

HOLOCAUST RESPONSA:
QUESTIONS AND ANSWERS FROM A TIME OF DESPAIR

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Summary of the Thesis

This thesis examines four responsa written by rabbis in response to issues arising from the Holocaust. The goal of the thesis was to study how these rabbis utilized both halakhah and other rabbinic literature to craft these responsa. Four responsa were selected, each representing one of the four categories of the *Shulhan Arukh* (*Orah Hayim*, *Yoreh De'ah*, *Even ha-Ezer*, and *Hoshen Mishpat*). The responsa were translated and then analyzed to determine how the rabbis arrived at their decisions. Biographical information on the rabbis was included.

Materials used include primary texts such as the *Shulhan Arukh* and its commentaries, *Mishneh Torah*, relevant responsa, as well as texts from the Talmud *Bavli* and Hebrew Bible.

The thesis consists of an introduction, four primary chapters (each analyzing one responsum), and a conclusion.

Through analyzing these responsa, the author hoped to gain some understanding of how the rabbis who wrote them used halakhah as well as the lens of human comfort and dignity to provide answers to the painful, difficult and often unthinkable issues with which Jews were confronted during the Holocaust.

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The wise person does not speak in the presence of one who is greater than he in wisdom; he does not interrupt the speech of his companion; he is not hasty to answer; he questions and answers properly, to the point; he speaks on the first point first, and on the last point last; regarding that which he has not learned he says: "I have not learned;" and he acknowledges the truth.

Pirkei Avot 5:9

Introduction

The phrase “Holocaust halakhah” would seem to be an oxymoron.¹ Halakhah is the system of rules and instruction which has guided Jews for almost two thousand years, and which Orthodox (and some Conservative) Jews regard as mandatory due to its divine source.² The word derives from the Hebrew root *heh-lamed-khaf*, which means “to walk” or “go.” The word “halakhah” conveys movement, which is appropriate given its evolution. It is an ongoing effort to understand and interpret the meaning of Judaism’s sacred texts.³ To follow halakhah is to walk on a life path based on what came before and determined by means of an orderly process. “Holocaust”—“a great or complete devastation or destruction, especially by fire”⁴—conveys the opposite. Both the literal and historical meanings of the word suggest

discontinuity, dissociations, a descent into a deep pit. The Holocaust was a collapse of worlds, both the personal and the public, and a shattering of all systems: those of ethics and thought, those of existence and society.⁵

During the Holocaust Jews tried hard to keep the external reality of the unspeakable suffering and horror which had been imposed on them from damaging their inner lives. Halakhah provided a means through which they could preserve their identities as Jews

¹ Ester Farbstein, “Building Amidst Devastation: *Halakhic* Historical Observations on Marriage during the Holocaust,” *The Impact of the Holocaust on Jewish Theology*, Steven Katz, editor. (New York: New York University Press, 2005)175.

² Melech Westreich, “One Life for Another in the Holocaust: A Singularity for Jewish Law?” *Theoretical Inquiries in Law*, Volume 1, Number 2 (July 2000). Article 4, 2. Halakhah covers many aspects of life and governs behavioral norms concerning ritual as well as other matters. Some of these are matters that, in modern societies, are under the jurisdiction of the secular legal system.

³ Mark Washofsky, *Jewish Living: A Guide to Contemporary Reform Practice*, New York: URJ Press, 2001, xviii.

⁴ holocaust. Dictionary.com. *Dictionary.com Unabridged (v 1.1)*. Random House, Inc. <http://dictionary.reference.com/browse/holocaust> (accessed: January 19, 2009).

⁵ Farbstein , 175.

and as human beings.⁶ The world of halakhah provided structure and certainty in a world that was falling apart, and gave Jews a system through which dilemmas unique to that time could be addressed.

By some estimates, more than half of the Jews whose lives were affected by Nazi rule lived their lives according to the *mitzvot* prescribed by halakhah.⁷ Since the Holocaust was not the first catastrophe to befall Jews in their long history, scholars and rabbis had already been forced to develop ways to act according to Jewish law during difficult times.⁸ Jews who lived their lives according to halakhah were certainly aware that it had enabled their ancestors to cope with other tragedies inflicted on them from without. For these Jews, observing *mitzvot* and living their lives according to halakhah was a link to the Divine in a time of devastation. They subscribed to the words from the Talmud *Bavli*, *Berakhot* 8a (hereafter, in the form “b. *Berakhot* 8a):

Since the day the Temple was destroyed, the Holy One, blessed be He, has nothing in this world but the four cubits of Halakhah alone.

During the Holocaust individual rabbis and rabbinical courts dealt with a variety of issues concerning both day-to-day and ritual life. Other issues arose in the years after the war ended. Individual rabbis responded to these legal questions in responsa,⁹ rulings in which one person consults another on a matter of law which arises either due to unforeseen circumstances or because of matters not dealt with in existing halakhic

⁶ Farbstein, 175.

⁷ Irving J. Rosenbaum, *The Holocaust and Halakhah*. (New York: Ktav Publishing House, Inc., 1976), 1.

⁸ Rosenbaum, 2.

⁹ In Hebrew responsa are called “*she’elot u’teshuvot*,” literally, “questions and answers.”

sources.¹⁰ The answers to these questions, written by recognized authorities in Jewish law, must contain the author's arguments for justifying why he arrived at this answer, as opposed to other answers that might have been entertained. Each answer seeks to provide the best interpretation of the Jewish legal sources.¹¹

The Development and Significance of Responsa

Although such queries are mentioned in the Talmud, the role of responsa as a mechanism of disseminating Oral Law and establishing the Talmud *Bavli* as the primary legal authority for Jews occurred during the Geonic period (589-1038 C. E.).¹² During this period, partly as a result of Moslem conquests and partly as a result of pursuing economic opportunities, Jews became more widely dispersed and lived far from the Babylonian academies whose scholars continued to provide answers to questions on Jewish law. Many of the responsa from this period are short; others consisted of explanations of entire books or topics. More than half of the thousands of responsa written during the Geonic period were written after 750. In addition to questions on all aspects of Jewish life, the responsa contained explications of various passages and themes in the Talmud, as well as theological discourses.¹³

During the time of the *rishonim*¹⁴ (11th through 15th centuries) responsa dealt primarily with halakhah and became more detailed and lengthy. Expressions such as “in my humble opinion” become more common, and rabbis were more apt to note that a

¹⁰ Israel Moses Ta-Shma and Shlomo Tal, “Responsa,” *Encyclopedia Judaica*—CD-ROM Edition, Version 1.0. (Israel: Judaica Multimedia, Ltd., 1997).

¹¹ Washofsky, xvii-xviii.

¹² Ta-Shma and Tal.

¹³ Ibid.

¹⁴ The scholars who followed the Geonic period.

particular issue “requires further thought.”¹⁵ These responsa—often exchanged between scholars in different geographic areas—are full of differences of opinion, indicating that the authority of the rabbis—both in reality and in their self-perception— had diminished from the Geonic period.¹⁶

After their expulsion from Spain at the end of the 15th century, Jews migrated to North Africa, the Balkans, Egypt, and *Eretz Yisrael*. Questions arose regarding different customs, the authority of local communities, communal taxation and its apportionment between the newcomers and original residents, and commercial matters.¹⁷ New Jewish communities were established in Poland and Lithuania. Issues arose regarding trade, apportionment of taxes within communities, relations between communities, employer-employee relations and issues involving marriage and divorce.¹⁸

The responsa that grew out of these concerns addressed practical issues, with less concern for issues of belief and philosophy. The scholars who responded to these questions are generally known as the *aharonim*, and for the most part they accepted the legal conclusions of the *rishonim* as binding and recognized the *rishonim* as greater scholars than themselves. *Aharonic* responsa became longer and were complicated by sophisticated argumentation which could only be understood by other scholars.¹⁹ The decentralization of Jewish life, a large number of new population centers, the expansion of international trade, and the rabbinic effort to maintain the Talmudic prohibition against

¹⁵ Ta-Shma and Tal.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ta-Shma and Tal. The trend towards complex argumentation began in the period of the *rishonim*.

relying on Gentile courts all contributed to a proliferation of responsa in the 16th century.²⁰

With the acceptance as authoritative halakhah of R. Joseph Karo's *Shulhan Arukh* (hereafter in the form "SA") and its glosses by R. Moses Isserles (16th century), responsa focused on issues not covered in the *Shulhan Arukh*. Responsa continued to be written during subsequent centuries, with the greatest changes occurring in the 19th century in the wake of the Emancipation in Europe. In Europe the influence of Emancipation, the *Haskalah*, the Reform movement, technology, and nationalism all had an impact on the subjects covered in responsa. These sweeping changes brought Jews into the arena of Gentile civic life—including the legal system—which raised a host of new issues. A large number of responsa from the Balkans and Turkey, where autonomous Jewish courts continued to have jurisdiction over the Jewish communities, concerned *Hoshen Mishpat*, the section of the *Shulhan Arukh* dealing with civil law and financial concerns.²¹

In the 20th century, the flourishing of *yeshivot* in Poland and Lithuania brought an increase in Torah study and rabbis continued to write responsa. The Holocaust gave rise to numerous questions about which rabbis wrote responsa. Today responsa are written by rabbis in Israel and the United States. In the United States responsa are written by Conservative and Reform as well as Orthodox rabbis.

Responsa are unique sources for the history of Jewish communities in various geographic centers for almost fifteen hundred years. Unlike official historical records which usually record events deemed significant by their authors, responsa are

²⁰ Ibid.

²¹ Ta-Shma and Tal.

unintentionally- rich sources of information about the daily lives of Jews in far-flung communities.²² Responsa provide important information about how the rabbis who wrote them interpreted halakhah in light of new scientific developments, and are a living record of the history of halakhah in various subjects.

Responsa During the Holocaust

Responsa literature of the Holocaust may be divided into three periods: the prewar years (1933-1939), the war years (1939-1945), and the period after the war (1945 to the early 1950's).²³ During the prewar years most responsa came from Germany and later from Austria. The questions raised grew out of the increasingly difficult conditions imposed on German Jews by the Nazis, and concerned such topics as economic and social problems, emigration, and religious practice. Towards the end of this period, as life became more difficult, the tone of the questions and the circumstances that gave rise to them became increasingly desperate.²⁴

The passage of the Nuremberg laws excluded Jews from German society, and gave rise to responsa such as the one by Rabbi Jehiel Jacob Weinberg (discussed in Chapter 1 of this thesis) which concerns whether lectures and concerts on secular topics could be held in synagogues. Economic hardship as a result of restrictive anti-Jewish legislation was the source of many responsa dealing with questions about whether stores could be kept open on Shabbat because of financial need. In one responsum from this

²² Ibid.

²³ Jonathan I. Helfand, "Halakhah and the Holocaust: Historical Perspectives," in *Perspectives on the Holocaust*, ed. Randolph L. Braham (Boston: Kluwer/Nijhoff Publishers, 1983), 94.

²⁴ Helfand, 94.

period, Rabbi Weinberg wrote that trying to earn a living under the circumstances was “more difficult than the splitting of the Red Sea.”²⁵ After *Kristallnacht* a number of Jews were rounded up and killed. Some families received cremated remains; others were merely notified of the deaths. Questions arose about how the ashes should be treated and when the period of mourning should begin.²⁶

The restriction that had the greatest impact on the Jewish community during this period concerned the slaughtering of kosher meat—*shehitah*. Using the pretext that *shehitah* constituted cruelty to animals, the Nazis outlawed the practice unless the animal was first stunned by electric shock. Such a practice could cause lesions on the animal, which would render it unfit for kosher use—*terefah*. For a time the Nazis permitted Jews to import kosher meat from other countries, but with the increasing economic difficulties that became impossible. Rabbi Weinberg, the head of the Department of Talmud and Codes at the Berlin Rabbinical Seminary, prepared a lengthy responsum on the issue in which he ruled that—under some circumstances—the ill and aged could consume such meat due to the difficult conditions. Although he obtained assent to his position from a number of German rabbis, the leading rabbis of Poland and Lithuania did not agree, fearing that such an action would set a precedent for Jews in other countries.²⁷

During the war years (1939-1945) the topics treated in extant responsa covered all areas of religious life, as Jews tried to preserve their religious heritage in the midst of ghettos and concentration camps. Many of the issues arose out of the lack of food and supplies rather than anti-Jewish edicts. In Kovno, for example, permission was given to

²⁵ Helfand, 95. A reference to a midrash from *Yalkut Shimoni*, *Yeshayahu* 474.

²⁶ Helfand, 96-97.

²⁷ Rosenbaum, 9-10.

eat black peas on Passover and to make *matzah* with potato peelings.²⁸ In other cases, however, Nazi authorities harassed Jews by forbidding religious practices completely. For example, the Jews of Kovno were ordered to work on Yom Kippur in 1941 . The rabbi issued a ruling that those required to do so should report for work on Yom Kippur.²⁹

Those Jews who observed Jewish law in defiance of Nazi rule risked severe punishment or death. A question arose concerning whether Jews had a right or obligation to endanger their lives in this way. If they did not, and performed a religious obligation that endangered their lives, they would violate the law which requires protection of human life. The question is whether the Holocaust was a time of forced apostasy (*she'at ha-shemad*) or a situation that required preserving life (*pikuah nefesh*).³⁰

In a case of *pikuah nefesh* the requirement to save a life supersedes all other commandments of the Torah except for the laws against idolatry, illicit sexual relations, and murder. This concept derives from Leviticus 18:5: “And live by them.” At a time of *she'at ha-shemad*, the enemy imposes edicts aimed at destroying the Jewish religion. In this circumstance, a Jew must comply with *all* halakhic rulings, even at the cost of his life. Most halakhic authorities ruled that this was not necessary with regard to positive commandments, but may be done for the sanctification of God’s name.³¹

The question for rabbis was whether this was a time of *sh'at ha-shemad*—which is defined as a time when the government tries to force Jews to abandon their religion—

²⁸ Helfand, 98.

²⁹ Helfand, 98.

³⁰ Esther Farbstein, *Hidden in Thunder: Perspectives on Faith, Halachah and Leadership during the Holocaust*, translated by Deborah Stern, (Jerusalem: Old City Press, 2007), 157-158.

³¹ Farbstein, 157-158.

or whether these were acts against Jews by individual Gentiles. Those who interpreted the Nazis' goal as the physical annihilation of the Jewish people saw the halakhic situation from a standpoint of *pikuah nefesh*, meaning that survival should take precedence over observing the commandments. Those who viewed the Nazi agenda as one that sought to wipe out Judaism (not only Jews) saw the Holocaust as a time of *she'at ha-shemad*, requiring compliance with all halakhic prohibitions. The conflict over how to categorize the actions of the Nazis can be seen in the dispute over *shehitah*. Those rabbis who viewed the ban on *shehitah* as a religious edict did not agree to an easing of halakhah for the benefit of the ill and aged.³²

A third circumstance that might lead a Jew to transgress a negative commandment is referred to as “duress.” This describes a situation where one person is forced by someone else to violate a negative commandment, often under threat of terrible suffering or death.³³ The difference between “duress” and *pikuah nefesh* is that with the former the person is forced directly to engage in the act, while in the latter case the individual makes the decision himself to violate the prohibition in order to stay alive. From a halakhic standpoint all the commandments are set aside in both situations in order to save a life, with the exception of the prohibitions against illicit sexual relations, idolatry, and murder.³⁴ If a person commits one of these sins under duress, he is not punished. If, however, he commits one of these sins in the absence of duress—although he may

³² Farbstein, 159-160.

³³ Farbstein, 315.

³⁴ Farbstein, 315.

describe the situation as life-threatening— “the court gives him the appropriate punishment.”³⁵

After the war began and the Nazis’ goal of destroying the Jews spiritually and physically became clear, most rabbis advised that Jews respond to the increasing hardships from the standpoint of *pikuah nefesh*. Most Jews were forced to make such decisions on their own, and rabbis did not issue global dispensations in the ghettos or concentration camps. Some rabbis—by their own example—persuaded Jews to do what it took to remain alive.³⁶

Many of the issues about which Jews sought guidance from their rabbis were agonizing:

Did a man have the right to bribe his son out of internment if it meant that another boy would have to die in his place? Were birth control and abortions permissible when the Nazis threatened pregnant women with death? Could a Caesarean section be performed on a pregnant woman who had been shot by the Nazis? Under what circumstances could someone who threatened the survival of his comrades be killed? Was suicide or homicide justifiable in the face of anguish or torture?³⁷

For many Jews, seeking answers to these terrible questions within the context of Jewish tradition was a way of demonstrating their love for Torah and was a form of resistance to Nazi oppression. By trying to live according to halakhah they were denying the Nazis an ultimate victory.³⁸

Legal issues growing out of the Holocaust continued into the postwar period. Many of these concerned marital and family status, in particular due to the large number of women whose husbands had disappeared without evidence of their deaths. These

³⁵ Maimonides, *Hilkhot Yesodei ha-Torah*, Chapter 5:6.

³⁶ Farbstein, 161, 314-315.

³⁷ Helfand, 100.

³⁸ Farbstein, 163 and Helfand, 100.

women could not be released from their marriages in order to remarry, and were placed in the legal category of *agunah*. Other questions arose concerning the treatment and disposition of Jewish property such as desecrated and deserted synagogues and cemeteries. Some responsa addressed the issue of whether property confiscated by the Nazis must be returned to the original owners. Questions arose regarding caring for mass graves, ashes of the deceased, and how to memorialize those killed in the Holocaust.³⁹

This thesis will examine four responsa that have their roots in the Holocaust. Each represents one of the four divisions of the *Shulhan Arukh*, the 16th century legal code written by R. Joseph Karo (1488-1575). The *Shulhan Arukh*, along with its commentaries, is the most authoritative and universally accepted compilation of halakhah since the Talmud, and its four divisions cover almost every aspect of Jewish life. *Orah Hayim* contains the laws of prayer and laws pertaining to synagogues, Shabbat, and holidays. *Yoreh De'ah* deals with—among other topics— laws of *kashrut*, religious conversion, mourning and *Eretz Yisrael*. *Even Ha-ezer* deals with laws of marriage, divorce, and related issues. *Hoshen Mishpat* contains laws of finance, financial responsibility and civil damages, as well as laws of judicial procedure and testimony. We will analyze the responsa in order of the relevant divisions of the *Shulhan Arukh*.

The responsa were selected to show the variety of issues with which rabbis and communities had to contend during the Holocaust, as well as to demonstrate the halakhic process by which each rabbi made his ruling. In the first chapter we analyze a responsum by Rabbi Jehiel Jacob Weinberg concerning whether secular lectures and concerts are permitted in the synagogue. In chapter 2 we analyze a responsum by Rabbi Yissachar

³⁹ Helfand, 100-101.

Shlomo Teichtal concerning whether a Jew may purchase a conversion certificate during a time of “persecutory decrees.” Rabbi Teichtal also examined the question of whether a person who purchases such a certificate may be called up to the Torah for an *aliyah*.

Chapter 3 examines a responsum by Rabbi Yekutiel Yehuda Halberstam which discusses whether a twice-widowed woman whose second husband died in the Holocaust may remarry for a third time. The question is whether the woman falls under the category of the *qatlanit*, or “murderous wife.” Chapter 4 examines a responsum by Rabbi Yisrael Welz that grew out of the beating of a Jewish inmate by a Jewish kapo in Buchenwald. The inmate—questioned by an SS officer demanding to know who administered the beating—identified the kapo as the perpetrator. The kapo was beaten and subsequently died. The question before Rabbi Welz was whether the inmate must atone for his actions in turning over the kapo. In each of these cases, the respondent rabbis engage in deep analysis of halakhic sources in order to arrive at their responses. Their responses are well-sourced and well-reasoned, illustrating their profound belief that the world of the halakhah was equal to the task of responding to these difficult and (at times) even horrific challenges.

Chapter 1: Secular Lectures and Concerts in the Synagogue: A Responsum by Rabbi Jehiel Jacob Weinberg

Background

Nazi Germany and Anti-Jewish Laws

Weinberg wrote this responsum during the mid to late 1930's, as Nazi rule made life increasingly difficult for Germany's Jews. The German census of June 16, 1933 showed that the Jewish population of Germany was approximately 505,00, just under 0.75 percent of the total. By the end of 1933 a total of 37,000 Jews had left Germany due to the Nazi takeover.⁴⁰ Almost 70 percent of Jews in 1933 lived in urban areas, with the largest number—160,000—in Berlin.⁴¹ In 1933 the Jews of Berlin—where Rabbi Weinberg was the head of the Berlin Rabbinical Seminary—constituted more than 32 percent of Germany's Jewish population.⁴² Between 1933 and 1939, the Jewish population of Berlin fell to 80,000 as Jews fled Nazi Germany.⁴³

During the Third Reich Nazi leaders enacted progressively more restrictive anti-Jewish laws and ordinances. In 1935, at the annual rally of the Nazi Party, laws were introduced which codified many of the racial theories of the Nazi ideology. The Nuremberg Laws prevented German Jews from holding citizenship in the Third Reich, and prohibited Jews from having sexual relations with or marrying those with "German

⁴⁰United States Holocaust Memorial Museum, "Germany: Jewish Population in 1933," *Holocaust Encyclopedia*, Museum website. <http://www.ushmm.org/wlc/en/>.

⁴¹ According to the June 16, 1933, census. This was less than 4 percent of the city's population. "Berlin," *Holocaust Encyclopedia*.

⁴² "Berlin," *Holocaust Encyclopedia*.

