (1898–1985), entitled *Tiferet Naftali*, is important for its numerous references to Hungarian history. The volume was published in 1986 in Brooklyn by the rabbi's grandson, Chaim Yehoshua Gross. He also wrote the biography of R. Hönig as the introduction to the book.

Hönig became the rabbi of Nagysármás (today: Sărmașu, Romania) in 1924. In 1944, many Jewish refugees arrived in the Nagysármás Jewish community from Hungary, since the town was situated near the border, but on the Romanian side. On September 5, 1944, however, the retreating Hungarian Army occupied it. Before the army entered, the rabbi, together with his five sons and a few members of his community, had managed to escape. On the night of September 17, 1944—it was the night of *Rosh hashanah*—the gendarmes, under the command of Gendarme Captain László Láncz, shot the 126 Jews who had remained in Nagysármás, including 43 children, into two mass graves in the Sósút forest near the town. Before the massacre, which lasted for more than four hours, 20 Jews had been compelled to dig the two large pits. Since many of the victims were buried alive, the earth was moving above the graves for two whole days. The rabbi's wife and four daughters were among the murdered Jews. The mass graves were opened by returning survivors (those who had managed to escape from the town before the arrival of the Hungarian Army) in the winter of 1945. R. Hönig supervised the opening of the mass graves and the subsequent reburial of the victims. All of the victims were placed in separate coffins and buried at the scene of the massacre according to the Jewish burial rites on February 22, 1945. The reburial raised numerous halachic problems, about which R. Hönig carried on extensive correspondence with other rabbis.<sup>9</sup> Besides one book published in 1945 by Matatias Carp, who was in charge of the 1945 exhumation, the first detailed account of the Nagysármás massacre can be found in R. Hönig's responsa volume. It also contains a picture of the monument erected in Nagysármás at the time of the reburial and the list of the victims' names.<sup>10</sup>

<sup>9</sup> See R. Hönig's correspondence, for example: Naftali Hirzka Hönig, *Tiferet Naftali* (Brooklyn, 1986), no. 100; Bezalel Stern, *Be-zel ha-hokhma*, Vol. 1 (Jerusalem, 1990), nos. 14–18, Vol. 5 (Jerusalem, 1990), nos. 104–105.

<sup>10</sup> In addition to the introduction of R. Hönig's responsa volume, see on the massacre: Moshe Carmilly-Weinberger, *Út a szabadság felé! Zsidó menekültek megsegítésének története*

The responsa volume of R. Yehoshua Grünwald (1909–1969), entitled *Ḥesed Yehoshua* was published in 1948 in New York. R. Grünwald was born in Huszt (today: Хуст, Ukraine) in 1909. From 1933 on, he served as the rabbi of his home town and headed the yeshiva founded by his grandfather, Moshe Grünwald, the famous *Aruḡot ha-bosem*. In the responsa volume that included his decisions from both the pre- and the post-Holocaust period, the rabbi, himself a Holocaust survivor, also published his memoir entitled *Ayin dimah*. He wrote this memoir in the summer of 1948. The very choice of title—*An Eye Filled with Tears*—already invokes mourning and an irrevocable loss.<sup>11</sup> Versions of the expression “an eye filled with tears” can be found in the Psalms and also in Jeremiah, mourning the destruction of the people and the loss of the country.<sup>12</sup>

At the beginning of the work, R. Grünwald defines the purpose of his memoir as follows:

אמרתי אספרה לדור אחרון את אשר עבר עלינו בימים ההם, [...] למען ידעו הדורות הבאים בנים אשר יולדו ורשת הגויים נגדנו וילמדו לקח מהאסון הנורא אשר קרנו בעוה"ר. איך נהרסו ונחרבו קיבוצי ישראל הגדולים והאדירים בפולניה והונגריה ושאר מדינות אירופה, קהילות קדושות ומבצרי תורה שניבנו ונשתרשו במשך שנות גלותנו הארוכים ביגיעה ועמל אין סופית ובעקשנות דקדושה של אלפי משפחות יראים וחרדים על דברו.<sup>13</sup>

