

AN ANALYSIS OF *OR NOGAH* -
REFORM RESPONSA IN EARLY
NINETEENTH CENTURY GERMANY

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Summary: An Analysis of *Or Nogah* –Reform Responsa in Early Nineteenth Century Germany, by Sharon Jill Litwin Hoberman

Or Nogah is a collection of responsa written by Eliezer Liebermann in 1818. These responsa were written as a justification and defense of the changes made by the early reformers in Berlin and Hamburg Germany. Liebermann uses Tanakh, Talmud, Codes and responsa to create his defense. Most of his justification is not adequate for a successful defense of the changes. Instead, Liebermann points a finger at the traditional community and demonstrates their inflexibility.

This thesis analyzes three of Liebermann's responsa. The goal of the thesis is to understand the context in which Liebermann used traditional texts and to demonstrate an awareness of the realities that Liebermann was contending with in the new liberal Jewish community in Germany. This thesis can contribute to the study of the early Reform movement. It demonstrates one man's personal struggle of integrating modernity and tradition in Jewish practice and belief.

The thesis is divided into five chapters. The first chapter is an introduction to the historical context and milieu in which Liebermann was living. The three middle chapters each focus on one responsum from *Or Nogah*, 1. May prayer be recited in the vernacular? 2. May musical instruments be played in the synagogue on the Sabbath? 3. Is the new Hamburg Temple creating factionalism in the Jewish community? The final chapter is a conclusion. The materials used in this thesis included an array of sources, including, Tanakh, Talmud, Codes, Responsa, historical secondary sources and of course, the primary text, *Or Nogah*. An extensive "Works Cited and Consulted" can be found at the end of the thesis.

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ברוך אתה יי אלהינו מלך העולם שחיינו וקימנו והגיענו לזמן הזה.

Introduction

Historical Background

Revolution, enlightenment and emancipation characterize the hundred-year period between the late eighteenth and late nineteenth century in Europe. Napoleon's ideology of liberty and equality spread throughout the continent, and influenced communities in all aspects of life, from politics and education to religion.

"Emancipation, or at least the promise of emancipation, stimulated a process of acculturation among the Jews."¹ The Jewish community, especially in Germany where German culture was particularly anti-Semitic, sought to adopt a variety of secular cultural traditions, including philosophy and aesthetics. By assimilating German culture, the Jewish community thought they could avoid and lessen the anti-Semitism that had been a dominant force in Germany. The Jews believed that the more like the Germans they became, the less "other" they would be perceived by them. "A Jewish Reform movement came into existence, that intended first of all to reform the traditional liturgy, but then soon aimed to adapt Judaism to the surrounding society, which was determined by Christianity."² Whatever impelled the Jewish reform movement, whether the desire for liturgical change or the impetus to be more like their Christian neighbors, there is no doubt that the changes could only take place in the context of an enlightenment. Because the culture of enlightenment "was predicated on a resolve to create both a universe of discourse and a structure of

¹ Mendes-Flohr, Paul and Judah Reinharz, The Jew in the Modern World, Oxford University Press, New York, 1980 p. 140.

² Heuberger, Rachel, "Orthodoxy versus Reform, The Case of Rabbi Nehemiah Anton Nobel of Frankfurt a. Main," Leo Baeck Institute Yearbook 36 1991, p. 45.

social bonds that [were] open to all men regardless of class, national origin, or religious affiliation, it was said that for the first time in European history the Jews could participate in non-Jewish culture without the stigma of apostasy."³ Thus, Jews could also assimilate into German culture while still retaining their own faith and religious beliefs.

Israel Jacobson, with the help of other lay leadership, introduced innovations in Berlin in 1815 because he desired to blend the new ideas of enlightenment and modernity with traditional Judaism. He desired especially, to blend the German language and the aesthetic beauty of the organ and choirs with the words of traditional Jewish liturgy. Three years later, the Hamburg Temple was dedicated, marking the introduction of reforms into the Hamburg Jewish community. The reforms were "little more than desultory aesthetic innovations in Jewish ritual, innovations that were intended to make Jewish liturgical services more decorous and becoming. Undoubtedly, these early reformers had in mind such comments as those made by J.H. Campe. In his much acclaimed *Dictionary of the German Language* (1808), he urged that German [culture] be expunged of foreignisms..."⁴, which certainly included the use of the Hebrew language in prayer and preaching. The changes made in the early reform worship service included prayer in the vernacular, the omission of the repetition of the *Amida*, the inclusion of musical instruments (specifically the organ) in the synagogue worship service, the Sephardic pronunciation of Hebrew, and the reading of the Torah without traditional

^{3 3} Mendes-Flohr, Paul and Judah Reinharz, *The Jew in the Modern World*, Oxford University Press, New York, 1980 p. 140.

⁴ Ibid. 141.

cantillation. Of all of these changes, the organ was the most controversial, although all of them caused an outcry in the traditional Jewish community.

Because of this outcry, Israel Jacobson and other lay leaders knew that they needed a legal defense for their reforms. Apparently Jacobson realized that there would be difficulties with the traditional Jewish community and even before its establishment, "the Hamburg Temple would encounter difficulties and would be condemned as heretical by the old rabbis."⁵ It seems that Jacobson "enlisted the support of Eliezer Liebermann, a man learned in the law but of whom little is known....In his travels Liebermann learned that in Hungary and in Italy there were Rabbis who approved of Jacobson's innovations. Either Jacobson or Liebermann wrote to these Rabbis, namely Aaron Chorin of Arad... Moses Kunitz of Ofen, Jacob Recanati of Verona, and Joseph Chayyim Ben Samun (Shem Tov) of Leghorn"⁶ and enlisted their support. Each wrote a responsum supporting the reforms of Berlin and Hamburg.

In 1818 in Dessau, Germany, Eliezer Liebermann published *Nogah Ha-Tzedek* ("The Radiance of Justice") and its companion volume *Or Nogah* ("Radiant Light"). *Nogah Ha-Tzedek*, a collection of four responsa from the Hungarian and Italian rabbis, introduced legal justifications for many of the innovations established by the reform Jewish community in Berlin. *Or Nogah*, divided into two parts, is Liebermann's own legal defense of the changes introduced by the early reformers followed by an essay in which Liebermann addresses the issue of reform and claims that Judaism has always evolved and changed.

⁵ Graetz, Heinrich, *History of the Jews V5*, Jewish Publication Society, Philadelphia, 1895, p.568.

Very little is known about the man Eliezer Liebermann. It is quite clear from his writings that he is learned in Torah and Jewish text, but he offers little autobiographical information. We know that Liebermann was born in Austria and is the son of Ze'ev Wolf, a rabbi in Hennegau. Heinrich Graetz suggests that Liebermann was a "gambler" and notes "that afterwards he was baptized,"⁷ but the Jewish Encyclopedia retorts that "there is nothing positive to corroborate this assertion."⁸ "It is at this point that confusion has arisen among modern Jewish historians"⁹ concerning the publication of *Nogah Ha-Tzedek* and *Or Nogah*. The details of the publication of *Nogah Ha-Tzedek* and *Or Nogah* are not definitive. Michael Meyer suggests that Liebermann was commissioned by the reform community in Berlin, who, "under pressure of Jewish opponents and the suspicion of the government [were] prompted to commission a defense of their innovations which would appeal to the canons of Jewish law and custom."¹⁰ Emanuel Schreiber, however, suggests that the books were written in response to the Rabbinical College of Hamburg, whose leadership "published an interdict against the new ritual [of the Hamburg Temple] on account of its innovations, [and] prevailed upon the Senate of Hamburg to close the Temple. The consequence was, that the different rabbinical authorities of Europe were asked by the officers of the new Temple in Hamburg to give their opinions of the justification of these Reforms. These opinions were published by Elieser Liberman [sic], of Austria, who added them to his own

⁶ Weizenbaum, Joseph S., *An Analysis of Nogah Tzedek*, Hebrew Union College- Jewish Institute of Religion, D.H.L. Thesis, Cincinnati, 1962 p. 8.

⁷ Graetz, Heinrich, *History of the Jews V5*, Jewish Publication Society, Philadelphia, 1895, p. 569.

⁸ "Liebermann, Eliezer," *The Jewish Encyclopedia*, , Ktav Publishing House, New York, 1964 p.80.

⁹ Weizenbaum, Joseph S., *An Analysis of Nogah Tzedek*, Hebrew Union College- Jewish Institute of Religion, D.H.L. Thesis, Cincinnati, 1962, p. 8.

¹⁰ Meyer, Michael A., *Response to Modernity*, Oxford University Press, New York, 1988 p. 50.

arguments, under the name 'Nogah Zedek' and 'Or Nogah.'"¹¹ The problem arises in that three of the four responsa "where dates of the composition were furnished, the dates all preceded the dedication of the Hamburg Temple, October 18, 1818."¹² In all probability, Liebermann began working on *Nogah Ha-Tzedek* and *Or Nogah* soon after the Berlin reforms were instituted by Jacobson. It was with the dedication of the Hamburg Temple that the new reforms¹³ began to be taken seriously by the greater Jewish community.

Immediately after the dedication of the Hamburg Temple, a group of rabbis joined together to pen a response to Liebermann's *Nogah Ha-Tzedek/Or Nogah*. At the time, there were no Orthodox rabbis in Hamburg. "Religious affairs were conducted by three *dayanim* (judges). The first reaction of these *dayanim* was to condemn every innovation in the new Temple without distinguishing between minor ones such as the use of the Sephardi accent and major ones such as the use of the organ. They were able to draw strong support from Rabbis throughout Europe."¹⁴ Twenty-two leading rabbis condemned the Hamburg reforms in a treatise entitled *Eleh Divrei HaBrit* ("These are the Words of the Covenant") (Altona, 1819). They claimed that Liebermann's defenses were based on a "specious reading of *Halakha*" and constituted "a schismatic threat to the unity of the Jewish people."¹⁵ "For the

¹¹ Schreiber, Emanuel. Reformed Judaism and Its Pioneers, Spokane Printing Company, Spokane, Washington, 1892, p. 76.

¹² Weizenbaum, Joseph S., An Analysis of Nogah Tzedek, Hebrew Union College- Jewish Institute of Religion, D.H.L. Thesis, Cincinnati, 1962, p. 8.

¹³ The term "Reform" does not accurately describe the changes made in Berlin, Hamburg and elsewhere. It is not until the late nineteenth century that the term designates what became the movement toward progressive, modern, liberal Judaism. But Jacobson, Liebermann and their contemporary peers are considered the pioneers of early Reform in Germany.

¹⁴ Weizenbaum, Joseph S., An Analysis of Nogah Tzedek, Hebrew Union College- Jewish Institute of Religion, D.H.L. Thesis, Cincinnati, 1962, p. 9.

¹⁵ Mendes-Flohr, Paul and Judah Reinharz, The Jew in the Modern World, Oxford University Press, New York, 1980 p.142.

most part, the rabbis confined themselves to quoting authoritative texts against the innovations of the temple and pronouncing them forbidden...Basically, they were all opposed to any alteration of existing practices.”¹⁶ The response of the traditional Jewish community throughout Europe was negative. There seemed little room for discussion concerning the ever changing times and needs of the Jews of Europe. “The Rabbis of Prague decided that the Hamburg Temple people were neither Jews nor Christians, but individuals without faith, whose prayers were sinful and whose only purpose in introducing Reforms was to make themselves liked among the Christians.”¹⁷

To be sure, Liebermann’s *Nogah Ha-Tzedek* and *Or Nogah* were divisive in the community, but the traditional rabbis’ response in *Eleh Divrei HaBrit* was schismatic itself. “By its failure to acknowledge and adapt to the fact that an ever increasing number of Jews were abandoning Judaism because they found it incompatible with their new sensibilities and priorities,”¹⁸ these rabbis were alienating and dismissing a huge population of the European Jewish community. They even sought to have the Hamburg Temple shut down by a proclamation of the Hamburg Senate, which declared the entire matter to be a strictly Jewish affair and would not issue any decision regarding the new Temple. “The controversy ebbed over the following years and by 1840 the Hamburg Reform Temple had become prosperous enough to expand its premises.”¹⁹

¹⁶ Meyer, Michael A., Response to Modernity, Oxford University Press, New York, 1988, p. 58

¹⁷ Schreiber, p. 79.

¹⁸ Mendes-Flohr, Paul and Judah Reinharz, The Jew in the Modern World, Oxford University Press, New York, 1980 p. 142.

Thesis Methodology and Objectives

Over the course of the past year, I have closely read and extensively analyzed Liebermann's treatise *Or Nogah*, especially the responsa that he wrote to bolster the defenses of Aaron Chorin of Arad, Moses Kunitz of Ofen, Jacob Recanati of Verona, and Joseph Chayyim Ben Samun (Shem Tov) of Leghorn. He bases his work on eight specific claims of traditional rabbis that the changes made in the Reform synagogues were not legitimate in the eyes of *Halakha* and Jewish tradition. Liebermann addresses each claim with specific proof texts from the *Tanakh*, Talmud, codes, responsa and other legal source material. He adds his own commentary and personal opinions to each of his claims. Liebermann himself seems to feel internally divided by the process of a changing Judaism, as he straddles his traditional leanings and enlightenment ideas.

In the following chapters I will discuss and analyze what I consider to be the three most important claims that Liebermann addresses. First, I will look at the question of whether prayer may be recited in the vernacular. I will outline Liebermann's halakhic defense and personal comments, while hypothesizing about his motivations and underlying assumptions about this question. In this case, he offers a compelling defense for prayer in the vernacular, but his own opinion seems to turn the defense on its head. The next chapter will discuss the question of the playing of musical instruments in the synagogue on Shabbat. Liebermann divides this claim into three distinct halakhic arguments, and argues each one through Jewish legal

¹⁹ Seroussi, Edwin, Spanish-Portuguese Synagogue Music in Nineteenth-Century Reform Sources from Hamburg, The Magnes Press, Jerusalem, 1996 p.35.

texts. In this claim though, Liebermann's defense is less compelling, perhaps because the claim itself is much more difficult to defend. Finally, I will look at Liebermann's defense of the claim that the reform community is creating factions within the greater Jewish community, which is prohibited by an injunction in the Babylonian Talmud tractate *Yebamot*. For me, this claim is the most relevant to the historical development of the Reform movement and the most instructive as to Liebermann's personal feelings and motivations in writing *Or Nogah*.

In reading all of the responsa in *Or Nogah* and I have found these three issues to be the most instructive about the sentiments of the Jewish community, both from the reformers' and the traditionalists' perspective. These issues seem to be the most divisive and also the most dramatic. They illustrate the tensions between the reformers' desire for aesthetic change and modern thinking and the orthodox desire for adherence to traditional Jewish practice. In each chapter I will study each of Liebermann's sources, while trying to understand how each text has been used within the circle of Jewish traditional study and if Liebermann is using the source in that same way. I will also suggest other ways in which his sources could have been read to make a more persuasive argument for the legal justifications of the reforms. I hope to demonstrate that while Liebermann had a solid background in traditional Jewish texts, he takes many sources out of context and uses them to promote a liberal agenda.

I also hope to show Liebermann's own apologetic tendencies. Throughout his writings, Liebermann himself gets caught up in the technicalities of his defense and then jolts the reader from the legal defense to the personal opinion. It often seems

that he is not only trying to convince the reader that, for example, there is legal justification for the playing of an organ in the synagogue on Shabbat, but also to convince himself. He will move from the comfort of Jewish legalese into a more moral or ethical tone just at a point where the legal argument seems to be suspect. It seems as if Liebermann is trying to say that he knows that the halakhic validity of what he is saying is questionable, but that the legality doesn't matter as much as the intellectual, enlightened rationale for the change.

It is my goal to expand on Liebermann's discourse and to bring to light the meanings of his sources within the context of his writings. In doing so, I hope to demonstrate that Liebermann's *Or Nogah* is a product of its time and that it can be helpful and relevant in understanding the development of the Reform movement within the context of its traditional background, from its earliest roots.

SOURCES

In order to understand Eliezer Liebermann's *Or Nogah* in context, I utilize a variety of primary and secondary sources. Liebermann himself was quite extensive in his knowledge of the traditional halakhic sources, often quoting them directly or bringing the main idea in a paraphrased statement. Each time Liebermann quotes a traditional source (from the Talmud, Rashi, Tosephot, *Mishneh Torah*, Shulkhan Arukh and the Tur and their commentaries, as well as the responsa of medieval and early modern rabbis), I try to locate the exact source and to cite it as part of the discussion on Liebermann's claims. Sometimes Liebermann's paraphrase or even direct quotation does not match with the source that he claims to be citing. He

sometimes makes a point opposite to that which his source is trying to make. Other times his quote or paraphrase is not as thorough as the original source and other times he uses the source exactly how it was traditionally interpreted. His inconsistency will be discussed throughout the following chapters.

I have also read a wealth of secondary sources in the hopes of understanding the context in which Eliezer Lieberman collected *Nogah Ha-Tzedek* and wrote *Or Nogah*. There are not many studies of Lieberman's work, but Joseph S. Weizenbaum, a candidate for a Doctor of Hebrew Letters degree at Hebrew Union College-Jewish Institute of Religion in Cincinnati, wrote *An Analysis of Nogah Tzedek* in 1962. His work focuses more on the responsa of the Hungarian and Italian rabbis and less on Lieberman's own legal discussion, but it was helpful to me in creating a context for the time period in which *Or Nogah* was written. It seems that halakhic issues surrounding the synagogue changes made in the earliest days of Reform has not been of interest to scholars of Reform Judaism in the twentieth and twenty-first centuries. The Reform movement has found its own legitimacy outside the structure and confines of the *Halakha* as a way of life, and those who study Reform have not felt the need to explain the choices that the movement has made through traditional Jewish legal sources.²⁰

²⁰ Although this has been the trend in Reform for many years, in recent years the movement has developed a new interest in tradition and study. Rabbi Eric Yoffe, president of the UAHC, has called for a return to text study and analysis, for changes in worship that are viewed as a return to traditional styles, and for high levels of adult Jewish literacy. While the Reform movement's attitude toward tradition has shifted, Reform Jewish decisions are not being made solely on the basis of *halakha*, nor are they likely to be.

***Tefillah B'Kol Lashon?*²¹** **Prayer in Any Language?**

The first claim against the reformers was that it is halakhically illegitimate to pray in German (or any other vernacular). Lieberman undertakes a defense of prayer in German and not Hebrew. This is the claim against reform that Lieberman needs to justify the least. From the earliest halakhic sources, prayer in any language is permitted. Lieberman was compelled to write this claim not on the basis of *halakhic* needs, but rather on the basis of *social* needs. In his introduction to the contents of his responsa Lieberman states: "The first claim is raised against any Jew who is found praying most of his prayer in the Ashkenazi language, his sin is doubled: 1. They have left the source of life, the language of our holy tongue that we inherited from our ancestors from when God created the beginning of the work of His hands, and have gone over to the wisdom of a foreign nation's language. 2. It is found in the Talmud and legal decisors that one who changes the form of the *Tefilah* as established by the [Talmudic] sages, has not fulfilled his obligation to pray."²² Lieberman notes that there are two problems raised by those who objected to reformers²³ praying in German and not in Hebrew. German is not the holy tongue and prayer in German demonstrates a move away from the holy language that is both God-given and historically important. The traditionalists claim that praying in German is an error, implying that the Talmud and legal decisors agree that praying in

²¹ Lieberman, Eliezer, *Or Nogah, Helek Alef* p. 2-9.

