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ON JEWISH RELIGIOUS LIFE in the Ghetto

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Sacred Remnants:

Responsa of the Holocaust
on Jewish Religious Life in the Ghetto.

A Rabbinic Thesis by:
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Acknowledgements:

In choosing this topic for my rabbinic thesis, it was my intention to add, be it in a small way, to the study and record of holocaust responsa literature and the righteous deeds of Rabbi Ephraim Oshry and his community in the Kovno Ghetto. I could not begin such an undertaking without being constantly aware of the midrashic explanation of how it is possible for the younger generation to one day arise and comment or expound upon the works of the previous generation. To this seeming impossibility, that the students would be able to add some new perspective to the works of the great rabbis of Jewish history, the midrash reassures the younger generation and explains. "We are like grasshoppers standing on the shoulder of giants, because of the great deeds and insights of those who came before us, we can stand upon their shoulders and adding our own small insight, see that much further."¹

This work would not have been possible without the work and scholarship of so many others. In particular I would like to thank Dr. David Ellenson, my thesis advisor. It is fitting that R. Hanina is one of the first tannaim introduced in this thesis, for it was R. Hanina who penned the verse, "When two

¹ The literature on this phrase is voluminous. On the use of this expression within the halachah, see Israel Ta-Shema "'*Hilkhita ki-Batrai*' – Historical Aspects of a Legal Maxim," *Annual of Hebrew Law* 6-7 (1979/80): 405-23 (Hebrew)

people sit together and words of Torah are shared between them, God's presence dwells between them." Dr. Ellenson sat with me every Monday morning at his kitchen table to study these texts together. His tireless explanations and help in editing this text are only outweighed by his kindness and his *neshama metukah*, his sweet soul. It has been my greatest good fortune to share words of Torah between us, and I did indeed feel God's presence.

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Lastly, thank you to my parents Patti and Larry Moskowitz, for raising me to cherish my Jewish identity and for supporting me in innumerable ways as I embarked on this journey to become a rabbi. They are my biggest heroes and continue to inspire and impress me every day with their love of Judaism, family and, most of all, each other. This thesis is for them and the path to righteousness they have instilled in their children and community, for they themselves are *tzadeekim*.

If my treatment of these texts and re-telling of R. Oshry's heroic story can raise the level of awareness and understanding of holocaust responsa literature by at least the level of a "grass-hopper," then I am uniquely thankful for God's blessing on this work, and for the help and scholarship of teachers and colleague who helped it come into being.

Dedicated to my wife, Kimberly Wallis,

And to my parents Patti & Larry Moskovitz

Introduction:

When speaking about the Holocaust, a familiar cry can be heard from every pulpit, lecture hall and meeting room in the Jewish world. Rabbis, educators, scholars and lay-leaders proclaim solemnly, and with the strength of a people that have survived untold horror, "Never Again"! "Never Again!" This they exclaim to a world that witnessed the most systematic destruction and attempted genocide of the Jewish people in history. But what is evident in that statement is that the destruction and attempted genocide of the holocaust, the horror and violence on a continental scale, is viewed in the context of previous, be they lesser, attempts to destroy the Jewish people, its culture and traditions.

To the student of history, it is evident that in every age the Jewish people have faced attacks on their very existence. Nazi Germany was not the first time forces attempted to destroy the Jewish people. This lachrymose view of Jewish history is expressed in the statement found in the Haggadah, "In every generation they have stood against us, to destroy us." However the holocaust is by far the most systematic attempt to destroy this people, its culture, its heritage, its institutions, its religion.

In every age, with every attempt at their destruction, the Jewish people managed, miraculously, to maintain existence and peoplehood. History will

record that it was often armies or world events that ultimately came to their aid or beat back their assailants. Yet in the final analysis, still another factor, one often over looked by scholars and historians contributed to the continued existence of the Jewish people as a religion and a culture. That factor was the Jewish people's dogged adherence to *Halachah*.