⁴³ "Berlin," *Holocaust Encyclopedia*.

or German-related blood.”⁴⁴ Coupled with these laws were regulations which deprived Jews of the right to vote and which forbade them from holding political office.⁴⁵

Additional anti-Semitic laws were introduced all over Germany in the wake of the Nuremberg Laws with the goal of segregating Jews from the rest of the population. In Dusseldorf Jews could not be admitted to the municipal hospital, German judges could no longer quote legal commentaries or cite precedents written by Jews, Jewish officers were removed from the army, and Jewish graduate students could not take their doctoral exams.⁴⁶

From April 1933 to April 1938 the Nazi government made it increasingly difficult for Jews to earn a living. Jewish-owned and run companies were “Aryanized” by replacing Jews with non-Jews. The government began the process of expropriating Jewish property by requiring that Jews register all property and assets—both domestic and foreign.⁴⁷ Although the Nazis curtailed their anti-Jewish campaign in preparation for the 1936 Olympics, by 1937 anti-Jewish legislation increased. Jewish doctors were not permitted to treat non-Jewish patients, and Jewish lawyers were not allowed to practice law.⁴⁸

After *Kristallnacht*⁴⁹ efforts at “Aryanization” were increased. Measures designed to increase the segregation of Jews from other Germans were introduced, with

⁴⁴“Anti-Jewish Legislation in Pre-War Germany,” *Holocaust Encyclopedia*.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ “The Night of the Broken Glass.” In this wave of violence across Germany which lasted from November 9-10, 1938, Jewish-owned businesses and homes were damaged and property was stolen. Most of Berlin’s synagogues were destroyed, dozens of Berlin Jews were killed, and thousands were arrested and taken to concentration camps. “Berlin,” *Holocaust Encyclopedia*.

some cities designating special “Aryan zones” which Jews were prohibited from entering. Public schools and universities were closed to Jews. Jews could not patronize theaters, movie houses, and sports facilities.⁵⁰ Jews were not allowed to gather in public places, except for synagogues.⁵¹ It was in this increasingly restrictive and dangerous atmosphere that Rabbi Weinberg was asked to respond to the question of whether it was permissible to hold secular lectures and concerts in the synagogue.

Biographical Information

Rabbi Jehiel Jacob Weinberg was one of a group of brilliant scholars who emerged from Lithuanian Jewry during the period from the mid-19th century to the Holocaust.⁵² These scholars brought changes to Talmudic methodology and created a system of *yeshivot* which had great influence in the Jewish communities of Eastern and Central Europe, and which continue to shape Orthodox Judaism to this day. These scholars, along with the rabbis of the Polish and Hungarian dynasties, in large measure determined the responses of Orthodoxy toward the Enlightenment, emancipation, socialism, Zionism, and the other social movements and forces of the modern era.⁵³

Weinberg was born in 1884 in Ciechanowiec, a Polish town in the Grodno district. He was born at a time when—although traditional Jewish society faced enormous challenges and had been weakened—great *yeshivot* flourished.⁵⁴ Weinberg was

⁵⁰ “Anti-Jewish Legislation in Pre-War Germany, *Holocaust Encyclopedia*,

⁵¹ Weinberg responsum, p. 1.

⁵² Jeffrey R. Woolf, “The Legacy of Yehiel Jacob Weinberg,” *Azure*, Spring 2000. (Israel: The Jewish Agency for Israel).

⁵³ Woolf 1-2.

⁵⁴ Marc B. Shapiro, *Between the Yeshiva World and Modern Orthodoxy: The Life and Works of Rabbi Jehiel Jacob Weinberg, 1884-1966*. (Portland, Oregon: The Littman Library of Jewish Civilization, 2002), 2-3.

educated in these “intellectually rich but culturally limited institutions.”⁵⁵ Weinberg’s brilliance became known soon after he began his studies. There is a story that he so distinguished himself in a Talmudic discussion led by the rabbi of the town that Weinberg soon was known as the ‘Ciechanowiecer *ilui*’(prodigy).⁵⁶ His renown increased during his studies in Grodno at the *beit midrash* of the *Hevrah Shas*. During this time Weinberg gave regular Talmudic discourses and lectures as well as a homilies each Shabbat at the “carriage drivers” synagogue.⁵⁷

In 1901 Weinberg moved to Slobodka, a town near Kovno, where he continued his studies at *Keneset Yisrael*, the famous yeshiva founded by Rabbi Nathan Zvi Finkel.⁵⁸ Under Finkel’s guidance, Weinberg received instruction in a new form of *musar*⁵⁹ that emphasized the “dignity and majesty of humanity.”⁶⁰ Finkel believed that students could not achieve their spiritual potential without self-respect. To encourage self-respect, he insisted that all of his students be well groomed and dressed “in the manner of contemporary bourgeois society.”⁶¹

Weinberg was well acquainted with the secular Hebrew literature of the Jewish Enlightenment, and is said to have considered abandoning the yeshiva world for the world of *Haskalah*.⁶² During his years at the yeshiva Weinberg continued to have broad

⁵⁵ Woolf, 2.

⁵⁶ Shapiro, 4.

⁵⁷ Shapiro, 5.

⁵⁸ Shapiro, 5. Finkel was a student of Rabbi Simhah Zissel of Kelm, one of the leading disciples of Rabbi Israel Salanter.

⁵⁹ Ethical teaching, usually associated with Rabbi Israel Salanter. Shapiro, 237.

⁶⁰ Shapiro, 5.

⁶¹ Shapiro, 5.

⁶² Shapiro, 11-12.

interests, and even left the yeshiva for a time to study Russian.⁶³ In 1906 Weinberg became the crown rabbi of Pilwisk, a town in Lithuania. During his time in Pilwisk, Weinberg published articles in two significant Orthodox Hebrew newspapers, *HaModia* (based in the Ukraine) and *Ha'Ivri* (published in Berlin).

Weinberg travelled to Berlin for medical treatment in mid-1914, and became stranded with the outbreak of World War I. He obtained a position as a rabbi in the Charlottenburg neighborhood of Berlin, which was home to many Eastern European Jews.⁶⁴ Like his fellow Eastern European Jews, he was puzzled by the ways of German Jews—including the fact that women sang together with men at the Shabbat table.⁶⁵ Unlike many of the Eastern European Jews, however, Weinberg did not separate himself from the German Jewish community. He was drawn to that community's “intellectual ferment” which was very different from what he was used to in Lithuania.⁶⁶

In his writing Weinberg expressed pleasure that there was increasing interest in and appreciation for the “simple piety and ‘living Judaism’ ” about which German Jews learned in the wake of the war.⁶⁷ He was suspicious, however, that this newfound interest was a subterfuge for German Jews wanting to “improve” their Eastern European brothers.⁶⁸ It was during this post-war period that Weinberg, in contrast to his earlier

⁶³ Shapiro, 15.

⁶⁴ Shapiro, 51-52.

⁶⁵ Shapiro, 52.

⁶⁶ Shapiro, 53.

⁶⁷ Much of this information was brought back to Germany by Jewish soldiers who served in Eastern Europe during World War I. Accounts of Jewish life in these communities were published in Jewish newspapers in Germany. Shapiro, 55.

⁶⁸ Shapiro, 55.

beliefs, began to advocate the importance of rabbis receiving secular education as part of their rabbinic training.⁶⁹

After the war Weinberg remained in Berlin, although he could have safely returned to Pilwisk. In Berlin he frequented the Hebrew Club, along with other Eastern European intellectuals such as Shmuel Yosef Agnon and Gershom Scholem. Scholem recalled that Weinberg gave lectures in flawless, Ashkenazi-pronounced Hebrew.⁷⁰ Although he felt it was permissible to work with non-Orthodox wings of Judaism on matters of common concern, Weinberg believed this was only possible if Orthodox Jewish interests would not be harmed.⁷¹ He was vehement that the Orthodox could not be expected to be tolerant of their non-Orthodox brothers, as can be seen in this excerpt from a 1917 essay:

Is it easy to say to a son that he should be tolerant of them that insult his mother? Tolerance?! Will a man forgive his brother when he sees the apathy shown to him, that his brother is unconcerned with his pain or happiness?...Should one perhaps have tolerance for him who forsakes his mother, his wife and his family?... Tolerance is a modern invention! I can love or hate my brother, but under no circumstances am I, or can I be, tolerant of him. From my brother I demand, and have the right to demand, that he should not deprive me of the opportunity to love him properly, as one loves a brother.⁷²

In 1920 Weinberg moved to Geissen to pursue his academic studies at the University of Geissen under Professor Paul Kahle. Kahle, one of the great Semitic and masoretic scholars of his time, was a pious Christian and staunchly defended Jewish literature from anti-Semitic attacks.⁷³ At Geissen Weinberg concentrated on biblical

⁶⁹ Shapiro, 62.

⁷⁰ Shapiro, 66.

⁷¹ Shapiro, 67.

⁷² Shapiro, 67.

⁷³ Shapiro, 84.

studies, surrounded by students from different religions and nationalities who were dedicated to learning from Kahle. Although Weinberg had extensive knowledge of Bible, *Targum*, and rabbinic literature he had had no exposure to modern biblical scholarship and Wissenschaft des Judentums, nor to the critical approach to classical Jewish literature generally.⁷⁴ In 1921 Weinberg was offered an appointment as a lecturer in Jewish studies at the university. Before he could accept the position, however, Weinberg had to address the halakhah that says that Jews may not teach Torah to gentiles. Weinberg confronted and solved this difficulty in a responsum that showed that “teaching gentiles Torah solely for academic purposes is not proscribed.”⁷⁵

In the mid-1920's Rabbi Weinberg was appointed professor of Talmud and Codes at the Berlin Rabbinical Seminary, a post he held until he became the rector of the seminary in 1935. In accepting this position Weinberg became the chief halakhic authority for rabbis who were graduates of the seminary, as well as for other rabbis who had no connection to the seminary.⁷⁶ He became the most influential authority on halakhah in Germany.⁷⁷ During his years at the seminary Weinberg wrote responsa, although only a few have survived.⁷⁸ He wrote philosophical essays on the nature of religious faith. After ten years in Germany, Weinberg's concerns about the ability of Eastern European Orthodox Judaism to respond to the challenges of the modern world were heightened. In Germany Weinberg tried to foster a combination of German culture,

⁷⁴ Shapiro, 85.

⁷⁵ Shapiro, 85.

⁷⁶ Shapiro, 93.

⁷⁷ Woolf, 2.

⁷⁸ Shapiro, 94.

respect for critical academic study, and what he saw as the “pure” Judaism of Eastern Europe.⁷⁹

During his years at the seminary Weinberg became a proponent of neo-Orthodoxy (as the German approach to Orthodoxy was known) which he had staunchly opposed as a young man. Weinberg built on the work of Rabbi Samson Raphael Hirsch, the 19th century leader of neo-Orthodoxy. Like Hirsch, Weinberg stressed the innate value of modern culture and pushed to integrate secular studies into the traditional Jewish curriculum.⁸⁰

Weinberg expressed confidence when the Nazis first came to power that the Jewish community had nothing to fear—as did other Jewish leaders. After a Nazi-organized boycott of Jewish shops on April 1, 1933, Weinberg began to change his mind, although he did not share Rabbi Leo Baeck’s view that “the thousand year history of Germany Jewry has come to an end.”⁸¹

The controversy over *shehitah* (Jewish ritual slaughter) was the most well known of the many issues which were brought to Rabbi Weinberg during Nazi rule. The Nazis banned ritual slaughter in April, 1933 unless the process could be reformed so that it was more humane. Such changes to the halakhic procedure, however, would have yielded meat that was incompatible with the requirements of Jewish law. Weinberg wrote a number of responsa on various aspects of the issue, ultimately arguing that animals slaughtered in the way the Nazis required could be eaten. He made his lenient ruling

⁷⁹ Shapiro, 101.

⁸⁰ Woolf, 2.

⁸¹ Shapiro, 116.

contingent on the agreement of other halakhic authorities, generating a controversy that spanned Europe.⁸²

During this time Rabbi Weinberg was asked to decide on halakhic matters bearing on earning a living, burial, and synagogue use. Anti-Semitic laws were making it increasingly difficult for Jews to support themselves. Rabbi Weinberg ruled that a Jewish shopkeeper could keep his store open on Shabbat if he “sold” it to a non-Jew every week.⁸³ Another question concerned whether Jewish bodies which were buried in a non-protected cemetery could be exhumed and moved to a safer cemetery. From a halakhic standpoint Rabbi Weinberg wrote that this could be done, but he was concerned that this would lead the Nazis to think that mass exhumations were possible, so he ruled against it.⁸⁴ The responsum we will analyze in this paper was written at a time when synagogues became the only places where Jews were permitted to gather and so the question naturally arose as to whether secular lectures and concerts could be held there.

Rabbi Weinberg remained head of the Berlin Rabbinical Seminary until the Nazis closed it in 1938. In the spring of 1939 he was ordered to leave Germany. Eliezer Berkovits, a student of Weinberg’s who had been able to escape Germany, had many of his teacher’s responsa, but many of Weinberg’s writings were left behind in Berlin.⁸⁵ The works in Berkovits’ possession formed the core of *Seridei Esh*, which was published after the war. Weinberg travelled to Kovno and then to Warsaw for medical treatment. Although he resided in the Warsaw ghetto once the war broke out, Weinberg, due to his Lithuanian birth, had Soviet citizenship and was not subject to the hardships of the other

⁸² Shapiro, 117-129 and Woolf, 4.

⁸³ Shapiro, 138.

⁸⁴ Shapiro, 139.

⁸⁵ Shapiro, 159.

residents of the ghetto.⁸⁶ He was elected president of two rabbinical organizations, although he turned down an appointment as the chief rabbi of Warsaw, believing that this position would be controlled by the Gestapo.⁸⁷ Weinberg was the head of the committee in the ghetto that helped rabbis and yeshiva students, and he worked with the Polish Joint Distribution Committee to distribute aid to ghetto residents.

Rabbi Weinberg lost his privileged status as a Soviet citizen once war broke out between Russia and Germany, and he was incarcerated at two separate prisons before being sent to two different detention camps. At the end of war Weinberg settled in Montreux, Switzerland, where he continued to write responsa. His influence as a *poseq*, limited to Europe before the war, grew.⁸⁸ Even at the end of his life, Rabbi Weinberg's rulings reflected the combination of tradition and modernity that characterized his remarkable life.⁸⁹ Rabbi Weinberg died in Montreux in 1966.

Use of Synagogue Buildings in Jewish Law

Among the primary texts concerning the sanctity of the synagogue are b. *Megillah* 28a and 28b.

תנו רבנן: בתי כנסיות אין נוהגין בהן קלות ראש: אין אוכלין בהן, ואין שותין בהן
Our Rabbis taught: Synagogues must not be treated disrespectfully. We
neither eat nor drink in them.⁹⁰

אמר רבי אסי: בתי כנסיות שבבבל על תנאי הן עשוין, ואף על פי כן אין נוהגין בהן קלות
ראש. ומאי ניהו - חשבונות
R. Assi said: The synagogues of Babylon have been built on condition⁹¹, and
even so they must not be treated disrespectfully. What [for instance] is this
[condition]? [Allowing the] doing [of business] calculations in them.⁹²

⁸⁶ Shapiro, 160.

⁸⁷ Shapiro, 160.

⁸⁸ Shapiro, 173.

⁸⁹ Woolf, 3.

⁹⁰ B. *Megillah* 28a

⁹¹ On condition that they could be used—Rashi.

Synagogues in Babylonia—and the Diaspora in general—were built with certain stipulations, which would take effect once the synagogue building was no longer in use.⁹³ During the time when the building was in use as a synagogue, however, all relevant prohibitions apply, despite the conditions.⁹⁴ These prohibitions ensure that the primary activities of the synagogue —prayer, study, and the giving of a public eulogy—would be conducted in a manner commensurate with the synagogue building’s holy task.

The *Bavli* introduces the idea that Torah scholars are permitted to adorn themselves in the synagogue—something which is prohibited for others—because it is “a home for Torah scholars.”⁹⁵ Although it is not said explicitly here, other places in the Talmud tell us that Torah scholars are in a special category.

The Talmud, the *Mishneh Torah* and the *Shulhan Arukh*—as well as their commentaries—spell out which kinds of activities are forbidden in a synagogue in order to maintain its sanctity. People should not “adorn themselves” or “stroll about” in the synagogue.⁹⁶ Because the primary purpose of the synagogue is prayer and study, one may not enter the building for another purpose, such as to get out of the heat in the summer or to seek shelter from the rain in the winter.⁹⁷ A person may read from Scriptures, study Mishnah, and deliver a eulogy for a Torah scholar in a synagogue.⁹⁸ If someone must be summoned while he is in the synagogue the person who summons him

⁹² B. *Megillah* 28b

⁹³ Synagogues in *Eretz Yisrael* have sanctity forever. With the coming of the Messiah and the rebuilding of the Temple in Jerusalem, the sanctity of synagogues in the Diaspora will be nullified. B. *Megillah* 28b. Schottenstein edition, 28b. This viewpoint, mythical rather than halakhic, is associated with *Eretz Yisrael*.

⁹⁴ B. *Megillah* 28b. Schottenstein edition, 28b

⁹⁵ B. *Megillah* 28b

⁹⁶ B. *Megillah* 28b

⁹⁷ B. *Megillah* 28b

⁹⁸ B. *Megillah* 28b

must first recite some halakhah (if he is a Torah scholar), repeat a *mishnah* (if he is a *tanna*), a verse of Scripture (if he is a “reader”—one familiar with the reading of Scripture). If the summoner is in none of these categories he should ask a young child to recite the last verse of Torah he has learned.⁹⁹ Alternatively, if he can do none of these things, he should linger a while in the synagogue before leaving, so that it will not appear that he has come to the synagogue for a frivolous purpose.¹⁰⁰

The sanctity of the synagogue remains even when it is in ruins. One may not give a funeral oration, wind ropes, spread nets, or lay out produce on the roof of a ruined synagogue.¹⁰¹

Maimonides (the *Rambam*) adds some important details to the Talmud’s discussion of the synagogue’s sanctity and clarifies others. He makes it clear that the rules of sanctity apply both to synagogues and houses of study.¹⁰²

Rambam defines the concept of קלות ראש (levity or lack of seriousness) that was mentioned in the *Bavli*. For the *Rambam* this includes laughing, mocking, and discussion not related to prayer or study, as well as using the synagogue for one’s own benefit.¹⁰³ In the same halakhah, *Rambam* states that—while eating and drinking are forbidden in the synagogue—these activities are permissible for Torah scholars because of the difficulty it would cause them not to do so.¹⁰⁴ *Rambam* refines the Talmud’s prohibition against calculating accounts in a synagogue, noting that it is acceptable to calculate accounts that are related to a *mitzvah*, such as the collection of monies for the communal fund and for

⁹⁹ *B. Megillah* 28b

¹⁰⁰ *B. Megillah* 28b

¹⁰¹ *B. Megillah* 28a.

¹⁰² *Mishneh Torah, Hilkhhot Tefilah* 12:5, 6.

¹⁰³ *Mishneh Torah, Hilkhhot Tefilah* 12:6.

¹⁰⁴ *Mishneh Torah, Hilkhhot Tefilah* 12:6.

the redemption of captives.¹⁰⁵ In the same halakhah *Rambam* narrows the definition of “public eulogy” in the Talmud, noting that such a eulogy can only be given in a synagogue if it is for one of the great sages of the city “for which all the people would gather together and come.”¹⁰⁶

The pertinent texts from the *Shulhan Arukh* that address the sanctity of the synagogue summarize *Rambam*’s views and elaborate on others. The *R’ma* to *Shulhan Arukh, Orah Hayim* 151:1 states that there are some who say that Torah scholars are permitted to eat and drink in the synagogue. This is the case even if the Torah scholars are not eating in the synagogue because it would be difficult for them to eat elsewhere. This *se’if* adds to the Talmud’s discussion about how one should act if he needs to summon someone from the synagogue. Building on the Talmud’s comment that even if he is unable to recite any verses he should tarry in the synagogue, the *Shulhan Arukh* states that even sitting in the synagogue is a *mitzvah*. Words from Psalm 84:5 are brought to reinforce this point: “Happy are those who dwell in Your house.”

The *Shulhan Arukh* enlarges on the Talmud’s discussion of synagogues built “on condition.” If, at the time of its construction, a synagogue was built with conditions on it for its use, it is permitted to use it when it is in ruins. For a functioning synagogue, however, conditions are not in effect. If the synagogue is in ruins, proscribed activities— such as sprinkling the floors and general accounting—are not permitted absent those conditions. These conditions apply to synagogues outside of *Eretz Yisrael*.

¹⁰⁵ *Mishneh Torah, Hilkhhot Tefilah* 12:7.

¹⁰⁶ *Mishneh Torah, Hilkhhot Tefilah* 12:7.

Synagogues built in *Eretz Yisrael*, however, do not have any conditions placed on them because they maintain their sanctity forever.¹⁰⁷

Weinberg uses these and other sources in order to reach his decision in this responsum on whether secular concerts and lectures are permitted in the synagogue.