*a Holocaust idején: Erdély (1936–1944)* (Cluj-Napoca: Babes-Bólyai University, 1999), pp. 65–66; by the same author, *A zsidóság története Erdélyben (1623–1944)* (Budapest: MTA Judaisztikai Kutatócsoport, 1995), p. 316; the book by Matatias Carp, *Sârmaş: Una din cele mai oribile crime Fasciste* (Bucureşti: Socec, 1945); and the article of Nicholas M. Nagy-Talavera, who interviewed 30 eyewitnesses still living in the village in 1984: “The Anatomy of a Massacre: Sarmas, 1944,” *Simon Wiesenthal Center Annual*, 1990, pp. 41–62.—In the winter of 1945, R. Hönig moved to Kolozsvár, where he became a member of the *bet din*, which was created to solve the *agunah* problems for the Orthodox in Transylvania. He left Romania in the winter of 1946 and lived for years in a camp for displaced persons near Munich. During that time, he was serving as a member of the *bet din* for *agunot* in Munich. In 1949, R. Hönig finally immigrated to the US and arrived in New York, where he became a close associate of the Satmar rebbe, R. Yoel Teitelbaum. He died in 1985.

<sup>11</sup> See an analysis of R. Grünwald’s memoir in Nathan Cohen, “Between the Pain of Survival and the Joy of Rescue: The History of Two Hungarian Rabbis during and following the Nazi Occupation,” *Dapim*, 20 (2006), pp. 113–124.

<sup>12</sup> Psalms 116:8; in Jeremiah see the following three verses: 9:17; 13:17 and 14:17.

<sup>13</sup> Yehoshua Grünwald, *Ḥesed Yehoshua*, p. 5.

I promised to the last generation [to those who had lived during the Holocaust] that I would relate what had happened to us during those times [...], so that the next generations, the children to be born only thereafter, should know about the evil deeds committed against us and learn from the terrible tragedy that afflicted us to our great distress. [They should know] about how the large and significant Jewish communities were destroyed and devastated in Poland, in Hungary, and in other countries of Europe. These were Jewish communities, strongholds of the Torah, which had been built during the long time of the *galut* (Diaspora) and became deeply rooted as a result of the arduous and determined labor of thousands of pious families.

Then he continues:

ואם אמנם לא ראיתי רק מה שנעשה בעירנו קהלה קדושה הוסט (קרפטו רוסי) ומהנעשה סביב לי במחנות ההשמדה ר"ל אבל הלא ידענו כי הכל נעשה באופן אחד ועפ"י שיטה אכזרית נתונה מראש. וכך נהרגו נשרפו ונשמדו ששה מיליון נפשות [...] ובכל מקום ומקום עיר ועיר מדינה ומדינה שדרכו כף רגלי הרשעים הצוררים הנאצים ימ"ש נעשה החורבן וההשמדה באופן זה.<sup>14</sup>

Although I have only seen what happened in our town, to the Jewish community of Huszt (in Sub-Carpathia), and then in the extermination camps around me, we know that it all happened everywhere in the same manner, according to a deliberate, cruel scheme. This is how six million people died, were incinerated, and perished [...] and everywhere, in all the localities and all the countries where the evil ones, the heinous Nazis set their foot, the destruction and extermination was carried out in this manner.

By describing what had happened to his own community, the Jewish community of Huszt, R. Grünwald thus aimed to commemorate all destroyed Jewish communities, and European Jewry in its entirety. In his memoir, R. Grünwald related the following events that occurred between Sub-Carpathia's re-annexation to Hungary (March 1939) and March 1944, when the Wehrmacht occupied Hungary: the introduction of the anti-Jewish Laws, the revision of trade licenses, the closing down of shops owned by Jews, forced labor service on the eastern front, anti-Jewish riots in Huszt, the rounding

<sup>14</sup> Ibid.

up of stateless and foreign Jews and their subsequent deportation to Galicia in the summer of 1941, and the Kamenets-Podolsk massacre in August 1941. After March 19, 1944, when the German Army occupied Hungary, R. Grünwald carefully recorded the new anti-Jewish decrees. He paid special attention to the decree ordering Jews to wear the yellow star, because responsa of earlier ages have also dealt with this phenomenon. The specific responsum to which R. Grünwald referred in that case, concerned the Jews of Saloniki at the end of the 15th century. The question was whether local Jews, who had to wear a red star on their clothes, could go outside on Shabbat wearing it.