²² Lieberman, Eliezer, *Or Nogah, Helek Alef* p. 1

²³ A number of objections had been raised by rabbis after Israel Jacobson began to make changes in the Berlin Jewish community. The responsa in *Nogah Ha-Tzedek* and Lieberman's own writings in *Or Nogah* address these objections.

Hebrew is the only correct way to pray. Liebermann knows that these points are not supported in the *halakha* and he is able to defend against the claim. Liebermann's introductory remarks will help to focus his longer claim that prayer in the language of Ashkenaz is allowed and even encouraged by a variety of halakhic sources.

Before studying the text, I think it is important to understand why Liebermann needed to write this defense. As we will see, prayer in the vernacular is not a radical reformation in Judaism, at least from an halakhic perspective²⁴, but it was a major change for the German Jewish community in the early nineteenth century.

Traditionally, Jewish synagogue worship was in Hebrew. The prayers, the reading of the Torah, and the short exposition on the Torah were all recited or spoken in Hebrew. There was an ancient custom of having an Aramaic recitor translate the Hebrew of the Torah text out loud as it was being read in the synagogue. This tradition had fallen into nearly universal desuetude. A German edition of the Five Books of Moses was published for use in Jewish circles by Moses Mendelssohn in 1783,²⁵ but it was probably not used as a substitute for the Hebrew Torah reading in traditional German synagogues. For the traditional Jews, prayer in German was not a legitimate mode for Jewish prayer – the halakhic evidence notwithstanding. By starting with this easy-to-prove claim, Liebermann is in effect “buttering-up” the reader in order to persuade him to accept his other arguments which are halakhically more questionable.

²⁴ This point will be further illustrated throughout the body of this chapter.

²⁵ “Moses Mendelssohn”, Encyclopedia Judaica, CD ROM Edition, Judaica Multimedia Ltd, Text, Keter Publishing House, Ltd.

The first point that Liebermann makes is, in essence the last one that he needs to make. He quotes the Babylonian Talmud at Sotah 36,²⁶ although the accurate citing is Sotah 32a. In Sotah 32a, the Mishnah teaches that the following liturgical texts may be recited in any language: the Sotah text,²⁷ the avowal of the tithe,²⁸ the recitation of the *Shema*, the Prayer, the Grace after meals, the oath of testimony²⁹, and the oath of deposit.^{30a and b} Clearly, the oldest halakhic Jewish source permits the recitation of Judaism's central declaration of belief—the *Shema*—and the *Amidah* (or the “*Shemoneh Esrei* Prayer”) in any language. Liebermann quotes commentary on this passage from Sotah that interprets the intentions of the Mishnah. He tells us that Rashi teaches that the *tefilah* does not need to be recited in the holy tongue because God is merciful to all of us once we learn to direct our hearts. Liebermann then quotes the Tosephot, who explain that it is possible to bless God in any language so

²⁶ Liebermann, Eliezer, *Or Nogah, Helek Alef*, p. 2, Liebermann does not cite whether the passage can be found on Sotah 36a or b.

²⁷ This refers to the oath with which the priest adjures the suspected adulteress (see Numbers 5:19-22).

²⁸ According to the annotations in the Schottenstein Edition of b. Sotah, (*Tractate Sotah v. 2*. R. Hersch Goldwurm, General Editor, Mesorah Publications, Ltd., Brooklyn, NY, 2000,): “the owner of produce grown in the Land of Israel must separate two tithes from each year's crop, in accordance with a three-year cycle. The first tithe that is separated each year is designated for the Levites. The second tithe in the first and second years is designated for consumption in Jerusalem. In the third year, however, the second tithe is not consumed in Jerusalem, but is distributed to the poor. The cycle is repeated every three years, with the exception of the seventh year, when no tithes are taken. The Torah states (Deuteronomy 26:12) that in the year following each three-year cycle (i.e. the fourth and the seventh years), if one has not yet delivered the tithes of the last three years to their rightful destinations, he must do so before Passover. On the last day of Passover he recites the confession of the tithes,” which begins: ‘I have eliminated the holy things from the house.’ This may be recited in any language.”

²⁹ According to the annotations in the Schottenstein Edition of b. Sotah, p.32a² (*Tractate Sotah v. 2*. R. Hersch Goldwurm, General Editor, Mesorah Publications, Ltd., Brooklyn, NY, 2000,): “this refers to a situation where a litigant in a monetary case asks people to give testimony he needs in order to win the case, and they deny knowing the testimony. If the litigant adjures them to confirm their ignorance of the testimony (e.g. he says literally: ‘I place you under oath etc.’), and they repeat their denial or respond ‘amen,’ they have taken what is known as the oath of testimony.”

^{30a} According to the annotations in the Schottenstein Edition of b. Sotah, p.32a³ (*Tractate Sotah v. 2*. R. Hersch Goldwurm, General Editor, Mesorah Publications, Ltd., Brooklyn, NY, 2000,): “This oath is taken by a person who denies being in possession of someone else's money or property. If the claimant adjures him to confirm his position and he repeats his denial or responds ‘amen’, and then confesses to having lied, besides restoring the principal he must pay an additional twenty-five percent and brings a guilt offering.” (See Leviticus 5:20-26; Numbers 5:5-10; b. Shavuot Ch. 5).

long as the blessing is recited with a full heart. Liebermann then quotes the Palestinian Talmud (with no specific reference), but with a strong sense of conviction. He tells us that the Palestinian Talmud (as if in one voice!) explains that blessing God must be done in such a way that you understand Whom you are blessing. The issue of *kavannah* or intention becomes central to Liebermann's defense of prayer in the language of Ashkenaz. It doesn't matter what language one uses or what specific words one says, so long as the intention of one's heart is focused on the Holy One.

The next source that Liebermann uses to bolster his argument is Maimonides *Hilkhot Tefilah* (Laws of Prayer) 1:1-4. Employing both paraphrase and direct quotation, Liebermann tries to establish ancient precedents for individual prayer in any language and in any style:³¹

Maimonides wrote in the Laws of Prayer chapter 1:³²
"And you shall worship *Adonai*, your God." From the oral tradition, they learned that the worship of the heart is the *tefilah*, as it is written: 'to worship God with all of your (plural) hearts.' And the form of the *tefilah* is not from the Torah."

Clearly Liebermann wants to stress Maimonides' unique claim that prayer itself (specifically the *Amida*) is a duty prescribed by the Torah, and also that worship of the heart is the Torah's injunction, which can mean prayer in any form, so long as it comes from the heart.

Liebermann continues to paraphrase Maimonides:

The second *halakha* there: "The obligation is that a man pray every day and tell of the praises of the Holy One Blessed be He, each according to his own strength. The third *halakha*: If he is fluent he may expand his

^{30b} Tractate b. Sotah.32a.

³¹ Liebermann, Eliezer, *Or Nogah, Helek Alef*, p. 3.

³² *Tefilah* 1:1.

supplications and requests and if he is a stutterer, he speaks according to his ability.³³

The Torah does not prescribe a set way for all Jews to pray. Each person was to pray with his own capacity. The particular words are not as important as the effort and desire that a Jew has to praise God. Since the Torah does not specifically prescribe particular prayers and since prayer can be said in any formula each according to the ability and strength of the one praying, the holy tongue is not the only means by which to praise God.

But the absence from the Torah of fixed prayer proved problematic in Jewish history. As Maimonides continued in his explanation as to why Ezra felt it necessary to standardize prayer:

The fourth *halakha*: When Israel was exiled during the days of Nebuchadnezzar and mixed with the Persians, Greeks and other nations and children were born in the lands of the Gentiles, and these same children's language was confused, and the language of each one was mixed in with many other languages and when they would pray they could not speak their needs in one tongue, rather with confusion, as it is said, "and half of your children speak Ashdodi etc." And they don't know how to speak Jewish and in the language of every people. And because of this, when one of them prays, he is incapable of asking for his needs and speaking praise of the Holy One Blessed be He in the holy language. This is because the nations have mixed and have different languages.

Because of their linguistic confusion, Ezra established a fixed prayer. He did so not because other prayers would not suffice, but only to end confusion, bring uniformity, and enable all Jews to pray to God properly.

³³ Liebermann, Eliezer, *Or Nogah, Helek Alef*, p. 3.

When Ezra and his Beit Din saw this they stood up and fixed for themselves 18 blessings in order so that there would be an order for everyone and the *tefilah* of stammerers would be a complete *tefilah* like the *tefilah* of the master of clear language. And because of this matter, the blessings and the prayers were set in order in the mouth of all Israel so that the matter of every blessing would be set in the mouth of the stammerers etc.

Maimonides is trying to show that the only reason Ezra established a fixed prayer is because there was serious confusion on the part of his community. There was a conflation of languages, a group of people who stuttered over Hebrew, and a strong need for unification amongst the people in Ezra's time. Lieberman thus entreats the readers to "please note that the *essence of the commandment of prayer*³⁴ is that each man according to his will pour out his words before God. He can request and supplicate, praise and acknowledge according to his needs and his will, and it is in his hands if it goes on for a short time or a long time in any language. It will be in any language that it will be."³⁵

Surely, Lieberman could have ended this claim at this point. Traditional Jews, for whom authoritative texts are decisive in determining *halakha*, would have been satisfied with the citation of the Talmud, Rashi, Tosephot and Maimonides. But instead of concluding here, Lieberman continues his halakhic defense of prayer in the vernacular. He cites additional responsa, codes and commentaries on the codes to reinforce his argument that prayer is permitted in any language. He may have expanded on this claim simply because he could, there being an abundance of halakhic sources that enhance and bolster his argument. By expanding in this way, he

³⁴ My emphasis added.

³⁵ Lieberman, Eliezer, *Or Nogah, Helek Alef*, p. 3.

bolsters his own credibility here and in later arguments against other traditional claims. Perhaps he felt that it was socially necessary for him to go on; his audience being one that required further argumentation. Or perhaps he himself was not convinced. Even though prayer in the vernacular is halakhically acceptable, Liebermann himself was probably more comfortable praying in Hebrew and did not want to end his discussion until he was at ease with his own claims. Liebermann's frame of reference was still orthodox, even though he was commissioned to write *Or Nogah*. It could be that the mere existence of the reformers begins to catalyze his thinking about his own discomfort with orthodoxy. Throughout *Or Nogah*, and especially in this claim, Liebermann does not seem to be addressing either the orthodox or the reform, but rather he seems to be working through his own philosophical dilemmas. Reform gives him a framework through which he can investigate his dissatisfaction with orthodoxy.³⁶

As he moves his discussion away from the Talmud and earlier commentators to more current halakhic discussion, Liebermann quotes from a responsum of R. Shmuel Abohav, a seventeenth century Italian rabbi whose responsa are entitled *Davar Shmuel*. Basically, Abohav's argument is simple. "It is permitted to pray and even to say *kaddish* and *kedusha* in any language."³⁷ What is interesting is that in the next paragraph, Liebermann quotes from the Shulkhan Arukh and the Tur, both of which are more authoritative than a responsum by a lesser-known rabbi. It is unclear what Abohav's responsum adds to Liebermann's argument. Perhaps he cites the

³⁶ In *Or Nogah Helek Bet* p.19-20 Liebermann expresses his dissatisfaction with orthodoxy, suggesting that Jews would not turn away from traditional Judaism if there was joy in practicing it. But, in the orthodox community, there are those who judge other members of the community based on how strict they are in their observance of *halakha*.

Davar Shmuel because of its chronological proximity to him. Or perhaps Liebermann simply feels compelled to bring many traditional opinions to support his eventual ruling.

Liebermann then suggests that his readers ought to look in certain halakhic works to find even more proof: "And it is written in *Sefer Hasidim*, section 588³⁸, and look in the *Magen Avraham* (to the *Shulkhan Arukh*) section 50:2, and Section 106:2."³⁹ He cites *Sefer Hasidim* section 588, which states:

And prayers are in any language that is understood.
And if one comes to you who does not understand the Hebrew language, and he fears God (and wants to focus his heart), or if a woman comes before you. Say to them: they should learn the prayers in a language that they understand, because prayer is only what is understood in the heart. And if the heart doesn't know what is coming out of the mouth, how can this benefit God? Therefore it is better to pray in the same language that one understands.

The *Magen Avraham*, (who comments on the *Shulkhan Arukh*) echoes this sentiment, as do the *Rosh* and *Alfasi* in Liebermann's comments that follow:⁴⁰

The *Rosh* wrote in *Berachot* chapter 2: "Alfasi wrote, and this is his language: it is taught that *Tefilah* may be recited in any language. This is for the public, but in private, no."⁴¹ And the students of *Rabbeinu Yonah* raised the following difficulty:⁴² since the private *tefilah* is not recited in the holy tongue, how do women pray in the other language, for aren't they obligated in *tefilah*?... And to me it seems that once can pray in all languages, even in private, just not in Aramaic.

³⁷ Liebermann, Eliezer, *Or Nogah, Helek Alef*, p. 4.

³⁸ Liebermann refers to *Sefer Hasidim* section 788, but his reference is erroneous, he should have said 588.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Rabbeinu Asher, Perek Rishon Brachot*, p.7.

⁴² *Rabbeinu Yonah, Perek Rishon Brachot*, p. 7 (commentary on the *Meiri*).

Liebermann ignores this last comment about not praying in Aramaic.

Aramaic seems to concern all of the halakhists up to this point, but Liebermann does not bring in this discussion. The Talmud in Shabbat 12b and Sotah 33a discusses the case of R. Eliezer's prayer on behalf of a sick person in Aramaic. The rabbis involved in the discussion are incensed because both Rabbi Yehudah the Prince and Rabbi Yochanan have taught that one should not ask requests from God in Aramaic. R. Yochanan adds that the ministering angels do not understand Aramaic. The commentators and *poskim* discuss the ministering angels in depth. Some note that if the ministering angels do not understand Aramaic (which is very close to Hebrew, maybe even a corruption of it), then how could they understand any other language? Prayer should therefore only be in Hebrew. Liebermann does eventually quote one halakhic statement from the midrashic work *Eliyahu Rabbah*,⁴³ but it only establishes that Aramaic is a confusing language and that it is difficult to concentrate on prayer in Aramaic. By eliminating the other *poskim*'s misgivings about Aramaic and focusing only on how difficult it is to concentrate in Aramaic, Liebermann again takes the stand that the intention of prayer is more important than the language in which it is recited. On the other hand, there are other commentators and *poskim* quoted by Liebermann (including the Rosh), who feel that the ministering angels do, in fact,

⁴³ Liebermann, Eliezer, *Or Nogah, Helek Alef*, p. 5: And Eliyahu Rabbah wrote Section 60, paragraph 2: It is so that no one will be thought of as having made a mistake. He explains this: that here every master of intellect needs to understand and not err, in the words of R. Yehuda, the intention of his prayer should be directed to the angels so that they will bring the prayer to God. And this is ignorance and folly. Rather the *ma'amar* explains: Because one needs to direct his prayer and because Aramaic is not fluent in the mouth of everyone, and also because Aramaic is a confusing language, therefore a soul can err and get mixed up with it. And there is no mindfulness in a language that he doesn't understand well, and it is known that an angel has all kinds of power, and by these good powers the ministering angels are named and by the evil powers the angels of destruction are named. And this is what R. Yehuda meant that the ministering angels do not understand Aramaic. This is to say that we are not used to these powers and one cannot direct his prayer in a language that is foreign to him."

understand Aramaic, but find that "the language is contemptible."⁴⁴ Other languages are allowed and encouraged, so that one can understand his or her own prayers, but Aramaic is a bastardization of the holy tongue and should not be used.

A question might be raised about the *Kaddish*. It is recited many times throughout the course of a service and is in Aramaic. Is the reason that it is acceptable because it is a praise of God and not a request for needs? Are the ministering angels intermediaries in the realm of praise as well as in the realm of needs and requests? Requests and needs do seem to be a central part of the prayer service, especially in traditional services. Liebermann's next halakhic authority mentions the *Kaddish*, along with the *barechu* and *kedusha*, all of which are prayers that are traditionally only recited in the presence of a *minyan*:⁴⁵

The *Lahak* wrote in section 108: "Ten from Israel who do not understand the holy tongue can pray in the language that they understand and say *kaddish*, *barechu*, and *kedusha* in the vernacular.

Liebermann probably liked the specificity of this particular statement. Not only does it allow for the recitation of prayers in any language, but it encourages a Jewish community (in the form of a *minyan*) to recite prayers in the language that they understand. Again Liebermann uses this source to emphasize the intention of prayer and not its form. And once again Liebermann introduces a proof that emphasizes the importance of the ideas that are in the prayers and not the language of their formal recitation:

⁴⁴ *Rabbeinu Asher, Perek Rishon Brachot*, p.7.

⁴⁵ Liebermann, Eliezer, *Or Nogah, Helek Alef*, p. 4.

The Rambam wrote in chapter 1 of *Hilchot Brachot Halakha* 10⁴⁶: All the blessings can be said in any language, provided one recites the text that the sages established. If the formulation is changed, since he mentioned God's name and Sovereignty, and the matter of the blessing, although he did so in a profane language, he has fulfilled his obligation.

Therefore, all that matters in the recitation of blessings is that God and God's sovereignty, as well as the main idea of the particular blessings, are mentioned. Even though Maimonides wants to maintain the formal text of the prayers that the sages established, he is willing to forego the formal text as long as the form and essential meaning remain the same. Liebermann knows that the essence of the prayers at the Hamburg Temple is not fundamentally different from those that have been passed down through tradition, but he also knows that they may have a different nuance and intention.⁴⁷ They are certainly being recited in German, which is aesthetically pleasing and comfortable for the reformers, much to the dismay of the orthodox.

Liebermann further bolsters his emphasis on intention in prayer over the language of prayer in his next use of Maimonides:⁴⁸

The Rambam wrote in his commentary to tractate *Avot*⁴⁹: "know that the poems which were composed in whatever language that they may be, they must be checked in their matters, to determine if they are going on a straight or righteous path. Indeed, I have explained this, even if it is explained again, for I have seen elders and righteous from among the people of our Torah who were at a wine party or a wedding or something like this, and the man wanted to recite an Arabic poem. Even if the subject matter of the poem was praising the might of God or the upright path or was of a beloved

⁴⁶ Liebermann's quotation of the Rambam is correct, but his citation is not. This is from *Hilchot Brachot* Chapter 1, *Halakha* 6.

⁴⁷ A new prayerbook was written for the Hamburg that omitted the prayers calling for the rebuilding of the Temple in Jerusalem and the ingathering of the exiles to the Land of Israel.

⁴⁸ Liebermann, Eliezer, *Or Nogah, Helek Alef*, p. 5-6.