Halachah is the Hebrew term for the Jewish legal system of biblical and rabbinic commandments. The commandments, known in Hebrew as *mitzvot*, have been codified and commented on by generations of Rabbis since the time of the destruction of the Second Jewish Temple in the year 70 c.e. The system of authoritative texts and legal analysis that has developed is known as Halachah and it guides a traditional Jew in every manner and aspect of life. Through this legal tradition that spans more than 2,000 years, Jews have grappled with and debated each one of the mitzvot, and their continuing centrality in every aspect of Jewish life. Halachah, developed in part as a response to the catastrophe of the destruction of the Second Temple and has continued its development in both times of ease and times of strife for the Jewish people. Halachah transcended all of these events, and as will be demonstrated in this paper, Halachah transcended

the holocaust as well. Irving Rosenbaum writes in his study of Halachah and the

Holocaust:

Precisely because the Holocaust was not without precedent, and because the Halachah had confronted, dealt with, and transcended similar situations in the past it was able to guide and sustain those who lived and died by it during the bitter and calamitous times of the German domination of Europe. While much of its technology was novel, the Holocaust simply duplicated on an extensive and enormous scale events which had occurred with melancholy regularity throughout Jewish history.²

Rosenbaum continues, "Long, long before the Holocaust, the Halachah had developed its theoretical 'theology' and its practical course of action when confronted with such tragic events."³ Rosenbaum and others point out that it would be blasphemous to claim that the Halachah universally sustained, comforted or aided those Jews who were victims of Nazi atrocity and genocide. But history, and the writings of one great Rabbi in particular, Rabbi Ephraim Oshry attest that for many Jews, perhaps as many as one million, the Halachah was for them a source of guidance and direction in a time of chaos.

The Role of Halachah in Jewish Life and History

In Jewish tradition, a child learns from his earliest years of the covenant between God and the Jewish people. This covenant, called in Hebrew a *brit*, was

² Irving J. Rosenbaum, The Holocaust and Halakhah, New York: KTAV Publishing, 1976 p. 1

³ Ibid., pp. 1-2

first established between God and Abraham in the Genesis narrative. The agreement between man and God was rather straightforward. If man agreed to follow God's commandments, laws and statutes (*mitzvot*), God agreed to, among many other things, watch over and protect man from his enemies; to cause rain in its proper season and to continue to teach man ways to better himself and the world around him.

This basic formula is fundamental to the Jewish relationship with God, and while it has expanded and become more complex over time, the basic contract has never changed. In fact, it is an essential principal of the Jewish legal tradition that the contract is eternal and stands for all generations. While many modern Jews may question the theology that undergirds this concept, a traditional Jew accepts it as true and binding. For the traditional Jew, one who dedicates his life to fulfilling these commandments and living in the ways of Torah, the challenge becomes how best to fulfill the contract, to observe all of the mitzvot so as to warrant God's favor in life and in *Olam HaBah* (The World to Come).

Indeed, for centuries this struggle has been the theme of traditional Jewish life, posing the eternal question, "How, in the face of overwhelming forces against it, can the Jewish people maintain a strict adherence to Jewish law and

practice, upholding the mitzvot and thereby renewing the covenant with God?"

This question has been asked and answered by each successive generation of Jewish scholars and rabbis. Its roots are indeed as old as Judaism itself, and can be traced as far back as the biblical stories of the Prophets and Kings and their challenge to the people to maintain Jewish observance against the strong pull of assimilation. Students of the Prophetic writings will recall the story of the prophets Ezra and Nehemiah as they re-envisioned Jewish practice during the rebuilding of the biblical temple (516 bce). The whole of the Hebrew Bible is replete with such stories of how the community or individuals managed to maintain Jewish observance and practice in the face of seemingly insurmountable odds. The stories of Queen Esther and the warrior-prince Judah Maccabee further contribute to the record of Jewish determination to maintain community and tradition even at the cost of their very lives.

Later in the Rabbinic Period (beginning in 70ce), after the destruction of the Second Temple by the Roman Empire, the Jewish world was again faced with a profound challenge of maintaining the covenant with God and Jewish life at a moment of total loss and disfunction. Judaism was besieged from the outside by a nation set on destroying its holiest of sites, and it was rife with internal conflict

between Jewish sects that each made their own claim to divine prophecy. The response of the Jewish tradition came from the Pharisees, a group of Rabbis who had begun to envision a text centered Judaism, based on study and prayer. The Pharisees led the codification of the *Mishnah*⁴ which, in turn, led to the eventual writing of the *Gemara*⁵. Together these two works form the *Talmud*,⁶ the primary text of halachah.