Then R. Grünwald narrated what happened during the times preceding the deportation of the Jews of Huszt. In 1944, during the week of Pesah, the Gestapo arrived in Huszt. They immediately forbade Jews to leave the town and ordered the leaders of the community to set up a Jewish Council. The Germans demanded that the rabbi have no part in the Jewish Council. The community leaders understood that the goal of the Germans was to dismantle the organizational framework of the Jewish community. The Germans then constantly ordered the Jewish Council to supply them with certain goods, the requests ranging from coffee and alcohol to jewelry. The Germans also ordered 500 people for work. Being aware of what was going on in Poland, the Jews were terrified that they would not see again those who were taken to forced labor. R. Grünwald gave a detailed account of the holiday of Pesah, during which the Germans ordered him to give a speech in the synagogue. After Pesah, the Jews had to move into the ghetto. He described the plundering of Jewish houses outside of the ghetto, and how Jews were tortured to reveal their hidden valuables. He rendered a detailed account of the liquidation of the ghetto and the deportation to Auschwitz, which took place after Shavuot. At the railway station, even the *tallit* (prayer shawls) and *tefillin* (phylacteries) were taken away and were piled up to be burnt. The Jews of Huszt were deported in three or four transports to Auschwitz in May and June 1944.

After he was chosen for work, R. Grünwald was transferred to Melk (Austria). He survived the war and returned to Hungary through Pozsony (today: Bratislava, Slovakia). He could not go back to Huszt, which by then had become part of the Soviet Union. He soon left Hungary, and, via Paris, he immigrated to the United States, where he settled in Brooklyn.

R. Grünwald's memoir was included in its entirety in the most recent memorial book on Huszt, published in Israel in 2000, entitled *Huszt and its*

*Vicinity: Memorial Book*.<sup>15</sup> This fact clearly demonstrates that recent readers also consider R. Grünwald's piece one that fits perfectly into the memorial book genre.

My last example is a book entitled *Yerushat peletah*, which was published in 1946 by the Orthodox Shas Chevrah of Budapest to mark the fiftieth anniversary of the existence of the association. It is a most striking example of the merging of various genres in rabbinic literature: the merging of the genre of responsa and that of the memorial book. The volume consists of a collection of responsa of rabbis who were considered Hungarians by their contemporaries and the vast majority of whom perished in the Holocaust. Moreover, since some of the responsa published in the book discuss halachic problems raised by the events of the Holocaust, the volume as a whole can be regarded as a memorial monument—a memorial book—dedicated to Holocaust victims especially to Hungarian Jews, or more specifically, to the martyred Orthodox rabbis of Hungary.

The title itself is already revealing: *The Inheritance of the Surviving Remnant (Judges 21:17): A Collection of Responsa by the Great Hungarian Rabbis, the Majority of whom Died as Martyrs during the Persecutions of 1944*.

The Orthodox Shas Chevrah of Budapest was established in 1894 by changing the name of the Tiferet Bachurim association, which had been founded ten years earlier. Consequently, it would have celebrated its fiftieth anniversary in 1944. When thinking about marking the anniversary, the leaders of the association decided to ask questions regarding current topics from great contemporary Hungarian rabbis, and publish their answers in a celebratory volume. They were able to assemble most of the material, but there was no time left for editing and publishing it. After the war, the survivors decided to publish the originally planned volume.<sup>16</sup> Its belated appearance turned the book into a memorial monument commemorating more than 300 Orthodox rabbis, who had served in Hungary in 1944 and were murdered in the Holocaust together with the vast majority of the members of their communities. The appendix of the volume lists the names of 320 rabbis, but the editors note that the list is not final: the number of rabbis murdered is in fact higher.

<sup>15</sup> Zvi Menashel, ed., *Huszt and its Vicinity: Memorial Book* (Hebrew) (Rehovot, 2000), pp. 383–410.

<sup>16</sup> See the first page of the introduction (the introduction is unpaginated).



In addition to the introduction and the appendix, the volume consists of 37 rabbinical decisions. Most of them bear no relation to the Holocaust. Many of them are concerned with problems raised by modernization: industrial and technical inventions, such as the possibility of using machines for baking *mazzah* for Pesah; the problem of *shaatnez* (a mixture of wool and linen, prohibited by Jewish law) in the case of garments mass-produced in factories; the use of electricity and the telephone on Shabbat and Holidays; the use of Pyrex dishes; insulin shots for the diabetic on Shabbat; the printing of newspapers in Hebrew letters, raising the possibility of desecrating holy texts; and the spreading custom of placing the photograph of the deceased on the tombstone. Others discuss traditional problems. Six responsa, however, relate directly to the Holocaust in Hungary.