⁴⁹ Maimonides, *Commentary on Avot*, Chapter 1, Mishnah 16.

subject, they would go far from him in every way for it is not permitted for them to hear it at all. But, when a composer composes some *piyyut* of the *piyyutim* of the Hebrews we don't keep him far away or consider him evil in our eyes, despite there being in those words themes that must be watched out for and are despised. And this is total idiocy. The thing that is not beloved and that is abhorred is not because of the language, but because of the subject matter. If the matter were superior, it would be obligated to be said in whatever language there was. If the intention of the poem is bad, it doesn't matter what language, it would be forbidden to say it. And more, if there was any terrible thing, wouldn't it be worse in Hebrew than in Arabic or vernacular?"

And so if it doesn't matter if someone recites a poem praising God (a type of prayer) in any language, including Hebrew, it follows that it does not matter if someone recites any kind of prayer in any language, Hebrew or otherwise. The point is the subject matter — not the language. Liebermann concludes his halakhic arguments for the permissibility of prayer in any language and essentially in any formulation⁵⁰ and asks the following:⁵¹

And behold my brethren and my people! Why are you fighting your brothers? What is all the noise and the voice of complaining in the opposing camps? After we have seen that all the *poskim* permit praying in every language and even in the language that is more clear and more habitual in our mouths, that one should not speak in front of God in the language of stammerers or in a mocking tongue, which is an act of frivolity directed at heaven. Bring Him close to you and you will be opened. And we know from their statement (*Mesechet Ta'anit*): If a man's lips (in prayer) produce a flow (if he speaks fluently), it is for sure that God hears his prayer. As it written: "Who creates peace by

⁵⁰ Liebermann does not specifically cite sources requiring people to pray within the confines of the sages' formulation, but there is a subtext of his argument; the Hamburg Prayerbook changed the traditional formulations for certain prayers, and this evoked upset from the traditional rabbis.

⁵¹ Liebermann, Eliezer, *Or Nogah, Helek Alef*, p. 6.

the fruit of the lips."⁵² And it is said, "a wise heart will enlighten the mouth."⁵³ And it is said: "My words will vouch for Him and I will rejoice with God."⁵⁴

After these comments, Liebermann changes his focus from prayer being permitted in any language to prayer being an act of choice, not something which someone ought to do mechanically. Prayer becomes an action done as a matter of philosophical or intellectual reason, not simply because it is a commandment. Liebermann advances the discussion by citing a commentary on Sa'adia Gaon's "Book of Beliefs and Opinions." The passage that Liebermann chooses is clearly useful in advancing the idea that prayer should be more about intention than rote recitation. He brings a new idea to his claim:⁵⁵

And the wise one, *Ba'al Heker Da'at*⁵⁶, in [his commentary on] the "Book of Beliefs and Opinions" of the teacher Sa'adia Gaon comments: "the good deed is complete when it comes from the side of choice. That is to say not from the aspect of necessity or without any intention. All the deeds included under 'good and evil' are from the side of choice.... Thus, indeed this general rule exists: if a person will observe and measure all of his deeds on a scale from the perspective of choice and the weight of the intellect then the proper deed will be worthy to be called a human action.

But, if one of all the deeds of choice is not done because people choose not to do them, they are choosing and using their intellect which helps differentiate this deed from another deed. Will he not escape from the doing of the deed whether it is from

⁵² Isaiah 57:19

⁵³ Proverbs 16:23

⁵⁴ Psalms 104:34

⁵⁵ Liebermann, Eliezer, *Or Nogah, Helek Alef*, p. 6-7.

⁵⁶ The *Ba'al Heker Da'at* must have been a commentary on Sa'adia Gaon's "The Book of Beliefs and Opinions." Liebermann had this commentary available to him, but in my searches through many libraries, I have been unable to locate it or find any information about the writer. He is clearly liberal in his interpretation of the *mitzvot*. Although the *Ba'al Heker Da'at*'s idea of "choice" is not the autonomy that has become a hallmark of contemporary Reform, perhaps the Reform ideology of autonomy or choice through knowledge was informed by this commentator.

the side of intention and desire or in confusion without any intention at all, only from the side of habit? Here, this is the second deed [the one of habit] that is not worthy to be called a human deed....When the ignorant man prays in the morning and he is in the house of worship and the reason for his *tefilah* is because he is used to it, were it not for force of habit, he would already forget all of the service of worship and the house of prayer. And because it was such a big habit, he returned and made a mistake, and the reader sees what a big fool he is...To do a deed from the natural instinct, that is the lowest of all deeds and understand this.

And thus the matter of all deeds that are done without conscious choice before doing them, behold they are actions done for actions' sake, and not because they were intended. They should not be done and shall not be known and will not be understood.

....For in the matter of prayer, it is when he chooses with the feeling of his spirit when he is compelled by the law of the Torah and his prayer is to God his Creator, that he prays from the side that has chosen to pray.... The morning is the time for his prayer. At that time his heart is in the house of worship and his intellect is his reason for praying. And he knows and understands the clear sayings of his soul, to whom, from what and why he puts his soul in the hands of God and gives his soul to the outpourings of his heart.... And the heart is an offering to God and he will sacrifice his soul and desire to God.

Liebermann's message is loud and clear. A prayer that is prayed when a person is moved by the law of the Torah and by God, and/or when the person desires to praise God, such heartfelt prayer is effective. Otherwise, there is no purpose to prayer. It seems radical for Liebermann to be including this idea in his halakhic defense of prayer in any language. It doesn't seem to me that he would want to highlight the fact that prayer could become optional; to be done only when one is compelled to pray.

As was mentioned earlier, it is important to think about Liebermann's intended audience for *Or Nogah*. Maybe Liebermann's intention is to convince the more traditional Jewish community that the changes being made in the Hamburg Temple were valid and acceptable in the eyes of *halakha* and that they ought to accept the Hamburg Temple. If this is his intention, then an idea as radical as that proposed by the *Ba'al Heker Da'at* – that prayer not motivated by choice is not prayer – is bound to be rejected by the traditional community. But, if he is trying to sway the more liberal members of the Jewish community to accept that all the changes in the Temple are right and that certain commandments are not religiously valuable if not done on the basis of free choice, then his argument is stronger. I think that Liebermann is straddling two worlds, and is himself unsure of his true feelings about his endeavor to defend the early reforms of Hamburg. Here again, Liebermann is using this point about choosing to pray as an opportunity to attack what he doesn't like about orthodoxy, specifically the lack of heartfelt intention in prayer.

In his next textual citation, Liebermann quotes Moses Hayyim Luzzato⁵⁷, an eighteenth century Italian Kabbalist. In this passage Luzzato criticizes Hasidism for being a movement of followers of a charismatic leader. He suggests that Hasidim do not use their intellect and reason to know God "with clear, direct knowledge...

... Rather, they became *hasidim* and did what they happened to do according to their initial logic and they did not go into depth in these things and did not measure them by the standards of wisdom. And behold, these have made the spirit of *Hasidut* abhorred by many people, among them the *Maskilim*, who already thought that Hasidism was hanging on by words of vanity and words that went against reason and with great self-castigation that will make a man kill himself

⁵⁷Luzzatto, Moses Hayyim *Missilot Yesharim* Amsterdam, 1740.

immersing himself in ice and snow and other things like this."⁵⁸

Maybe Liebermann is using Luzzato to criticize Hasidut because Liebermann is wont to make the critique himself. This seems to be in line with the tendency of *Or Nogah*. Liebermann was charged with writing a justification of the changes in the Hamburg Temple, either because he was known to be a master of traditional sources, or because he was able, to use an anachronism, to spin the sources to work in favor of the reformers. But, he does not seem entirely comfortable in his own use of the sources. He may be a rationalist, but that was not uncommon in nineteenth century Germany. His use of Luzzato, to criticize non-rationalists, might be his strategy to hide his own biases. As a Kabbalist, Luzzato might not have been a logical choice for Liebermann as one who would come to criticize the non-rationalist nature of Hasidut. Maybe Liebermann uses Luzzato to show that even an "orthodox" Jew can attack orthodoxy. Liebermann might have been less concerned with defending reforms and more concerned with attacking traditional Judaism.

After his thorough discussion of many halakhic and philosophical texts, Liebermann allows himself to venture into the first person. Prayer in any language is always permitted, but now we see Liebermann's own bias. He thinks it is preferable for Jews to pray in Hebrew, which is quite surprising after all of the earlier discussion, and calls into question his personal motivations for composing *Or Nogah*. His final comments in his defense of prayer in any language raise serious doubts as to his sincerity. Liebermann is a greatly conflicted man. His apologetic follows:⁵⁹

⁵⁸ Lieberman, Eliezer, *Or Nogah, Helek Alef*, p. 7.

⁵⁹ Ibid. p. 8-9.

Indeed, my brethren and people, I know the truth. That all we have spoken until now on the matter of prayer in any language; and we have proven clearly the permissibility of prayer in the Ashkenaz language. But this is only applicable to the many Ashkenazi people who are speaking the language of the land and the Ashkenazi language is clear and fluent in all of their mouths, from the oldest to the youngest, men, women, youths and elderly, their clear tongue is this language that they understand best, for all their ways, laws and statutes....No one explains [Hebrew] or asks for her, and no one clings to her or brings her home and she does not find rest in a single treasured house and the refugees that God calls to.

But many of them, even women and children don't know or recognize her value and treasure and Hebrew does not give them the pleasure of a honey comb when spoken because they don't understand her ways or her qualities. And she is almost foreign to them, like a foreigner she is thought of in their eyes. And for this you don't understand what your lips say, and can't even intend the meditations of your hearts in this language. Therefore for these people and ones similar to them are obligated by the religion and teachings and even by the intellect, it is better for them to pray in the Ashkenazi language that they understand than to pray in the holy tongue when the heart doesn't understand what the mouth is saying.

In these two paragraphs Liebermann presents the linguistic state of the Jewish community in Germany. He knows that only a small minority of the community understands Hebrew and that there are very few people who are interested in learning the language. His agenda is that Jews should pray from the heart, with a full understanding of the words that they are saying and with every intention that they reach God. He stands firmly within the traditional texts on that point. But he is obviously pained at the admission of ignorance of his community. Liebermann writes his entire treatise in clear, fluent Hebrew. He is familiar with and understands the

corpus of the traditional texts and their words are embedded within him in the holy tongue. He wants to ensure that the Jewish community in Germany remains connected to synagogue life, and so he makes room in his ideal system to allow for prayer in German as acceptable, not just in the traditional halakhic sense, but in his own ambivalent mind. What follows demonstrates his sense of conflict in an even more striking way:⁶⁰

This is not for the Jews dwelling in other states and in the places that they have settled, like the people of Poland and similar to them, that even they speak the language of Ashkenaz. But it is confused and ruined in their mouths, because they don't understand it clearly nor do they understand all the intentions of the words. But, many of them are experts in the holy tongue, for they have studied it since their youth with their instructors and teachers in scripture, commentaries and some in Mishnah and Gemara. And also many of the people who have not succeeded in their studies, many of them find the principles of Hebrew on their lips and when they speak to one another on business matters, purchasing and acquisition they use different Hebrew words to make the matter more clear and understood. And they are used to adding to their language different sayings and full phrases from our holy tongue to make their speech prettier. And for this the understanding of the language is easier for them and learning it is easier. And more or less they all understand the meaning of the prayers. Therefore, of course it is better for them to hold onto the custom of their forefathers and to pray in Hebrew, which is clear and pure and refined.

Hebrew is familiar and accessible to the Jewish community in Poland in the nineteenth century. Liebermann idealizes the Polish community. They are not ignorant of the holy tongue; they are immersed in it in ways that the Jewish community of Hamburg was not.

⁶⁰ Ibid. p. 9.

And all the claims and testimonies that we brought above to prove that it is better and obligatory for the *tefila* to be in Ashkenaz for those who know it and understand it, for the sake of their ability to direct their prayers better, for these people is it not clear that prayer in the Ashkenazi language is forbidden for those who do not know its ways and do not understand it well? The matter is simple and understandable in and of itself.

Liebermann's defense now takes on an entirely different meaning. Instead of helping to bolster the ideals of the reformers (who have commissioned him to write this treatise) he idealizes the Jewish community in Poland. I am not sure that the comparison is tenable. The Jews living in Poland primarily lived in segregated communities, in small towns and villages, and were much less involved with the lives of their fellow Poles. Their primary language was Yiddish rather than Hebrew, especially in commerce and conversation. They knew Hebrew, but it was reserved for prayer and Torah study. Liebermann seems to look at the Polish Jews' use of Hebrew as idyllic. They are more committed Jews because they are more connected to the holy tongue.

Liebermann is clearly confused. He may not have wanted to be understood as creating a new *mitzvah* to pray in German. He pays lip service to the German community which is underwriting his treatise, but at the same time wishes that that very community could become something that it is not. Despite his liberal leanings, he is so entrenched in the traditional sources and the Hebrew language that he is not able to fully adopt the reforms that he supports. This might not be that unusual. Experience has shown that many traditionally minded Reform Jews live with this very same conflict.

***Klei Shir* – Musical Instruments – in the Synagogue⁶¹**

Liebermann next addresses the issue of playing musical instruments in the synagogue on the Sabbath. This issue is particularly difficult, because it is the one that is most clearly prohibited in the *halakha*. Liebermann writes “because this matter is slightly sinful and iniquitous and rebellious in my eyes, we must go on at length a little in regards to this matter.”⁶² Liebermann is about to embark on his investigation of the permissibility of musical instruments in the synagogue on Shabbat and he has already convinced himself that they are forbidden. “At first glance [it appears that] it was decreed about all instruments that they are forbidden completely,”⁶³ he writes, but he will go on to test the issue to see if their prohibition is compelling.

The prohibition against musical instruments in the synagogue on Shabbat is derived from three different legal arguments. The first is the prohibition of playing a musical instrument on Shabbat, an extension of the prohibition of work from the Torah and developed in Mishnah Shabbat⁶⁴. Liebermann also includes in this category the injunction against telling a Gentile to do that which is forbidden for a Jew to do on Shabbat. This qualifier is discussed in the codes and other halakhic sources and is known in Jewish legal sources as “*amira l'akum*” – “telling a gentile.”

⁶¹ Liebermann, *Eliezer Or Nogah Helek Alef* p.14-18.

⁶² Liebermann, *Eliezer Or Nogah Helek Alef* p.14.

⁶³ Ibid.

⁶⁴ The Ten Commandments (Exodus 20:8-11 and Deuteronomy 5:13-15) explicitly prohibit work on the Sabbath for all Israelites and those in their house. Mishnah Shabbat 7:2 expands on the prohibition of work which includes tying knots and stitching, both of which may be required in repairing a musical instrument, which will be discussed by the halakhists below.

The second prohibition against musical instruments in the synagogue originates from Leviticus 18:3: "You shall not copy the practices of the land of Egypt where you dwelt, or of the land of Canaan to which I am taking you; nor shall you follow their laws."⁶⁵ Traditional interpretations of Leviticus 18:3 have understood the last phrase of this verse, "*B'khutotayhem Lo Taylkhu*" ("nor shall you follow their laws"), to mean that the Jews should not imitate the laws of the Gentiles in any place in which they live.⁶⁶ Liebermann then, must defend the use of instruments (especially the organ) in Jewish worship as permissible, on the grounds that instruments are not required by law in the worship of other religious traditions. There are those who will argue that they are strictly prohibited for just this reason.

The third reason for prohibiting musical instruments in the synagogue on Shabbat (or even for use outside the synagogue not on Shabbat) is the destruction of the Temple in Jerusalem. Liebermann paraphrases the Gemara and tells us, "When the Sanhedrin was exiled, they forwent the song."⁶⁷ Music is seen as a means to bring festivity and joy. Once the Temple was destroyed music was deemed inappropriate and possibly disruptive to the state of mourning that the Jewish people were to live in. Musical instruments were permitted for weddings, which occasioned a cessation from mourning and a commandment to rejoice. Prayer in synagogue, however, did not call for the level of rejoicing associated with weddings. Thus, although we will see below that musical instruments were allowed and encouraged on the occasion of a wedding, music for any other reason was forbidden.

⁶⁵ Translation from *Tanakh, The New JPS Translation*, The Jewish Publication Society, Philadelphia 1999.

⁶⁶ See, *erd*; b. *Avodah Zarah* 11a-b; b. *Sanhedrin* 52b.

⁶⁷ B. *Sotah* 49, Liebermann, *Eliezer Or Nogah, Helek Alef* p.14.

Liebermann writes *Or Nogah* to prove halakhically that the changes being made by the community of the Hamburg Temple were legitimate and valid. For this argument that the congregation was permitted to play the organ and other instruments in the synagogue on Shabbat, Liebermann also has to prove these arguments to himself. He begins his discussion with the first reason for prohibiting musical instruments on Shabbat, the strict prohibition of work in the observance of Shabbat.

Liebermann first quotes the prohibition against playing a musical instrument from the Gemara. "We do not tie up a string, or dance, or clap, lest he repair the musical instrument."⁶⁸ This source demonstrates the halakhic prohibition against playing instruments on Shabbat under the category of tying a knot within the framework of the prohibition of work. This is the only statement that Liebermann quotes from the Gemara. Every source that Liebermann uses to bolster his own case for the permissibility of the playing of instruments is post-Talmudic and more lenient. The effect Liebermann creates is that of a halakha that has evolved from stringency to leniency. .

Liebermann paraphrases the Tosephot to b. Beitza 30a, claiming this is the Tosephot to b. Beitza 35:

All this was in their time, but now we are not competent in the making of musical instruments, and this thing is not done, and it is possible that because of this, we behave more leniently.⁶⁹

Liebermann weaves his own words into the language of the Tosephot, who do not mention the clause for leniency. Tosephot comment that there is no longer a need for

⁶⁸ B. Eruvin 103a

a decree against playing instruments because in our time we are not expert or competent in their repair. It is the *repair* which is forbidden on Shabbat, not the *playing* of the instruments. In the actual Tosephot (as opposed to Liebermann's paraphrase), there is no call for leniency. But, Liebermann quotes a comment of Mordechai,⁷⁰ in which a lenient tendency may be discerned. Liebermann paraphrases:

Here the reason for the prohibition of playing instruments on the Sabbath is only because of "lest he repair it," and all the *poskim* ruled that we are not competent in [repairing musical instruments]. Hence it is allowed for a Jew himself to play, it is only because of the custom of our ancestors that it was forbidden. But, it is difficult for us to be lenient in a matter that isn't totally necessary. And here, for our ancestors who were competent [in instrument repair], it was forbidden [for them to play instruments] by the prohibition of rest, and later it was forbidden because of *amira l'akum* – telling a gentile.⁷¹

Liebermann seems to want the comments of Mordechai to prove the lenient ruling that the playing of musical instruments is allowed in his day, because no one is now competent enough to repair an instrument. But this is not what Mordechai is saying. Yes, the injunction, "lest he repair it," is no longer timely, but this is insufficient to lead the rabbis to allow instruments to be played on Shabbat. Mordechai finds another injunction to enforce the prohibition against instruments – *amira l'akum* – ("telling a gentile"). This means that although a Jew is not actually forbidden to play the instrument, he is forbidden to do so on the grounds that he may come to ask a

⁶⁹ Liebermann, Eliezer, *Or Nogah, Helek Alef*, p. 14. It is possible that Liebermann took this paraphrase directly from R. Moses Isserles' commentary *Darchei Moshe* on the Tur. An almost identical phrasing of these ideas of Tosephot is found in the Tur, *Orach Hayyim, Hilkhos Shabbat* 338.