Analysis of the Responsum

Section One

Weinberg begins by describing the circumstances that gave rise to the question of whether secular lectures and concerts are permitted in a synagogue. He writes that—although the question came from specific and terrible circumstances—the answer can also be useful to Jews who live in remote places in which the only possible places in which they can gather *en masse* are synagogues and study-houses. He tells his readers that he will not engage in *pilpul* in this responsum, but rather that he will ground his response in the works of the *rishonim* and the *ahronim*. This approach exemplifies Weinberg’s stance both within the traditional yeshiva world and the world of critical scholarship. Weinberg notes that he is relying in part on works of the *rishonim* that were not known to the *ahronim*, but which open “for us the gates of light and spaciousness—[enabling us] to exit the tight space of forced resolutions [to halakhic problems].”¹⁰⁸

The first section of the responsum reviews the laws relating to synagogue use. Before the review, however, he states the question and notes that “Rabbi” has written that in such terrible days as these it is a time of emergency. Jews are living, sometimes scattered in remote places, under abuse and scorn, and it is a *mitzvah* to lift their spirits by allowing concerts in their synagogues. The fear is also expressed that leniency in the use

¹⁰⁷ SA, *Orah Hayim* 151:11.

¹⁰⁸ Weinberg responsum.

of synagogue buildings may result in the people being influenced by “the Free Ones” (Reform Jews) who are not God-fearing.

Rabbi Weinberg cites the *Taz*¹⁰⁹ to SA, *Orah Hayim* 151:1, stating that poor guests are permitted to eat in a synagogue if they do not have another place to eat, this lack being for them a “*d’hak*,” (pressure), or emergency. He supports this position by bringing in *aharonic* glosses to b. *Megillah* 28b, which states that for some—Torah scholars—the synagogue is home, so certain things which are not permitted to others (such as adorning themselves) are permitted to them. Rabbi Weinberg concludes this section by noting that

we must say that in our case it is a “time of emergency” since there is no other place in which to gather as the Rabbi wrote—and thus it is necessary to permit.¹¹⁰

In paragraph two Rabbi Weinberg summarizes the conflicts between various *aharonim* and other commentators about synagogues being built on condition. The Talmud,¹¹¹ the *Rambam*, the *Ran*¹¹² and the *Taz* agree that a synagogue built on condition may be used by Torah scholars during any and all times of emergency to eat and drink. This is not the opinion of the *Tosafot*, *Rabbenu Asher*, the *Tur*, and SA 151:11. Moreover, according to the view of the *Magen Avraham*,¹¹³ the conditions were only valid in Babylonia and not in our time. That being so, we cannot permit the poor in our time to eat in the synagogue. Weinberg concludes this section by noting that *Birkei*

¹⁰⁹ David HaLevi Segal (1586-1667), a prominent Polish halakhic authority and author of a commentary on the SA called the *Turei Zahav*.

¹¹⁰ Weinberg responsum.

¹¹¹ B. *Megillah* 28b

¹¹² *Rabbenu Nissim*, 14th c.

¹¹³ Abraham Gombiner (1633-1683), a noted scholar who wrote a commentary on SA *Orah Hayim*.

Yosef, Magen Geburim, and *Mishneh Brurah* nevertheless all conclude that in times of emergency it is a necessary *mitzvah* to allow people to eat and drink in the synagogue.

Weinberg writes that in the current time it is also a necessary *mitzvah* to “strengthen the hearts of Israel,” all of whom are “poor” with respect to this need for morale-strengthening.¹¹⁴ “Not by bread alone,” writes Weinberg, “does man live.”¹¹⁵ Therefore, hearing stories from the lives of their ancestors who have also suffered and “sacrificed their lives for God’s Holy Name”¹¹⁶ will provide hope and comfort. If permission is not given for such lectures, Weinberg writes, he fears that Jews will be “compelled to go to the synagogues of the liberals”¹¹⁷ where they will hear “*derashot* of slander and the misleading of their preachers.”¹¹⁸

In the third paragraph of this section Weinberg notes, citing a commentary on *Megillah* and the *Tosafot Rid* to *Pesachim* 100a, that it may be permissible for guests who come from other cities—who he defines as poor—to eat and drink in the synagogue. Weinberg says, however, that one who really looks at the words of the *rishonim* on this issue will see that the basic reason the poor—including people from other cities—may be allowed to eat in the synagogue is because for them it is a situation of “pressure,” which is not so for the residents of the city, who are able to eat in their own homes. Weinberg

¹¹⁴ Weinberg responsum.

¹¹⁵ Weinberg responsum.

¹¹⁶ Weinberg responsum.

¹¹⁷ Although Weinberg spoke and wrote in a positive fashion about individual Reform rabbis, he was dismissive of the Reform movement, which he believed was closer to Christianity than to Judaism. He refused to allow Reform rabbis to give lectures in Orthodox synagogues. Shapiro, 186-187.

¹¹⁸ Weinberg responsum. Rabbi Weinberg uses the word “*anusim*” to describe people who feel compelled to go to liberal synagogues. This word, rich with both halakhic and martyrological associations, implies that these people are like the *conversos* who went unwillingly to Catholic churches.

points out, however, that this distinction between people from other cities and the residents of the city only holds with respect to eating and drinking. When it comes to listening to lectures in the synagogue, all are equally in an emergency situation, whether residents or visitors from out of town. Weinberg concludes this section by noting that even though city residents may not do accounting in the synagogue on account of the “*kalot rosh*” (levity or lack of seriousness) involved in this activity—no matter how much they need to do this—this limitation does not apply to the hearing of lectures, which is permitted.

Weinberg outlines three distinctions on the usage of synagogues. The first is a small degree of levity or lack of seriousness, such as what is involved in eating and drinking, which was permitted in Babylonia but not in *Eretz Yisrael*, and is forbidden in our time, according to *Magen Avraham* 151:12. Second, activities that involve a great lack of seriousness like accounting, laughter, and mockery are forbidden, as they were in Babylonia. Third, activities that do not in and of themselves indicate a lack of seriousness, but which are ordinary secular activities. As to these, a condition applies and can legitimate these activities in every place, even when the synagogue is in use. Here Weinberg brings *Magen Avraham* 151:14 and other sources to support his view.

Drawing on the previously cited sources, Weinberg concludes that in his day halakhah permits the poor to eat and drink in synagogues because it is a *mitzvah*.¹¹⁹

Weinberg states that hearing lectures is similar to the secular use of synagogues and that it is not *kalot rosh*.

¹¹⁹ Weinberg notes that the *Magen Avraham* did not see the 13th century *Or Zarua* because it had not yet been printed in the 17th century. This is an example of the semi-critical method he adopted at the beginning of the responsum.

Section Two: Usage of a Synagogue for a *Mitzvah*

Weinberg notes that it is possible for some to raise doubts, saying that only in the east as well as in earlier generations was it customary to feed the poor in the synagogue—as if these Jews had placed conditions on their synagogues from the beginning to use them for that purpose. This, however, has not been the case in Germany. He says that even if a change should be made in the use of the synagogue, this would not be because of a prior condition on the use of the synagogue, but on account of the newly-arisen situation, which never could have occurred to a German synagogue's builders. Weinberg goes on to note that sages and Torah scholars were permitted to eat and drink in the synagogue during the time of the intercalation of the year. That was because intercalation is a *mitzvah gemurah*¹²⁰, which is not the case in the present situation (of allowing lectures in a synagogue). Although Torah scholars are always permitted to eat in synagogues, the rationale of “*tzorekh mitzvah*” was required to allow them to eat there if it was not a time of stress and emergency.

Even though a number of the *rishonim* wrote about making Kiddush in the synagogue for the benefit of guests who ate, drank, and slept there, this was because the Shabbat meals are a *mitzvah* and do not involve any element of *kalot rosh*. This is not the case with meals that are eaten in connection with the intercalation of the year. Such meals, which are not themselves *mitzvot* but which come about in connection with *mitzvot*, are only permitted for Torah scholars, but not for the rest of the people present. Applied to the situation at hand, holding lectures in the synagogue is only permissible if categorized as “*tzorekh mitzvah*,” since such activities are not *mitzvot* in and of

¹²⁰ A full *mitzvah* in and of itself.

themselves. Only in matters where there is a little *kalot rosh* (like eating and drinking) is it permitted for Torah scholars who are under duress to eat and drink, or for meals which are *s'udot mitzvah*. In matters which do not involve *kalot rosh* but simply involve the secular use of the synagogue (such as this case of giving lectures in the synagogue), permission may be granted for the secular use on the ground of “*tzorekh mitzvah*” even if the activity is not a *mitzvah* itself.

Weinberg goes on to state that support for his opinion regarding the permissibility of eating and drinking in the *beit midrash* even if it is not a time of distress, and in the synagogue only if it is in a time of distress, can be found in the *R'ma*, section 1, as well as in the commentaries on the *Shulhan Arukh*. The *Ran* is the source for the principle that it is permissible to eat and drink in the *beit midrash* even if it is not a time of distress, although he did not permit this in the synagogue even if it is a time of distress. And according to all this, eating is not “*kalot rosh*” for Torah scholars. Any activity that is secular is prohibited unless it is “*tzorekh mitzvah*,” in order that the scholar not be made idle from his studies. For Torah scholars eating and drinking in the *beit midrash* does not indicate a lack of seriousness, but they are not like other people.

Section 4: Eulogizing of the Torah scholars in the Synagogue¹²¹

A *hesped*¹²² for Torah scholars is permitted in the synagogue, as seen in *b. Megillah 28b*. These are not funeral orations for average people, but for scholars whose stature is so great that many people will come to honor them and to hear the *hesped*. The

¹²¹ Sections not containing details of legal argumentation that advance the overall argument of the responsum or which touch on related, albeit tangential questions, have been omitted.

¹²² Funeral oration.

synagogue is a suitable place for this, as it is a large building and will accommodate all who want to attend.

Weinberg cites *Rambam, Hilkhhot Tefilah* 11:7 and the *Tur Orah Hayim* 151 to show that it is acceptable to use a synagogue for the purpose of hearing a funeral oration for a great sage, because many people will want to hear it. To demonstrate that funeral orations were common, Weinberg notes that the *rishonim* addressed this issue, stating that a large number of people will gather to hear such a *hesped* not only because of the one who died, but to hear and see the person giving the oration.¹²³

Weinberg cites a responsum by Rabbi Meir Eisenstaedter¹²⁴ in which he describes the *hesped* of the great ones in Alexandria and *Rambam's* comments on it. The deceased was brought into the courtyard of the synagogue, up to the place where the community prays. Next in the procession are the judges and *chazzanim*, followed by the entire community with the bier. The community recites “*Tziduk Ha-Din*,” and the *chazzanim* wail. *Rambam*¹²⁵ comments that this is most certainly a *hesped* of public interest. For *Rambam* such a *hesped* involves either the death of a great man whom all the people are obligated to eulogize or that it was heard that a truly worthy man had died. Eisenstaedter's responsum indicates that the *mitzvah* to eulogize a Torah scholar is not only to eulogize the person but because of the honor of the Torah.

Weinberg returns to the *Rambam's* comment on the Alexandria funeral ritual, noting that the real question is whether it is acceptable to eulogize in the synagogue if it is a *hesped shel rabim*—the eulogy for the public. It is not acceptable, according to

¹²³ See *Rabbenu Y'ruchem, Nativ* 3, *chelek* 8.

¹²⁴ From *Words of Fire*, *siman* 9.

¹²⁵ In *The Glory of the Generation*.

Rambam, if people are already in the synagogue to pray and they happen to hear a eulogy. It is not a *hesped* of a Torah scholar if the listeners are not coming to the synagogue solely for the purpose of hearing the *hesped*. There can also be a *hesped* in the synagogue for a great man, even if he is not a Torah scholar. Weinberg summarizes that the general principle is that everything for which the public would come—even if the eulogy has no element in it of honor to the Torah—is called the “needs of the public.” Weinberg points out on the basis of the *Yad Shaul* glosses to SA *Yoreh De’ah* 344 that eulogies of public interest are permitted in the synagogue because it is important to encourage Torah scholars and others who will hear the *hesped* to be inspired to do *teshuvah*. Encouraging *teshuvah* in this way is also consistent with the holiness of the synagogue building, which is not the case with other matters. Synagogues are not only made for holiness and prayer, but also for such matters as erecting a *huppah* in the mixed company of men and women. Weinberg makes a bridge from this point to the question under discussion, noting that the proposed lectures contain an aspect that encourages *teshuvah*. Such lectures will remind the people of the history, great deeds, wisdom, and self-reliance of their ancestors.

By means of lectures in Jewish history, they will recognize and know the account of the greatness of Israel in previous generations or the actions of the great ones of Israel in all the branches of the sciences and technology that brought such great benefit to the peoples among whom they lived.¹²⁶

¹²⁶ Weinberg responsum. Weinberg has dealt several times with the point that such lectures are morale-builders. It is not clear whether he knew something about the proposed lecture topics, and perhaps this is part of the reason he is inclined to read the halakhic sources to permit them.

Weinberg concludes this section with a Talmudic reference to “the seven good men of the city” who “in the presence of the people of the city” can lift and suspend the sanctity of the synagogue.¹²⁷

In the next section (15) of the responsum Weinberg discusses the necessity of having words of Torah prior to such a lecture. In his view, this should be a selection from Psalms or “any word of Torah.”¹²⁸ Weinberg grounds this in *Megillah* 28b,¹²⁹ which states that someone who must call another person from the synagogue must first recite some appropriate verses from the Bible or Mishnah or some halakhah so that it will not appear that he has entered the synagogue in vain. Weinberg concludes from this Talmudic passage that a secular activity is permitted in the synagogue if it is ancillary to a matter of Torah. Similarly, he goes on to conclude that secular activities are also permitted if they are ancillary to a matter of study. In section 17 Rabbi Weinberg brings a text from *Otzar HaGeonim* to *masechet Megillah* 28b. In this text, Rabbi Binyamin Menashe Levin quoted a source in the name of R. Hai Gaon who said that it is permitted to teach children secular subjects in the synagogue such as mathematics and Arabic script if these are taught incidentally to learning Torah, but not otherwise.

Weinberg writes:

And according to this, they are accustomed in all the eastern lands to eat in the synagogue a *mitzvah* meal—such as for completing a tractate of the Talmud, or the three meals of Shabbat...the [scholars who permit this] have what to rely on...And it is known in the lands of the east they are also accustomed to be lenient about lectures in the synagogues and study houses. And reliable people have testified to me that also in Tel-Aviv they are accustomed to gather crowds and hold lectures in synagogue.¹³⁰

¹²⁷ B., *Megillah* 26a and 27a.

¹²⁸ Weinberg responsum.

¹²⁹ See pp. 22-23 of this paper.

¹³⁰ Weinberg responsum, section 19, paragraph 4.

Section 6: Religious Concerts in the Synagogue

Weinberg writes that, at first glance, the decision regarding secular lectures in a synagogue discussed up to this point in the responsum should apply as well to concerts of religious music. He cites SA, *Orah Hayim* 560:3, which states that it has been decreed that there can be no playing on instruments of song or any kind of singing or hearing a voice of song for the purpose of rejoicing because of the destruction of the Temple. Even a song without instruments, such as over wine, is forbidden. Songs of praise and thanks to God and songs about God's holy loving kindness, however, are permitted over wine. The *R'ma* adds that this is the case if the music is a need of a *mitzvah*, such as in the house of the groom and bride. Weinberg cites the *Rambam*, *Hilkhos Ta'aniyot* 5:14, which states that making music which is not for the praise of God is forbidden because of the destruction of the Temple.

Accordingly, writes Rabbi Weinberg, it is forbidden to have concerts of a secular nature in the synagogue. He is aware that in Ashkenaz it is common for many observant Jews to attend secular concerts, and that they may be supported in doing so by *Rambam's* ruling that this is only forbidden in the case of a drinking party. He then brings the *Tur* to *Orah Hayim* 560, which mentions that the *Yerushalmi* describes how the head of the community of exiles in Babylonia woke up and went to bed with song. The *Tur* quotes *Rambam*, who rules that the singing of drinking songs, whether in Hebrew or Arabic is forbidden. Obscene songs and love songs in praise of someone's beauty are forbidden as well.

The only question that remains to be addressed (section 21) is that of holding religious concerts with singers and prayers with instruments of song in the synagogue. Weinberg brings a comment from the *Magen Avraham* to *Orah Hayim* 560:10,¹³¹ which makes reference to a collection of responsa of the *Maharil*.¹³² The *Maharil* had stated that it is not lawful to sing at a drinking party “I thank You because You have answered me.”¹³³ This is an inappropriate place in which to praise God, and the *Maharil* brings words from the b. *Sanhedrin* 101a to emphasize the point: “Your children have made me like a song.”¹³⁴

Weinberg writes:

They only permitted song in the synagogue at the time of prayer, and it may be inferred that even not at a time of a wedding it is forbidden. For behold we rule to forbid: for with musical instruments it is forbidden even when not at a time of a wedding. And furthermore, for behold the reason that “the Torah wears sackcloth...” applies even when not at a time of a wedding. Nevertheless, they are already accustomed to be lenient about this...and that which it says in *Sanhedrin* that the Torah wears sackcloth means for those who refer to the Torah with humor and ridicule. But by means of praise and thanks, it is permitted.¹³⁵

In the next section (23) Rabbi Weinberg draws on the famous *Hatam Sofer*, Rabbi Moses Sofer. Weinberg quotes from a responsum¹³⁶ indicating that the *Hatam Sofer*

¹³¹ Paragraph 10.

¹³² Rabbi Jacob Moline, 1360-1427.

¹³³ From *Hallel*, which is chanted after the *Amidah* on Pesach, Shavuot, Succot, Hanukkah, and *Rosh Hodesh*.

¹³⁴ In this text, we learn that a person who recites a verse from the Song of Songs with a secular melody and someone who recites a verse at the banquet table in the wrong season have brought evil on the world. The Torah, girded in sack-cloth, laments before God. “Your children,” she wails, “have made me as a harp upon which they frivolously play.” When God asks the Torah with what His children should occupy themselves when they are eating and drinking, the Torah replies that they can occupy themselves with Torah, Prophets, Writings, Mishnah, Halakhah, and *Aggadah*.

¹³⁵ Weinberg responsum, section 21.

¹³⁶ 6:84

was not at ease with the idea of instruments of song during the *Amidah*, even on a weekday. The *Hatam Sofer* writes that when the prayers were fixed by our fathers, they did not fix them with instruments of song, even though it was through Jews that “this song” went out in the *Beit HaMikdash*. . He makes reference to Psalm 137:4 (“How can we sing a song of the Eternal One on foreign soil?”) but goes on to note that although we cannot sing before God in a foreign land it is permitted to rejoice with the bride and groom. They are depressed in the exile, so it is permitted to rejoice with them, but in the house of God there is no rejoicing, according to the *Hatam Sofer*. Weinberg quotes from another responsum of the *Hatam Sofer* in which the latter says that in the post-destruction world we live in it is enough for us to preserve a memory of Temple music with songs that are merely sung with no instrumental accompaniment. Weinberg concludes that it is not permissible to hold religious concerts in a synagogue.

Having given this ruling, however, Weinberg goes on to write that rabbis are not obligated to quarrel with the community leaders over this issue, and there is halakhic room to be lenient. This is not similar to the issue of whether an organ is permissible in a synagogue, because that stems from a rabbinic prohibition against imitating the “laws of the Gentiles” as well as Shabbat rest, which is not connected with this matter.

Weinberg goes on to note that in Prague it is the custom to welcome Shabbat with instruments of song, and he directs the reader to a discussion about this in *These are the Words of the Covenant*, a 19th century collection of responsa by Orthodox rabbis upset about the Hamburg Temple, as well as in the work *Melamed L’Ho’il* by Rabbi David Zvi

Hoffman.¹³⁷ He notes that it was the custom of the *Sephardim* to perform a boy's first haircut in the synagogue, an event accompanied with "drums and dance."

Weinberg concludes this section of the responsum by bringing various sources that support his view that it is not worth it for the rabbi to get into a dispute over this issue with his community, especially if it will result in the community turning against the rabbi. Although it is forbidden to hold religious concerts in the synagogue, if it is being done anyway the rabbi should not try to stop it.

Section Seven: What Comes out from all the Aforementioned for Purposes of Halakhah

Weinberg summarizes the discussion clearly:

- 1) Hearing lectures in a synagogue is permitted according to the law. It is desirable prior to the lecture to have a *d'var* Torah, or to recite some verses of Psalms.
- 2) Only a person who is "strengthened as to their fear of heaven" and is not a free thinker is permitted to speak, and only with the permission of the rabbi.
- 3) It is not permitted to have disputes after the lectures, as is the fashion. This is also because there may be free thinkers among the people who raise questions about the lectures. This could lead to excessive levity (fighting and arguing), which is forbidden on any account in the synagogue. Such disputes are usually outbursts of zesty words with stinging remarks, or mockery. This causes derision and ridiculing, which is forbidden in the synagogue.
- 4) Holding secular concerts is forbidden, and the rabbi must risk his soul¹³⁸ to prevent this, even it means that he loses his job.
- 5) Religious concerts are a matter with which our rabbis were not at peace, but in lieu of controversy, it is possible that there is room to allow it.
- 6) It is obvious that men and women may not mix at these permitted events.¹³⁹

¹³⁷ David Zvi Hoffman (1843-1921) followed Esriel Hildesheimer as head of the Berlin Rabbinical Seminary. He was the leading halakhic authority in Germany in the first part of the 20th century. He was both a proponent of critical Talmud study and *Wissenschaft des Judentums*. Shapiro, 78.

¹³⁸ Here Weinberg uses the language of martyrdom.

¹³⁹ Weinberg brings b. *Sukkah* 51b, which describes how men celebrated downstairs in the Temple while women celebrated upstairs during the festival of drawing water.