The economic aspects of the Holocaust led to problems such as those of companies partially owned by Jews working on Shabbat and the holidays (decision no. 11)<sup>17</sup> and opening the shops on Shabbat at the order of the authorities (decision no. 5). The responsa also discuss the current difficulties of observing the Shabbat and the holidays. They consider, for example, the problems of the selling of *hamez* before Pesah (decision no. 12)<sup>18</sup> and those of maintaining contacts with other Jewish communities. The latter is illustrated by the question about using donations collected for the poor in Erez Israel for local purposes, given that it was impossible to send the donations there due to the war (decisions 21–22). Finally, the complex question concerning saving lives also surfaces. The discussion centers on the purchase and use of Christian identity documents for rescue purposes at times of persecution (decision no. 27).<sup>19</sup> These questions concerning various aspects of the Holocaust from an Orthodox point of view, approached from the perspective of halakhah, together provide an overview of the major stages of the Holocaust in Hungary: the economic exclusion and destruction of the Jews, namely taking away their businesses and livelihoods; the severe

<sup>17</sup> For a detailed discussion of this question see Judit Kónya's paper in the present volume: "Halakhah and Micro-History: Anti-Jewish Legislation in Hungary (1938–1941) as Reflected in the Responsa Literature," pp. 123–133.

<sup>18</sup> For a detailed discussion of this question see Judit Kónya's paper in the present volume.

<sup>19</sup> For a detailed discussion of the latter see Yehuda Friedländer's paper in the present volume: "Rescuing Jews during the Holocaust with the Help of Aryan Papers: A Rabbinic Perspective," pp. 135–157.

limitations imposed on their religious life, which was also a means to humiliate them; and finally, their murder.

Thus, *Yerushat peletah*, which was published in 1946, by collecting the views of famous Orthodox rabbis of the pre-deportation era in Hungary concerning the modernization of their community, its daily life, and the Holocaust, can be considered as a typical memorial book not only because of the editorial intentions demonstrated by the title and stated in the introduction, but also on account of its structure. It is a typical memorial book chiefly because it reveals the flourishing life of the Hungarian Orthodoxy prior to the Holocaust as well as documents the phases of the Holocaust.

By merging the genres of memorial books and responsa literature, one of the most traditional and respected genres of rabbinical writings, Orthodoxy invented a way to ensure some kind of continuity with its destroyed past, together with the continuity of traditional values, even while registering the unbelievable enormity of loss and devastation.