It is interesting to note that after centuries of biblical persecutions and exiles, the calculated response of these great rabbis was to codify the legal tradition, putting it in printed form, thereby making it portable and more resilient against those who would seek the destruction of the Jewish people. Like the precious stones and gems that Jewish merchants would later keep hidden but readily accessible in the days of the medieval pogroms and crusades, these sacred texts have, in their portability, become a life preserver for a people constantly assailed by the storms of destruction and degradation. The codification of the Oral Law was the singular most important contribution to the

⁴ Oral Law, the codification of this Jewish legal text is attributed to Rabbi Judah HaNassi in the year 200ce.

⁵ The commentary to the Mishnah written in two editions circa 400-500ce

⁶ Jewish tradition holds that two laws were given to the Jewish people by God, through Moses on Sinai. The Written Law, which is the Torah or the Five Books of Moses, and the Oral Law which was given to Moses orally by God at the same time the Written Law was given. The Oral Law contains the how-tos and the applications of many of the larger ideas and commandments found in the Written Law.

continued survival of the Jewish people in the Common Era. The process, which is still on going today, established a system of legal precedent that would bolster and protect Jewish traditions more than any army or walled city ever could.

The eternal question, "How do we maintain the covenant in light of our present situation?," is answered in the Jewish legal tradition through exegesis; eliciting from the sacred text insight and direction for the challenges that face the people in present day. Exegesis is most often associated with biblical textual analysis, where it is employed to better understand context and structure of the biblical narrative. But the process of exegesis is also applied to post-biblical texts, namely the Oral Law. Both in the Talmud itself, and in commentaries and codifications of Jewish law written after it, we find an exegetical record as to the application of Jewish tradition and practice in almost all imaginable circumstances. Indeed, it should be noted that one of the greatest strengths of talmudic discourse and this exegetical process is that it confronts both the minutiae and the broadest applications of Jewish legal precedent. So central is this particular phenomenon to talmudic discourse that the homiletical formula has been given a classifying name, *kal v'omer*, meaning if it can be stated as fact

in this minor instance, then so-much-the-more-so it can be stated as fact in this larger instance.

The Genre of Responsa Literature:

Rosenbaum points out that, while the Talmud may readily prescribe the course of action for a Jew or a Jewish community under ordinary circumstances, cases of unusual or a difficult nature require special rabbinic guidance, of course this occurs in all legal systems.⁷ David Ellenson notes that this exegetical challenge, of finding application for Jewish Law in all imaginable circumstances was and continues to be met through the ongoing development of the Oral Law, through a process of legal "Questions and Answers" asked by individuals or rabbis of rabbinic scholars. Ellenson writes:

Central to this development for over a thousand years has been the genre of rabbinic literature known as She' elot u'Teshuvot (Questions and Answers – Responsa), in which leading rabbinic jurist-legislators have issued authoritative renderings (piskei din) of Jewish Law (Halakha) to rabbinic colleagues for application and, sometimes, public dissemination in specific cases.⁸

Peter J. Haas, whose work entitled, Responsa: Literary History of a Rabbinic

Genre is considered essential reading in the field of Responsa study, adds to the

definition of the genre of Responsa as follows:

⁷ Ibid., p. 2.

⁸ David Ellenson, Tradition in Transition: Orthodoxy, Halakhah and the Boundaries of Modern Jewish Identity (Lanham, Maryland, University Press of America, 1989), p. 10.

Responsa are written replies to legal, moral, or exegetical questions put to a rabbinic authority, usually by another rabbi. In general these replies consist of three parts. First they repeat the question, or at least give the gist of the questions, second they analyze the issue in light of Scripture and other religious literature, and third they render an answer or resolution.⁹

Responsa makes a unique contribution to our understanding of the Jewish historical and textual tradition. This unique contribution is that while they are legal sources, responsa echo the humdrum daily life of the ordinary person, his folkways, beliefs, dialects, and, of particular importance, details about the lives of villagers and townsmen whose identity is completely blurred in the usual sources.