The responsum closes with Weinberg noting that all that is permitted only in this time, which is a time of pressure. When “our four boundaries are widened,” writes Weinberg, “we will return, with God’s help, to be very careful with the sanctity of the synagogue in all its strictness.”¹⁴⁰

Conclusion

In this responsum Weinberg uses the long tradition of halakhah and responsa, as well as his knowledge of the customs of Jews in other communities, to build a careful case for allowing secular lectures in the synagogue, under certain conditions. His responsum provides a review of the sweep of halakhah over many centuries on the issue of the sanctity of synagogues. Unlike other scholars of his background and education, however, Weinberg uses (semi) critical method to make his case. He demonstrates how the statements of the Talmud were refined by subsequent scholars through codes, commentaries thereon, and responsa to address the sanctity of the synagogue in a world which the sages of the Talmud could not have envisioned.

Although Weinberg’s responsum is well- rooted in halakhah, he does not see his decision as valid for all time: he permits lectures, but notes that they should not be permitted when times are not difficult. He is opposed to concerts of religious music, but states that rabbis should not fight their communities if such concerts are strongly desired. Weinberg’s argumentation is rigorous, but he is clearly motivated by non-halakhic factors as well. He knows where he wants to go in this responsum and is not completely guided by halakhah in getting there.

¹⁴⁰ Weinberg responsum.

As necessary as those lectures were for morale, grounding permission to hold them in halakhah ensured that Weinberg's decision would not only be acceptable to his community, but could provide an example—as he suggests—for how Jews might handle such situations in other places. In this way Weinberg not only teaches halakhah but shows us how halakhah can be a source of both guidance and compassion.

Chapter 2: A Conversion Certificate in the Days of Annihilation: Rabbi Yissachar Shlomo Teichtal.

Jews trapped in the horrors of the Holocaust tried various means to survive. In some cases—driven by imminent danger—they hid in convents, gave their children to Christian families for safe-keeping, performed Christian ritual acts, obtained baptismal certificates, denied their religion, or pretended not to be Jewish by performing ambiguous acts.¹⁴¹ Most such cases occurred as Jews tried to blend in with the societies in which they lived by hiding their identities, and did not involve formal conversions.¹⁴² Although these actions were most often taken in response to immediate danger, those who took them were not free from the halakhic consequences of their conduct. In this responsum Rabbi Teichtal addresses the issue of purchasing baptismal certificates.

Biographical information

Rabbi Issachar Shlomo Teichtal was one of the most prominent rabbis in Slovakia between World Wars I and II.¹⁴³ He was born in Kiskunhalas, Hungary in 1885, went to Poland to study at age fourteen, and returned to Hungary at age twenty. Rabbi Teichtal was appointed a judge in Besarmin, and at the end of World War I he was appointed rabbi of Piestany, Czechoslovakia. There, he also served as the head of the Moriah Yeshiva.

In 1942, after transports from Piestany to the death camps began, Rabbi Teichtal fled with his family to Nyitra, a city in western Slovakia, and then to Hungary. He

¹⁴¹ Farbstein, 235.

¹⁴² Farbstein 234.

¹⁴³ Farbstein 252, fn. 47.

returned to Piestany and hid in the attic of his synagogue where he wrote about and studied Torah and kept a journal that was published after the Holocaust.

Rabbi Teichtal took temporary refuge in Budapest, and became an active member of the Jewish community there. In 1944 he returned to Slovakia and ultimately to Pressburg (Bratislava), where he hid with his family for several months. He and his family were discovered and sent to Auschwitz. Shortly before the arrival of Russian troops in 1945, Rabbi Teichtal was put on a train to Mauthausen. He was murdered in transit.¹⁴⁴

Halakhic Background

Actions such as purchasing baptismal certificates violated prohibitions related to idolatry in Jewish law, violations for which there are no exceptions.¹⁴⁵ The over-arching prohibition is stated by the *Rambam* in *Sefer HaMitzvot, Mitzvah 9*:

By this injunction we are commanded to sanctify God's name. It is contained in His words, "But I will be hallowed among the children of Israel" (Lev. 22:32). The purport of this commandment is that we are 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 positively 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).

This is the commandment concerning the Sanctification of the Name which is laid upon every son of Israel: that we must be ready to die at the tyrant's hands for our love of Him (exalted be He)...¹⁴⁶

¹⁴⁴ Biographical information from Farbstein and Machon Netivei ha-Halacha, Maagrei Meyda Toranyim. *Responsa of the Holocaust*, CD Rom, (Ramat-Gan, Israel: *Responsa* Project, Bar-Ilan University, 2006).

¹⁴⁵ Farbstein 233.

¹⁴⁶ Isadore Twersky, *A Maimonides Reader*, (Springfield, N.J.: Behrman House, Inc., 1972) 433-434.

Yet *Rambam* also states in *Hilkhot Yesodei ha-Torah* 5:4 that a Jew who— under duress—chooses to violate one of the three sins for which he must give up his life (murder, idolatry, and illicit sexual relations) should not be punished, because he acted under duress. Only a person who violates these prohibitions free of duress is to be punished.¹⁴⁷

The prohibition against idolatry—which is a central aspect of the responsum we will discuss in this chapter—grows out of Jewish attitudes towards Christianity, which was seen by most medieval scholars as idol worship. Simeon b. Yohai—expressing the feelings of Jews persecuted during Hadrian’s rule—stated that the best of Gentiles should be killed.¹⁴⁸ During a less difficult time in Sassanid Babylonia Samuel states that on the day of judgment there will be no difference between Israel and the other nations.¹⁴⁹

There were numerous reasons expressed during Talmudic times for Jewish hatred toward Gentiles. Gentiles were cruel to Jews¹⁵⁰ and they were said to have questionable morals.¹⁵¹ From a theological standpoint Gentiles were found wanting because— although they had been offered the Torah—they rejected it.¹⁵²

The Gentiles were subject to the seven Noahide laws, and therefore had legal status in Jewish law. Although sometimes Gentiles were discriminated against, they were

¹⁴⁷ Twersky, 50. *Rambam* writes that a person who freely transgresses one of these prohibitions can be whipped and executed only if his actions were witnessed and only if he was given appropriate warning. Because this was an impossible standard to meet, the reality is that no one could be punished for failing to choose death in the appropriate circumstances.

¹⁴⁸ *Yerushalmi, Kiddushin* 4:11, 66c. Daniel Sperber, “Jewish Attitudes Toward Christianity in the Talmud,” *Encyclopedia Judaica*.

¹⁴⁹ Sperber, “Jewish Attitudes”

¹⁵⁰ b. *Baba Kama* 117a, b. *Avodah Zarah* 25b.

¹⁵¹ b. *Yevamot* 98a, b. *Avodah Zarah* 22b.

¹⁵² b. *Avodah Zarah* 2b

supposed to be treated fairly.¹⁵³ When Gentiles were discriminated against, it was usually because they did not subscribe to the same social contract as Jews. The commandment to return lost property to its rightful owner, for example, does not apply if the Gentile is the owner of the property,¹⁵⁴ because Gentiles do not act reciprocally in such matters. Gentiles could not act as witnesses because they are not honest or reliable.¹⁵⁵ Other rulings that limited contact with non-Jews—such as consuming non-Jewish wines or cooked food—were designed to guard against assimilation.¹⁵⁶ In practice, however, overt discrimination against Gentiles was discouraged in the interest of maintaining good relations (*mi-p'nei darkhei shalom*).¹⁵⁷ To discriminate in this way against Gentiles was viewed as a profanation of God's name, to the extent that the Talmud states that the Gentile poor should be assisted along with the Jewish poor.¹⁵⁸

During the Middle Ages the Talmudic laws designed to minimize contact between Jews and Gentiles did not reflect the daily realities of Jewish life.¹⁵⁹ Many laws were given new interpretations that conformed to these realities. The law that prohibited Jews from doing business with Gentiles on their festivals was reinterpreted to permit doing business with Gentiles on Sundays and other Catholic holidays.¹⁶⁰ Rashi states that such dealings are prohibited only on Christmas and Easter.¹⁶¹

¹⁵³ Sperber, "Jewish Attitudes"

¹⁵⁴ Sperber, "Jewish Attitudes," b. *Baba Kama* 113b.

¹⁵⁵ Sperber, "Jewish Attitudes," b. *Baba Kama* 15a.

¹⁵⁶ Sperber, "Jewish Attitudes."

¹⁵⁷ b. *Gittin* 5:8-9.

¹⁵⁸ b. *Gittin* 61a.

¹⁵⁹ Theodore Friedman, "Jewish Attitudes Toward Christianity in the Middle Ages," *Encyclopedia Judaica*.

¹⁶⁰ Friedman. *Tosafot to Avodah Zarah* 2a.

¹⁶¹ Friedman. *Or Zaru'a, Sanhedrin* 2a.

These reinterpretations of halakhah were built on a foundation which regarded the world as divided into those who had completely abandoned idol worship—Jews—and those who continued to worship idols—non-Jews. Those in the latter category were called “worshippers of stars and planets” (*oved kokhavim u-mazzalot*), sometimes abbreviated as “*akkum*.”¹⁶²

These attitudes towards Christianity were evident in the rabbinic and communal reactions to the purchase of baptismal certificates. Acquiring a *Taufschein* (baptismal certificate) was of great concern to rabbis in Nazi-occupied Europe, because the possession of such documents symbolized conversion to Christianity, although most Jews who purchased these certificates did not convert.¹⁶³ These certificates were not the same as identity papers, which many rabbis helped people purchase in order to save their lives.¹⁶⁴ Rabbi Ya’akov Avigdor of Drohobycz replied to a questioner who asked about this subject that purchasing such identity papers was “not only permitted but should be regarded as conscious resistance” to the Nazis.¹⁶⁵

The issue of baptismal certificates did not arise in Poland and Lithuania, as in those countries even those who had proof of actual conversion to Christianity were killed.¹⁶⁶ The issue arose in Slovakia as a result of laws adopted by the Slovakian government on May 15, 1939. These laws exempted three groups from deportation: those who belonged to a Christian denomination prior to passage of the law, those who had married non-Jews before September 10, 1941, and those to whom a government

¹⁶² Sperber.

¹⁶³ Farbstein, 249.

¹⁶⁴ Farbstein, 250.

¹⁶⁵ Farbstein, 250.

¹⁶⁶ Farbstein, 249.

ministry had given “special immunity.”¹⁶⁷ The rabbinic leadership of the country was permitted to remain temporarily. After the law passed, a rumor swept through Slovakia that those who converted to Christianity would not be deported to concentration camps.¹⁶⁸ Although most Slovakian Jews did not convert, purchasing a baptismal certificate was a way to meet the terms of the legislation without being baptized.¹⁶⁹ Teichtal spoke and wrote against obtaining such documents.

As Teichtal indicates in this responsum, he gave sermons in several communities against the purchasing of baptismal certificates. In these sermons Teichtal supported his view with several arguments. First and foremost, he argued that purchasing such certificates constituted idolatry. Jews who purchased these certificates abandoned their fellow Jews at a time when the community needed the strength of all of its members.¹⁷⁰ Purchasing such certificates, argued Teichtal, was the top of a slippery slope which could lead the buyers away from being observant synagogue-going Jews to eating with non-Jews in order to demonstrate that they were the same as non-Jews. At the bottom of the slope was attending church and then conversion. Finally, Teichtal argued that purchasing the certificates was a desecration of God’s name because it implied that the Holy One was less able to protect Jews than idol worship.¹⁷¹

In these sermons, Teichtal admonished Jews to try to find ways to survive that did not “remove them from Judaism and from the Jewish people.”¹⁷² Teichtal told his listeners that the purchase of baptismal certificates was an act of surrender, and he urged

¹⁶⁷ Farbstein, 250.

¹⁶⁸ Farbstein, 250.

¹⁶⁹ Farbstein, 252.

¹⁷⁰ Farbstein, 253.

¹⁷¹ Sermon given by Teichtal. Farbstein, 253.

¹⁷² Farbstein, 253.

his listeners in emotional language to bear their suffering with pride, rather than betray their fellow Jews.¹⁷³

Some rabbis, however, such as Rabbi Armin (Avraham Abba) Frieder, the rabbi of a large segment of the Slovakian community, did not regard the purchase of such certificates to be altogether prohibited.¹⁷⁴ Rabbi Frieder wrote that he was not opposed to the purchase of these certificates if they saved lives, if the bearers were not baptized, and if they continued to live as Jews.¹⁷⁵ Rabbis such as Rabbi Frieder encouraged Jews to purchase such certificates as long as doing so did not involve baptism. “Be good Jews in your heart and souls,” he wrote, “but carry Aryan papers in your pockets.”¹⁷⁶

Issues began to arise for the Jewish communities of Slovakia about how to treat those who had purchased baptismal certificates. The rabbinical court of Pressburg (Bratislava) was not in agreement on matters of status and ritual arising from the purchase of these certificates. Some rabbis did not consider the purchasers of these certificates as having acted under duress. These rabbis viewed such people as having converted from Judaism to Christianity, and who therefore required a process of formal return to Judaism. Others, such as Teichtal, although fiercely opposed to the purchase of these certificates, were more understanding towards those who had been unable to bear the pressure of a terrible time, as we will see in this responsum.¹⁷⁷

Teichtal ties the matter of purchasing baptismal certificates to the issue of performing ambiguous acts: that is, acting in a way that might lead a Gentile to infer on

¹⁷³ Farbstein, 253.

¹⁷⁴ Farbstein, 253.

¹⁷⁵ Farbstein, 253.

¹⁷⁶ Farbstein, 253.

¹⁷⁷ Teichtal responsum.

his own that the person in question is not Jewish. Teichtal relies on Rabbi Moses Isserles' (the *R'ma*)¹⁷⁸ ruling in *Shulhan Arukh* (SA) *Yoreh De'ah* 157:2 that a Jew may tell a non-Jew something which is ambiguous, as the non-Jew will believe that the Jew is a non-Jew, while the Jew means something different.¹⁷⁹ Such deception is only permitted in what the *R'ma* calls "a place of danger."¹⁸⁰

Discussion and Analysis of the Responsum

The question to which Teichtal responds is whether it is permissible to purchase a baptismal certificate during a time of "persecutory decrees."¹⁸¹ He notes that the purchase of these certificates has caused disputes in the community, specifically around the issue of whether those who have purchased the certificates may be called up to the Torah for an *aliyah*. Teichtal states clearly and strongly at the beginning of his responsum that the purchase of baptismal certificates is strictly forbidden under Jewish law, falling into the category of "be killed and do not transgress."¹⁸²

Using the language of *Rambam* from *Sefer HaMitzvot*, *mitzvah 9* quoted above, Teichtal notes that a Jew must allow himself to be killed rather than lead a persecutor astray by allowing him to believe that he denies God. This is true even if the Jew, in his heart, has not denied God. From this foundation, Teichtal makes the point that by showing such a baptismal certificate to a non-Jew, the Jew misleads him into thinking

¹⁷⁸ Author of *HaMapah*, the interline commentary on the *Shulhan Arukh*. He lived from 1520-1572.

¹⁷⁹ Rabbi Ephraim Oshry, *Responsa from the Holocaust*, (The Judaica Press, Inc., 2001) 30. Also mentioned in Farbstein, fn. 69, 261.

¹⁸⁰ SA *Yoreh De'ah* 157:2.

¹⁸¹ Teichtal responsum.

¹⁸² Teichtal responsum, section 1. This is the commandment that a Jew must submit to death rather than deny Judaism. This is *Rambam's Mitzvah 9* in *Sefer HaMitzvot*.

that the Jew believes in a foreign religion and denies “the fundamental principle [of the Jewish faith], God forbid.”¹⁸³

Teichtal raises and attempts to resolve a conflict between *Rambam*’s position and that of the *R’ma*, as stated above, that it is permitted to speak with ambiguity—in a place of danger— “in the language of ‘speaking with two faces,’ and they will understand that he is an idolater.”¹⁸⁴ Teichtal discusses what he perceives as the difference between deceiving someone by using language that speaks “in two faces” versus language that speaks with “one face.” When a Jew speaks “in two faces” the non-Jew himself draws the inference that the person to whom he is speaking is a non-Jew; the Jew has not explicitly self-identified as such. The non-Jew can thus be said to have “deceived himself” about the Jew’s identity. But when a Jew speaks in a manner which is not “two faces,” the Jew is actively representing himself (falsely) as a non-Jew. The non-Jew in this situation has not “deceived himself”: he has been deceived by the Jew’s own misrepresentation. This is so even if, in the latter case, the Jew is internally denying what he says to the non-Jew explicitly with his mouth. A person who speaks with “two faces” can rationalize his words, thinking that he never said what the non-Jew divined from his words, and that the non-Jew “discerned in the words of the Israelite what he thought.”¹⁸⁵ In this case, it is the “idolater” who leads himself astray by the Jew’s words, not the Israelite.

However, when a Jew speaks with “one face” he has directly and explicitly led the non-Jew astray, which is forbidden. Teichtal likens this to the prohibition against

¹⁸³ Teichtal responsum, section 2.

¹⁸⁴ SA, *Yoreh De’ah* 157:2.

¹⁸⁵ Teichtal responsum, section 3.

“stealing someone’s mind” (causing someone to think something which is not true).

When someone deceives himself there cannot be false pretenses. This is similar to the situation of the Jew who shows a baptismal certificate to a non-Jew. The Jew is not able to rationalize this to himself, as he has explicitly—in showing the certificate—indicated that he is “a member of another religion” although in his heart “he clings to the Holy One, blessed be He.”¹⁸⁶ Teichtal states that this is forbidden, and that the Jew is obligated to “hand himself over” to be killed rather than transgress.¹⁸⁷ Teichtal buttresses his position with other sources which rule that even *speaking* in such a direct and unambiguously misleading way about his identity obligates a Jew to hand himself over for death.¹⁸⁸ If even *speaking* in this way obligates a Jew to hand himself over, reasons Teichtal, how much more so is it forbidden to buy a document which indicates—equally unambiguously—that the Jew has performed an act of conversion. Teichtal holds that “action is weightier than pure speech.”¹⁸⁹ Although the Jew has not actually performed an act of conversion, his presentation of the baptismal certificate is an act of deception that causes the non-Jew to think that he has done so.

After establishing the firm halakhic basis on which the prohibition against purchasing these certificates rests, Teichtal attempts to apply these halakhic principles to the real and terrible world in which the Slovakian Jews were living. He begins this section of the responsum with obvious sympathy and understanding for his fellow Jews, questioning whether the community should “reject these people who cannot summon

¹⁸⁶ Teichtal responsum, section 3.

¹⁸⁷ Teichtal responsum, section 3.

¹⁸⁸ *Sefer Nidchai Yisrael, Chafetz Chaim* chapter 7 [ruling from SA, *siman* 157].

¹⁸⁹ Teichtal responsum, section 3.

strength to pass the test, and who purchased these bills for themselves.”¹⁹⁰ The specific issue that Teichtal addresses concerns whether Jews who had purchased baptismal certificates could be called to the Torah and whether they were to be considered Jews for purposes of other ritual matters. He describes being present on numerous occasions when such people were called to the Torah, and notes that he was silent, and “left them alone to read Torah.”¹⁹¹ Teichtal maintained this stance in the face of those who complained that he should have prevented such people from having *aliyot*.

Teichtal then begins a lengthy discussion of why he stands on his belief that such Jews should not be rejected and pushed away from the community. He reiterates that even in a case of idolatry, in which a Jew must “be killed and do not transgress,” if the Jew transgresses because of duress he is exempt from punishment.¹⁹²

The first source Teichtal cites in this regard is a responsum by Isaac ben Sheshet Perfet (*Rivash*), the 14th century rabbi and halakhic authority.¹⁹³ The *Rivash* responds to a question about libation wine¹⁹⁴ made by *anusim*, Jews forced by insurmountable pressures to renounce Judaism and take on a different faith.¹⁹⁵ The question is whether

¹⁹⁰ Teichtal responsum, section 4.

¹⁹¹ Teichtal responsum, section 4.

¹⁹² Twersky, 49-50. Maimonides, *Sefer ha-Madda*, 5:4. This would seem to be the basis for Teichtal’s statement, although he does not directly cite it.

¹⁹³ *Sh’eilot u-T’shuvot Ha Rivash, siman dalet*. From Hebrew Union College, Jewish Studies Portal.

¹⁹⁴ *Yein Neseikh* (“libation wine”) is wine that has been consecrated by non-Jews for the purpose of idol worship. It is forbidden to Jews, who may not drink it, handle it, or derive any benefit from it. Michael Berenbaum and Fred Skolnik, editors, “Wine,” *Encyclopedia Judaica*.

¹⁹⁵ Yom Assis, Renee Melammed, and Haim Ben-Sasson. “*Anusim*,” *Encyclopedia Judaica*. Such Jews were compelled by physical threats, psychological stress, and/or economic sanctions to give up their faith. Although Jews were forced to renounce their faith and take on another faith throughout their exile, *anusim* were most prevalent in the Iberian Peninsula from the late 14th to the mid-15th centuries.

Jews could trust *anusim* to make wine that was permissible for Jews to drink, or whether such wine fell within the category of libation wine. The *Rivash* begins by stating that the law requires a Jew who violates any of the prohibitions concerning this wine to hand himself over for death. If, however, the person transgresses under duress and is not killed, he is not unfit to be a witness and is still considered a Jew in all respects, since he violated the prohibition under duress. No *beit din*, writes the *Rivash*, would punish him even though he did not fulfill the commandment “You shall love the Eternal your God with all your heart and with all your soul and with all your might” (Deut. 6:4) by refusing to hand himself over. This is so even if he violated the prohibition in front of ten witnesses and even if he profaned God’s name. He is permitted to give testimony, as long as it is not given in public. If he eats non-kosher meat, however, he cannot give testimony and should be beaten.