⁷⁰ Mordechai's "compendium consists of elaborations on Talmudic problems" and was edited and compiled by his sons sometime between 1270-1286. "Mordecai Ben Hillel Hacohen," *Encyclopedia Judaica*, Keter Publishing House, Jerusalem, 1971.

Gentile to make repairs on an instrument that breaks on the Sabbath. The *halakha* prohibits asking a gentile to do something on Shabbat that is forbidden for a Jew to do. Thus, although Liebermann wants to read Mordechai for his alleged leniency, no leniency is to be found. Liebermann might have used Mordechai's statement only up to but not including "But, it is difficult for us to be lenient in a matter that isn't totally necessary." Up until that point, Mordechai is lenient. But Mordechai forbids the playing of a musical instrument on Shabbat through the use of the prohibition of *amira l'akum*. In studying the original comment of the Mordechai found in the back of b. Beitza, I have discovered that he permits the use of instruments on Shabbat only for a wedding. Liebermann misuses Mordechai's comment. His use of Mordechai does nothing to further his argument that the *halakha* permits the playing of musical instruments on Shabbat.

But Rabbeinu Nissim, who comments on the Alfasi (although Liebermann does not tell us where the comment is found) wrote in the name of the *Ba'al Hattur*⁷² that a Jew is *permitted* to tell a gentile to do a forbidden labor on Shabbat if it is for the sake of even a small commandment. By quoting this comment, Liebermann is able to show a leniency in the injunction of *amira l'akum*. While it is by no means certain that the use of musical instruments in the synagogue is considered a small commandment, citing a source that claims it is would allow Liebermann to justify telling a gentile to play an instrument on the Sabbath. A Jew, however, would likely still not be permitted to do so.

⁷¹ Ibid.

⁷² Menachem Elon, in *Jewish Law, History, Sources, and Principles* (JPS, Philadelphia 1994 v. 3 p. 1267-69 writes about the *Ba'al Hattur*: R. Isaac of Marseilles wrote *Sefer Hattur* in the twelfth century in southern France. It is considered a "classic book of *halakhot*... in which he cites the

Liebermann next presents a string of legal sources, each of which permits the playing of instruments for the sake of fulfilling a commandment. Rabbi Moshe Isserles (in his glosses to the *Shulkhan Arukh Orach Hayyim* 266) teaches that it is permitted to tell a gentile to light a candle during Shabbat for a *mitzvah* meal. R. Isserles is lenient about festive meals and weddings. Liebermann paraphrases what he claims to be the *Beit Yosef* to the Tur (but what actually appears to be a paraphrase of the Tur itself) to further his reasoning:

There are those who permit telling a gentile to play an instrument on the Sabbath at a wedding and even to tell a gentile to repair the instrument on Shabbat. This is permitted because of honoring the groom and bride, and at this time it is customary to be lenient.⁷³

Liebermann then quotes the *Magen Avraham*, written by Abraham Abele Ben Hayyim Halevi (1637-1683), an esteemed Polish rabbi who commented on the *Shulkhan Aruch Orach Hayyim*,⁷⁴ who permits the repair of a stringed instrument on Shabbat in the case of a wedding⁷⁵. It seems in the cases of both the Tur and the Magen Avraham that leniency is allowed – if not required – for the sake of rejoicing with the bride and groom. Even a Jew may repair an instrument on Shabbat if it means that this will increase the joy of the wedding couple. Liebermann continues to paraphrase the *Magen Avraham*⁷⁶, who tells of an incident when:

sources, discusses them briefly, and arrives at conclusions that are frequently independent and original.”

⁷³ Liebermann, Eliezer, *Or Nogah, Helek Alef*, p. 14. I am unable to find a similar argument in the Beit Yosef in *Orach Hayyim Hilchot Shabbat* section 338, but the Tur on the same page does permit telling a gentile to play an instrument because there is no rejoicing with groom and bride that is without instruments.

⁷⁴ “Abraham Abele Ben Hayyim Halevi,” *Encyclopedia Judaica*, Keter Publishing House, Jerusalem, 1971.

⁷⁵ The full text can be found in the *Magen Avraham, Orach Hayyim, Hilchot Shabbat* 338.

⁷⁶ *Ibid.*

"the *Maharil* (Rabbi Jacob Ben Moses Moellin)⁷⁷ made a wedding for his son and at the same time the Jewish leader commanded that there should not be instruments at weddings and [so the *Maharil*] commanded that the groom and bride be led to another city so that there they could play musical instruments on Shabbat."⁷⁸

For whatever reason, the *Maharil* not only permits, but commands that there be music at his son's wedding on Shabbat. The *Maharil's* comments as quoted by the *Magen Avraham* are of great utility to Liebermann. Liebermann quotes from the *Magen Avraham's* continuing comments on the *Shulkhan Arukh*. The *Magen Avraham* says:

From the perspective of the law it is permitted for a Jew to play an instrument on Shabbat, even though we behave as if it is forbidden. Because of this it is permitted to tell a gentile as well....and to say to a gentile on Erev Shabbat that he should play on Shabbat is of course permitted and there is no reason to hesitate about this at all.⁷⁹

Finally Liebermann finds the leniency he is looking for. But it does not satisfactorily prove his point. Yes, there is legal material he can use that permits the playing of instruments on Shabbat and even telling gentiles to do so. The caveat is that this prohibition only applies in the case of a wedding. Liebermann is arguing his point from the evidence of an uncommon case, generalizing from the specific instance of a wedding to the general observance of Shabbat. And moreover, how often does a Jewish wedding occur on Shabbat?⁸⁰ While it may be that musical instruments bring joy and beauty to a synagogue service, Liebermann does not make a compelling case from the perspective of the *halakha* for their permissibility on Shabbat. We will see

⁷⁷ Rabbi Jacob Ben Moses Moellin (1360-1427), a prominent talmudist and head of the Jewish communities in Germany, Austria and Bohemia. For more information see: "Maharil," *Encyclopedia Judaica*, Keter Publishing House, Jerusalem, 1971.

⁷⁸ Liebermann, Eliezer, *Or Nogah, Helek Alef*, p. 14.

⁷⁹ *Ibid.*

if he is able to justify his argument in favor of instruments in the synagogue on Shabbat on the basis of the next two legal arguments.

The second legal issue in the discussion of musical instruments on Shabbat is whether or not the playing of musical instruments in a house of worship constitutes a violation of the Leviticus 18:3 injunction "*B'khutotayhem Lo Taylkhu*" (nor shall you follow their laws"), which develops into the legal category *hukot ha-goyim*. The term *hukot ha-goyim* designates customs of Gentiles that Jews are forbidden to imitate, especially those that are "closely connected with idolatry or that form part of a non-Jewish religious ritual."⁸¹ The first evidence that Liebermann cites is from a responsum of the Ba'ch, Rabbi Joel Sirkes.⁸² He writes:

Melodies that are sung by the gentiles in their own houses of worship are permitted for us to sing in our synagogue, and they are not forbidden except for certain melodies used in idol worship specifically. Since this is a law about idol worship, therefore it is prohibited like the statue of an idol which the Torah prohibits us because the Canaanites had a law regarding idol worship. But, plain melodies that are sung in their houses of worship, those that are learned only for the wisdom of their music, they are permitted for everyone.⁸³

Clearly this responsum does not restrict music in the synagogue. Nor is the music of the gentiles prohibited, except in the case of idol worship – but Liebermann knows

⁸⁰ Although a small number of these weddings may have occurred, weddings on Shabbat are generally prohibited, as the signing of a *ketubah* is a violation of the prohibition against writing on Shabbat.

⁸¹ Ydit, Meir, *Hukkat Ha-Goi*, *Encyclopedia Judaica* – CD ROM Edition, Judaica Multimedia (Israel) Ltd.

⁸² I have been unable to find any responsa of the Ba'ch, who is known for his famous commentary on the Tur, but this responsum, while persuasive, evades me.

⁸³ Liebermann, Eliezer, *Or Nogah, Helek Alef*, p. 15.

"that the nations in this time are not involved in idol worship, they only believe in the one Unity, like us."⁸⁴

Liebermann continues to illustrate this point, in his own words:

And also, music is not a statute of idol worship, for in some places, like in most of Poland, in the small towns, they don't even have instruments in their houses of worship. And if this instrument was a statute for their idol worship specifically, it would be required of them in every house of worship, like [holy] water, that is known, and things like this.

This argument is compelling because it allows for the use of music in the synagogue by undermining the notion that such music is forbidden under the category of *hukot ha-goyim*, the laws of the gentiles.

Liebermann quotes the commentary of the *Kesef Mishnah* (Rabbi Yosef Karo's commentary on Maimonides' *Mishneh Torah*), who teaches that "the only thing prohibited because of 'their laws' is one specific thing, and this only: non-Jewish women."⁸⁵ The *Kesef Mishnah* is not concerned about musical instruments. Nor are musical instruments a concern of Rabbi Moshe Isserles, whom Liebermann considers to be lenient on this point. Liebermann paraphrases Isserles:

We also do not prohibit anymore because of "their laws," except on one certain thing for them alone, and that is the establishing of the prophets and priests, we have no part in this.⁸⁶

Liebermann quotes Isserles in an attempt to show that the halakhic tradition no longer uses the category of *hukot ha-goyim* to restrict behavior, except in the matter of appointing prophets or priests. But, this is not exactly what Isserles says in his gloss

⁸⁴ Ibid.

⁸⁵ Lieberman, Eliezer, *Or Nogah Helek Alef* p. 15. Here the prohibition is against Jewish men engaging in relationships with non-Jewish women.

to the *Shulkhan Arukh*, *Yoreh De'ah* 178. He doesn't discuss priests or prophets at all. Instead his leniency comes from a different perspective. He purports that there is no injunction not to follow "their laws," so long as the act which the Jew is doing is not a licentious act in dress or any other form of behavior. Music in the synagogue is neither licentious nor does it have anything to do with the selection of prophets and priests. Both the citations from the *Kesef Mishnah* and Isserles are sufficient proofs for Liebermann's assertion that music in the synagogue is not forbidden because of *B'khutotayhem Lo Taylkhu*.

Instead of ending his discussion here, Liebermann now changes focus and quotes a long passage from b. Arakhin 11a. Essentially, the *sugya* arranges quotations from eight rabbis who propose that music and song are the best ways to praise God and each brings a proof text from the *Tanakh*. Liebermann tells his reader to look also in *Bamidbar Rabbah*, *Naso* 6:10 which parallels the *sugya* at b. Arakhin 11a:

It was taught: Song is an indispensable adjunct of sacrifice. These are the words of R. Meir. But the Sages say that it is not indispensable. Said R. Eleazer: R. Meir's reason is derived from this verse: And I have given the Levites – they are given... to make atonement for the children of Israel, etc. (Numbers 8:19). Just as atonement is indispensable, so is song indispensable.... R. Johanan infers it from the following: *To do the work of the service* (Numbers 4:47). What kind of a 'work' is it that requires 'service'? You must grant that it is song.⁸⁷

Liebermann knows that the *Tanakh* is full of references to worship with song in the Temple in Jerusalem. He knows that the Psalms teach to praise God with timbrel and

⁸⁶ Ibid.

⁸⁷ Numbers Rabbah, translated by Judah J. Slotki. The Soncino Press, New York, 1983 p. 175-76

lyre and harp and drums.⁸⁸ Nobody can really argue against the case he has made for the use of music in worship in the Temple; it is only *after* the destruction of the Temple, when the Jewish people are now in mourning, that music in worship becomes problematic. Liebermann could not base his argument on these texts alone, and he did not, because the passages in *Arakhin* and *Bamidbar Rabbah* pertain to the time of the Temple. These texts help his claim that music is a vital component in worshipping God. However, perhaps by placing them at the end of his argument, Liebermann expresses a realization that they are not his primary supports.

Finally Liebermann turns to the third legal issue in the use of musical instruments in the synagogue on Shabbat. Again, this argument all but ignores the issue of desecration of Shabbat (which I believe to be the only compelling argument of the three) and turns to the question of the destruction of the Temple. Liebermann brings a variety of sources – Talmudic and post-Talmudic – to demonstrate that the destruction of the Temple was indeed the reason for the cessation of music in many locations. He begins with a direct quotation from b. Sotah 48a: “From the time the Sanhedrin ceased to function, song was abolished from wine-feasts, as it is stated: *They shall not drink wine with song* (Isaiah 24:9).⁸⁹ The end of the Sanhedrin signifies the exile and the beginning of a period of mourning. Song does not to belong in the wine houses; i.e., joy is not appropriate when there is no Temple. Liebermann cites another example of this from b. Gitten 7a:

They sent to Mar Ukva: How do we know that music is forbidden? He drew it out and wrote them: *Israel should not rejoice, nor be glad among the nations.* (Hosea 9:1).

⁸⁸ Psalm 150

⁸⁹ Lieberman, *Or Nogah Helek Alef*, p. 17.

Rejoicing has no place in Israel anymore. But we know from the sources that Liebermann cites earlier that musical instruments were a prescribed necessity at weddings in order to honor the bride and groom. Liebermann does not forget this, as he quotes a Tosephot to b. Gittin 7a:

How do we know that music is forbidden? Rashi explained that this means singing in drinking houses... But the song which fulfills the commandment to rejoice with the groom and bride and things like this are permitted.⁹⁰

Now that Liebermann has introduced the prooftexts of his opponents, he sets out to prove that it was never the intention of the rabbis to ban all music, especially music that praises God. It is possible to ban or outlaw music that is frivolous, but how can the rabbis have intended to forbid all singing?

Liebermann quotes a variety of sources demonstrating that there are halakhic authorities that do permit singing and music despite the destruction of the Temple. Liebermann cites the *Rosh*, who in turn quotes the interpretation of an anonymous halakhist, called simply, "Gaon":

There they say that song is forbidden, but this means a song of love of a man for his friend, or to praise his beauty like the Ishmaelites poets read. But words of song and praise mentioning the kindness of God, a Jew is not prevented from this. And it is the custom of all of Israel to say them in a wedding house or a drinking house, and we can't see what the problem is with this.⁹¹

In quoting the anonymous Gaon, the *Rosh* is demonstrating that Jews did not cease to sing after the destruction of the Temple, only that their songs ought to be directed

⁹⁰ Ibid.

⁹¹ Lieberman, *Or Nogah Helek Alef*, p. 17. The original text can be found in *Rabbenu Asher's Commentary to b. Brachot*, Chapter 5 p. 40.

toward God, and not be frivolous or idolatrous. And there are other reasons that Jews continued to sing, suggests Rashi in his commentary to Sotah 48a, "'The music of boat haulers and plowers is permitted.' Rashi explains that this is only to speed up his work, so that he won't be tired."⁹² Now Liebermann is able to generate some plausibility for his argument. He knows that in the worship of God and to lighten one's workload, music is permitted. He knows too that in the discussion in Gemara music is prohibited on Shabbat, as was discussed earlier. So how could it be that there was really a prohibition against music after the destruction of the Temple? If it did exist, it certainly was not followed. Liebermann knows this to be true from his first hand experience.

Liebermann recalls that which the elders of Prague told him about the organ in their synagogue:

They would play it every Sabbath night, on Rosh Hodesh and festivals. And until this day, they welcome the Sabbath in this old synagogue with musical instruments, and the music continues until half into the night. And the musicians are Jews.⁹³

In Liebermann's mind, there is no controversy over the organ in Prague and it can be seen as the ultimate proof for the legitimacy of the Hamburg organ. But, just in case this is not enough, Liebermann sets out to prove that the best way to honor God is with all kinds of musical instruments. He uses verse after verse from the *Tanakh* to demonstrate how often music was the vehicle that the Israelites used to praise God, from the most obvious to the most obscure. "And Miriam the prophet took her timbrel in her hand and all the women went out after her with timbrels and dancing and

⁹² Lieberman, *Or Nogah Helek Alef*, p.17.

⁹³ Ibid.

answered her,"⁹⁴ in praising God after the parting of the Red Sea. "And Elisha said: 'Now then, get me a musician;' as the musician played, the hand of the Lord came upon him."⁹⁵ And David said in Psalm 150: "Praise with hard and lyre, with timbrel and dance, and with lute and pipe and with resounding cymbals." Liebermann writes:

And all of the singers of Psalms sang them with instruments as is known. And the matter is known, that a voice that is pleasant and melodious expands and excites the soul and wakes it up to tell the praise and praises of God, blessed be His name, and to worship him with a joyful heart and a desirous soul.⁹⁶

For Liebermann, the injunction to mourn the destruction of the Temple by abstaining from music goes against the grain of the *Tanakh*.⁹⁷ He obviously sees the commandment to praise God in song as superseding the rabbis' injunction that all music cease. For Liebermann all of the arguments against playing instruments are folly. The older halakhic concerns about desecrating Shabbat and modeling the behavior of the gentiles mean nothing compared to praising God with music. As it is written in the *Sefer Hasidim*:

And if you cannot add to your prayer, look for other melodies and pray with the melodies that are sweet to you, then you will pray with intention and your heart will continue after what your mouth says, in the way of the melody that is attracted to the words of praise and makes hearts glad in order that your mouth be filled with love and joy towards the One who sees your heart and blesses you with great and joyous love.⁹⁸

⁹⁴ Exodus 16:20

⁹⁵ 2 Kings 3:15

⁹⁶ Liebermann, Eliezer, *Or Nogah, Helek Alef*, p. 18.

⁹⁷ The *Tanakh* is not often cited as the source for a Jewish legal injunction. Liebermann uses the *Tanakh* as a source to bolster his legal argument which was uncommon in halakhic discourse.

⁹⁸ Liebermann, Eliezer, *Or Nogah, Helek Alef*, p. 18. The original text can be found in *Sefer Hasidim* by Judah B' Samuel HeHasid, (Mosad Ha Rav Kook, 1970) p. 163.

Melodies and music are the way to God.⁹⁹ In light of the Hamburg community's distance from the old language of Jewish prayer (as discussed in the chapter on prayer in any language), it seems that music can bring them closer to God. Music creates more of a connection to the Creator, which is what Liebermann thinks is the ultimate goal of prayer. The sources that he cites demonstrating the permissibility of musical instruments on Shabbat in the synagogue are not nearly as compelling as his final statement, "worship God in gladness and come to Him in joy."