Responsa of the Holocaust echo all of these factors. Yet also they are unique on another level as well. Historically, the process of writing responsa was a somewhat protracted long distance correspondence between a great rabbi and a younger rabbi or neighboring community. Responsa of the holocaust era were however almost always rendered orally in short order, by the rabbi of the same community that asked the question.

⁹ Peter Haas Responsa : Literary History of a Rabbinic Genre Society of Biblical Press, 1996), p.11.

In the holocaust, the essential tools that a *poseik*¹⁰ needs when rendering a *Teshuva* (answer), access to a library of sacred texts and sources, were almost impossible to acquire. Even when it was possible to obtain a needed volume of Talmud or legal commentary, the scholar seldom had the necessary time to thoroughly research and explore the volume before him. Therefore most holocaust *poskim* relied heavily on their own, thorough knowledge of the applicable rabbinic case law and rendered their decision in the swift and timely fashion that matters of life and death would require.

But far more remarkable than the rulings contained in the responsa of the Holocaust, is that these questions were asked of rabbis at all, given the extreme conditions and circumstances of the time. Further, the record indicates that the responsa rendered in the Holocaust were widely known within observant Jewish circles during the period of Nazi terror and adhered to with the same devotion and acceptance of rabbinic authority as in any other time in Jewish history.¹¹

Rabbi Ephraim Oshry

¹⁰ One who authors responsa, literally one who has the authority to render legal decisions. Plural: 'poskim'.

¹¹ Ephraim Oshry, Responsa From The Holocaust (New York: Judaica Press, 1983), pp.ix-xi.

While many rabbis were called upon to render *piskei din* (legal rulings) amidst the fire of the Holocaust, one rabbi in particular, Rabbi Ephraim Oshry of the Kovno Ghetto, in Lithuania, was more than a prolific respondent. He also, managed to survive the holocaust and reproduce his work for the world to bear witness. In the years following the war, Oshry reconstructed and recorded his responsa from that era in a three volume set entitled, Sheilot Utshuvot Mima'makim (Responsa from Out of the Depths).

These responsa comprise a graphic history of Jewish religious life in the Kovno Ghetto and the great efforts made by members of that Jewish community to maintain the covenant of Abraham against overwhelming odds. The responsa he writes about literally have their roots in the Kovno ghetto. When it was possible, Oshry would write out his response to a question and then bury it in a tin can in the soil of the ghetto itself. These reponsa, these holy words, were written in pencil on the torn paper of the concrete sacks that Jews were compelled to lug to forced labor sites. Buried deep beneath the soil of these killing grounds, Oshry hoped they would out live him and form a historical record of his community's struggle with the Nazis and their desire to maintain religious and moral dignity in the face of immeasurable suffering.

The Kovno ghetto was liberated in August of 1944, and shortly after, Oshry returned to the field where he had buried his sacred vessels and unearthed the tin cans, containing the scraps of paper that would form the sacred record of his and his community's deeds. Thus began Oshry's arduous task of deciphering and editing his own notes and scribbled references. The first of Oshry's three volumes of responsa was published in 1959 by Modern Linotype Co, of Brooklyn, New York. In this publication Oshry writes an introduction, attempting to explain what the reader is about to discover in the following pages, and his own thoughts on the great responsibility entrusted to him as a respondent from such a time. Oshry's words are profound and crucial to an understanding of this literature and the man who held it in trust for so long. A partial translation of his introduction follows:

How did a 1942 Jew, hauled off under the whip of the German beast, retain a sense of chosenness? How could he feel part of G-d's anointed people, while he watched with his own eyes the denigration of the elders of a generation, the saints and the scholars?...

When we realized that we were the targets of the Germans just because we were Jews - that our Jewishness was being attacked - then our Jewish pride came to the fore

Jews whose faith was strong faced the events that developed with the vigor of the believer. I am not speaking of wonderworking rabbis or of grocers who

secretly and humbly had mastered the Talmud and Kabala, but simple Jews whose faith in the Almighty was the core of their being. Such a Jew simply follows the dictates of the Torah as he knows best. And when he doesn't know, he approaches a Rabbi, whose authority and wider knowledge and accessibility to sources is recognized and relied upon.