The *Rivash* acknowledges the difficulties inherent in these situations, specifically that it is not within the power of these Jews to escape to a place where they will be able to worship God without fear. They must try to escape, and if they cannot then their conduct will be evaluated after the fact. If they had led Jewishly-blameless lives they are considered kosher Jews; if not, they are not considered kosher Jews. The rule, however, is that if suspicion hangs over someone in this matter, he is not permitted to give testimony.

Teichtal’s use of this 14th century responsum is striking given the similarity between the circumstances the *Rivash* confronted and those of Teichtal’s own day. The responsum highlights his concern for the circumstances under which the Jews who purchased baptismal certificates were living, and the importance of showing compassion

for them while at the same time stating clearly the prohibition against performing such prohibited acts. As Teichtal notes, based on this responsum of the *Rivash*, we consider someone to be a kosher Jew in all respects if he is “meticulous and comports himself with the way of *mitzvot* like other Jews.”¹⁹⁶ The fact that the Jew violated the positive commandment of “I will be sanctified”¹⁹⁷ does not render him an un-kosher Jew. Because this person comports himself in all other respects as a kosher Jew he is permitted, in Teichtal’s view, to go up to the Torah. Yet Teichtal understood the reason for the Pressburg court’s policy of preventing such Jews from going up to the Torah: so that other Jews will not learn from these Jews and do likewise.

Teichtal returns to his concern that, if pressed too hard by the community, the Jew who purchased such a certificate

...will separate himself from Israel altogether, and he will go and cling, God forbid, to those who worship idols. We have seen such cases at this time because they legally presumed him to be an apostate [from Judaism], he distanced himself from us, and little by little drew himself close to them, in the beginning through the compulsion of the decree and in the end willingly.¹⁹⁸

Teichtal’s choice of the *Rivash* responsum is particularly interesting, given Isaac ben Sheshet Perfet’s own life. During the anti-Jewish riots in Valencia in 1391, Perfet was asked by the authorities to convert in the hope that this would stop the rioting. When he refused to do so, the authorities brought a false charge against him that would have resulted in his death unless he converted. Perfet converted, becoming a *converso*. He

¹⁹⁶ Teichtal responsum, section 4.

¹⁹⁷ “You shall not profane My holy name, that I may be sanctified in the midst of the Israelite people.” (Leviticus 22:32). In purchasing the baptismal certificate the Jew presents himself as an idol worshiper, thus profaning God’s name. This requires that the Jew hand himself over to be killed.

¹⁹⁸ Teichtal responsum, section 5.

was baptized on July 4, 1391, the Ninth of Av. Eighteen months later he was able to leave Valencia for North Africa and resumed his life as a Jew. Many of his responsa concern issues arising from forced conversion to Christianity.¹⁹⁹

Was Teichtal, in his choice of this responsum, using the life of Rabbi Isaac ben Sheshet Perfet to help make his argument? Teichtal and his contemporaries must have known that the *Rivash*, whose rulings were one of the sources for the *Shulhan Arukh*,²⁰⁰ underwent baptism rather than be killed. If such an eminent halakhic authority ruled thus, *al achat kamah v'kamah*, could Teichtal reasonably do any differently?

Teichtal builds on his argument that we should be careful not to reject such Jews because, in pushing them away, we push his children away as well. On this basis he justifies his decision not to protest if the purchasers of such certificates are called to the Torah, as long as testimony was not presented in his presence in court that he had purchased such a certificate. We must not, writes Teichtal, invalidate a person's legal presumption of *kashrut* [as a Jew]. Therefore, it is preferable to be [in a state of] "stay put, and not to do."²⁰¹

Teichtal then states that *Rambam*'s ruling that a person is exempt from punishment²⁰² if he violates and is not killed is not relevant in the case of the baptismal certificates, because those who purchase them do not do so under duress, but because

¹⁹⁹ Hirsch Zimmels and David Derovan, "Isaac ben Sheshet Perfet," *Encyclopedia Judaica*.

²⁰⁰ Zimmels and Derovan.

²⁰¹ Teichtal responsum, section I. The language is a Talmudic term for an act that one must refrain from performing.

²⁰² Twersky, 50. Maimonides, *Sefer ha-Madda*, 5:4.

they want to save themselves from danger. He cites sources²⁰³ which demonstrate that such a person is not exempt from punishment [for the sin] “of profaning the name of God.”²⁰⁴ by of idol worship.

Teichtal, having stated the halakhic position, once again interprets the law in a manner that makes it unlikely that the wrong-doer will be punished. He writes that—although someone has purchased a baptismal certificate—this is not the performance of idol worship and the purchaser is not deserving of death. Rather, he is like an apostate and a non-Jew in all respects. He only transgresses the negative commandment of “do not profane” and the positive commandment of “I will be sanctified” if the transgression is done in the presence of ten Jews. If the transgression is not done in the presence of ten Jews it is called “in private” and he does not transgress the positive commandment of “you shall love [the Lord your God]” and is therefore not required to sacrifice his life. A person who transgresses the positive commandment of “you shall love” in and of itself, then, is not obligated to die.

Teichtal notes that these certificates are only purchased to show non-Jews at a time when it is necessary, and usually there are not ten Jews present, so the person has only transgressed on “you shall love” alone. This act alone does not make the person a “Gentile,” and he is regarded as a “kosher Jew” in all aspects.

He concludes this section by ruling that the person’s status is that of a Jew, “fit for every matter,”²⁰⁵ and that because he does not want to push way “another rock that

²⁰³ *Minhat Hinuch* (mitzvah 296) and *Bet Yosef, Hoshen Mishpat, siman* 205.

²⁰⁴ The punishment for this sin is not worldly. Teichtal responsum, section 1.

²⁰⁵ Teichtal responsum, section 7.

falls”²⁰⁶ he urges the *Beit Din* in Pressburg to remain quiet when such men are called to the Torah.

In the second section of the responsum Teichtal is asked about a related question. A Jew had to travel to Hungary, but only non-Jews were able to obtain visas. Was it permissible for the Jew to travel with a certificate that had the abbreviation “RK,” for Roman Catholic? Rabbi Teichtal argues “for leniency,”²⁰⁷ citing a sage story from a time of persecution.²⁰⁸ The sage, when asked if he is a Jew, responds: “*Ken yud*,”²⁰⁹ intending to answer in the manner of “*ken benot Zelophehad dovrot*”²¹⁰ The Jew thus answered with deliberate ambiguity. His own meaning would thus have been “thus, a Jew.” His interrogators, however, interpreted his “*ken*” as “*kein*” and so interpreted what the Jews said as meaning “not a Jew.” Teichtal notes that this is according to the previously cited rule in the *Shulhan Arukh* that it is permitted to speak in words that may be interpreted in two ways. He states that, in the case of the Jew traveling to Hungary, the letters “RK” can be applied to the verse “but (*RaK*) take utmost care and watch yourselves scrupulously so that you do not forget *Adonai* your God.”²¹¹ The non-Jews will “understand as they will understand.”²¹² Teichtal then brings a proof text from b. *Sanhedrin* 46b to demonstrate that writing is less important than speech. Bringing this together with the story from the *Torat Hayim*, Teichtal points out that if the sage in the

²⁰⁶ Teichtal responsum, section 7.

²⁰⁷ Teichtal responsum, section 7.

²⁰⁸ *Torat Haim* in *Avodah Zarah* 17 (s.v. “ie”).

²⁰⁹ The “*yud*” most likely stands for “Jew.”

²¹⁰ Numbers 27:7. Here the word “*kein*” means “right,” “true” or “just.” In this verse God uses these words to validate that the claim by the daughters of Zelophehad to their father’s hereditary holding is lawful.

²¹¹ Deuteronomy 4:9.

²¹² Teichtal responsum, section 8.

story comported himself in this way with speech, then how much more so is it permitted to do so in writing—which, as per *Sanhedrin* 46b, is a less serious matter than speech. This would seem to contradict his earlier statement in this responsum “and we hold that this action is weightier than pure speech.”²¹³ Teichtal quickly states, however, that he has decided not to follow his own opinion (that writing is less important than speech) unless “the great ones of the generation agree with me.”²¹⁴

In the final part of the responsum Teichtal uses the Talmudic story of *Chananyah, Mishael and Azaryah*²¹⁵ in an additional attempt to strengthen *R'ma's* position in relation to that of the *Rambam*²¹⁶. He brings a story from b. *Pesachim* 53b in which a Roman Jew named Todos is not excommunicated by the rabbis for encouraging his fellow Jews to eat “helmeted goats” on Passover because he was a “great man.”²¹⁷ Proof of his greatness is that Todos expounds on the story of *Chananyah, Mishael, and Azaryah*, making a *kal v' homer* argument from the plague of the frogs.²¹⁸ Todos states that the three men’s decision to sanctify God’s name rather than to bow down to the statue of Nebuchadnezzar was based on their understanding that if the frogs, which were

²¹³ Teichtal responsum, section 3.

²¹⁴ Teichtal responsum, section 8.

²¹⁵ Daniel 3.

²¹⁶ *Rambam's* position is that a Jew must allow himself to be killed rather than lead a persecutor astray by allowing him to believe that the Jew denies God. *R'ma*, on the other hand, believes that it is permitted to speak with ambiguity (“the language of two faces”) in a place of danger.

²¹⁷ b. *Pesachim* 53a and 53b. Todos is accused of encouraging his fellow Roman Jews to eat a kind of roasted animal on Passover which could be considered a violation of the prohibition against sanctifying an animal and eating sacred flesh outside the Temple. The *Gemara* is discussing the Mishnah’s statement that in places where it is the custom to eat roast meat on the night of Passover, one may do so.

²¹⁸ Exodus 7:28.

not commanded to swarm “into your ovens and your kneading bowls”²¹⁹ did so, how much more so should they, who are commanded to sanctify God’s name, throw themselves into the fire rather than bow down to the statue.

Teichtal notes that *Rashi* sees Todos’ teaching as an indication that Todos had a problem with the decision of *Chananyah*, *Mishael* and *Azariah* to give up their lives. *Rashi* comments that a Jew may transgress a prohibition of the Torah in order to save his life.²²⁰ *Rashi*’s interpretation is difficult for Teichtal, because the sin of the three was in public, for which a Jew is obligated to give up his life. Here he cites b. *Sanhedrin* 74b, which states that a Jew is required to give up his life if he commits even a minor sin in public. Teichtal goes on to outline the comments of *Rabbenu Tam*, who notes that the statue of Nebuchadnezzar was a royal statue made to honor himself, not to be worshipped. Because this was the case, the three were not obligated to give up their lives, as *Rashi* explained.

In support of *Rashi*’s position, Teichtal quotes from a responsum of the Sephardic sage R. *Yehuda Ayish*,²²¹ who cites b. *Megillah* 12a, which notes that—although the three men did not prostrate themselves before the statue of Nebuchadnezzar—the other Jews did so. *Megillah* states that the Jews only bowed outwardly to the statue because they feared Nebuchadnezzar.

Teichtal goes on to discuss, using both *Yehuda Ayish* and *Rashi* to *Shir Ha-Shirim* 7:8 that the Jews fell to the ground “with an erect stance and did not bend either

²¹⁹ Exodus 7:28.

²²⁰ Leviticus 18:5. “You shall keep My laws and My rules, by the pursuit of which man shall live.”

²²¹ *Kuntres Ot Berit* on circumcision, appended to his book of responsa, *Beit Yehuda*.

their bodies or their heads, to do the actual act of prostration.”²²² Teichtal quotes *Rashi*’s interpretation of Daniel 3:7. *Rashi* notes that all the peoples “fell down and worshipped” the statue. The use of two verbs to describe the action is a hint, according to *Rashi*, that—although everyone *fell* down—not everyone *worshipped* the statue.

Teichtal’s interpretation of *Chananyah, Mishael and Azariah*’s actions, building on the opinions of *Yehuda Ayish* and *Rashi*, is that the men did not act to obey the decree of the Babylonians. They may have “fallen” but they did not “worship.” Their actions could have been interpreted in two ways by the Babylonians. Teichtal reiterates that this is not the case, however, with the purchase of baptismal certificates. By showing such a certificate to a non-Jew, the Jew is “like one who admits to them that he acknowledges their religion, Heaven forefend.”²²³

In this responsum Teichtal walks a fine line between halakhah and reality. Although he could not be more clear in his insistence that the purchase of baptismal certificates is forbidden—especially if they were not purchased under actual duress—he goes out of his way to find sources from tradition which allow him to fashion an argument that leniency may be called for.

Teichtal’s discussion of the story of *Chananyah, Mishael, and Azariah* as portrayed by the Talmud and the *rishonim* leaves the reader feeling confused. Why did the three feel it necessary to give up their lives, when it may not have been necessary? What should happen to those Israelites who did bow down to the statue of Nebuchadnezzar? Was this really idolatry, or just showing fealty to a powerful ruler? What did these Israelites believe—in their hearts—about their actions? Even if

²²² Teichtal responsum, section 9.

²²³ Teichtal responsum, section 11.

Nebuchadnezzar's intention was for his statue to be worshipped, might the way in which the Israelites "fell down" indicate one thing to the Babylonians and another to themselves?

This discussion gives the reader a window into what Teichtal and his colleagues might have felt during the terrible time in which this responsum was written. Rabbi Teichtal's responsum illustrates the complexity of motives that may underlay a particular action. Using classical halakhic argumentation, Teichtal searches for different angles and various lines of authority through which halakhah can be viewed. Teichtal's references to earlier persecutions—and what Jews had to do in order to survive—establish the context for his argument. He tries mightily in this responsum to view the actions of Jews who purchased baptismal certificates through the lenses of empathy as well as pragmatism. Teichtal's concern that such Jews not be pushed away from the community signals his hope and belief that the Jewish community—in some form—would survive.

Chapter 3: The Judgment of a *Qatlanit* When the Former Husband Died in the Shoah: A Responsum by Rabbi Yekutiel Yehuda Halberstam

Background

The end of World War II saw a flood of weddings among newly liberated Jews.²²⁴ In the months after the war approximately three thousand weddings were performed and two thousand children were born.²²⁵ Survivors often married people from their former communities, or those with whom they had shared experiences in the Holocaust. These weddings were a combination of joy and sorrow, providing an opportunity to recall the family members who were no longer living—the parents, siblings, husbands, wives, and fiancés of those about to be married.²²⁶ Although these weddings were tinged with sadness and grief, these new families were essential for the renewal of the individuals involved as well as for the Jewish people.²²⁷

Rabbi Yekutiel Yehuda Halberstam was deeply involved in these weddings, officiating at many, leading grooms to the *huppah*, and instructing brides whose mothers had died concerning the laws of family purity.²²⁸

The large number of weddings in the wake of the Holocaust gave rise to several halakhic issues, including that of *agunot*.²²⁹ Another marriage-rated halakhic issue which arose after the Holocaust is that of the *qatlanit*, or the “murderous wife.”

²²⁴ Farbstein, 354-355.

²²⁵ Farbstein, 354-355.

²²⁶ Farbstein, 354-355.

²²⁷ Farbstein, 355.

²²⁸ Farbstein, 355.

²²⁹ *Agunot* are women whose husbands are missing but have not been declared dead, and who are unable to remarry. Farbstein, Glossary.

Biographical Information

Rabbi Yekutiel Yehuda Halberstam was born in Galicia in 1904. He was a descendant of Rabbi Chaim of Sanz, author of *Divrei Chayim*. Prior to World War II Rabbi Halberstam was the rabbi of Klausenberg in Transylvania. During the war, Rabbi Halberstam and his entire community were taken to Auschwitz, where his wife, eleven children, and most of his community were murdered. After the Warsaw Ghetto uprising, Rabbi Halberstam was among a group of workers sent to clean up the ruins of the ghetto. From Warsaw he was taken on a death march to Germany, where he was liberated from the Feldafing camp.²³⁰

After the liberation of the camps, Rabbi Halberstam worked tirelessly to help survivors. He was concerned with both the spiritual and physical states of his fellow camp inmates, leading services and helping to establish a fund for survivors. Rabbi Halberstam did not criticize those who had lost faith as a result of the Holocaust, but urged them not to continue the Nazi destruction by abandoning their religion. In a sermon on the second day of Rosh Hashanah, a year and a half after liberation, Rabbi Halberstam pleaded with his congregation:

Holy Jews! Listen to the pained voice of the Divine Presence which refuses to be comforted for its children who are gone—for the many survivors who are no longer children of Hashem and who are barely recognizable as Jews. My brothers, let us return to our Father in Heaven! Let us become once again Jews worthy of being called children of God! Let us take upon ourselves the yoke of His kingdom! Only then will Hashem's promise be fulfilled through us:

“And your children shall return to their border.” (Jer. 31:16-17)²³¹

²³⁰ Farbstein, 579.

²³¹ Farbstein, 598.

At one High Holy Day service after liberation Rabbi Halberstam led prayers with fervor, weeping and adding Yiddish words from his heart. When asked why he did so, he responded: "I must do this so that the congregation relearns what prayer is."²³²

Rabbi Halberstam addressed the tremendous depression and guilt of many survivors.

When the Messiah comes and we merit the true redemption, a prosecuting angel will surely tell the Almighty to redeem only those who remained strong even when they were in trouble. But God will respond, "During the days of killing they were all considered good Jews, whether or not they served Me, and all were delivered up to be destroyed, killed, and annihilated. Now that the time for redemption has come, should they not be considered Jews?"²³³

Rabbi Halberstam devoted much time and energy to arranging and officiating at weddings of survivors.

I am the father of the bride here; these are my daughters. Is it conceivable that I would let them be matched up with someone who is not suitable to be my son-in-law...?²³⁴

Rabbi Halberstam viewed his efforts as part of what had to be done to renew the Jewish community in the wake of the Holocaust.

We are toiling in this with genuine devotion. After all, it is a tremendous mitzvah because everyone is naked and destitute, with broken spirits and shattered heart...left alone, a marriageable bereaved man here, and a marriageable lonely woman there, young in days. The danger is great and the destruction terrible, and when, with God's assistance, we help them come together in the bond of marriage in accordance with the law of Moses and Israel, we have already built a faithful home to heal our people.²³⁵

²³² Farbstein, 432.

²³³ Farbstein, 603.

²³⁴ Farbstein, 357.

²³⁵ Farbstein, 357.

The issue of *agunot* was one which concerned Rabbi Halberstam, and he served on one of the special rabbinical courts established in the Displaced Persons (DP) camps²³⁶ to free women whose husbands were unaccounted for after the war.²³⁷

Rabbi Halberstam came to the United States, where he reestablished the yeshiva of Sanz-Klausenberg Chassidut in New York, as well as other *yeshivot* around the world. He was particularly interested in the education of girls. At the Fohrenwald DP camp he founded a network of girls' schools which had more than 250 students. Rabbi Halberstam counseled the girls, and wrote a weekly "Letter to the Girls" in which he discussed the weekly Torah portion and Jewish laws. On Shabbat he taught the girls himself in the *beit midrash*, sitting behind a curtain. On Yom Kippur he gave each girl the blessing which fathers give their children.²³⁸

Rabbi Halberstam was the Rebbe of the Klausenberger Chassidim both in Israel and in the United States, and responded to halakhic questions. Late in his life he moved to Israel, where he founded Kiryat Sanz in Netanya and its related institutions, including the Laniado Hospital. He died in Kiryat Sanz in 1995. After his death his responsa were gathered and published in six volumes.²³⁹

²³⁶ Between 1945-1952 over 250,000 displaced Jews (DP's) lived in camps and urban centers in Germany, Austria, and Italy. These centers were jointly administered by the Allies and the United Nations Relief and Rehabilitation Administration. "Displaced Persons," *Holocaust Encyclopedia*.

²³⁷ Farbstein, p. 376.

²³⁸ Farbstein, p. 697.

²³⁹ *Responsa of the Holocaust*—CD-ROM.

The “Murderous Wife” and the *Qatlanit* in Jewish Law and Tradition

In societies such as ancient Israel the deaths of more than one husband raised suspicion that the woman might be a “murderous wife.”²⁴⁰ The idea that women possess destructive powers first appears in Jewish tradition with the narrative of Tamar and Judah in Genesis 38. This suggests that the authors of the Hebrew Bible shared a belief common in the ancient world—that women have within them mysterious forces which can be dangerous.²⁴¹ The belief extended to twice-widowed women, whose magical, destructive powers were thought to be implicated in the deaths of their husbands.²⁴²

The biblical text²⁴³ tells us that God takes the lives of Tamar’s first two husbands—Judah’s sons Er and Onan— due to their actions. Judah’s reluctance to let his third son Shelah perform the duty of levir²⁴⁴ is based on his fear that Tamar is somehow responsible for the deaths of his older sons. After their deaths—instead of betrothing Tamar to Shelah—Judah tells her:

“Stay as a widow in your father’s house until my son Shelah grows up”—for

²⁴⁰ Jewish law has no concept of a murderous husband, and a man may marry as many times as he wishes, even if one or more of his wives has died. Avraham Grossman, *Pious and Rebellious: Jewish Women in Medieval Europe*, Translated from the Hebrew by Jonathan Chipman (Waltham, Massachusetts: Brandeis University Press, 2004), 263.