Again the question arises as to Liebermann's motivations in composing the argument in favor of musical instruments in the synagogue. He is not as explicit in stating his opinion in this argument as he was in the first discussion on prayer in the vernacular. And his arguments are not as compelling. Liebermann had to write an halakhic defense for the use of musical instruments in the synagogue on Shabbat; after all, the express purpose of *Or Nogah* is to defend reforms. But this defense falls short. It does not carry the same authoritative weight as his first defense, because musical instruments are clearly prohibited. Even though Liebermann perceives the organ as a worship enhancement and a vehicle to bring people closer to God, there is

⁹⁹ The quotation from *Sefer Hasidim* seems to be discussing singing and vocal melodies, and does not include musical instruments. Liebermann's use of this quotation is questionable since it does not specifically mention the use of musical instruments as a modality of music to reach God.

nothing about his use of the halakhic sources that permits its playing on the Sabbath.¹⁰⁰

¹⁰⁰ My advisor, Dr. Gray, has suggested that "by raising the smoke and mirrors of all of the Tanakh verses, [Liebermann] has advanced what may be his 'hidden agenda' that orthodox worship is dry and joyless, and that the Hamburg Temple's worship is spiritually uplifting and hence religiously valuable."

***Lo Titgodedu*¹⁰¹** **Do Not Make Factions**

Liebermann's seventh claim focuses on a Torah prohibition *lo titgodedu* ("do not make incisions").¹⁰² The verse states, "You are the children of the Lord your God. You shall not gash yourselves (make incisions) or shave the front of your heads because of the dead." The verse is talking specifically about bodily mutilation, but as we will see throughout this chapter, the rabbis raise the possibility that the Torah not only prohibits Jews from cutting or mutilating their own bodies, but also prohibits Jewish communities from creating factions and thus "cutting" themselves. Liebermann knows of this non-literal interpretation and uses it to bolster his central apologetic message. No matter how different the customs of this new liberal synagogue are, none of them are different enough to cause a schism in the community. Therefore, those who oppose the changes being made in the Hamburg Temple should remember the Torah's injunction not to make factions within the community. To Liebermann, the leaders of the reform temples in Germany were not trying to create a new Judaism. They only wanted to meld their Jewish traditions and customs with their modern, enlightenment sensibilities to make Jewish worship more relevant to the secularizing Jewish community. Liebermann needs the most forceful argument backed by the most traditional documents and teachings. His mission is to deem all the changes legitimate in the eyes of Jewish tradition, and failing that, to convince those who would condemn the changes to reconsider their condemnation in light of *lo titgodedu*.

¹⁰¹ Liebermann, *Eliezer Or Nogah Helek Alef* p.21-22.

Liebermann takes his cue from the Talmudic discussion at b. *Yebamot* 13b-14a. The Mishnah that Liebermann cites to begin his discussion of "do not make factions" presents an argument between Beit Shammai and Beit Hillel, the two famous rival schools of the late Second Temple period. Beit Shammai permits the rivals¹⁰³ to be married to the brothers, "even though the women themselves are otherwise prohibited to [the brothers]"¹⁰⁴. Beit Shammai, it seems, disagrees with the law taught in an earlier Mishnah. The previous Mishnah teaches that there are fifteen categories of women who exempt their "rivals" from *halitza* and *yibum*. Beit Hillel prohibits these women from marrying their dead husbands' brothers. The Mishnah goes on to bring a variety of stipulations from each of the schools. Beit Shammai disqualifies the husband of a woman who has performed *halitza* from serving as a priest, but Beit Hillel allows this woman to marry a priest. Then the Mishnah states that Beit Shammai allows women who were widowed from a *yavam* (the now dead brother of their dead first husband, with whom the women had borne no children) to marry a priest, and Beit Hillel prohibits such marriages. Nevertheless, even though the two Houses are not of one accord, the Mishnah states:

"Beit Shammai, nevertheless, did not refrain from marrying women from the families of Beit Hillel, nor did Beit Hillel refrain from marrying women from the families of Beit Shammai. Similarly, in respect of all questions of ritual cleanness and uncleanness, which these declared clean where the others declared unclean, neither of them abstained from using the utensils of the

¹⁰² Deuteronomy 14:1

¹⁰³ Kahati notes: "If one woman was married to the dead man's brother who had another wife, they are called 'rivals' of each other;" Kehati, Pinhas, *The Mishnah, Seder Nashim, V.1 Yevamot*. Torah Education Department of the W.Z.O., Jerusalem, 1992 p.8.

¹⁰⁴ Kehati, Pinhas, *The Mishnah, Seder Nashim, V.1 Yevamot*. Torah Education Department of the W.Z.O., Jerusalem, 1992.

others for the preparation of food that was ritually clean."¹⁰⁵

The Mishnah makes a very bold statement. Its agenda is to minimize factions. Each House was not so opposed to the other's point of view that it considered the other outside of the community. They may have approached the interpretation of the *halakha* differently, but Judaism was still one religion with a tradition of intra-group argumentation. Although there was a Beit Hillel religious faction and a Beit Shammai religious faction, they did not see each other as standing outside the religion; they were only in disagreement *within* the halakhic process. The real issues – the question of valid food preparation, *kashrut*, and those of family fitness – did not prevent the members of either House from trusting one another. Both accepted the others' children into their families and ate from one another's utensils. Indeed, it seems that if these issues did not bring the two Houses closer together, at least they did not get in the way of the Houses' continued interaction. Beit Shammai and Beit Hillel did not allow their difference to break them into warring factions.

But the Mishnah does not mention the Deuteronomic injunction *lo titgodedu*. It is only in a later discussion in the Gemara that the command is interpreted and takes on its non-literal meaning¹⁰⁶. It is possible that Liebermann chose this Talmudic argument with an eye to the force that an example of congruity between Beit Hillel and Beit Shammai could have on those who sought to widen the gap and maintain factions within the Jewish community in Hamburg. Lieberman took his lead from Aaron Chorin, who in his responsum in *Nogah Ha-Tzedek* uses the same sources to argue against making factions. The Gemara discusses the fact that the community

¹⁰⁵ Mishnah Yebamot 1:2

was not divided physically or legally because of the disagreement between Beit Hillel and Beit Shammai, and raises *lo titgodedu* as an injunction meaning that there should not be multiple Judaism. ¹⁰⁷ The Gemara then focuses on the development of this classification from its original literal meaning.

The scriptural statement *lo titgodedu* uses a reflexive verb. The Gemara suggests that the Torah ought to have used a regular (*kal*) form of the verb root *GaDaD*, ¹⁰⁸ which would have made more sense in the context of not making incisions. Instead, by using this reflexive form, the rabbis were able to interpret the concept more figuratively. There is a Hebrew root word *AgaD*, which literally means “to bind” ¹⁰⁹ which may have been conflated with *GaDaD* by the rabbis:

The verb *AgaD* has a number of meanings, two of which are in the scripture, one has the meaning of making wounds or incisions and the other means the forming of factions or sects. ¹¹⁰

The Bible knows both these meanings and uses both of them in the reflexive. In I Kings 18:28, “So they shouted louder and gashed themselves (*vayitgodedu*) with knives and spears according to their practice, until the blood streamed over them,” the root is clearly used to describe a scene in which prophets of Ba’al were gashing themselves. But in Micah 4:14, “Now you gash yourself (*titgodedi*) into factions (*gidud*), they have laid siege to us, they strike the ruler of Israel on the cheek with staff,” the root is used to describe a time when the Israelites gathered themselves into different groups. The Gemara understands the Deuteronomic *lo titgodedu* as “do not

¹⁰⁶ B. *Yevamot* 13b

¹⁰⁷ The rabbinic idea of *lo titgodedu* is not meant to cut off disagreement.

¹⁰⁸ Ibid.

¹⁰⁹ Marcus Jastrow in *A Dictionary of the Targumim, the Talmud Babli and Yerushalmi, and the Midrashic Literature*, gives two definitions of *AgaD*, 1, to twine around, tie up, to close, or 2, to form a union of faction.

make factions" to allow for disagreement in practice within the Jewish community, while still maintaining the integrity of a Jewish legal discourse as a uniting force for the community.

Liebermann quotes from the Mishnah: "Beit Shammai permits rival wives for brothers and Beit Hillel deems them disqualified, even though these are forbidden...."¹¹¹ The Gemara questions the leap made between the Mishnah's discussion of Beit Hillel and Beit Shammai to the Gemara's discussion of general community relations: how does the Gemara come to create the injunction not to create factions within the Jewish community from the Mishnaic discussion of the two Houses? Later the Gemara asks, "How do I read from this 'do not make factions'?" It seems that Lieberman then makes an assumption that the Gemara's explanation of the way in which "do not make factions" is derived from "do not make incisions" is known to his readers, and that the existence of this piece of rabbinic exegesis is a powerful force in the eyes of those who might choose to break ties or create factions within the Jewish community.

In light of his entire book and all of the major changes, albeit aesthetic, in custom at the Hamburg Temple, Lieberman is working to find a convincing model to which the liberal Jewish community can look to find acceptance for these changes. The message that Lieberman is trying to send by means of *lo titgodedu* is one of legitimacy. For centuries the customs of the Central European Jewish community were set, *davening* was *davening*, and there were very few variations in custom. German Jews prayed in Hebrew and they used the Ashkenazic pronunciation of the

¹¹⁰ Steinsaltz, Adin *Talmud Yebamot*, Israel Institute for Talmudic Publications, Jerusalem, 1985 p.57

¹¹¹ Lieberman, Eliezer, *Or Nogah, Helek Alef*, p.21

holy tongue. They certainly did not use instruments in their synagogue on Shabbat. They had both a silent and then a vocal repetition of the *amida*. They chanted the Torah and did not recite it. And in the matters of synagogue etiquette and *minhag*, they did what their parents had done before them throughout the ages. No one would have thought to create a new prayerbook or cut prayers that were not meaningful or contemporary. Liebermann needs to base his defenses in the sacred texts that underlay traditionalist thinking, in order to convince such people (if these indeed were the people he wished to convince). He could have consulted other texts which focus on *lo titgodedu* in order to create a bigger picture of what Jewish tradition teaches on this topic. It is interesting to search out these other sources and see "roads not taken" by Liebermann in his presentation of "*lo titgodedu*."

Other traditional commentators have written on *lo titgodedu*. Ibn Ezra writes:

Once you know that you are the children of *Adonai*, and that He loves you more than a father loves his son, don't make factions in everything that you do. For all that you will do is for good. And if you don't understand this [decree not to make factions, it is okay], just like small children who don't understand the actions of their father, and just trust him, so should you.¹¹²

It seems that Ibn Ezra is trying to teach that making factions is displeasing to God. He uses the first words of the verse to illustrate his point. You are children of *Adonai*, your God.¹¹³ Because you are children of God, you should consider the way you act, and in doing so, act in a way that is good. Goodness means not upsetting God and goodness means not arguing amongst yourselves. Maybe since you are all children of God, factions are unnatural and not part of God's vision of you as a community.

¹¹² *Ibn Ezra* on Deuteronomy 14:1

Creating factions only leads to unrest and displeases God. God's love is so great that it should compel you to remain together as community. Ibn Ezra's argument may be too emotional for Lieberman, for whom love of God does not seem to be a factor in his analysis of *lo titgodedu* (although he does suggest that love of God is a primary purpose for prayer in whatever language with whatever music). Ibn Ezra may have something to teach all Jews on the message of unity in Israel, and the absence of this Ibn Ezra passage from the section on *lo titgodedu* in Lieberman's apologia may indicate that Lieberman himself is somewhat ambivalent about the process of reform.

A short midrash from Sifre Deuteronomy also knows of the *lo titgodedu* "do not make factions" tradition. Sifre teaches:

Do not split yourselves up into several factions (*aguddot*) but rather be one faction, as it is said, *It is He that builds His upper chambers in the heaven, and has founded his (aguddato) vault in the earth.* (Amos 9:6)¹¹⁴

God wants the children of Israel to be one group, to be unified. "God has created His people, one united group on earth."¹¹⁵ Sifre wants to teach that Jews should be united, not because they all agree or because factionalism is necessarily bad, but because God created the Jewish people to be one group. Lieberman must have known about this midrash as well. But were he to have used it, he would instead have pointed a finger at the reform community whose innovations he was trying to defend. He wants to maintain the idea that the changes of the Hamburg Temple are well

¹¹³ Deuteronomy 14:1

¹¹⁴ Sifre Deuteronomy Piska 96 translation taken from *Sifre: A Tannaitic Commentary on the Book of Deuteronomy* (Yale Judaic Series, Vol 24, 1986 by Reuven Hammer.

within the confines of Jewish tradition. The Jews of the Hamburg Temple were making changes in custom and were creating a community that was not in accord with the traditional community that had existed for years. Liebermann seems to be addressing the more traditional community with his discussion of *lo titgodedu*. He is not suggesting that the leadership of the Hamburg Temple is making factions, but rather that those who *oppose* the Temple are creating factionalism within the community. For Liebermann, allowing for difference of opinion and custom, while also allowing intimate interactions like those between Beit Hillel and Beit Shammai, is a manifestation of the absence of factionalism in his contemporary Jewish community. The teachings of Ibn Ezra and the Sifre do not add to the power of his arguments; in fact, they *detract* from his arguments by raising the possibility that the reformers are the schismatics. His deployment of *lo titgodedu* as developed in Yebamot allows him to imply that the *traditionalists* are the schismatics.

Liebermann also quotes the *Siftei Cohen*, a commentator on the *Shulkhan Arukh*.¹¹⁶ He tries to point out that those who live in the same city have an obligation to find a middle ground and not create a situation in which it would appear that there are more than one way to serve God:

One Beit Din in one city that disagrees about a matter, some prohibiting and some permitting. They transgressed the negative commandment, "do not make factions" because this matter increases disagreement in Israel and the Torah appears like it was two Torahs. Rather, they should negotiate on the matter until they all agree with one opinion. And if this is impossible: if the matter is a prohibition from the Torah, they all should rule strictly and if it is a prohibition from the

¹¹⁵ Hammer, Reuven from *Sifre: A Tannaitic Commentary on the Book of Deuteronomy* (Yale Judaic Series, Vol 24, 1986), Notes to Piska 96, Note 10.

¹¹⁶ *Siftei Cohen* to *Shulkhan Arukh Yoreh De'ah* 242.

rabbis, they all should rule leniently. But in the second Beit Din in that city, there was no discussion of "do not make factions" at all.¹¹⁷

Liebermann is trying to use this halakhic argument to teach compromise. He uses this text as a proof that rabbinic injunctions, as opposed to Torah injunctions, are to be ruled on leniently. Therefore the matters that Liebermann is concerned with – prayer in the vernacular and musical instruments in the synagogue – are to be ruled on leniently. There should be negotiation within the community and the changes in customs should not result in the creation of factions. Rather, the community should rule together and compromise. Liebermann also implicitly compares the situation of the reformers and the traditionalists to two *batei-din* in one city, who are not considered warring factions.

Liebermann cites a situation analogous to that in Hamburg, saying that divisions in customs are not wrong at all. He brings the example of the Jewish community in Amsterdam where both a Sephardic and an Ashkenazic synagogue exist, with many differences in custom between them, but this does not detract at all from their being one community. This is parallel to the example of Beit Hillel and Beit Shammai who married each others' children and ate meals together. He also tells of his experience in Lembourg where those who live within the city bow at the knee on Rosh Hashanah and Yom Kippur for the *Aleinu* prayer, and those who live just within the gates of the city do not bow. He says that in the city the custom is to do Tashlich while outside of the city Tashlich is not practiced. "In the city, the groom breaks a small glass bottle under the Huppah and in the gates of the city, they don't

¹¹⁷ Liebermann, Eliezer, *Or Nogah, Helek Alef* p. 21.

break..."¹¹⁸ Liebermann is responding to the ever-louder rumblings of the traditional community. He may be attempting to prove to himself that what he is writing and defending is legitimate in the eyes of the traditional halakhic literature, and so should be legitimate to the traditional community as well. Perhaps though, it was more important to him to criticize the traditional community than it was to create a legitimate halakhic defense. It seems that Liebermann is standing on unsure footing, not confident of either side of his arguments. He may believe rationally or intellectually in of his treatise *Or Nogah*, but the echoes of tradition weigh heavily in his thoughts.

In the second volume of *Or Nogah*, Liebermann admits to the fact that at least two sects have formed among the Jews in his community.¹¹⁹ In fact, he names these factions *Yehudah* and *Yisrael*, in reference to the two kingdoms of ancient times.¹²⁰ He also suggests that there are those who have wisdom and those who have faith. Liebermann indicates that those with faith were taught that those who try to understand God through wisdom should be thought of as heretics. But he goes on to cite many traditional quotations to prove that wisdom is a legitimate way to know God and through which to do what God wants. We learn from Scripture, the Talmud, the wisdom literature, and from the kaballah that the basis for serving God is by using the intellect to know the ways of God and to choose to do good by way of intellectual pursuits.¹²¹ Liebermann wants to convince his readers that reason and intellect will

¹¹⁸ Liebermann, Eliezer, *Or Nogah Helek Alef* p. 21.

¹¹⁹ Liebermann, Eliezer, *Or Nogah Helek Bet* p.8.

¹²⁰ I might even suggest that in naming the factions, he is admitting to the possibility that there has never been a united Jewish people, and that he knows that as hard as he tries to convince the Hamburg community not to make factions, the factions are ipso facto an unchanging reality of the Jewish people throughout time.

¹²¹ Liebermann, Eliezer, *Or Nogah, Helek Bet*. p. 9

lead them to the ways of God. He calls those that are inflexible in seeing that change is a positive direction for Judaism "*megosheshei kir*," those who cling to the wall. He chastises them because he sees them as unable to interpret and reinterpret Torah.

Liebermann labels the traditional community *Yisrael* and the reformers *Yehudah*. We know of course, that *Yisrael* is not looked upon favorably by Jewish tradition. It is the group who breaks away from the unified monarchy under David and Solomon. *Yisrael* participates in the worship of multiple gods and are punished by exile and eventual extinction. *Yehudah*, on the other hand remained loyal to the house of David and the worship of Yahweh. Even when they are exiled, the community of *Yehudah* developed a strong Jewish tradition and discourse as is evident in the Mishnah, Talmud and subsequent generations of literature and lore. Modern Jews are the descendants of *Yehudah*. Liebermann shrewdly wants to place the reformers in the line of *Yehudah* and those that oppose progress and development in the camp of *Yisrael*.

Liebermann does return to his tenet of *lo titgodedu*. He does not use the same term, but it is clear that he has it in mind. As much as he can admit that there is division, he pleads with his beloved brethren and people not to make factions. He implores: "Take hands, worship God as one group, don't let one man pour out bitterness to his fellow, because you are all the first born children of *Adonai*, you are a beloved seed of faithful believers."¹²²

Clearly Liebermann has an agenda. He wants to use traditional texts and concepts to win over traditional people. In this section on *lo titgodedu*, he does not introduce examples from his own community. He does not expound at length on the

merits of one faction or the other. His agenda is change but he uses traditional means as if to apologize to the traditional community for what he is about to argue to them. In the eyes of *Or Nogah*, they are making factions. The liberal community is working within the confines of an intellectual pursuit of Torah and with the desire to make aesthetic change in worship. Lieberman wants to perpetuate this notion of progress and process as the most legitimate way to be a Jew.

The question that remains is: why didn't Liebermann open with *lo titgodedu*? *Or Nogah* would have been more convincing if Liebermann had begun with these basic remarks. Instead, he begins with the defense of prayer in the vernacular. Perhaps, as I suggested earlier, he knew that claim would be the easiest to defend. Perhaps he was responding in the order in which the claims were presented to him. Most likely he did not reflect at length on the order of the claims, but rather on their content.