And so, Jews approached me. Through the divine watchfulness of G-d, I survived and was able to return and forage the can of the questions and answers I had hidden away.

Right after the war I dug up my notes on the questions and my answers, and proceeded to examine the sources at greater length and fill out the answers. Only then did I begin to perceive the significance of these questions as a record of Jewish uniqueness. And I was awed by the privilege granted me by Providence to be the scribe who recorded these questions asked in the depths and the responses that emerged from the depths of misery and degradation, of suffering and death and of resurrection. Did our enemies, the Germans - many of them church going sons of churchgoing mothers and fathers - ask their priests and ministers how to care for the Jewish dead? Were they concerned to learn whether one may use clothes stolen from a dead Jew, or a curtain ripped from the ark where the Torah-scrolls are kept? Did they receive dispensation to bayonet pregnant mothers? But we Jews did inquire after food when forced to eat on a fast day. We wanted to know the correct form of the blessing a Jew says before going to his death.

The world at large may not understand this. But the greatness of the Jew can be seen in these very concerns. The enemy does not kill blindly, savagely, like a dog frothing at the mouth, but kills methodically, like a robot, measuring height, weight, years, setting aside plumbers and electricians while determining that doctors and nurse should die. The enemy robs and kills, and the Jew, knowing that he is being killed only because he is a Jew, sanctifies G-d in going to his death, wants to die with the correct words on his lips, because the Jew, who sanctifies every atom of life, sanctifies dying as well; and a

martyr's death must be accompanied by a blessing that is correct.

What do you say to a Jew who is a Jew unto death? Can the modern Jew fathom it? Can the world fathom it? Can the German fathom it? Does one laugh perplexed? Does one gasp amazed? Because it is amazing, and at the same time it is a very basic question that requires an answer: What blessing do you recite when you are about to be martyred?

It is so elementary that tears are not enough.¹²

The Responsa

This document does not attempt to be an exhaustive study of Holocaust responsa, rather I have chosen to examine select responsa that deal with matters of Jewish religious practice in the ghetto. These responsa are all from R. Oshry's collection and are grouped so as to address key issues of Jewish religious practice and ritual. The reader will note that the responsa are not presented as direct translations of Oshry's writing; instead they are summarized and examined based on the textual arguments and issues that he raises. It is my hope that such a thorough treatment of each responsum will give the reader a lense through which to view this graphic and poignant literature.

¹² Ibid., pp. ix-xi.

The responsa are arranged according to categories of Jewish religious practice, prayer, study, ritual objects, holidays, and shabbat observance. Chapter two presents our first responsum and centers on the question of whether one is obligated to risk one's own life for prayer or Torah study. It is presented as fundamental to the entire classification of religious practice responsa, as it raises the key issue of the hierarchy of mitzvot and what commandments, if any, one is permitted to transgress at the risk of one's own life. In chapter three our second responsum asks the question, "If compelled on threat of death, is one permitted to teach Torah to the Nazis?" This responsum raises the issue of "otherness" with regard to the Jewish legal view of the Nazi oppressors and illuminates the treatment of the oppressor/perpetrator in the view of halachah. Chapters four and five contains responsa on the question of ritual objects in the ghetto. As will be explained in both chapters, ritual objects are essential expressions of the covenantal relationship of the Jewish people with God. Chapter four will examine the case of using stolen wool to make the fringes of a prayer shawl (*Tzitzit*).¹³ Chapter five will discuss if a Ghetto home requires the placement of a

¹³ *Tzitzis* are the fringes attached to the four cornered garments worn by Jews in fulfillment of the commandment found in *Numbers 15:37-41*. There, in verse, it states, "And God spoke to Moses saying, Speak to the Children of Israel and tell them to make fringes (*tzitzit*) for themselves on the corners of their garments ..."

mezuzah on its doorposts, as is required of other Jewish homes.¹⁴ Chapter six will present responsa dealing with Shabbat and Holiday observance in the ghetto. Taken together, the responsa presented address many of the central aspects of Jewish religious life and how the Jewish legal system dealt with their observance in the face of the greatest single attempt to annihilate the Jewish people the world has ever known. I believe the reader will discover that the halachah, the leaders of the Jewish community, Rabbi Oshry in particular, and the Jewish people as a whole were heroic and resourceful beyond comprehension, it is my hope that this paper will help us begin to comprehend the resiliency and durability of the Jewish people and the halachah, and the will for meaning that informs human beings even at their darkest moments.