#### APPENDIX

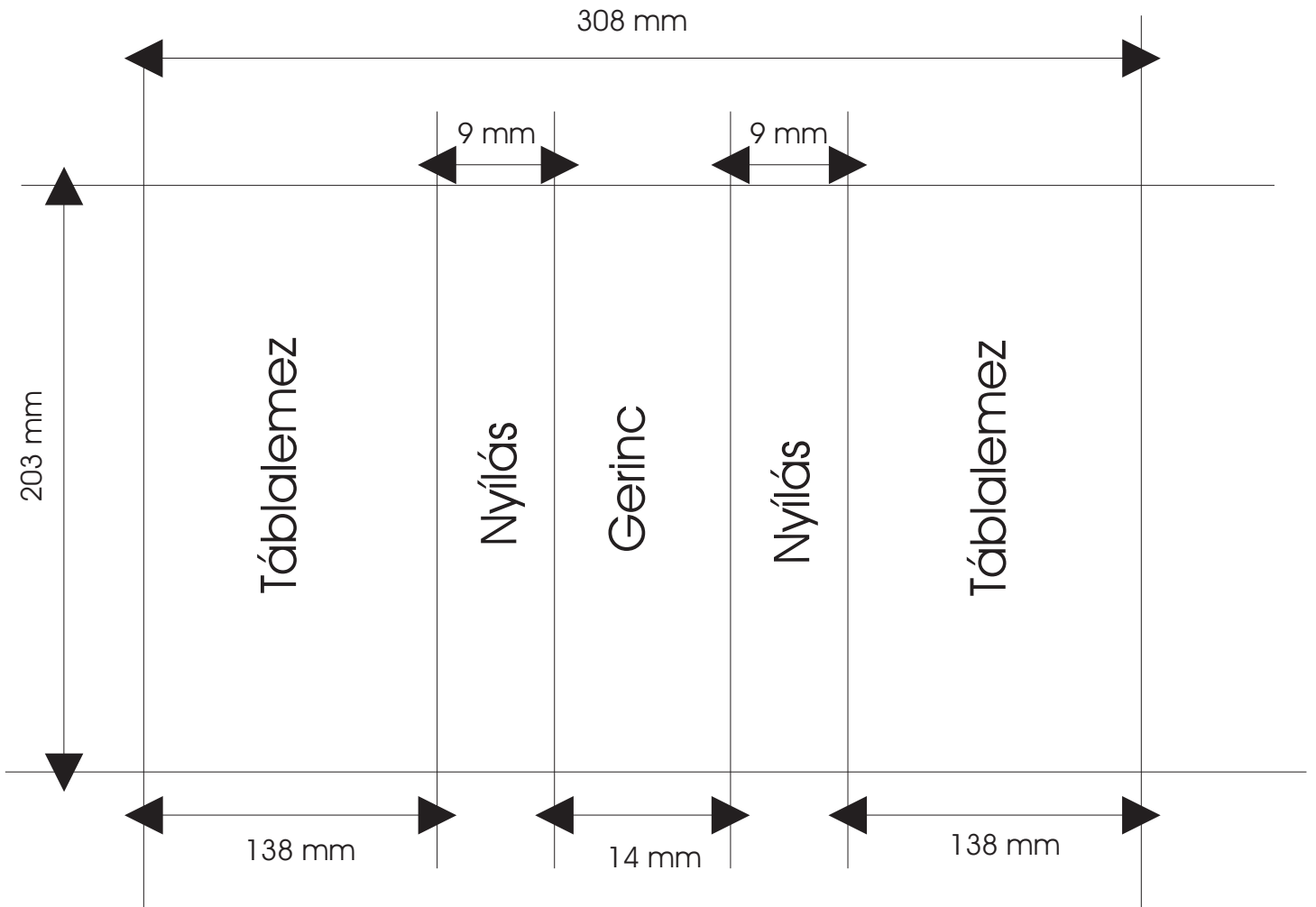
List of the rabbinical decisions published in *Yerushat peletah*

- 1-4: Baking *mazzah* for Pesah with a machine
- 5: Opening shops on Shabbat if ordered by the authorities
- 6-7: The use of electricity on Shabbat
- 8-10: The use of the telephone on Shabbat and holidays
- 11: Issues concerning companies owned partially by Jews: Shabbat and holidays, the problem of *ḥamez* on Pesah
- 12: Selling *ḥamez* before Pesah, when the authorities interfere
- 13: The use of *etrog* from Erez Israel on Sukkot, given that it was difficult to get it from anywhere else
- 14: The issue of shops built adjacent to the synagogue wall
- 15: The use of insulin shots for diabetics on Shabbat and holidays
- 16: The use of electric ovens for warming up food on Shabbat
- 17: The kashrut of Torah scrolls, when the leather might be imperfect
- 18: Removing headgear when taking an official oath
- 19: Obligatory shaving in the army on Shabbat
- 20: Kashering Pyrex dishes

- 21-22: Freeing prisoners locally by donations collected for the poor in Erez Israel that cannot be sent there because of the war; also, the use of *etrog* from Erez Israel
- 23: The problem of *shaatnez* in machine-produced garments
- 24: The kashrut of geese of a larger kind than usual in Hungary
- 25: In a case where a defective Torah scroll becomes mixed up with two flawless scrolls and one cannot tell which one is defective, whether one is allowed to read from all three
- 26: The conversion of the wife in the case of a married couple that has lived together for a long time and in which the husband is Jewish
- 27: Purchasing Christian documents for rescue purposes in the event of persecution
- 28: A case in which a non-menstruant woman sees blood after intercourse
- 29: The problem of newspapers printed in Hebrew letters, raising the possibility of desecrating holy texts
- 30: The reburial of a person in his hometown where his ancestors are buried
- 31: Whether memorial candles should be used sparingly at the *Jahrzeit*, if oil prices have risen significantly
- 32: Whether it was allowed to write down the name of G-d in a newspaper
- 33: Whether women should remove false teeth in the *mikveh*
- 34: Whether a Cohen was allowed to travel on a train which carried the corpse of a Jew in another wagon; whether a Cohen could travel on a plane that flew over a Jewish cemetery
- 35: Reburial of those who fell during the war, and who had been buried among non-Jews
- 36: The engraving of Arab numerals on tombstones in the Jewish cemetery in order to assist relatives in finding the grave; whether a photograph of the deceased could be placed on a tombstone to help preserve his/her memory
- 37: About the mitzvah of returning to Erez Israel