¹²² Liebermann, Eliezer, *Or Nogah Helek Bet* p. 29.

Conclusion

Eliezer Liebermann's *Or Nogah* is a product of its time. Halakhic defenses for the aesthetic and ritual changes in reform synagogues were no longer necessary just two decades after the founding of the Hamburg Temple. But Liebermann and his contemporaries were committed to Jewish tradition and legal debate. This was the method by which they could discuss and argue the principles of Jewish practice. Classical rabbinic opinion mattered to Liebermann. As such, his composition reflects his desire to justify the changes in synagogue worship, which he thinks are justifiable. The question exists though, whether or not his justifications are viable.

The response of the rabbis in *Eleh Divrei HaBrit* was to condemn Liebermann and the reformist community in Hamburg. Clearly there were rabbis who thought that Liebermann's writing was bunk and even suggested that *Nogah HaTzedek* and *Or Nogah* were the "work of the innovators [that] stood outside the pale of Judaism."¹²³ In analyzing the text of *Or Nogah*, it seems obvious that Liebermann often stretched the accepted meaning of a rabbinic text to fit his particular need, especially in the case of the use of musical instruments. The traditional community may have been justified in finding his halakhic defenses to be out of the confines of what they considered rabbinic tradition. But they were completely resistant to any change and "conspicuously ignored the Reformers' contention that halakhic Judaism itself was in effect schismatic by its failure to adapt to the fact that an ever-increasing number of

¹²³ *Eleh Divrei Habrit*, Altona, 1819.

Jews were abandoning Judaism because they found it incompatible with their new sensibilities and priorities."¹²⁴

Nogah Ha-Tzedek and *Or Nogah* were not adopted by the progressive Jewish community as authoritative texts from which to draw defenses or justifications for further changes in synagogue practice. In fact, Reform as a movement in Germany did not take hold for another twenty years after the publication of Liebermann's work. The next Reform prayerbook after that of Hamburg did not appear until 1840, and the first rabbinical conference was not held until 1844. It seems that the majority of German Jewry did not take part in the earliest manifestations of Reform. The Hamburg Temple, under the guidance of Israel Jacobson, did lay the groundwork for the development of what would become a flourishing progressive movement in Germany. This movement, however, would not be guided by the principles of *halakha* to which Liebermann was so committed.

Liebermann and the earliest reformers, like Jacobson and Aaron Chorin, saw themselves as connected to the "historical community of rabbinic Judaism."¹²⁵ But this was to change. David Ellenson writes:

The lack of interdenominational debate over [the issue of the organ] in Central Europe by the end of the nineteenth century reflects a Reform Judaism that no longer defined itself in legal categories, employing other arguments to defend and justify Reform practices. The evolution and direction of Reform Judaism in the course of that century are foreshadowed in the legal literature of 1818 and its use of the precedent of the Prague organ.¹²⁶ The absence of such literature by the

¹²⁴ Mendes-Flohr, Paul and Judah Reinharz, *The Jew in the Modern World*, Oxford University Press, New York, 1980 p. 142.

¹²⁵ Ellenson, David H., "A Disputed Precedent: The Prague Organ in Nineteenth Century Central European Legal Literature and Polemics," *Leo Baeck Institute Yearbook* 40, 1995 p.263.

¹²⁶ Liebermann mentions the Prague organ in his claim on musical instruments in the synagogue to establish legal precedent for the organ in Hamburg.

1890s reveals that Reform Judaism ultimately came to abjure law as a defining characteristic of the movement and marks its departure from the classical canon of rabbinic civilization.¹²⁷

Reform could (and does) no longer count itself as part of the halakhic tradition. In this light, Liebermann's *Or Nogah* becomes obsolete. It no longer matters whether prayer may be recited in the vernacular or if musical instruments are permitted as part of a Shabbat worship service. The halakhic arguments that Liebermann raises in his defenses in *Or Nogah* serve to illuminate his own ambivalences. The justification for prayer in the vernacular comes to teach Liebermann's own traditional biases. An organ in the synagogue is almost indefensible.

But Liebermann has another message, one that comes through in his discussion of *lo titgodedu*—do not make factions. Persuasive halakhic arguments need not be the ultimate goal of *Or Nogah*; instead it may reflect a strong desire on the part of the earliest reformers to maintain a cohesive community. The early reformers “did not envisage the creation of a new Jewish sect. On the contrary the responsa are attempts to justify the synagogal innovations on the basis of traditional Jewish law.”¹²⁸ Liebermann wanted to meld the enlightenment sensibilities of early nineteenth century Germany with the halakhic and rabbinic traditions. He saw them as compatible and even desirable. He wanted to continue the ongoing conversation of generations of rabbis who introduced innovations into an ever-changing and modernizing Judaism. His own ambivalence about the changes in the Hamburg Temple addressed in *Or Nogah* only serve to illustrate this point further; there is

¹²⁷ Ellenson, David H., “A Disputed Precedent; The Prague Organ in Nineteenth Century Central European Legal Literature and Polemics,” *Leo Baeck Institute Yearbook* 40, 1995 p.263.

tension between innovation and tradition, but the two can come together in ways that bridge the community. Even today, while the Orthodox community does not accept the playing of the organ on Shabbat and would discourage the use of the vernacular in prayer, Reform and Orthodox are two sects of the same Judaism, much like Beit Hillel and Beit Shammai in the mishnaic tradition.

Liebermann may have been unsuccessful in his attempt to convince the Orthodox community to adopt his legal justifications in *Or Nogah*, but the attempt might have been a fruitless endeavor before it even began. Instead, maybe Liebermann can be viewed as archetype of the newly enlightened German Jew of the nineteenth century. The struggle to balance enlightenment and emancipation with a rich Jewish tradition and heritage was entirely new to Liebermann and his contemporaries. Liebermann seeks to bring "a middle ground between two extremes....He sought a balance between faith and reason."¹²⁹ Liebermann wanted to help the Jews who were turning from Judaism to find a place where they could feel comfortable. He "praised the [Hamburg] temple for drawing alienated Jews back to Judaism and especially for attempting to bridge the widening gulf between those who clung tenaciously to every custom and those who mocked and scorned everything the tradition had to offer."¹³⁰ Liebermann can be viewed as a model for modern times. Though orthodox tradition may not be compelling for many, the Reform movement in recent years has sought to incorporate more custom and traditional rituals, while still maintaining a balance with modern, rational sensibilities.

¹²⁸ Weizenbaum, Joseph S., *An Analysis of Nogah Tzedek*, Hebrew Union College- Jewish Institute of Religion, D.H.L. Thesis, Cincinnati, 1962 p. 82.

¹²⁹ Ibid. p. 84.

¹³⁰ Meyer, Michael A., *Response to Modernity*, Oxford University Press, New York, 1988 p.51.

Or Nogah is not a strong halakhic work; it has flaws in many areas as we discussed above. *Halakha*, however, does not serve as a compelling force with which the modern Reform Jewish community can make decisions. A combination of rationalism and tradition, together with a strong sense of Jewish community unity, can be a compelling force with which the Reform Jewish community can use to maintain our strength. It is this lesson that Liebermann teaches well. In this way *Or Nogah* cannot be seen as obsolete or anachronistic. He may not have been an authoritative halakhic master, he may have been scorned for his misguided readings of traditional texts and his hypocritical approach to prayer in the vernacular, he may have simply desired to condemn the traditional community, but Liebermann's vision of a union of modernity and Jewish tradition is still relevant today.

Appendix A

Title Page of *Or Nogah*

אור נגה

כולל

דברי חכמה ומוסר בעניני עבודת ה' ית'

יאיר נתיב המסילה העולה בית אל ואורח חיים למעלה למשכיל, במאורות השכל והכתוב והקבלה, לכל הבאים לגשת אל הקדש פנימה, ולשפוך נפשם ולכם בתפלה ותורה בשפה ברורה ונעימה, ובעבודה רצויה ותמימה, ויסיר תלונת המעררים על התפלה בלשון אחרת על בלי מה, אך בעבור הרעימה.

חלק ראשון

מאח

אליעזר ליברמאן

בע"המח ס' עיר ומשק

לסדר ולפרט

וורחה לכם יראי שמי שמש צדקה ומרפא בנפית

Druck u,
gedruckt bei E. Schließer.
1818.

Appendix B

Text of Tefilah B'kol Lashon

— ד —

(ג) הוכח נש"ה דבר שמואל שאלה ש"כא וז"ל, לפי דעת רוב הפוסקים מותר להתפלל ולומר אפי' קדיש וקדושה בכל לשון. וראוי לדבר מלשון ארמי, לדעת הפוסקים הוא הגרוע שבכל הלשונות. וכ"כ מהר"ק בש"א סי' ק"א, ומפי מגידי אמת הוגר לי שבשיר הגדולה סאלוניקא, יש חזן קבוע לנשים שאינן מבינות כל"הק ומוצא עצמו ואותן בתפלה לעזר. "עכ"ל, עוד ראוי מברכת כהנים שאין לך דבר שבקדושה המור ממנה שנאמרת בשם המפורש בנ"הטק, ואי לאו מיעוטא דכה חברכו, ה"א דאף היא נאמרת בכל לשון.

(ד) כתב המג"א סי' ק"א ס"ק ה' וז"ל: „אם אינו מבין כל"הק אזי מצוה להתפלל בלשון „שמבין“ וכ"כ ה"טו ס"ק ד' וכ"כ בס'הסידים סי' הק"פה והש"פח וכ"כ המג"א סי' נ' ס"ק ב'. ועיין במג"א סי' ק"ו ס"ק ב'.

(ה) כ' האשרי ברכות פ"ב וז"ל: „כהב רב אלפס ז"ל הא דקחני הפלה בכל לשון ה"מ כצבור, אבל ביחיד לא. והקשו תר"י כיון שחפלת היהודי אינה נאמרת בל"הק, איך נהגו הנשים להתפלל בשאר לשון, דהא אף הם הייבן כחפלה? וחרצו רבני צרפת ז"ל: שכיון שמהפליין התפלה הסדורה כצבור דמי. ולי נראה, דבכל הלשונות יכול להתפלל אף ביחיד, רק לא בלשון „ארמי“. עכ"ל.

(ו) כ' לה"ק סי' ק"ה וזה לשונו: „עשרה מישראל שאינם מכינים בל"הק יכולין להתפלל בלשון ששבינים ולומר קדיש וברכו וקדושה בלעז.“ עכ"ל.

(ז) כתב ב"י סי' ק"א וז"ל: „יכול להתפלל בכל לשון שירצה וה"מ כצבור, אבל ביחיד לא יתפלל אלא בל"הק. וי"א דה"מ כששואל צרכיו, כגון שמתפלל על החולה או על שום צער שיש לו בביטחו, אבל הפלה הקבוע לצבור אפילו יחיד יכול לאמרו בכל לשון. וי"א דאף יחיד כששואל צרכיו יכול לשאול בכל לשון שירצה. עכ"ל.

(ח) איהא בגמ' מגילה דף י"ח ע"ב וז"ל: לימא קסבר רבי כל ההורה כולה בכל לשון נאמרה, מדאיצטרך בק"ש והיה? ופיר"ש: בכל לשון נאמרה לקרוא. והקשו התוס': והא קריאת ס"ת הוא רק מתקנת עזרא? והירצו: בקריאה דאורייתא, כמו פרשת זכר וחליצה ודודי מעשר וכו'. ע"ש. וכן הוא בהוס' ברכות דף י"ג.

(ט) כתב הכל בו: הא דק"ש בכל לשון, ה"מ כצבור אבל ביחיד לא, כדאמר ר"י אל ישאל אדם צרכיו כלשון ארמי, שאין מלאכי השרת וכו'. עכ"ל. וכתב עליו הב"י:

ואיני יודע מה שאלה צרכיו יש בק"ש? הלכך נראה דאין להלקי וכן דעת הרמ"ם ז"ל שלא חילק בין יחיד לצבורי עב"ל. וכתב האליהו רבא ס"ס ס"ב וז"ל: „וכדי שלא נחשב להכל בו „טועה, נדרש, דהנה צריך כל בעל שכל להבין ולא ישעה בדברי ר"י, שהכוונה בתפלתו „אל המלאכים, שהמה יביאו הפלתו לפני הש"י, כי זה הוא שטות וסבלות * אלא ביאור „המאמר: מפני שצריך אדם לכוון בתפלתו, ולשון ארמי אינו שגור בפי כל אדם, ועוד „דהוא לשון משובש, לכן טבע הנפש להתערב בו, ואין הכוונה מצויה בלשון שאינו מבין „היטב. וידוע דמלאך ענינו כח, ולכחות השוכות יקראו בשם מלאכי השרת ולכחות הרעות „בשם מלאכי חבלה, וזה שאמר ר"י שאין מלאכי השרת מכירין בלשון ארמי, ר"ל שאין „כחורת הנפש מורגלים בו, ואין בידו לכוון בתפלתו מפני הלשון אשר הוא זר אצלם עכ"ל.

(יוד) כתב הרמ"ם ז"ל פ"א מהל' ברכות הלכה יו"ד וז"ל: „כל הברכות כולן נאמרים „בכל לשון, והוא שאמר כעין שתקנו חכמים, ואם שינה המטבע, הואיל והזכיר אזכרה „ומלכות וענין הברכה, אפילו בלשון חול, יצא עכ"ל.

(יא) כתב הרמ"ם ז"ל בפירושו לט"ז אבות וז"ל: „דע שהשירים המוזכרים מאיזה לשון „שיהיה, צריך שיכתנו בעניניהם אם הולכים ביושר ואמנם בארתי זה אף שהוא מכואר „מאליה, מפני שראיתי זקנים וחסידים מאנשי חזרתנו, כשהיו במסגרת יין בהופרה וכדומה, „וירצה אדם לשיר שיר ערבי, אפילו יהיה ענין השיר שהוא שבח הגבורה או הנדיבות והוא „מן החלק האהוב, ירחיקו אוהו בכל צד ההרחקה ואין מותר אצלם לשטעו כלל, וכשישורר

(*) וכבר התרשמו רבים מהממי הדור על תכלת מכיכבי רחמים שאינו התקין כלל, והחננו מלאמרו לו דומיה תהלה. ומעודי לא הוסב דעיני תכלת הש"ן נר"ה ויה"כ קודם תכלת מוסף, באמרו שכל המלאכים שהם בעלי תפלות יביאו תפלתו לפני כסא כבוד ויפיו אותה לכניך כו'. והוא אינו נכון כלל, שנראה כאלו מכנים אמצעי הלילה, והוא משקרי החמורה שאליו לבדו ראוי להתפלל ולא לזולתו. ואף הנה נגד נח' ערוכה, ירושלמי פ' הרושה וז"ל: מי כה' אלהינו בכל קראנו אלינו, ר' יודן אומר, נשר ודם יש לו כבודן אם נאה לו צרה אינו נכנס אצלו בתאוס, אלא הולך ועומד על פתח חדרו של כטורנו וקורא לכן ביתו, והוא אומר לו איש כלוני בחוץ, אבל הק"נה אינו כן, אם נאה לו צרה לאדם, לא יקרא לא למיכאל ולא לגבריאל, אלא לו צווח והוא יענה. וה"ד: מי כה' אלהינו בכל קראנו אלינו, ואמר: כל אשר יקרא בשם ה' ימלט, ואמר: קרוב ה' לכל קוראיו לכל אשר יקראוהו באמת. עכ"ל.

„המשורר איזה פיוט מצוישי העברים לא ירחיקוהו ולא ירע בעיניהם, עם היצור הכנעני
„ההם המוזהר והנמאס. וזה סכלות גמורה, שהדבר לא יאהב ולא ימאס מצד הלשון, אבל
„מצד ענינו, שאם הוא ענין מעולה, יתחייב לאמרו באיזה לשון שיהיה; ואם כוונת
„השיר גרוע, באיזה לשון שיהיה אסור לאמרו. עוד אם יהיה הדבר גרוע, אזי הוא גרוע
„יותר בעבר מבלשון ערבי ולעז.“ — עכ"ל הזהב.

זהנה אחי זעמי! למה זה תריבו עם אחיכם, ומה קול הרעש זקול ענות חלושה במחנה
העברים! אחרי ראינו שכל הפוסקים סתירין להחפלה בכל לשון, ואף כי בלשון
היוהר צחה והיוהר רגיל על לשוננו, שלא נדבר לפני הק"ה בלשון עלנים ובלעגי שפה, והוא
מן הקלור ראש כלפי מעלה (*). הקריבהו נא לפתחך — וידוע מאמרם ז"ל (מס' הענייה):
אם עשו שפתותיו של אדם הנוכה, מבושר שהפלו נשמעת שנה' בורא ניב שפתים שלום
וגו'. ונאמר: לב חכם ישכיל פיהו ונאמר: יערב עליו שיהי אנכי אשמת בה'.

וז"ל החכם בעל הקר דעת בספר האמונות והדעות לרבנו סעדיה גאון ז"ל: „המעשה הטוב
„הוא שלם כאשר יחיה מצד הבחירה, ר"ל לא על צד ההכרח או בלתי כוונה כלל, וזה, כל
„המעשים הנכללים תחת טוב ורע הוא אך מצד הבחירה. וכל המדות, כעשיות הראוי ועוונת
„בלתי ראוי, יתכנו היות עשיות העושה אותם שלמה בעשותו אותם מצד הבחירה בהם. ולכן
„כאשר יתנהג האדם עם אלה הפעולות והמדות וההכונות ע"צ הבחירה בהשקפת השכל עליהם
„אל פנות הטוב, או כל מעשיו טובים, אין אחת מכל פעולותיו רעות; כי כאשר המדות
„הטובות טובות בעצמם לכוונה ראשונה, והרעות רעות בעצמם על כוונה ראשונה, יכול
„שתהפך הרעות לטובות והטובות לרעות, כי כאשר הרחמנות טובה בעצמה, כן חובל
„להיות רעה כאשר יתנהג בה על אופן הבלתי נכון לרהם, וכן באכזריות וכדומה. אך אמנם
„הכלל הזה אם ישמר האדם כאשר ישקול כל מעשיו בפלס טאזי הבחירה ובמשקל השכל,

(*) ונמדרש: חכם אחד הלך בדרך ולא רגליו, והתכלל לה' ית': אהא אלי! הקרה נא לי חמור לרכוב.
ואחר קיוה שעות כנגד צו פרזי אחד אשר המליטה לו חמורו פייר צו ניס, ואמר לו: יחודי! טול
את סימני על כתך, והרכיב את העייר טל כתו והוכרם לשאת אותו מהלך שני מילין. ואמר: אני
בטחמי גרמתי לי הרעה הזאת, כי סתם ה' תכלתי, התכללתי הקרה נא לי חמור לרכוב, ולא
פירשתי אם לרכוב אני על החמור, או החמור ירכוב עלי. — אר"י: התכלל צריך שיהא תכלתו רחב
ומתקן נפיו, שגל: היערוך שועך לא בצר. עכ"ל.