²⁴¹ Ancient peoples believed in magical forces, both hostile and healing. The Bible condemns the Babylonians for relying on magic (Isa. 43:9) and sorceresses are denounced in Ezek. 13:17-23. Ex. 22:17 says that a woman who practices witchcraft should be condemned to death—a punishment not proscribed for male sorcerers (Deut. 18:10, Mal. 3:5). The Hebrew Bible condemns alien cults that permeated Israel and that encouraged sorceresses such as Jezebel (2 Kings 9:22). Joseph Dan, “Magic,” *Encyclopedia Judaica*.

²⁴² Grossman, 262-263.

²⁴³ Genesis 38:6-10.

²⁴⁴ The duty of a man to marry the widow of his brother if the brother dies without leaving a male heir. The first son from such a union is considered to be the son of the deceased husband. Deut. 25:5.

he thought, “He, too, might die like his brothers.”²⁴⁵

Judah sends Tamar to live with her father, not—as he tells Tamar—to wait until Shelah is old enough for marriage, but to protect Shelah from the danger Tamar poses to his life.²⁴⁶

The Bible contains two different ideas about the cause of Er and Onan’s deaths:

(1) the possibility that they were caused by Tamar; or (2) that God killed the brothers because of their own actions. Mordecai Friedman believes that the text tells us that Judah’s belief is in error, and serves as a polemic against the idea that women have destructive, demonic powers.²⁴⁷ As Friedman argues:

Israelite religion—as manifested in Genesis 38—rejected pagan superstition. Death is not caused by diabolic forces or evil sprits. Willful sin causes death. When one is evil in God’s sight, He takes one’s life.²⁴⁸

The sages of the *Bavli*, like their contemporaries in premodern cultures, viewed women as mysterious creatures who were connected with “life-endangering demonic forces.”²⁴⁹ A passage from b. *Berakhot* 51a is illustrative.

R. Joshua b. Levi says: Three things were told me by the Angel of Death. Do not take your shirt from your attendant when dressing in the morning, and do not let water be poured on your hands by one who has not washed his own hands, and do not stand in front of women when they are returning from the presence of a dead person, because I go leaping in front of them with my sword in my hand, and I have permission to harm. If one should happen to meet them what is his remedy? Let him turn aside four cubits; if there is a river, let him cross it, and if there is another road let him take it, and if there is a wall, let him stand behind it; and if he cannot do any of these things, let him turn his face away and say, And the Lord said unto Satan, The Lord rebuke thee, O Satan etc., until they have passed by.²⁵⁰

²⁴⁵ Genesis 38:11.

²⁴⁶ Mordechai A. Friedman, “The ‘Killer Wife’ Superstition in Jewish Tradition,” *AJS Review* vol. XV, number 1 (Spring 1990), 28.

²⁴⁷ Friedman, 31-32.

²⁴⁸ Friedman, 32.

²⁴⁹ Friedman, 24.

²⁵⁰ Translation from Jewish Studies Portal, Hebrew Union College. Accessed 1/25/09.

The *Bavli* and midrash-compilations contain a number of references to the murderous wife. A passage from *Tosefta Shabbat* 15:8 illustrates that by the end of the tannaitic period at least some sages subscribed to this idea:²⁵¹

“If a woman married one man and he dies, and a second and he dies, she does not marry a third.” These are Rabbi’s words. R. Simeon b. Gamaliel says, “She does not marry a fourth.”

The discussion is about defining the point at which a woman is seen as a “murderous wife”—after the deaths of two husbands (R. Judah the Prince) or three husbands (R. Simeon b. Gamaliel). The goal of these sages is to protect the lives of the future husbands of such a woman.²⁵²

In b. *Yevamot* 64b, a *sugya* about such women is preceded by a discourse on deaths from circumcision of babies in the same family. The sages discuss whether a woman who circumcises her first two children, who then die, may circumcise a third. The Talmud connects this issue with the danger to a man from marrying a woman who has been widowed two—or three—times, repeating the *baraita* from *Tosefta Shabbat*, 15:8.²⁵³ Two explanations are then given for the prohibition against marrying such a woman. Rav Ashi states that the woman’s bad luck caused the death of her husbands. The woman cannot be allowed to marry again, because her bad luck will put any future husbands in danger. Rav Huna, on the other hand, believes that the deaths of the woman’s first two husbands were due to sexual relations with the woman. Rabban

²⁵¹ Friedman, 35.

²⁵² Friedman, 35.

²⁵³ There is a disagreement in the text between the views of Rabbi (Judah the Prince) and his father, R. Simeon b. Gamaliel. The connection between circumcision and the murderous wife may stem from the biblical story of Moses’ near death and its connection to Zipporah’s circumcision of their son (Ex. 4:24-26).

Simeon b. Gamaliel's position—that the woman may marry a third husband, but not a fourth—is reiterated.

While there are *mishnayot* that discuss the remarriage of women widowed more than once, none refer to the “murderous wife” or impose restrictions.²⁵⁴ The Mishnah does not refer to the “murderous wife” and the Tosefta—while it does refer to such women—does not devise a conceptual category for them.²⁵⁵

In *Bereshit Rabba* 85:5 there is discussion of the Tamar and Judah story which raises the distinction between divination and omen.

R. Eleazar said, “Even though there is no [permissible] divination [*nahash*, see Numbers 23:23] there is a [permissible way of seeing an] omen [*simman*]—For he thought, he too might die like his brothers” (Gen. 38:11).²⁵⁶

Friedman notes that, although divination is forbidden by Torah law,²⁵⁷ this midrash demonstrates that pagan beliefs were seen as less of a threat to rabbinic Judaism.²⁵⁸ Some pagan beliefs and practices were condoned by the rabbis, which seems to be the case with the “murderous wife.” Because it was merely a pagan belief not connected with divination, it was acceptable.

Although there are no extant Geonic responsa which discuss the “murderous wife,” the subject was discussed extensively in the Middle Ages. Two factors account for this: extensive and extended commercial travel by men, and a high number of Jews

²⁵⁴ Friedman, 39.

²⁵⁵ Friedman, 41.

²⁵⁶ Friedman, 42.

²⁵⁷ Lev. 19:26.

²⁵⁸ Friedman, 44.

murdered during the 14th and 15th centuries in anti-Jewish violence.²⁵⁹ It is at this time that a new Hebrew word appears to describe such a woman: *qatlanit*.²⁶⁰

The *Rambam* sees the notion of the *qatlanit* as a superstitious belief grounded in “divination and magic alone.”²⁶¹ The *Rambam* discusses the issue of the *qatlanit* in a responsum²⁶² dealing with levirate marriage and a twice-widowed woman. A local scholar ruled that the woman cannot enter a levirate marriage because she is *muhzeqet* (legally presumed) to be a woman whose husbands die. A second scholar argued that fulfilling the levirate commandment supersedes a prohibition of remarriage for a woman of “presumed” status.²⁶³ *Rambam* is astonished that these scholars failed to acknowledge that there are differences between categories of prohibitions: those forbidden by the Torah, those forbidden by the sages, and things which are “reprehensible” but which are not forbidden. For the *Rambam*, the remarriage of such a woman belongs in the last category.

In this responsum the *Rambam* takes a stand against the idea of the “murderous wife” in Jewish tradition.²⁶⁴ This responsum was written at a time when there was great interest in philosophy and the natural sciences in the *Rambam*’s intellectual universe, and the idea of a “murderous woman” was anathema to a rational view of the world.²⁶⁵ The remarriage of such a woman, he writes is

doubtful danger to life, fear of which is in the way of soothsaying,
divination, conjectures, and fantasies, from which at some time

²⁵⁹ Grossman, p. 264.

²⁶⁰ Friedman, 50.

²⁶¹ Grossman, p. 264.

²⁶² 2:218.

²⁶³ Friedman, 50.

²⁶⁴ Friedman, 51.

²⁶⁵ Grossman, 264-265.

bodies of weak constitution might be affected.²⁶⁶

The *Rambam* notes that in all of Andalusia a woman widowed several times was never forbidden to remarry, and this was particularly so if she was a young woman. The *Rambam* expresses concern that if such women are not allowed to remarry, they will seek sexual satisfaction outside of marriage.²⁶⁷ Although pious men should avoid officiating at the betrothal of such a woman, they should inform her—if she does marry—that she will not be forced to divorce. Maimonides encourages a “legal subterfuge” in which the couple is betrothed in private before two witnesses. After this, the couple should then come before the *Beit Din*, where the judges should not only write the woman’s *ketubah* but also chant the wedding blessings.²⁶⁸ In this way, the woman’s status would be legitimized both in the eyes of society and of her family.²⁶⁹ *Rambam* states that the courts of Rabbi Yitzhak (the *Rif*) and Rabbi Joseph ibn Migash followed the same practice which he outlines regarding a woman widowed multiple times, and that he himself has followed this practice from the time he settled in Egypt.²⁷⁰

The *Rambam* also discusses the issue of whether a twice-widowed woman should be permitted to marry in *Mishneh Torah, Hilkhot Issurei Bi'ah* 21:31:

אשה שנשאת לשני אנשים ומתו, לשלישי לא תנשא ואם נשאת לא תצא,
ואפילו נתקדשה יכנוס...

A woman who was married to two husbands and they (both) die should not marry a third. If she did marry (a third husband) she need not be divorced. Even if he merely consecrated (betrothed) her, he may consummate the marriage.

²⁶⁶ Friedman, 50-51.

²⁶⁷ Grossman, 264.

²⁶⁸ Friedman, 51 and Grossman, 264.

²⁶⁹ This legal subterfuge applies only to a regular, not a levirate, widow. Friedman, 51.

²⁷⁰ Friedman, 51.

This seems to contradict *Rambam*'s views in the aforementioned responsum. Friedman, however, points out that the other type of marriage described in this halakhah—that of an unlearned Israelite with the daughter of a priest—is in the category which *Rambam* himself defines as *mukruh* (“reprehensible”)²⁷¹ rather than completely forbidden, although it still means that such a marriage should not be done.²⁷²

The issue of the *qatlanit* continued to be discussed during the 13th through the 15th centuries. The Black Death (1348-49) and the persecutions and violence of 1391 created many widows, and there was discussion about whether a husband's death in the plague or through martyrdom made his widow a *qatlanit*. Although some sages during this time were hesitant about the correctness of the *Rambam*'s ruling, the majority accepted it. Even with opposition from many authorities, those who wished to marry a *qatlanit* were able to find ways to do so.²⁷³ R. Hasdai Crescas and his pupil R. Joseph Albo agreed that the wife of a man who dies as a martyr is not a *qatlanit*. R. Yitzhak ben Sheshet held that a martyr's death for God's sanctification is a deed deserving of merit, not representative of bad luck.²⁷⁴

The remarriage of a widow is strongly opposed in the *Zohar*, the major 13th century work of Jewish mysticism. According to the *Zohar*, the deceased husband's spirit continues to live within his wife, and engages in a struggle with her new husband. If the deceased husband wins the fight, the living husband will die. If the second husband wins the struggle, the soul of the first husband will leave his wife and wander aimlessly

²⁷¹ Maimonides, Commentary to the Mishnah, *Sanhedrin* 7:4.

²⁷² Friedman, 52-53.

²⁷³ Grossman, 266.

²⁷⁴ Grossman, 266.

in the world.²⁷⁵ If the wife does not remarry, the soul of her deceased husband resides in Paradise, where he waits for her to die, at which time he escorts her there.²⁷⁶

Ashkenazic scholars of the 13th century expressed conflicting views on the *qatlanit*, influenced by the worldview of the surrounding Christian society as well as the increasing influence of folklore, which held that women could possess demonic powers.²⁷⁷ During the 14th and 15th centuries this resulted in numerous accusations against women whose magical powers were alleged to have cause harm to people, livestock, and harvests.²⁷⁸ The Hasidei Ashkenaz, living in this atmosphere, expressed opposition to the marriage of a woman who had been widowed twice. *Sefer Hasidim* mentions the *qatlanit* a number of times, primarily with the view that the *qatlanit* was a real danger to a potential husband. One such reference states that a man who marries a *qatlanit* will be held accountable for his blood, which will be shed if he marries her.²⁷⁹ There are, however, lenient positions in *Sefer Hasidim* regarding the *qatlanit*. A man is permitted to marry a widow who has children by her deceased husband, and she is not considered a *qatlanit*. Another ruling states that a woman is not deemed a *qatlanit* until she has been widowed four times, a return to the more lenient position of R. Simeon b. Gamaliel in the Tosefta.²⁸⁰

R. Asher ben Yehiel (the *Rosh*), the great Ashkenazic scholar of the late 13th and early 14th centuries who migrated to the Iberian peninsula, strongly opposed marriage to

²⁷⁵ Grossman, 267.

²⁷⁶ Grossman, 267.

²⁷⁷ Grossman, 271.

²⁷⁸ Grossman, 272.

²⁷⁹ Grossman, 269.

²⁸⁰ Grossman, 269.

an alleged *qatlanit*. He believed that a man who does marry such a woman should be forced to divorce her, because she is dangerous to him.²⁸¹

The leniency of 15th century Ashkenazic scholars toward the *qatlanit* is clear in a responsum²⁸² of R. Israel Isserlein which is mentioned by Rabbi Halberstam in the responsum we will analyze more closely in this chapter. In response to a question about the practice of allowing a *qatlanit* to marry, which apparently had been permitted by several scholars, Isserlein reiterates that the practice should be avoided. He argues, however, that there are reasons for leniency.

The first of Isserlein's reasons for leniency is the small number of Jews and the necessity of establishing new Jewish families.²⁸³ Next, Isserlein quotes a verse from Psalms 116:6: "God protects the simple," suggesting that even a person who acts in a foolish way will have God's protection from harm. Finally, he argues that it is important to prevent women—especially young women who have been widowed twice—from becoming *agunot* if they are unable to remarry. Women not permitted to marry could be forced into bad conduct.²⁸⁴

R. Jacob Weil and R. Moshe Mintz, German scholars who lived after the *Rosh*, could not find any compelling reasons why some of their contemporaries ruled leniently regarding the *qatlanit*. The comments of these scholars tell us that many Ashkenazic scholars did permit marriage to a *qatlanit*.²⁸⁵ It is possible that the worsening violence

²⁸¹ Grossman, 269. This is a clear difference with the *Rambam* and an example of how the *Rosh* brought to Spain the halakhic and religious ideas he acquired during a lifetime in Germany.

²⁸² *Sefer Terumat ha-Deshen*, 211.

²⁸³ Isserlein lived after the Black Death.

²⁸⁴ *Sefer Terumat ha-Deshen*, 211.

²⁸⁵ Grossman, 271.

against Ashkenazi Jews during this time, coupled with deaths from the Black Plague, encouraged scholars to rule leniently regarding the *qatlanit*. Since marriage at a young age was common in this period, it was not unusual for a woman to be widowed twice.²⁸⁶ This was a period of increased belief in folklore which ascribed magical powers to women, and it is noteworthy that Ashkenazi scholars as a whole did not express greater strictness regarding the *qatlanit*.²⁸⁷ They may, in fact, have ameliorated harsher stances in response to the increasing numbers of deaths in their communities.

As we have seen, the law which Halberstam inherited regarding the *qatlanit*—as developed and applied throughout Jewish history—was far from monolithic.

Analysis of the Responsum

The responsum is dated the 8th of *Tammuz*, 1970, and begins with a summary of the facts of the case. The husband of a woman who was married prior to World War II was taken to a work camp where the inmates died violent deaths or contracted life-threatening illnesses. The woman's husband died (not clear if he died at the camp or at home), and she remarried. A month after the wedding her second husband died as well. Some time after this, acquaintances of the second husband confronted a relative of the woman, demanding to know why they had allowed her to marry the second husband, who was already known to be dangerously ill before the war. The question before Rabbi Halberstam is whether the woman is permitted to marry for a third time.

Halberstam begins by stating that he will examine the prohibition of the *qatlanit* in toto. He refers to Rabbi Judah the Prince's position in the Mishnah that there is a legal presumption for two marriages. He notes that *Tur Even Ha-Ezer* 9 states that a

²⁸⁶ Grossman, 271.

²⁸⁷ Grossman, 272. Many of these women were prosecuted as witches.

woman who has been married to two husbands who have died may not marry a third man who is already gravely ill.²⁸⁸ The *Tur*—building on the opinion of his father the *Rosh* who prohibited it—states that a man who marries such a woman brings danger on himself. Based on these two major scholars as well as on the *Perishah* and the famous post-*Shulhan Arukh* code *Levush*, Halberstam writes that although in general there is a legal presumption that a woman is a *qatlanit* after three marriages, there may be grounds for greater strictness (in defense of the husband)—as a result of which a given woman should be presumed a *qatlanit* after only two marriages.

Halberstam then reconstructs the history of the halakhah regarding the *qatlanit*, beginning with b. *Yevamot* 64a. He notes that if a man and woman are married for ten years without children divorce is permitted, and he must remarry another woman and his first wife is free to remarry.²⁸⁹ In 64b the *Bavli* identifies the mishnah's perspective with that of R. Judah the Prince in the *Tosefta*—that if two babies died of circumcision, the third baby born is not be circumcised. Halberstam notes that he will attempt to clarify the positions of the *rishonim* on the issue of a woman widowed twice—specifically, why the law follows Rabbi to the effect that a woman who has lost two husbands is forbidden to marry a third.

In section *bet* Halberstam discusses Isserlein's responsum on the *qatlanit*,²⁹⁰ noting that both Isserlein and the *Or Zarua*²⁹¹ follow the rule of Judah the Prince that a

²⁸⁸ The *Tur* notes that although there may be danger to the man in such a marriage it is not forbidden. If the third husband is aware that the woman's two prior husbands died, she will get the *ketubah* if they divorce. The *Perishah* (Yehoshua Falk, a 17th c. commentator) writes that a woman is legally presumed to be a *qatlanit* after two of her husbands have died.

²⁸⁹ Mishnah *Yevamot* 6:6, found on b. *Yevamot* 64a.

²⁹⁰ *Sefer Terumat ha-Deshen*. See p. 73 of this paper.

woman is a *qatlanit* after two husbands have died. This follows from *Yevamot* 64b and from the Talmudic example of Abaye, who married a woman whose two husbands had died and then died himself. Abaye apparently saw the two previous deaths as a matter as to which there might be a mere cause for concern, and thus proceeded with the marriage.²⁹² However, Isserlein observes that “it is a daily occurrence” that third marriages, even to twice-widowed woman, can result in long, happy marriages with children. Halberstam goes on to note that the rabbis who prohibited a twice-widowed woman from marrying a third time were concerned about the danger to the third husband. He again refers to Isserlein, who quotes Psalm 116:6: “God protects the simple.”

Halberstam lists several scholars who are not strict regarding the *qatlanit*, including *Benyamin Ze'ev*,²⁹³ and the *R'ma*,²⁹⁴ and notes that in the present time we see many scholars and pious ones who do not subscribe to the law of the *qatlanit*, and no one challenges them. They, too, rely on the knowledge that “God protects fools.” The *Batei Din* do not prevent or invalidate such marriages.

In section *gimmel* Halberstam cites the *Mishneh Torah, Hilkhot Issurei Bi'ah* 21:31, which states that a woman may not marry a third husband if her first two husbands have died. If she does marry a third time, however, her third husband is not compelled to divorce her. Karo, in the *Shulhan Arukh Even Ha-ezer* 9:1, chooses to follow *Rambam* on this point. Halberstam points out that *R'ma* does not gloss this ruling, which means that he likely agrees with Karo. Writing in his *Darkei Moshe* commentary on the *Tur*, *R'ma* noted—as Isserlein had earlier—that every day we see such marriages in which the

²⁹¹ 13th c.

²⁹² Isserlein does not mention that Abaye dies.

²⁹³ Greek, 14th c.

²⁹⁴ Responsum 20:2

man lives a long time and which produce sons and daughters. Halberstam next brings the opinion of the *Maggid Mishneh*²⁹⁵ who rules that a twice-widowed woman should not marry a third time, but that if she does her husband should not divorce her. Halberstam then brings opinions from the *Rashba* and the *Rivash*. The former states that if such a woman marries a third time her husband is not required to divorce her.

In section *vav*²⁹⁶ Halberstam raises the issue of the relationship between levirate marriage and the *qatlanit*. He brings the biblical story of Tamar and Judah's sons from Genesis 28, quoting Judah's words after the death of Tamar's second husband (his son Onan): "Lest he, too, die like his brothers." He then brings a responsum of the *Rambam* in which the latter holds that the rule of the *qatlanit* does apply to levirate marriage, which Halberstam finds astonishing in light of other sources that indicate it does not.²⁹⁷ Halberstam cites words from Gen. 42:36: "Joseph is no more," which show that a legal presumption is established when something happens three times,²⁹⁸ while another source says on the basis of Gen. 38 that the legal presumption in connection with the *qatlanit* is two times. Halberstam links this to the one who says that the determination of the *qatlanit* is from her womb, not from her *mazal*. There is disagreement, as in the Talmud, about which of these is correct.

²⁹⁵ Commentary on the *Mishneh Torah* by Vidal of Tolosa, published in Constantinople in 1509.

²⁹⁶ Sections of the responsum not containing details of legal argumentation that advance the overall argument of the responsum or which touch on related albeit tangential questions, have been omitted.

²⁹⁷ #218; see pp. 69-70 of this paper.

²⁹⁸ In this verse Jacob says that Joseph and Simeon are gone, and he worries that Benjamin, too will disappear. If something happens to Benjamin, then there would be a *hazakah*.