# EGYENES GERINC ESETÉN

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## Contributors

TAMÁS TURÁN, PhD (JTS) – Senior research fellow of the Center of Jewish Studies at the Hungarian Academy of Sciences (Budapest). His academic areas of interest include Talmudic and midrashic literature, rabbinic thought and the history of the Hebrew book.

DÓRA ZSOM – PhD student at the Department of Assyriology and Hebrew at Eötvös Loránd University, Budapest, and junior lecturer at the Department of Semitic Philology and Arabic Studies there. Her fields of research are Iberian Jewry and Jewish influences on mediaeval Muslim popular culture.

GÉZA KOMORÓCZY, Prof. – Professor emeritus at Eötvös Loránd University. Founder of the Department of Assyriology and Hebrew (Jewish Studies) there, and its chair between 1988–2002. Founder (1987) and director of the Center of Jewish Studies at the Hungarian Academy of Sciences; since September 2007, its retired director.

VIKTÓRIA BÁNYAI, PhD (ELTE) – Senior research fellow and (since 2007) director of the Center of Jewish Studies at the Hungarian Academy of Sciences (Budapest). Her fields of research are Hungarian Jewish history and culture in pre-modern and modern times; Hebrew language and literature in Hungary.

SZONJA RÁHEL KOMORÓCZY, DPhil (Oxon) – Research fellow at the Center of Jewish Studies at the Hungarian Academy of Sciences. She wrote her doctorate on the history of Yiddish culture in Hungary. Her main research areas are Yiddish, Hungarian Jewish history, sociolinguistics and Yiddish and Hebrew bibliography.

JUDIT KÓNYA – PhD student at the Department of Assyriology and Hebrew at the Eötvös Loránd University, Budapest. She has been working at the Yad

Vashem Archives in Jerusalem since 2007. Her research topic is “Anti-Jewish Legislation as Reflected in Responsa Literature Written in the 1930s and 1940s in Hungary.”

YEHUDA FRIEDLANDER, PhD (BIU) – Born in Budapest in 1937, has lived in Israel since 1950. His PhD dissertation (2007) was entitled: “The Thoughts and Deeds of Zionist and Anti-Zionist Rabbis in Hungary from the First Zionist Congress in 1897 until the 1950s.” He edited the selected sermons of R. Mihály Duschinsky and R. Fábíán Herskovits.

KINGA FROJIMOVICS, PhD (BIU) – Historian and archivist. Since 2007 the director of the Hungarian Section in the Yad Vashem Archives, Jerusalem. Her field of research is the history of Jews in Hungary in the nineteenth and twentieth centuries, focusing on the history of Jewish religious trends in Hungary and on the Holocaust. She is the co-editor of MAKOR, the series of the Hungarian Jewish Archives.

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Translation: András Zwickl; appendix: György Haraszti, "A Rumbach utcai zsinagóga és hívei" • "The Rumbach Synagogue and its Congregation"  
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Summary in English: Kornélia Koltai, "An Unpublished Hungarian Bible Translation of Simon Péchi from 1634 (Gen. 5–Ex. 12). Edited from the Autograph and Commented"

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2006. June, 89 p.  
ISBN 963-871620-7

Responsa literature (*sheelot u-teshuvot* in Hebrew, “questions and answers”) is a traditional rabbinical genre, with a history of over 1,000 years. Responsa are decisions and rulings written by rabbis to specific questions addressed to them, on topics ranging from everyday practical matters of Jewish law to theoretical issues in philosophy, ethics, history, astronomy, business, etc.

For the title of the present volume, we have deliberately reversed the order of the words of the Hebrew term to *Teshuvot u-sheelot* (“answers and questions”) to express that the answers written by rabbis of all generations raise a number of questions for the modern reader, in fields such as history and historiography, linguistics and socio-linguistics, literature, and anthropology. The studies contained in this volume, written by scholars affiliated with the Center of Jewish Studies at the Hungarian Academy of Sciences, attempt to analyze responsa literature from this perspective.