"עז ראוי המעשה להקרא מעשה אנושי; אך אם מעשה מטעשים הבחיריים אשר לא יעשה
 מאותם האדם מצד הבחירה בזה ר"ל מצד בהירות השכל אשר יבחר במעשה ההוא מזולתו.
 "הלא לא ימלט עשות המעשה אם מצד הכוונה והרצון; או כמנהל בלתי כוונה כלל.
 "רק מצד ההרגל, הנה זה מעשה השירה בלתי ראוי להקרא מעשה אנושי; ואומרי ע"ד
 "הדמיון, כאשר האיש הנכער ישים הנקר עת הפלתו, ובית התפלה המקום, וההרגל
 "סבת התפלה, כי לולי ההרגל כבר שבת כל הורת העבודה ובית התפלה, אך מצד רוב
 "ההרגל בו חשוב אליו טבע שנית, וראה כמה גדול באולת, עד שהפך מעשה הבחיריים
 "שהוא מעשה האדם מצד היווה אדם, אל מעשה הטבעי שהיא הפחית שבמעשים,
 "והבן זה: וכן הענין בכל המעשים אשר יעשו מבלי בחירה מרם העשותם, הנה אלה
 "אם יפעלו הפעולות טפני שיפעלו, ולא טפני שיהכנו, לא יעשו ולא ידעו ולא יכנו,
 "וכמעט בלתי נכון ליחס המעשה אליהם, כי לא נכון ליחס הפעולה אל הפועל רק בבחירת
 "הפועל בפעולת הפעולה, ובכוננו לעשות מה שנוטה לא כן החכם בעשותו מעשה טוב,
 "כי בענין התפלה יתפלל כאשר יבחר בהרגישו עם נפשו כי הוטל עליו חק החודש והתפלה
 "לא יוצרו, אז יתפלל מצד אשר יבחר להתפלל, והעת הפלתו בנקר, לא הנקר עת
 "הפלתו, ולכן בית התפלה, והשכל סבתו, וידע ויבין אמרי ברור נפשו, למי ומסרה ומה
 "זלמה יושם נפשו בכפו ותרומם נפשו בצקון לחש, ולא בית התפלה לכך, כי כל העולם
 "היכל ה' הוא אשר בו יתקבצו כל הברואים כהלל ותהלה, והלב מובח בו יקריב נפשו
 "ורצונו" עכ"ל הנחמד.

וכ"כ החכם הנעלה מוהרר משה חיים לוצאטור ז"ל בס' מסילת ישרים פרק י"ח וז"ל:
 מנהגים רבים ודרכים רבים עוברים בין רבים סכני אהם בשם חסידות, ואינם אלא
 גלמי חסידות בלי תואר, בלי צורה, בלי תקון, ומשך זה מתסרון העיון וההשכלה האמתית
 אשר לבעלי המדות ההם, כי לא טרחו ולא יגעו להעתיק את דרך ה' בידעה ברורה וישרה,
 אלא התחסדו והלכו במרה שנודמן להם לפי הסברה הראשונה, ולא העמיקו בדברים ולא
 שקלו אותם במאזני החכמה. והנה אלה הבאישו את ריח החסידות בעיני המון האנשים ומן
 המשכילים עמהם, כאשר כבר יחשבו שהחסידות תלוי בדברי חבל או דברים נגד השכל
 והרעת הנבונה, ויאמינו היות כל החסידות תלוי רק באמירת נקשות רבות, ויודוים גדולים,
 ובבכיות והשתחויות גדולות וכסנופיים הורים שימית בהם האדם את עצמו, כטבילת הקרח
 והשלג וכיוצא בדברים האלה כל. וז"ל שם פרק כ': והנה מרה שצריך להבין הוא, כי אין
 לדון המעשים על מראה הראשון, אלא צריך לעיין ולהתבונן עד היכן תולדות המעשה

מגיעות, כי לפעמים המעשה בעצמו יראה טוב, ולפי שהתולדות רעות יתחייב להניחם, ולו יעשה אותו יהיה חוטא ולא חסיד, וכו': ואחר שהכניא המהבר ראיות ע"ז מן הכתוב ומאמרי חז"ל, אמר בסוף הפרק: נמצאת למד, שהאדם צריך לשקול כל מעשיו לפי התולדות הנמשכות מהם, ולפי התנאים המתלויים להם לפי העת, לפי החברה, לפי הנושא ולפי המקום, כי הכל הולך אחר החתום והתולדה שהיא פרי המעשים באמת, ואין הדברים מסורים אלא ללב מבין ושכל נכון. כי א"א לכאר הפרטים שאין להם קץ, זה יתן הכמה מפיו דעת ותבונה עכ"ל.

והנה יש אחי ראיות הרבה מאוד מנגמ' ופוסקים ראשונים ואחרונים וש"ח בנדרן דידן, אבל הם למותר, כי הדבר פשוט, ובפרט בדורנו זה, שכמה מבני עמנו אינם מבנים לשוננו הקדושה, ומה גם טף ונשים המצפצפים ומהגים בפיהם בלי יבינו דבר מה (*). ואקוה שרי בדברינו אלה להעיר לב המפקפק, ורוב הדברים בזה הוא ללא צורך.

אמנם אחי זעמי! ידוע הדעו באמת, כי כל אשר דברנו עד הנה מענין התפלה בכל לשון והוכחנו לכרר היתר התפלה בלשון אשכנזית, אינו כ"א לרוב בני אשכנז ויושביה המורגלים מאד מנוער לדבר בשפת הארץ, ולשון אשכנזית הצחה והנקייה שגורה בפי כלם, למגדוליהם ועד קטניהם, אנשים ונשים נערים וזקנים גם יחד, שפתם ברור מללו בלשון ההיא ומבנים אותה היטב לכל דרכיה חקותיה ומשפטיה; לא כן לשוננו הקדושה אשר טעמים המה דורשיה וידועיה, ובפרט בדורנו זה בעו"ה, אשר שפת עברית עזובה וגלמודה, אין דורש ואין מבקש לה ואין מחזיק בידה מאסף אותה הכיתה, ולא מצאה טמח כי אם בבית יחיד סגולה והשרידים אשר ה' קורא בהם, אך רוב מהמונים, ואף כי נשים וטף,

(*) ושמעתי על איש רבני א' שפ"ח ה' פצרת בשמים והתפלל בל"ה נלחם דגמ' גדולה, ומיש נקרה שמה ונגז אלו נלחם בשמים שחומר הדגם כשמים הכסוק ועצר את השמים ולא יהיה מטר, ועיניו יולו דמעה, ולחמך שמים תפלתו שאל אותו השם: על מה התפלל ונכה כ"כ? והשיב לו, שהתפלל על הגשמים. ושאל השם: הלא שמעתי הכסוק בפיך ועצר את השמים ולא יכלי מטר? והשיב לו הרבני: איך מנין הפירוש, כי כך התפללתי: ועצר את השמים, שהק"נה יסחוט את השמים ולא ישאיר שם שום מטר רק הכל ירד על הארץ. — וזה לו הטעות ממנה כלים: אין עוצרין את השמים, וכידועו סמיטה, לכן פל כאן כפי המשנה ולא ידע כל הכשוע.

לא ידעו ויכירו ערכה וסגולה, לא ערכה להם צוף נפרד אסירה, כי לא יבינו דרכה וטהוטה, וכמעט זרה היא להם וכנכרירה תחשב בעיניהם, ולזה אין אתם להבין מוצא שפהזתיהם, אף כי לבחון הגיון לבכם בהתפללם בלשון ההיא, לכן לאלה ודומיהם היינו הדת והלטורי, ואף כי השכל, שמושב להם להתפלל בלשון אשכנזית המובנת להם, מלהתפלל כל"הק, והלב אינו מבין מה שהכה מדבר. לא כן היהודים היושבים במדינות אחרות במקומותם למושבותם, כמו אנשי פולניא ודומיהם, שאף אם גם הם בלשון ושפת אשכנזית ידברו, הנה משובשת זנשתתה היא כפיהם, ולא יבינו צחות הלשון ההיא על מכוניה, אבל בקיאים הטה מאד בלה"ק רובם ככלם, כפי אשר ילמדון אותה בנעוריהם אצל מוריהם ומלמדיהם במקרא מפורש ושום שכל במשנה וגמ', וגם הסון העם אשר לא הצליחו בלמודם, הנה רוב מוצא שפתיהם על קוסב העברית הסוב, וכדברים איש אל רעהו גם בכל דבר עסק וענין, מסחר וקנין, ישחמשו במלות עבריות שונות להטיב צחות לשונם להבנת הענין, ומורגלים להעלות על לשונם גם מאמרים ודבורים שלמים מלשוננו הקדושה ליפורת דבריהם, ולזה נקל להם מאד הבנת הלשון ההיא בלמוד קל, ולכל הפחות יבינו כלם פירוש התפלות, הנה אלה בוודאי מושב להם להחזיק בטנהג אבותיהם ולהתפלל בלשון עברית הזכה וטהורה מוקקת שבעתים, ע"פ סדר התפלה המתוקנת מפי אנשי כ"הג, מלהתפלל בלשון אשכנזית המנומגמת אשר רגל על לשונם בלעני שפה, או בלשון אשכנזית הצחה שאינם מבינים כלל, ויבואו לידי חרוף וגדוף ח"ו וכל הטענות והראיות שהבאנו למעלה בהוכחת היתר וחיוב התפלה בלשון אשכנזית ליודעיה ומביניה, למען יוכלו לכוון היטב בהפלהם, הלא גם הם מכריזים איסור התפלה בלשון אשכנזית או בלשון אחרת, לאלה אשר לא ידעו דרכיה ולא יבינו אותה היטב. והדבר פשוט ומוכן טעמנו. וה' יהפוך אל עמו שפה ברורה לקרוא כלם בשם ה' ולעבדו שכם אחד.

זעתה נכואה לטענה השניה על ביטול הפלר הלחש. והנה אם כלבני כן אניד לכם, אחי ועמי! הנה מעולם נקטה נפשי בהטנקשים הדשורה, ובסוד שונים המשינים מנהגי אבותינו ז"ל הקדושים אשר בארץ המה לא מצאתי רצון ונהר. ראו אחי! דברי הפוסקים ראשונים ואחרונים, ה"ה הר"אש והרש"בא מהר"ק ומהר"אש, שכלם כאחד פסקו שאין לבטל שום מנהג הנהוג בישראל, אם לא מנהג הנהוג בטענות ומנהג שאין בו טעם זריח וסמך כלל. וב"פ האחרונים, ה"ה הב"ח והרמ"א זהמ"א. ואף כי מנהג אשר יסודו על דברי הש"ס והפוסקים ז"ל, בוודאי אין כת לשום כ"ד לבטלו, אם לא לצורך המקום והשעה.

Appendix C

Text of *Klei Shir* – Musical Instruments – in the Synagogue

— יד —

טענה הרביעית בנידון המו"קא וכלי שיר הנקרא איר"גל. הנה מאשר הוא בעיני קצה להשא
גדול זעון ומרי יהשכ, לכן הזכרנו להאריך קצת בנידון זה. ואהם אהי ועמי!
נא אל יעמיסו עליכם דברי אלה משא עיופה. והנה בהשקפה ראשונה נגזר על כלי שיר הלז איכור
מוחלט ואיסור כולל מבטא איסורים התלויין בו, והנה אם נבחון הדבר ע"פ משפט הלמודי
נראה איסורו מג' טעמים: (א) משום איסור שבת, והוא אסור לישראל לנגן בשבת, וכל
דבר שאסור לעשותו, אסור לומר לנכרי לעשותו. (ב) משום ובחקותיהם לא הלכו, ואחרי
ידענו שהיא מנהגם בבית הפלח, לכן אסור הוא לנו. (ג) איתא בגמ' דאסור דף מ"ט:
משגלתי הסנהדרין בטל השיר: וכן הוא אומר: איך נשיר שיר ה' על אדמת נכרי. אכן
איתא בט"א ח' הק"ס: דאסור לשמוע כלי שיר מיום שחרב ב"הטק. הנה מכל אלו הטעמים
יהיה אסור לנו כלי שיר הלז ע"פ הדין. ועתה אחי שרי ישראל יחיו! הנה אעביר לפניכם כל
חששי איסורין הללו אחת אחת, ונצרכם בכור הבתירה, למען נראה אם שייכים לזרז ריזן.
ובראשונה נשים לב לחשש הא' שהוא משום חומרא דשבת. הנה נציע לפניכם גמ' עירובין
דף ק"ג: אין מטפחין ואין מרקדין ואין מכין כף על כף וכו', משום שמא יתקן כלי שיר. וכן
בגמ' כיצה דף ל"ה פ' המביא. ע"ש. וכתבו המוס' ו"ל: כל זה היה בזמניהם, אבל עכשיו
אין אנו בקיאים בעשיית כלי שיר, וטלחא דלא שכיחא היא, ואפשר שעפ"י נהגו עתה להקל
בכך. עכ"ל. וע"ש במרדכי פ' משילין. הנה טעם האיסור לנגן בכ"ש בשבת הוא רק משום
שמא יתקן וכו', וכל הפוסקי' פסקו. דאנן אין בקיאים בזה, הרי דמותר אף לישראל עצמו
לנגן לידן, רק מחמת שנהגו קדמונינו בו איסור, קשרה לנו להקל בדבר שאין הכרח כ"כ.
והנה אף להראשונים שהיו בקיאים, ה' אסור להם באיסור שבות, וא"כ למה יאסר אמירה לעכ"ם
בשבת דרבנן. וגדולה מזו כתב הר"ן בשם בעל העיטור, דאף בעלמא גמורה שרי אמירה
לעכ"ם בשבת לצורך מצוה קצת. וכ"ד הב"י בשם הג"מ. וזהו ש"ס רע"ו ס"ב מתיר
לומר לנכרי להדליק לו נר בשבת בסעודת מצוה, ועפ"י כתב דיש מקילין במשחה ושטחה, ע"ש.
והמג"א כתב שם, דאין למהורר בידים, דמוטב שיהיו שוגגין. והב"י סי' ש"לח כתב ו"ל:
יש מתירין לומר לנכרי לנגן בשבת בכלי שיר בחופות, ואפילו לומר לנכרי לתקן הכלי שיר
בשבת שרי משום כבוד חתן וכללה, ובזמן הזה נהגו להקל. עכ"ל. וכתב המ"א: דאף אם
נפסק הנימא וקשרו הוי מלאכה דאורייתא התירו לכבוד חתן וכללה. ואיתא, שמהר"ל עשה
חמנה לבנו, ואותו הפעם צוה המושל שלא לנגן בכלי שיר בחופות, וצוה להוליד החתן והכלה
לעיר אחרת לנגן שם בכלי שיר בשבת. ועיין ברמ"א סי' של"ט, ונס' אליהו רבא שהאריך
להתיר. והמג"א כתב שם בפירוש, רמדינא מותר לידן אף לנגן בכלי שיר בשבת, ואף

דאן נוהגים איסור, עב"פ שרי אמירה לנכרי, והנה עד כה דברנו צהיחר אמירה לנכרי בשבת לנגן בכלי שיר מדינה דש"ס ופוסקים, אבל לוטר לנכרי מע"ש שינגן בשבת, זה אינו צריך לפנינו כלל וא"צ לראיה כלל, וכ"כ המ"א סי' ש"לט בפירוש וו"ל, אבל לוטר לנכרי מע"ש שינגן בשבת וודאי מותר לכ"ע ואין מקום לפקפק בזה.

ועתה נשים לב לשעם הב' ונראה אם יש בו איסור משום ובחוקותיהם, והנה אחרי העיון מצאתי לרבנו הגדול הב"ח ז"ל בתשובתו שאלה כ"ז וו"ל: נגונים שמומרים העב"ם בנית תפלהם מותר לנו לוטרם בב"הבנ, ואינו אסור רק אותן נגונים המיוהרים לע"ז דווקא, מאחר שהוא חק לע"ז כוס, לכן אסור כמו טענה שאכרה לנו ההורה משני שעשאוהו כנשים חק לע"ז, אבל סתם נגונים שמומרים בנית תפלהם, לאו מנייהו גמרינן אלא מוחבטת המוזיקא ומותר לכ"ע. עב"ל. והנה ידוע שהעמים שבזמן הזה לאו ע"ז המה, רק מאמינים באחרות כמונו, ועוד המוזיקא אינו חק לע"ז, כי בכמה מקומות כמו ברוב מדינות פולניא, גם במקומות הקטנים אין להם בבית תפלהם שום כלי שיר, ואם הכלי שיר הלז חק להם לע"ז דווקא, יהיה מוכרח להם בכל בית תפלהם, כמו מים הידועים וכדומה, ועוד כתב הכ"מ פ"א מהל' עב"ם וו"ל: אינו אסור משום ובחוקותיהם רק הדבר המיוחד להם לכדס טפני גיוחן, וצריך הישראל לפרוש מזה משום יהדותו, אבל דבר שאינו אצלם אלא ניסוס לבד, אין בו משום ובחוקותיהם, ואין הישראל הייב בזה להשתנות מן הע"ז כוס כלל. עב"ל, וב"כ הר"טא ב"ד סי' ק"ע, ועפ"ז הטנהג להקל עכשיו בכמה דברים, ועוד דאינו אסור משום ובחוקותיהם רק דבר המיוחד להם לכדס אשר הקנו להם נביאיהם ובחוקותיהם ואין לנו הלק בו, לא כן המוזיקא אשר נמצא אצלינו מימי קדם קדמחה, ובה שכחנו את יוצרנו מאז כדורות הראשונים, כאשר המליך הבונה בעירובין פ"ב וו"ל: „צר לי המקום מהכיל אשר הרבו ההכשים לדבר בטעלת השיר, ותועלתו, כי כל יופי העולמות השפיל והאמצע והעליון וכל טובם הוא ערך קולות ושיר, „כידוע למכין *). ובמה התעורר הנשמה להתנשא ולהתרום מההומור אל שמי מכון בוראה,

(*) ודבריו יוצנו לכל משכיל, דהנה תכלית כרטי הצראה הוא אך להסלמת הכלל, ואף שצטרפות נראה חיוה הסרון, השלמות יתנא עלי כפך כלל, וכ"כ הכנס נט"א וו"ל: קצת הסכע להשכיב על כלל המין אשר חוסקד עליו לקיום המין הוא לצורך חוס הטבעי לפרות ולגדל צניהם, כדמתיב חולל חילות תשחור, עת לדת ישלי סלי, גם יתן לכל מין קצחה ומדע טעמי להכין להם צרכם ולהשחר מחקרה

אם לא מתוך הנגון והשיר? ועבודה גדולה היתה השיר בב"המק, ומכילה הנאי ואמוראי הסתיים
היות לה עיקר מן התורה, עמנו היתה מפארה הזאת ושלחנה. ואמר אחד מן המליצים: מה
האמר חכמה הנגון לאהדים? גנוב גונבתי מארץ העברים" עכ"ל. ובגמ' שם: אר"י א"ש, מניין
לעיקר שירה מן התורה? שנאמר ושרת בשם ה' אלהיו, איזה שירות בשם? הוי אומר זה
שירה. רב מחנא אמר מהכא: הנה אשר לא עבדת אלה ה' אלהיך בשמחה ובטוב לבב,
איזה היא עבודה שהיא בשמחה ובטוב לבב? הוי אומר זו שירה. ואימא דברי הורה, דכתיב
בהו פקודי ה' ישרים משמתי לב? משמתי לב אקרי, טוב לב לא אקרי. ואימא בכורים, דכתיב
בהו ושמחת בכל השטוב? טוב אקרי, טוב לב לא אקרי. חזקיהו אמר מהכא: זכירה שר
הלויים יסיר, אל הקרי יסיר אלא ישיר. ר' יצחק אמר מהכא: שאו זמרה וחנו הוף כנור נעים
עם נבל, ר"נ בר"ז אמר מהכא: הם ישאו קולם ירגו בגאון ה' צהלו מים. ר"י אמר מהכא:
משה ידבר זהאלהים יענו בקול, על עסקי קול. ר"א אמר מהכא: ויהי כאחר למחצרים
ולהמשוררים להשמיע קול אחד. עכ"ל שם. והלשון הזה הוא ג"כ במד"ר סדר נשא פרשה ו'.
וכתב המהר"ש שם זו"ל: תחת אשר לא עבדת וכו' הקפיד הכהוב על עבודת השיר בעונש,
שאמר ועבדת את אויבך, כי היא מבטלת רוח רעה, כמו שמצינו בשאול, ומביאה רוח הקדש
ונבואה, כמו שמצינו באלישע, זיהי כנגן המנגן וחה עליו וכו'. עוד שם: אר"ש מגריפה
היתה בב"המק, והיו בה יו"ד נקבים, וכל אחת מוציאה ימיני זמר. נמצא כולה מוציאה
ק' מיני זמר. ר"מ אמר, כל אחת מוציאה ק' מיני זמר. נמצא כולה מוציאה אלף מיני זמר.
עכ"ל. ובגמ' שם, שעבדי הלוים היו ג"כ מנגנים בב"המק. ודי בדברינו.