In section *zayin* Halberstam continues the discussion about whether Tamar was a *qatlanit*. Halberstam attempts to show, using *Ramban* to Genesis 38:11 and b. *Yevamot* 34b that Tamar was actually a virgin, because she did not have sexual intercourse in a way that would facilitate conception (*bi'ah she'lo k'darkah*). If Tamar had only had intercourse “*she-lo k'karkah*” with Judah’s sons she could not be a *qatlanit*. Since Judah saw that she was a virgin, he did not separate from her after having intercourse with her, since there was no danger of her being a *qatlanit*.

In section *yod*²⁹⁹ Halberstam mentions the *Rif*’s omission of the reasons of “bad luck” and “womb” vis-à-vis the *qatlanit*,³⁰⁰ although he does state in his codification of *Ketubot* that a woman who has been widowed twice is not fit to marry. The *Rosh* wrote “is not permitted to marry” rather than the *Rif*’s more lenient “is not fit to marry”; meaning that it is completely forbidden for such a woman to marry a third time—the danger to the husband is severe and the prohibition total. This is in contrast to the *Rif* and the *Rambam*, according to whom the concern about the *qatlanit* is simply a mere “concern.” *Tosafot* (b. *Ketubot* 43b, s.v. *ta'ama*) appear to share the views of the *Rif* and the *Rambam*.

The next section (*yod-bet*) emphasizes that the *Rif*, the *Rambam*, the *Rashba*, *Rabbi Avraham min Ha-Hur* and the *Rivash* all agree that if a man marries a *qatlanit* he should not divorce her. Halberstam discusses the concern in b. *Yevamot* 64b with the number of family members who must be afflicted with an illness before it is deemed hereditary. The Talmud states that there must be three cases of leprosy or epilepsy before a man can refuse to marry a woman from this family. This is contrasted with the *qatlanit*,

²⁹⁹ See fn. 283.

³⁰⁰ *Rif* to *Ketubot* 15a.

for whom some scholars allow two deceased husbands to establish this legal category. In any event, once married a third time the man cannot divorce his wife on this basis. Halberstam states that the only way that marriage to a *qatlanit* could be forbidden would be on grounds of superstition such as the fear of even numbers and of uncovered liquids. There is no danger to the third husband's life, unlike the danger of circumcision also discussed in *Yevamot*. The majority of scholars, notes Halberstam, rule that whether or not it is permissible to marry a *qatlanit*, it is not permissible to divorce her once married. Halberstam concludes the discussion by noting that the *rishonim* did not completely forbid a *qatlanit* to marry a third time, as the danger to the husband is not clear: there is only concern. While scholars such as the *Or Zarua* decided in favor of excessive caution, they were not accustomed to withhold approval of such marriages.

Section *tet-vav* deals with the relationship between the law of the *qatlanit* and a woman who is divorced by her husband because of her bad temper. Halberstam states that two husbands will divorce her because her temperament is not conducive to living within marriage. This is therefore not like the case of the *qatlanit*. In the next section (*yod-zayin*) Halberstam summarizes: the *rishonim* may forbid marriage to a *qatlanit*, but this is more from mere concern than from any real danger to the husband. This is certainly not an absolute prohibition. Even were it an absolute prohibition, it is only rabbinic (as opposed to a biblical prohibition). But even according to the *Rosh* and the decisors who held, like him, that there is deal danger to the husband, it is nevertheless not clear that this is a biblical prohibition.

Section *yod-het* discusses whether a man may marry a woman who has been widowed three or even four times. Halberstam cites *Sefer Hasidim* 478, which states that

a woman is not a *qatlanit* unless her husband dies immediately after their marriage. He then cites the *Zohar, Mishpatim* 102a, which notes that there is an element of danger in marrying *any* widow.

Halberstam discusses the issue of the length of time between the marriage and the husband's death further in section *yod-tet*. He contrasts the situation of Tamar's husbands, who seemingly died soon after their marriages to her, with that of a man who dies after having been married to the same woman for many years. He notes that it is not reasonable to label a woman a *qatlanit* who has been married for many years.

Halberstam cites a responsum by the Gaon of Rogatchov, who notes that devilishness in the woman's womb or her bad *mazal* can only be implicated in her husband's death if he dies immediately after the marriage. Otherwise, there is no connection between the two.

Halberstam states once again (section *kaf-bet*) that the majority of the *poseqim* did not completely forbid a third marriage to a woman whose first two husbands had died. He returns to the notion that the halakhah essentially follows the Toseftan view of R. Simeon b. Gamaliel (that a woman is a "murderous wife" after the deaths of three husbands) and not the stricter view of Judah the Prince (that a woman is a "murderous wife" after the deaths of two husbands).

In the circumstances of the case that precipitated the writing of this responsum, the woman lived with her first husband for many years. He died from typhus, as did many of the people in concentration camps. The second husband, according to witnesses, suffered from a dangerous sickness he contracted prior to the war. Halberstam analogizes this to a case found in the Responsa *Avnei Tzedek*, in which a woman whose first husband

died of a terrible disease and whose second husband died of old age was not considered to be a *qatlanit*.

Halberstam (section *kaf-gimmel*) concludes the responsum by ruling that the woman is permitted to marry any man who presents himself to her. He understands that there are people who are apprehensive about permitting this marriage, and once again cites *Tzafnat Pa'anach*, who mentions that the husband lived with his wife for many years before his death, thus obviating any concern that his wife was a *qatlanit*.

Halberstam writes that he did not choose to rule on this issue, but had to do so because the great *aharonim* “avoided most of the teachings regarding this.” He hopes that his “humble opinion” will be acceptable, given the fact that he is weak and does not have the proper books in order to research this issue properly. This is a matter, Halberstam writes, which “concerns a daughter of Israel, a lonely widow,” and so he permits her to marry a third time. He brings the responsum to a close—appropriately—with the words of Jeremiah 7:34, which are found in the wedding blessings: “May we hear the voice of mirth and the voice of gladness.” This, he writes, is the voice of the herald of good news—the time when Jerusalem (and the Jewish people) will be restored. He concludes the responsum, saying “Amen, may God’s will be done.”

Conclusion

In this responsum Rabbi Halberstam reviews the halakhah on the issue of the “murderous wife,” noting that although marriage to a woman who is widowed twice or more is not encouraged, it is rarely forbidden. Although there is disagreement on the number of times a woman must be widowed in order to fall under this category, the

halakhah is in agreement that—once the woman is married—her husband need not divorce her.

It is clear from the history of the halakhah on this issue that even in times when superstitions about women's demonic powers were more prevalent— such as the Middle Ages in Western Europe— rabbis went out of their way to give such women the benefit of the doubt. Because they viewed marriage as necessary for the good of the family and the Jewish community, they made it possible for women widowed three times to remarry.

Rabbi Halberstam's views in this responsum are consistent with this history. He, too, is reluctant to wade into these halakhic waters— somewhere between that which is forbidden and that which is “reprehensible,” or that which is allowed, and by others, tacitly tolerated. His conclusion is consistent with what we know about his work after the Holocaust: he tried, wherever possible, to bring comfort to those such as this “lonely widow” who could strengthen the remnants of *Am Yisrael*. Halberstam was helped in this by the fact that the evolution of the halakhah itself moves in different directions. The message Halberstam brings in this responsum is that—however difficult times may have been after the Holocaust—rebuilding the Jewish people had to be done, and that choosing a halakhic path that made that possible is to be preferred over a halakhic path that would make that difficult or impossible.

Chapter 4: Is Atonement Required for Delivering over a Kapo, If the Delivering-over Causes the Death of the Kapo? A Responsum by Rabbi Yisrael Welz

This responsum concerns a Jewish inmate in Buchenwald who was beaten so severely by a kapo that the inmate was unable to work. When an SS officer demanded to know who had administered the beating, the inmate identified the kapo. As a result of the kapo's identification by the Jewish inmate the kapo was imprisoned, beaten, and subsequently died. The question confronting Rabbi Welz is whether the inmate who gave the SS officer the kapo's name falls into the halakhic category of the *moser*, and therefore must atone for his action.

Biographical Information

Rabbi Yisrael Welz was born in the Hebrew year 5647 (1886-1887). He was a student of Rabbi Yehuda Leib Sofer, the author of the *Shevet Sofer*. Rabbi Welz was Chief Judge of Tinnye, and moved to Budapest to head a yeshiva after World War I. In addition to being a communal rabbi, he shared responsibilities as a *poseq* with Rabbi Yonatan Steif, and was known as a brilliant halakhic authority. He was sent to a labor camp during World War II and after the war returned to Budapest, where he helped to rebuild the Jewish community. Rabbi Welz established a rabbinical court for Hungary that focused on the issues of *agunot*.³⁰¹ When the Communist government of Hungary banned religious communities that were independent of the state, Rabbi Welz emigrated to Israel, where he continued to write responsa. He became one of Jerusalem's most eminent halakhic authorities. Rabbi Welz died in Jerusalem in 1973. His responsa were

³⁰¹ *Agunot* are women whose husbands are missing but have not been declared dead, and who are unable to remarry. Farbstein, Glossary.

edited after his death by his grandson, and published in a collection called *Divrei Yisrael*.³⁰²

Background and Discussion of the *Moser* in Jewish Tradition

Kapos

The question addressed to Rabbi Welz concerns the “handing over” of a kapo in Buchenwald. Kapos were prisoners in concentration and work camps who were put in charge of groups of inmates, and without whom the camps could not have functioned. Kapos were an integral part of the system of “command and obedience” instituted by the Nazis in the camps, which ensured that orders were carried out and which often set one group of inmates against another.³⁰³ In the beginning of the war kapos were often German political prisoners, convicts, former storm troopers or foreign legionaries.³⁰⁴ Many inmates were made kapos in part because they “knew how to wield a club.”³⁰⁵ Jews were made kapos only in camps where Jews constituted the majority of prisoners.³⁰⁶

The kapos were part of a command structure designed to make sure that every order was carried out, and which held the kapos responsible for completing tasks assigned to them and to those under them. Kapos were the heads of groups of laborers, and although they themselves did not have to perform the assigned tasks, they were responsible to see that those in their work groups did so.³⁰⁷ Kapos determined whether an

³⁰² *Responsa of the Holocaust*-CD-ROM.

³⁰³ Herman Langbein, *Against all Hope: Resistance in the Nazi Concentration Camps, 1938-1945*, translated by Harry Zohn. (New York: Paragon House, 1994), 25.

³⁰⁴ Eugen Kogon, *The Theory and Practice of Hell: The German Concentration Camps and the System Behind Them*, (New York: Farrar, Straus and Giroux, 2006), 56.

³⁰⁵ Kogon, 56.

³⁰⁶ Irving J. Rosenbaum, 157.

³⁰⁷ Langbein, 25.

inmate could be transferred to a better work detail, and could be bribed to make this happen.³⁰⁸

Kapos and other inmates who were members of the command structure wore special armbands, received privileges not available to other inmates, had complete power over their charges, and had the protection of the camp administrators.³⁰⁹ If a kapo or other inmate member of the command structure killed someone under his command there were usually no consequences, as long as the death was promptly reported.³¹⁰ Kapos who abused their power, however, were vulnerable to the whims of the SS, especially those kapos who were particularly vicious toward their fellow inmates to the point where inmates were unable to work. Such kapos could lose their special status and the protection of the SS, and were then subject to inmate justice. In a number of cases, such kapos were murdered by gangs of fellow inmates.³¹¹

Heinrich Himmler, the head of the SS, described the system of command and obedience in the camps of which the kapos were an integral part:

These approximately 40,000 German political and professional criminals...are my 'non-commissioned officer corps' for this whole kit and caboodle. We have appointed so-called kapos here; one of these is the supervisor responsible for the thirty, forty, or a hundred other prisoners. The moment he is made a kapo, he no longer sleeps where they do. He is responsible for getting the work done, for making sure that there is no sabotage, that people are clean and the beds are of good construction...So he has to spur his men on. The minute we're dissatisfied with him, he is no longer a kapo and bunks with his men again. He knows that they will kill him during the first night...Of course, we can't do it with Germans alone, and so we use a Frenchman as a kapo in charge of Poles, a Pole as a kapo over Russians, playing one nation off against another.³¹²

³⁰⁸ Kogon, 81.

³⁰⁹ Langbein, 25.

³¹⁰ Langbein, 26.

³¹¹ Langbein, 26.

³¹² Himmler's address to Wehrmacht generals on June 21, 1944, quoted in Langbein 26.

The Moser

A *moser* is a person whose actions cause another Jew to be placed into the hands of non-Jews, thus putting the life of the Jew who has been handed over at risk.³¹³ To “hand over” a fellow Jew in this manner is seen as equivalent to killing that person, even if the “handing over” is not the direct cause of death.³¹⁴ The prohibition against “handing over” a fellow Jew is so strong that Jews must observe it even if Jewish lives will be spared by handing the person over. The *Rambam* writes that

...if gentiles told [a group of Jews]: “Give us one of you to kill. If not, we will kill all of you,” they should allow themselves all to be killed rather than give over a single soul to [the Gentiles].³¹⁵

The *Rambam* goes on to distinguish this situation from one in which non-Jews single out a specific Jew to be “handed over.” He notes that:

If the person is obligated to die like *Sheva ben Bichri*³¹⁶ they may give him over to them, although, at the outset, this instruction is not conveyed to them. If he is not obligated to die, they should allow themselves all to be killed rather than give over a single soul to [the Gentiles].³¹⁷

Rambam’s rulings reflect a conflict in rabbinic opinion about whether it is sufficient that a person be singled out in order to warrant being turned over, or whether that person must also be deserving of death according to Jewish law anyway.³¹⁸

This conflict plays out in two situations outlined in the Talmud *Yerushalmi Terumot* 8:10-12. In the first case, non-Jews demand that a group of Jews walking along

³¹³ A person who hands over Jewish property can also be considered a *moser*.

³¹⁴ Farbstein 187-188.

³¹⁵ *Mishneh Torah, Hilkhoh Yesodei ha-Torah* 5:5.

³¹⁶ The rebel who calls for mutiny against King David in 2 Samuel 20.

³¹⁷ *Mishneh Torah, Hilkhoh Yesodei ha-Torah* 5:5.

³¹⁸ Melech Westreich, “One life of Another in the Holocaust: A Singularity for Jewish Law?” *Theoretical Inquiries in Law: Judgment in the Shadow of the Holocaust*, Vol. 1, Number 2, Article 4. (Tel Aviv University: The Cegla Center for Interdisciplinary Research of the Law, 2000), 20.

a road hand over one of their members to be killed, or else the entire group will be killed. Rabbi Shimon ben Lakish says that even if they will all be killed they should not hand over even one Jew. They should only hand over someone deserving of death, like *Sheva Ben Bichri*. Rabbi Yohanan states that the person should be turned over even if he is not deserving of death.

The second situation discussed in the *Yerushalmi* concerns a man wanted by the Roman authorities who flees to Lydda to seek refuge with Rabbi Yehoshua ben Levi. When soldiers surround the town and threaten to destroy it unless the man is turned over, Rabbi Yehoshua persuades the man to give himself up. Elijah refrains from revealing himself to Rabbi Yehoshua, whereupon R. Yehoshua undertakes fasts to get Elijah to appear. Elijah facetiously asks him if he should continue to reveal himself to an informer. Rabbi Yehoshua responds that he acted according to the law. Elijah answers: “Is this the law of the pious?”³¹⁹

In this case it is an official authority rather than a gang demanding that a Jew be turned over. The demand to turn the Jew over was in force before he fled to Lydda, and he came to the city as a fugitive. His crime was a violation of Roman, rather than Jewish law. The story shows that—although Rabbi Yehoshua acted in accordance with Jewish law—he did not act in a truly pious manner.³²⁰

The *Rambam* rules in accordance with Rabbi Shimon ben Lakish, setting two preconditions for handing someone over: the person must be singled out by name by those demanding that he be turned over, and he must be otherwise deserving of death. The *Rambam* notes that although this is according to Jewish law, it is not according to the

³¹⁹ Summary of *Yerushalmi* is from Westreich, 20.

³²⁰ Westreich, 20-21.

law of piety.³²¹ In this case, piety refers to the idea in rabbinic literature that—while adherence to halakhic norms is a necessary component of piety—true piety requires adherence to moral demands beyond the law’s requirements.³²²

R. Moses Isserles discusses the two situations from the *Yerushalmi* in his glosses to SA *Yoreh De’ah* 157:1, without deciding in favor of either Resh Lakish or Rabbi Yohanan.³²³ Polish rabbis after Isserles interpreted his views to be consistent with those of the *Rambam*.³²⁴

Rabbi Joel Sirkes (the *Bach*, 1561-1640) in *Bayit Hadash*, his commentary on the *Tur*, distills the following principles regarding handing someone over:

- 1) If the wanted person deserves death according to the laws of Torah, like *Sheva ben Bichri*, he should be handed over.
- 2) If the wanted person would be punished by death according to non-Jewish law but not by Jewish law, he may be handed over. This, however, is not the way of the pious.
- 3) If the wanted person deserves death according only to non-Jewish law, but it is not clear whether those who demand his surrender will kill him, it is permissible to hand him over, even according to the way of the pious.³²⁵

In all other cases, Rabbi Sirkes holds that a person may not be turned over, even if this would result in mortal danger, great suffering, or financial loss to others.³²⁶

Rabbi David Ha Levi (the *Taz*, 1586-1667) takes a similar position, stating that a Jew who has transgressed and rebelled against the non-Jewish ruling authorities must be handed over.³²⁷ He specifically singles out those engaged in forgery, a crime that greatly

³²¹ Westreich, 21.

³²² Walter S. Wurzbarger, “Piety and the Pious,” *Encyclopedia Judaica*.

³²³ Westreich, 21.

³²⁴ Westreich, 21.

³²⁵ Westreich, 21.

³²⁶ *Beit Hadash, Tur Yoreh De’ah* 157:4. Quoted in Westreich, 21.

³²⁷ *Turei Zahav, Yoreh De’ah* 157:8.

concerned Polish Jewry in the 16th-18th centuries.³²⁸ Forgery was not only a crime in the view of Polish authorities, but a crime Jews believed deserved censure as well as punishment by the Jewish community.³²⁹ For HaLevi, it is not only permitted but necessary to hand such a person over, as he has violated the laws of the non-Jewish authorities and through his criminal activity puts the Jewish community in danger. This is the case, according to HaLevi, even if the crime is not yet known to the non-Jewish authorities.³³⁰ Welz cites HaLevi's comment in this responsum.³³¹

HaLevi wrote his commentary during a time when there was close cooperation between Jewish law courts and Polish courts. Westreich believes that HaLevi's comment on *Yoreh De'ah* 157:8 derives from this period.³³²

Outside of the exceptions previously cited, the *moser* has often been regarded as “the basest of the base” in Jewish tradition.³³³ The *Rambam* is clear in his contempt for Jews who betray other Jews to Gentile authorities (aside from the exceptions previously mentioned), adding them to the list of those who will suffer the severest of punishment:

[they] do not have a portion in the world to come. Rather, their [souls] are cut off and they are judged for their great wickedness and sins forever.³³⁴

This prohibition against “handing over” applies even when the Jew involved

...is a wicked person who commits sins, and even if he causes one irritation and discomfort.³³⁵

³²⁸ Westreich, 22.

³²⁹ Westreich, 22.

³³⁰ *Turei Zahav*, *Yoreh De'ah* 157:8

³³¹ *Turei Zahav* to SA *Yoreh De'ah* 157.

³³² Westreich, 22.

³³³ Farbstein, 188.

³³⁴ *Mishneh Torah*, *Hilkhos Teshuvah* 3:6.

³³⁵ *Mishneh Torah*, *Hilkhos Chovel Umazik* 8:9.

Analysis of the Responsum

Welz uses two primary texts from the *Shulhan Arukh* to form the basis of his argument: *Yoreh De'ah* 157 and *Hoshen Mishpat* 388. He draws on the commentaries to these sources, as well as on Maimonides' *Mishneh Torah*, *Hilkhot Yesodei HaTorah* chapter 5. He cites several relevant responsa. Rabbi Welz uses biblical texts throughout the responsum, showing a deep knowledge of the Hebrew Bible. He makes several references to texts from the Talmud *Bavli*.³³⁶

Welz begins the responsum by establishing the date, the Shabbat of *parashat Ekev*, 1955. He makes reference to Deut. 3:20 : "...and they, too, have taken possession of the land that the Eternal One Your God is assigning them. " Welz marks the importance of this date, noting that it is seven years since the Jews received their inheritance in the Israeli War of Independence in 1948.

Welz indicates that this question was sent to him by Rabbi Abraham Meir Israel, who at this time lives in Brooklyn. A man approached Rabbi Israel with the question which is addressed in this responsum, and Rabbi Israel forwarded the question to Welz, seeking his wisdom and judgment. The responsum continues as Welz mentions his poor health and the difficulty he has in writing, as his hands are weak and his eyesight is poor. Welz uses two biblical verses to indicate his surprise at being asked to respond to the question, as well as to downplay his qualifications to do so.³³⁷ His words express

³³⁶ References include: From the Bavli: *Hullin* 95b, *Kiddushin* 20b, *Megillah* 12a, *Sanhedrin* 46b, 74b. Responsa include: *Sefer Nidchai Yisrael*, *Chafetz Hayim*, chapter 7, *Rivash*, *siman* 4 (R. Isaac b. Sheshet), *Beit Yehuda* (Yehuda Ayish). Hebrew Bible: Gen. 16:13, 21:16, 31:37; Deut. 3:20 and 16:16; Isaiah 1:6; *Kohelet* 12:13-14; Daniel 3:4-7. Also: *Beit Yosef Hoshen Mishpat*, *siman* 205.