המסכת העדרם, כמו מכות הדבורים כנגין ציתם וחטיפת מזונם וזריות הנמלים ונין מלאכת הציצית,
הפסח היין וטוב צפור דרור, וכן פרטים אחרים במיני נ"ח, כלם המה פנינים על כללית המין ההוא,
אחנם השנהגה כרטיית, אם יחיה עוד זה או ימות, אם תנולל נמלה זו או תדרם, אם יטרף זה העכביש
את זה הזנב, וכיוצא באלו הפרטים, אין הם שישיגו על זה, וכל בעלי חיים אף כי הדוממים והצומחים
לא יושגו בפרטים, לפי שהמכוון מהם יושג במיניהם לבד, לכן כל מיני אישים היו בחקיה לבד,
לא בנזירות כס"י. עכ"ל. והנה כל הדברים זולת האדם יש להם בדרשותיהם שלמות האפשרי במינת
הצטרפותם לכלל, והדמיון בהם דמיתרי הכנור (ואיטון) אשר על כל יתר כרטי בלתי אפשר למנגן לנצח
במלאכת הנגון להשמיע קול זמר ושיר, ואך ע"י התעוררת המיתרים כלם יחד בקול, יתאחדו הקולות
ויולד הנגן העולה ברעיון המנגן, כי כל יתר הוא דבר כרטי, והכנור מקנן הקולות השונים ממיתרים
הכרטיים, והכרת מציאותו יתחייב שיהי' כנור שלם בקיטון מיתריו הכרטיים, ועל ענין זה תסוד הכריאה
בכלל. והתשכיל ודין: —

בעתה נפן למעם הג' ונדרוש אם ישיבו איסור משום הרבן ב"המק' ונציע גמ' דסוטה דף ס"ט:
משגלה סנהדרין בשל השיר בבית המשתאות דכתיב בשיר לא ישתו יין פי' רשי
שם גורו שלא לומר בביתם ובבית המשתאות ובמס' גיטין ה"ז: שלהו ליה למי עוקבא וימרא
מנ"ל דאסור? שירטט וכחב להו, אל תשמח ישראל אל גיל בעמים וכחב החוס': וימרא טנלן
כו', פי' רשי לשורר בבית משתאות וכן משמע מדקאטר, ולישלח ליה בשיר לא ישתו יין,
אבל שיר של מצוה כגון לשמח חזן וכלהו וכיוצא בשירי עב"ל וזו"ל המהר"ש"א שם: אל
השמח ישראל אל גיל בעמים באותו גיל שרואה בעמים, כמה שאמר: ישתו בי וישבו שעה
ונגינות שותי שכר, ונני הפלתי וכו', וכו' רמז שמוחר לנו לגנן בחפלה: שאמר שהם נגינות
שותי שכר, ו"ל שהם מנגנים בכלי שיר בשכר, והאי קרא אל תשמח ישראל בגלות
איירי דכתיב לעיל מיני, הרבה יהודא כו' ושלחתי אש בעריו כו', ודקאטר ולישלח ליה בשיר
לא ישתו יין, והאי קרא מפורש שפי דמשמע שיר שהוא בבית משתאות, וכל הענין בגלות
איירי, וקאטר, ה"מ כמנא וכו', משום דכתיב לעיל מיניה, שבת משוש תפיס: עב"ל המהר"ש"א
ו"ל: והאשרי ר"פה דברכות כחב וז"ל: איתא בגמ' אר"י כל השותה יין בארבעה מיני זמר מביא
פורעניות לעולם, דכתיב והיה כנור וכו': פי' גאון: הא דאמרינן זימרא אסור, ה"מ כגון נגינות של
אהבת אדם לחברו לשנתיפה ביפיו כדרך שהישמעאלים קורין לזאשע"אר, אבל דברי שירות ותשבחות
וזכרון חסדי אל אין אדם מישראל נמנע בזאת, ומנהג כל ישראל לאמרו בכית החתנים ובכית
משתאות, ולא ראינו מי שמוחה בזה: עב"ל: ובכונה שם: א"ר הונא זימרא דנגרי ודנקרי
שרי, פי' שיי שאינו אלא לזרם במלאכהו שלא יעפו עב"ל: והנה אם לצורך הדיוט שרי,
לזירנו עבודת יצרנו לא כ"ש ועור, דאי ס"ר דאסור לשיר עכשיו שום שיר, משום הרבן
ב"המק', למי טפלל הגמ' אי אסור בשבת, היזוק ליה דאף בחול אסור? — ושם בסוטה:
דגרדאי אסור, פי' רשי, שאינו אלא לשחק: היזוק ליה דכל מיין שיר אסור? אלא וודאי דאינו
איסור כלל, אלא בשיר שעל היין, באשר היו רגילים בכך בדורות הראשונים: וע"ז הוכיחם
הנביא (ישעיהו ה' י"ב) והיה כנור ונבל תוף ותליל ויין משתיהם וכו': ובספר השירים לר'
היים ווינטורי כחב בפירוש, שמוחר לשיר בכ"הכנ אף עכשיו בכל כלי שיר: ומי שיש לו
ספר הלז יע"ש: גם לא נשכח מני אשר ספרנו לי כמה זקנים בעת היותי בפראג שזוכרים
האורגל אשר הי' שם בכ"הכנ על הנאי, והיו מנגנים בה בכל ליל שבת, כר"ה וי"ט ועיד
היום מקבליים שבת בכ"הכנ הישנה בכלי זמר, ונמשך המוזיקא עד חצי שעה בלילה,
והמנגנים יהודים המה: ומעתה די לנו בכל הדברים האלה להוכיח שאין בדבר המוזיקא הלז
שום צד איסור, ואדרכה כבוד אלהים הו"א להללו בשיר ושבחה ברנה וזמרה בכל כלי שיר.

כַּמִּשֶׁׁשׁ (ד"ה ה' י"ג) ובהרים קול כחצוצרות וכמצלחים ובכל כלי שיר להודות ולהלל לה' כי טוב כי לעולם חסדו. וכן מצינו בתורה בנביאים ובכתובים: בתורה: ותקח מרים הנביאה את התוף בירה וחצאן כל הנשים אחריה בתופים וכמחולות ותען וכו'. בנביאים: (שמואל ב' ו' ו') ודוד וכל בית ישראל משחקים לפני ה' בכל עצי ברושים בכנורות ובנבלים בתופים ובמנענעים ובצלצלים. ואלישע אמר (מלכים ב' ג' י"ד) קחו לי מנגן והי' מנגן המנגן ותהי עלין יד ה' בכתובים: (ההלים ל"ג ב'). הווד לה' בכנור בנבל עשור וזמרו לו. שירו לו שיר חדש השיבו נגן בתרועה: ודוד אמר: (תהלים ק"ג) הללוהו בנבל ובגור, בחוף ומהול במינים ועוגב בצלצלי שמע וגו'. וכל מזמורי תהלים נתקנו לזמרים בכלי שיר כידוע. והדבר ידוע, דקול נעימה וזמרה מרהיב ומלהיב את הנפש ומעורר אותה להגיד שבה ותהללת אל ית' שמו ולעבדו בלב שמח וכנפש חפצה. ובס' חסידים סי' ק"נח וז"ל: ואם לא תוכל להוסיף חקוה לך אחר נגונים ותהפיל בנגון שמחוק לך. אז תהפיל בכוננת וימשך לך אחר מוצא פיך כדרך הניגון שמושך לדברי שבה ומשמח את הלב, למען יטלא פיך אהבה ושמחה לטי שרואה לבבך והנרכהו כחיבה רחבה וגילה, כל אלה הדברים המכינים את הלב. עכ"ל. ועוד, דע"ז מרבים העם לבוא בית ה' ומתוך שלא לשמה בא לשמה. ואמר: נחלתי ערותיך לעולם כי ששון לבי המה. ואמר: דרך מצותיך ארוץ כי תרהיב לבו.

לכן אחי ועמי! עבדו את ה' בשמחה בואו לפניו ברננה, ואקרא עם הנביא ישעיהו: הנד עבדי ירונו וישמחו לב — ויקוים בנו דברי הנביא (ירמיהו ל"ח) הנני שב שכורת אהלי יעקב ומשכנותיו ארחם ונבנתה העיר על הלה, וארמון על משפטו ישב ויצא מהם תודה וקול משחקים ופקדתי על כל לוחציו, המה יהיו לי לעם, ואני אהיה להם לאלהים.

מענה הה' על מה שנהגו להתפלל במבטא ספרד ולאחריו במנהגם, ואנחנו יוצאי ירך בני אשכנז נחנו. הנה אף בטענה זו אין בה ממש, כי כן כתב מה"רם מבראני תשובה ק"עו וז"ל: „בשינוי תפלות אין בו טשום ואל השוש, ומנהג ספרד הוא יותר נכון וישר, ואין „להכריח לשום אדם להתפלל דוקא בב"ה של אבותיו, או שהתפלל הוא בה' אך יכול „להתפלל כאשר תשאלנו נפשו. עכ"ל. ובפרט שכל גדולי המוקדקים מעידים שמבטא ספרדים הוא ע"פ הדקדוק מאוד. ושלעמם ונימוקם עמם. (א) מפאת הנקודות והתנועות, כידוע שהמה נחלקים לאכזר ותולדות, ואלה הן: הקמץ והפתח, הציורי והסגול, החריק גדול והחריק קטן, החולם והקמץ חטף, המלאצום והשורק. והנה הכרת התולדות טעין האכזר, שהן ממוצא א', וכרא כרעא דאכזר, ואין חילוק ביניהן במבטא, אלא שזה בא בארוכה וזה

Appendix D

Text of *Lo Titgodedu* Do Not Make Factions

— כא —

לראשונים פסקי-טעמים אף בדברי ח"ל, ר"ל נעימה קול לפי ענין הדברים: וזה שאמרו בעירובין ובמגילה: כל הלומד בלא נעימה ושונה בלא זמרה, עליו הכתוב אומר: וגם אני נהתי להם הקים לא טובים וכו', לפי שאף בדברי ח"ל צריך האדם להנעים קולו לפי ענין הדברים: ועוד, ואם הנגינה מאבותינו מעכבת, והיא חוקר כפרה אדומה, איך אנו משנים אותה כמנה פעמים בשנה, כמו בר"ה וי"ה כ' יש לנו נגינה אחרת, כש"כ נגינה אחרת, והמהל יש לו נגינה אחרת; ואם היא גורית ומעכבת, איך נוכל לשנותה? אלא ודאי הדבר נכון כמ"ס, ומי אשר אמת מנטהו, יבין כי כנים דברי ודי למכין.

והנה בדבר אשר נהגו שלא לקרות לס"ה בשם, גם זה אינו חדש חתם השמש: וכבר הוכח מנהג הלז בש"ת אמונת שמואל וז"ל: במקום שאין קוראין לס"ה בשם, אין קפידא לקרות ב' אחים זה אחר זה. עכ"ל. גם הגאון בעל כה"ג מביא המנהג הזה ומחלק ע"פ המנהג הזה בדין כהן שקראוהו לס"ת והוא קורא ק"ש וז"ל: במקום שאין קוראין לס"ה בשם רק כהן קרב, א"צ להפסיק, אבל במקום שהמנהג לקרות בשם, צריך להפסיק. עכ"ל.

טענה הז' בענין לא התגודדו, הגר אף טענה זו חלושה מאוד, דהנה ביבמות רפ"א: ב"ש סתירין הצרות לאחים, וב"ה פוסקין, אע"פ שאלו אוסרין וכו'. וצריך: אקראי כאן לא התגודדו? ומטיק כנ"ל: כי אמרי לא התגודדו כב"ד ז"ל, פלג מורין כך ופלג מורין כך, אבל שני ב"ד בעיר אחרת, הללו מורין כך והללו מורין כך, אין בו משום לא התגודדו, וכחב הש"ך ב"ד סי' ר"מ וז"ל: ב"ד א' בעיר אחת שנהלקו בדבר, אלו אוסרין ואלו מתירין, עובדים על לאו דלא התגודדו, מפני שדבר זה מרבה מחלוקת בישראל והתורה טחוי כשתי הורות, אלא ישאו ויתנו בדבר עד שישכימו כלן לדעת אחת, ואם א"א בכך, אם הוא איסור דאורייתא יפסקו כלן להחמיר ואם הוא איסור דרבנן, יפסקו כלן להקל, אבל ב"ד בעיר אחת אין בו משום לא התגודדו כלל. עכ"ל. ועוד, דלא התגודדו לא שייך אלא בדבר איסור והיתר ממש, שזה מתיר וזה אוסר וטחוי כשתי הורות, אבל בהלוקי מנהגים, אין בו משום לא התגודדו כלל, וזה פשוט. ופוק חזי מאי עמא דבר, בכמה קהלות קדושות יש מנהגי' הלוקי' בחפלותיהם ובנימוסיהם, כמו בעיר הבירה אמסטרדאם יש ב"הכנ ספרדים וב"הכנ אשכנזים, והמרה חלוקים הרבה במנהגיהם. ובהיותי שנת ת"ק בעיר לעמבערג הבירה היא עיר גדולה לאלהים, גם רבים מבני עמנו דרים שמה לערך ואלפים ב"ב, ראיתי שאנשי מכונא העיר (פאר שטאדט) הלוקים בהרבה מנהגים עם אנשי העיר. ואזכיר קצתם לדוגמא, בתוך העיר כורעים על ברכיהם בר"ה ובי"ה בעלינו ובעבודה, ובמכונא העיר אין כורעים, בתוך העיר עושין תשליך, ובמכונא העיר

אין עושין, בתוך העיר משכר החתן צלוחית תחת החופה, ובמנוא העיר אין שוכר, וכן הרבה.

טענה היה אם זה הוא הדרך הנכון בעיני ה', למה לא נהגו כן אבותינו הקדושים בדורות הראשונים? הנה אחי ועמי! לא בהשכל נדבר כזאת, האם לא מצינו לדורות האחרונים שהשכילו והוסיפו דעת בכמה דברים הנעלמים מהראשונים? הלא מעשים כאלו אנו רואים בדורנו זה לאלפים מחכמת הטבע ומשאר חכמות? ואל תשיבני, שכל זה בחכמת הטבע ובתיקון העולם שהם דברי חול, אבל בעיני האלהות ובחכמת ה' הקדושים נקדש אין לנו רשות לשנות דבר, ומי הוא זה שיבא אחרי המלך מלכי עולם ומוסדי חבל אשר לבס היל כפתחו של אולם? ע"ז אשיב אתכם, אחי אהובי! משגה הוא בדינו, כי מלבד שהוא נגד השכל והמפורסמות, הנה הוא אף נגד דעת ח"ל הקדושים בעלי התלמוד, כי כן איתא בגמ' חולין דף ו' ע"ב: העיר ר"י בן זרוח בן חמיו של ר"מ לפני רבי על ר"מ שאכל עלה של ירק בכיר שאן, והתיר רבי את בירת שאן כוללה: חברו עליו אתיו וכיר אביו ואמרו לו: מקום שאבותינו ואבות אבותינו נהגו בו איסור, אתה תנהג בו עיתר? דרש להם מקרא זה, וכתת נחש הנחשת אשר עשה משה וגו', אפשר בא אסא ולא בערו, יהושפט ולא בערו, והלא כל ע"ז שבעולם אסא ויהושפט בערו? אלא מקום הניחו לו אבותיו להתגדר בו, אף אני מקום הניחו לי אבותי להתגדר בו. מכאן לת"ח שאמר דבר הלכה שאין מויתרין אותו, ואמרי לי, אין מויתרין אותו עכ"ל. ופי' רשי שם וז"ל: מקום הניחו, כשיבאו בנינו אחרינו אם לא ימצאו מה לחקן, במה יגרל שמם? מכאן לת"ח, כלומר אחר שראינו שרבי היתר מה שאסרו אבותיו, אע"פ שדבר המזה היה, שהרי מעולם היו נוהגין בו איסור, למדנו שאין מויתרין לת"ח שאמר דבר הלכה חדשה, ל"א אין מבדילין אותו משמועתו לוטר לו חזר בכך, ל"א אין משקצין את דבריו לוטר לו גאוהך גרמה לך לדבר זה ואין מגביהין ומסלקין אותו מדבריו עכ"ל. ובחזס' שם: שהראשונים שעו והשכו, אחרי שהנחש נעשר ע"פ הדבור אסור לכערו מן העולם, וזה גרמה לכל ישראל לטעות בו. וכ"כ הגאון בחשו' באר יעקב שמקום הניחו לכל דור ודור להתגדר בכמה דברים שנעלם מהראשונים כשכיל לעשות שם לאחרונים. וזה אצלי שיעור הגמ' (ע"ז דף ט"ו) אמר ר"ל בואו ונחזיק טובה לאבותינו, שאלמלא לא חשאו אנו לא באנו לעולם. ופריך למימרא דאי לא חשאו לא הוי מולדו, והא כתיב פרו ורבו? אלא אנו כמי שלא באנו לעולם עכ"ל. והנביא אמר: (ישעי' ס"ה ד') ובנו הרבות עולם, שוממות ראשונים יקוממו, והדרו ערי חורב שוממות דור ודור.

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