³³⁷ Gen. 21:6: "You have played a joke on me." Sarah's response to learning that she will have a child. Gen. 31:37: "You have gone through all my things, what have you found?"

humility, indicating that he has little to offer and that Rabbi Israel could certainly have gone to scholars in his own community. With God's help, however, Welz says that he will do his best to respond to the question. Like those who must appear before God three times a year bearing their own gifts,³³⁸ he will bring the gift of his thinking on this question. Welz writes that in responding to the question he will not engage in *pilpul*, but stick to the matter of law "according to what I am shown from the heavens..."³³⁹

Welz describes the situation that gave rise to the responsum in simple, powerful, and terrifying detail. In describing the extent and severity of the bruises inflicted on the prisoner by the kapo Rabbi Welz quotes Isaiah 1:6: "From head to foot no spot is sound: all bruises, and welts, and festering sores—." When the kapo—a fellow Jew—dies as a result of the SS beating, the prisoner is afraid for his conscience, because he has told the SS officer the identity of the person who administered the beating.³⁴⁰

Does he not bear guilt upon himself, like the case of the *moser*? Does he require atonement for this?³⁴¹

Rabbi Welz writes that "His Honor"³⁴² uses the opinions of the *Rambam* and the *Kesef Mishneh* in chapter 5 of *Hilkhos Yesodei HaTorah* to state that we do not hand someone over to the Gentiles unless the person is already liable for death,³⁴³ as was *Sheva*

Jacob is addressing Laban after Laban searches his things looking for the household gods Rachel has stolen.

³³⁸ Deut. 16:16.

³³⁹ Welz responsum. This expression is a rhetorical device found in responsa as far back as the Geonic period.

³⁴⁰ The prisoner's "handing over" was the cause of the kapo's death.

³⁴¹ Welz responsum.

³⁴² This is most likely a reference to Rabbi Israel, who had written to Rabbi Welz.

³⁴³ *Rambam's* position is summarized on p. 86 of this paper. The *Kesef Mishneh* to *Rambam* comments on the case of the man who flees the Romans and takes shelter in Lydda. He states that since the sages of the Talmud are divided over how to handle the situation, and since human life is in question, we should follow *Rambam's* position that

ben Bikhri. He also mentions that Rabbi Israel cited Isserles to *Yoreh De'ah* 157. He then brings another biblical verse: “Have I not gone on seeing after I saw”³⁴⁴ to indicate that he went on searching and found another source: an opinion in *Or Sameach*³⁴⁵ on why the people of Judah turned Samson over to the Philistines although he was not liable for death.³⁴⁶ This would appear to contradict the aforementioned passage in *Rambam*. The *Or Sameach* notes that Samson was turned over to the Philistines because he was a danger to the people. In this way, Samson’s behavior is like that of the person discussed in Isserles’ gloss to SA *Hoshen Misphat* 388 who defrauds his fellow and whose behavior puts the community in danger.³⁴⁷

Welz acknowledges the problem raised by the conflict between the biblical text in Judges and the *Rambam*’s opinion. He notes that that *Or Sameach*’s words are an argument on behalf of the inmate who had turned over the kapo. Were the situation being evaluated before the fact, he could hand over the kapo and be completely exempt from the need for any kind of atonement. But since the kapo was already turned over to the SS and the case is being evaluated after the fact, the question is presented as to whether the inmate who turned him over is a *moser* and therefore requires atonement. Welz cites a gloss of Isserles to *Hoshen Mishpat* 388, where he notes that a man who is beaten by his fellow is permitted to go before the Gentiles to file a complaint, even though this may result in great harm to the person who beat him. Welz goes on to cite

we can only turn someone over under the following conditions: if he is both singled out by name and liable for death.

³⁴⁴ Gen. 16:13

³⁴⁵ *Or Sameach* is a commentary on the *Mishneh Torah* written by Rabbi Meir Simcha HaKohein (1843-1926).

³⁴⁶ Judges 15:12.

³⁴⁷ Welz’s quote from the *Or Sameach* ends with Judges 15:11: “You knew that the Philistines rule over us; why have you done this to us?”

responsa of the *R'ma*³⁴⁸ and *Havot Yair*³⁴⁹ which “went on at length” that such handing over is only allowed in “the time of his wrath...”³⁵⁰ Welz returns to the facts of the situation, noting that

this particular kapo was habituated to raise his hand against the children of Israel, to strike with an evil fist, and he did not recoil before anyone, and there was no one who could stand against him. And he was so accustomed to doing this evil that it appeared to him as if it was permitted.³⁵¹

Here, Welz shifts the argument to address the harm the kapo had already done—and would likely have continue to do—to the Jews under his command. In doing so, he alludes to b. *Yoma* 86b. In a passage that discusses repentance on Yom Kippur, the rabbis state that if one has already confessed to a sin on one Yom Kippur, he should not confess the same sin on another Yom Kippur. This is not the case, however, if a person repeats the same sin. This kind of person is like a dog which “returns to his vomit,”³⁵² and will continue to repeat the same sin. In this way, the kapo “was accustomed to [do] this evil which had come to seem permitted to him.”³⁵³ Aside from the tendency of the repeated sinner to continue his behavior, there is another reason—notes Welz—for the one who was beaten to be acquitted. This is because he did not give the SS officer the name of the kapo who beat him for the purpose of handing the kapo over for death, but only in order to save himself. If he had not done so, the SS officer would have killed

³⁴⁸ *Siman* 88.

³⁴⁹ A 17th century German rabbi.

³⁵⁰ Welz responsum. This refers to the heat of the *moser*'s anger at the injury inflicted on him by the *nimsar*, and not at another time when he is calmer.

³⁵¹ Welz responsum.

³⁵² Proverbs 26:11

³⁵³ Welz responsum.

is giving the name of one's beater in order to save one's life considered "handing over," except when it is done only with the intention to cause harm to the other. Welz returns to the aforementioned responsum of the *R'ma*³⁵⁵ to note that the *R'ma* sides with acquitting the person who "hands over," because he did so not to harm the person who harmed him, but to save his own life. Welz urges his readers to examine this responsum to see the proof for themselves. He ends this section by asking his readers to consult the codification of Mordecai b. Hillel to the chapter *Ha Gozel Batra*.³⁵⁶

Welz writes that since the man who was beaten by the kapo told the SS officer what happened to him "from worry, lest he will be seized by the hands of the evil Germans"³⁵⁷ is he exempt from having to perform atonement for his action. Here Welz brings in the lawless nature of the Nazi regime and the absence of legitimate authorities to whom the prisoner might go with his complaint.

For there in the camps of the evil ones—may their names be blotted out—there was not law in the land about to whom to turn. And even in the hour of his beating, there was not one to say "Stay your hand in your chest," because he was afraid: Who would tell the evil taskmaster what to do, all the more so after the act. And because he can say "I intended to save myself," so that he should not be seized without telling them all that the kapo had done to him; that he had beaten him with murderous blows. Because of his wounds he couldn't go to work, and he was compelled to (do) this.³⁵⁸

Welz quotes *Kohelet* 12:13-14,³⁵⁹ noting that "the sum of the matter, when all is said and done," is that the kapo brought his fate upon himself because of his actions, which caused the deaths of many Jews.

³⁵⁵ *Siman* 88

³⁵⁶ Rabbi Eliezer of Toulouse, *Mordecai*, *siman* 193.

³⁵⁷ Welz responsum.

³⁵⁸ Welz responsum.

³⁵⁹ *Kohelet* 12:13. "God will call every creature to account for everything unknown, be it good or bad."

Next, Welz introduces a new argument—that the kapo who beat the inmate belongs in the legal category of the *rodef*.³⁶⁰ Having already established that the kapo was particularly vicious, had already killed numerous Jews and would kill more, Welz transforms the question from one of atoning for handing the kapo over to one of obligation. The inmate was obligated, under the law of the *rodef*, to prevent future murders by this kapo.³⁶¹ Welz ends this section by repeating his conclusion: “That a God-fearing beaten man does not have any guilt on him, and does not need atonement.”³⁶²

Welz concludes the responsum with self-deprecating language similar to that which he used at the beginning. He notes that, because of his health, he is not in a position to fully analyze all the sources that can be brought to bear on this subject. Welz answered Rabbi Israel’s *she’elah*, he writes, only to ease the mind of the former inmate.

It is clear that Welz’s responsum, written at least ten years after the events described, was produced in an effort to ease the conscience of the former inmate. In writing that he will not engage in *pipul*—whether due to his poor health or to his desire to give a direct and clear answer— Welz gives an answer about which there can be no doubt. This Jew—although barely alive in the worst possible circumstances—nonetheless acted according to the long tradition of Jewish law and custom in giving the SS officer the name of the kapo. Going beyond the basic legal question underlying the responsum regarding the *moser*, Welz brings in the law of the *rodef* to show that the

³⁶⁰ The law of the *rodef* has its roots in b. *Sanhedrin* 73a. . It states that a person who is about to commit murder may be killed himself if—after a warning to stop—continues his pursuit of the victim. This is one of the three circumstances in which a Jew must violate the commandment not to take another life.

³⁶¹ Rabbi Welz cites a source for this point which he urges his readers to examine: *Darkhei Teshuvah*, *siman* 157, note 49.

³⁶² Welz responsum.

inmate was, in fact, commanded to hand the kapo over. Thus not only was the inmate blameless under the law of the *moser*; he was commanded to do what he did under the law of the *rodef*!

One can imagine this former inmate, years after the fact— his conscience torn because he turned over the kapo—seeking counsel from his rabbi. Rabbi Israel sends the *she'elah* to his colleague, Rabbi Welz, knowing both of Welz's renown as a halakhic authority, and his experience as an inmate in a labor camp. In this responsum Welz provides an answer that does not radically interpret the relevant sources but gives the former inmate the halakhic and psychological comfort of knowing that his handing-over of the kapo to the SS was not only blameless but in fact commanded by the most authoritative voices in classical Jewish law.

Conclusion

The four responsa analyzed in this thesis provide a glimpse of some of the many difficulties which confronted Jews during the Holocaust and in its aftermath. In responding to the questions raised by these terrible circumstances, rabbis were guided not only by halakhah and its reinterpretation over the centuries, but by compassion for what their fellow Jews—and in most cases they as well—had suffered.

Rabbi Weinberg's responsum on whether secular lectures and concerts may be held in a synagogue carefully outlines the relevant halakhah on these issues and demonstrates how it has been reinterpreted over the centuries to reflect changing circumstances. This responsum demonstrates Rabbi Weinberg's concern for the morale of his fellow Jews. He discusses the importance of having a place where German Jews could have their spirits lifted by hearing lectures concerning the brave actions of their ancestors, which would give them courage in a terrible time. In ruling that—under carefully outlined circumstances—secular lectures may be held in a synagogue Rabbi Weinberg is able to stay on the path of halakhah while responding to the circumstances of his community. He also demonstrates his understanding of the challenges facing rabbis during this time, when he distinguishes between an issue for which a rabbi must be prepared to lose his job (secular concerts in the synagogue) and one concerning which a rabbi should not risk losing his job (religious concerts in the synagogue).

Rabbi Teichtal's responsum concerns whether it is permissible for a Jew to purchase a baptismal certificate during a time of “persecutory decrees,” and whether Jews who have purchased such certificates may be called up to the Torah for an *aliyah*. Although Rabbi Teichtal states that it is absolutely forbidden to purchase such

certificates—particularly if they were not purchased under immediate duress—he tries to find ways within halakhah and tradition to be lenient. He decides to be silent and do nothing when such Jews are called to the Torah. Rabbi Teichtal’s concern that neither Jews who have purchased such certificates nor their children be pushed away from the community is both poignant and practical.

Rabbi Halberstam’s responsum, written after the Holocaust, concerns a twice-widowed woman who wishes to marry a third time. The question is whether this woman is in the halakhic category of the *qatlanit*, or “murderous wife.” Rabbi Halberstam carefully traces the history of both halakhah and practice regarding women widowed two and three times, and uses the conflicting opinions of numerous sages to state that the woman may marry a third time. Although he expresses reluctance to become involved with this issue on which there is disagreement, he does so in order to give comfort to “a daughter of Israel, a lonely widow.” Rabbi Halberstam’s ruling is consistent with his tireless efforts after the Holocaust to aid in the establishment of new Jewish families.

Rabbi Welz’s responsum discusses whether atonement is required for a concentration camp inmate who gave an SS officer the name of the kapo who beat him, resulting in the kapo’s murder by the SS. The question which gave rise to this responsum arose at least ten years after the events themselves. Rabbi Welz’s answer goes beyond the question asked by the former camp inmate in order to provide psychological comfort to the man. Not only does Rabbi Welz demonstrate how the halakhah regarding the *moser* supports the actions of the former inmate, he also introduces the argument of the *rodef* to show that the inmate—through his action—prevented Jewish deaths which

would have been caused by this kapo in the future. Viewed through the lens of the law of the *rodef*, the inmate was arguably even religiously obligated to do what he had done.

These responsa demonstrate that

Despite the horrifying ordeal of the Jews, to which the questions posed to the rabbis bear compelling witness, the halakhic process continued...the rabbinic responsa of the Holocaust era are a uniquely sober witness to the life of religious Jewry. Their primary subject is not the Holocaust, nor the persecutors, nor even the victims, but the halakhah.³⁶³

In their answers to these difficult questions, the rabbis went beyond halakhah to consider the psychological needs of the community. They saw beyond the horrors of their time to a future in which the Jewish community could continue. Those rabbis who survived continued to support and rebuild *Am Yisrael*. They responded to the questions which continued to arise from the Holocaust, they established centers of Torah study, and were living reminders of the miracle of the endurance and survival of the Jewish people. As Rabbi Halberstam wrote:

The biggest miracle of all is the one that we, the survivors of the Holocaust, after all that we witnessed and lived through, still believe and have faith in the Almighty God, may His name be blessed. This, my friends, is the miracle of miracles, the greatest miracle ever to have taken place.³⁶⁴

³⁶³ Robert Kirschner, *Rabbinic Responsa of the Holocaust Era*, (New York: Schocken Books, 1985), 11.

³⁶⁴ Yaffa Eliach, *Hasidic Tales of the Holocaust: The First Original Hasidic Tales in a Century*, (New York: Vintage Books, 1988), 193.

Bibliography

- Assis, Yom,
Melammed, Renee,
Ben-Sasson, Haim. "Anusim." In *Encyclopedia Judaica*, CD-ROM edition, version 1.0. Israel: Judaica Multimedia, Ltd., 1997.
- Berenbaum, Michael and
Skolnik, editors "Wine." In *Encyclopedia Judaica*, CD-ROM edition, Version 1.0. Israel: Judaica Multimedia, Ltd., 1997.
- Dan, Joseph "Magic." In *Encyclopedia Judaica*, CD-ROM Edition, Version 1.0. Israel: Judaica Multimedia, Ltd., 1997.
- Dictionary.com *Dictionary.com Unabridged*, v. 1.1. Random House, Inc. <http://dictionary.reference.com/browse/holocaust>.
- Eliach, Yaffa *Hasidic Tales of the Holocaust*. New York: Vintage Books, 1988.
- Farbstein, Esther *Hidden in Thunder: Perspectives on Faith, Halachah and Leadership during the Holocaust*. Jerusalem: Old City Press, 2007.
- "Building amidst Devastation: Halakic Historical Observations on Marriage during the Holocaust." In *The Impact of the Holocaust on Jewish Theology*, edited by Steven Katz. New York: NYU Press, 2005.
- Grossman, Avraham *Pious and Rebellious: Jewish Women in Medieval Europe*. Translated by Jonathan Chipman. Waltham, MA: Brandeis University Press, 2004.
- Friedman, Mordechai "Tamar, a Symbol of Life: The "Killer Wife" Superstition in the Bible and Jewish Tradition." *The Journal of the Association for Jewish Studies*, Vol. XV, #1 (1990):23-61.
- Friedman, Theodore "Jewish Attitudes Toward Christianity in the Middle Ages." In *Encyclopedia Judaica*, CD-ROM Edition, Version 1.0. Israel: Judaica Multimedia, Ltd., 1997.

- Helfand, Jonathan "Halakhah and the Holocaust: Historical Perspectives." In *Perspectives on the Holocaust*, ed. by Randolph L. Braham, 93-103. Boston: Kluwer/Nijhoff Publishers, 1983.
- Isserlein, Israel *Sefer Terumat ha-Deshen*, 211. Hebrew Union College, Jewish Studies Portal.
- Ha-Kohen, Meir
ben Shabbatai
(*Shakh*) To *Hoshen Mishpat* 388.5. Hebrew Union College, Jewish Studies Portal.
- Kogon, Eugen *The Theory and Practice of Hell: The German Concentration Camps and the System Behind Them*. Translated by Heinz Norden. New York: Farrar, Straus and Giroux, 2006.
- Kirschner, Robert *Rabbinic Responsa of the Holocaust*. New York: Schocken Books, 1985.
- Langbein, Herman *Against All Hope: Resistance in the Nazi Concentration Camps, 1938-1945*. Translated by Harry Zohn. New York: Paragon House, 1994.
- Machon Netivei Ha'
Halacha-Maagrei Meyda
Toranyim *Responsa of the Holocaust*. CD-ROM. Ramat Gan: Responsa Project, Bar-Ilan University, 2006.
- Michman, Dan *Holocaust Historiography: A Jewish Perspective*. Portland, Oregon: Vallentine Mitchell, 2003.
- Oshry, Ephraim *Responsa from the Holocaust*. New York: The Judaica Press, 2001.
- Perfet, Isaac ben
Sheshet (*Rivash*) *Sh'eilot u-T-Shuvot Ha Rivash, siman dalet*.
- Rambam *Mishneh Torah: Hilkhhot Chovel U'mazik* 8:9; *Hilkhhot Issurei Bi'ah* 21:31; *Hilkhhot Ta-aniut* 5:14; *Hilkhhot Tefilah* 12:5-7, 11:7; *Hilkhhot Teshuvah* 3:6; *Hilkhhot Yesodei Ha-Torah* 5:5-7. Responsum 2:218. Hebrew Union College, Jewish Studies Portal.

- Rosenbaum, Irving J. *The Holocaust and Halakhah*. New York: Ktav Publishing House, Inc., 1976.
- Shulhan Arukh* *Orah Hayim* 151:1, 151:11, 560:3. *Yoreh De'ah* 157:1; 157:2. *Even Ha-Ezer* 9:1. *Hoshen Mishpat* 388. Hebrew Union College, Jewish Studies Portal.
- Shapiro, Marc B. *Between the Yeshiva World and Modern Orthodoxy: The Life and Works of Rabbi Jehiel Jacob Weinberg: 1884-1966*. Portland, Oregon: The Littman Library of Jewish Civilization, 2004.
- Sperber, Daniel "Jewish Attitudes Towards Christianity in the Talmud." *Encyclopedia Judaica*, CD-ROM edition, version 1.1. Israel: Judaica Multimedia, Ltd., 1997.
- Ta-Shma, Israel and Tal, Shlomo "Responsa." In *Encyclopedia Judaica*, CD-ROM edition, version 1.1. Israel: Judaica Multimedia, Ltd., 1997.
- Talmud *Bavli* *Berakhot* 51a; *Hullin* 95b; *Megillah* 12a, 28a, 21b; *Pesachim* 53a, 53b; *Sanhedrein* 46b, 74b; *Yevamot* 64a, 64b; *Yoma* 86b. Hebrew Union College, Jewish Studies Portal.
- Tosefta* *Shabbat* 15:8. Hebrew Union College, Jewish Studies Portal.
- Tur* *Even Ha-Ezer* 9. Hebrew Union College, Jewish Studies Portal.
- Turei Zahav* *Yoreh De'ah* 157:8. Hebrew Union College, Jewish Studies Portal.
- Twersky, Isadore *A Maimonides Reader*. Springfield, NJ: Behrman House Publishers, Inc., 1972.
- United States Holocaust Memorial Museum "Anti-Jewish Legislation," "Berlin," "DP Camps," "Germany: Jewish Population in 1933." *Holocaust Encyclopedia*. <http://www.ushmm.org/wlc/en/>.

- House Publishers, Inc., 1972.
- United States Holocaust Memorial Museum “Anti-Jewish Legislation,” “Berlin,” “DP Camps,”
 “Germany: Jewish Population in 1933.” *Holocaust Encyclopedia*. <http://www.ushmm.org/wlc/en/>.
- Washofsky, Mark *Jewish Living: A Guide to Contemporary Reform Practice*. New York: URJ Press, 2001.
- Westreich, Melech “One Life for Another in the Holocaust: A Singularity for Jewish Law?” *Theoretical Inquiries in Law: Judgment in the Shadow of the Holocaust*. Vol. 1, Number 2, Article 4. (July 2000).
- Woolf, Jeffrey R. Review: *The Legacy of Yehiel Jacob Weinberg: Between the Yeshiva World and Modern Orthodoxy: The Life and Works of Rabbi Yehiel Jacob Weinberg: 1884-1966*, by Marc B. Shapiro. In *Azure* (Spring 2000).
- Wurzbürger, Walter “Piety and the Pious.” In *Encyclopedia Judaica*. CD-ROM edition, version 1.1. Israel: Judaica Multimedia, Ltd., 1997.
- Zimmels, Hirsch and Derovan, David “Isaac ben Sheshet Perfet.” In *Encyclopedia Judaica*. CD-ROM edition, version 1.1. Israel: Judaica Multimedia, Ltd., 1997.