¹⁴ Plural: Mezzuzot. Parchment scrolls containing two paragraphs from *Deuteronomy* 6:4-9 and 11:13-21. They are attached to the doorposts of a Jew's home.

Responsa #11: "Is one permitted to risk his own life for Torah study and Prayer?"

In this chapter we will examine Rabbis Oshry's responsum #11 rendered on 13 Elul 5702 - August 26, 1942.¹⁵ It was around this time that the Nazis issued an edict forbidding the Jews of the Kovno Ghetto from gathering together in synagogues or classrooms for public prayer and/or study. The penalty for violating this edict and gathering for prayer and/or study was execution. Oshry was asked two questions by Reb Naftali Weintraub, the *gabbai* of the Gapinovitch Shul. One, did Jewish law obligate him to risk his life by attending a daily *minyan* and two, did the halachah compel him to risk his life for the study of Torah?

In the introductory paragraphs of his teshuvah, Oshry provided an overview of the spiritual and communal value that public worship services and study sessions possessed for residents of the ghetto. After an unimaginable grueling and exhausting day of slave labor, their spirits and bodies bent and aching, the Jewish community of Kovno would assemble in its synagogue and study halls for a period of renewal and consolation. Oshry himself often lead the *shiur* (lesson) in the *beit hamidrash* (synagogue) known as "Abba Yechezkel's Kloiz". After this sacred place was desecrated by the Nazis, the community

¹⁵ She'elot u'Teshuvot Mi-Ma'amakim 1:11, pp. 59-68

study session was moved to the "Halvoyas Hameis Kloiz", then into a private home known as "Gapinovitch's Synagogue" on Vitena Street and, finally, to the "Chayim Shafir Synagogue" on Vorena Street. It was while in Gapinovitch's house that Oshry was asked for a rabbinic ruling on the question, "Does Jewish law require one to risk his life for prayer and study?"

Oshry divides the question into two parts. (A) Is one obligated to risk one's life for Torah study? (B) Is one obligated to risk one's life for prayer? Thus divided, his teshuva begins with the question of the magnitude of the obligation concerning Torah study imposed upon the Jew by the tradition. For guidance in attempting to resolve this matter, R. Oshry turns to a precedent found in Avodah Zarah 18a, where the talmudic narrative tells how the tanna (talmudic sage) R. Hanaina b. Teradion¹⁶ went to visit the gravely ill R. Jose b. Kisma¹⁷. R. Jose and R. Hanaina lived in Palestine during the first part of the third century. It was in the midst of the Bar Kochba revolt¹⁸ and an era of great

¹⁶ R. HANAINA B. TERADION: Third generation tanna. Lived in Sichnin, in the lower Galilee. He was the Rosh Yeshiva (Head of the Academy) of Sichnin. He had two sons and two daughters. One son was associated with robbers and put to death and the other was a Torah scholar. His well-known daughter was Beruriah, and his other daughter was sentenced to a brothel when Hanaina was killed, but was later saved by R. Meir, the husband of Beruriah. It is to R. Hanaina that the teaching, "If two people sit together and there are words of Torah between them, the Divine Presence rests between them" is attributed. (Avot 3:2)

¹⁷ R. JOSE B. KISMA: Third generation Tanna, one of the greatest amoraim of his generation. Lived during the time of the Bar Kochba revolt when there were decrees forbidding the study of Torah. R. Jose believed that one should submit to Roman rule.

¹⁸ An attempt to rebuild the destroyed second temple led by Bar Kochba.

danger to the Jewish community when the Romans severely persecuted the Jews at the direction of the Emperor Hadrian.

According to the Talmud, the Romans had destroyed the Temple, executed the most pious among the people, and killed the most promising scholars and students. In such dark times, R. Hanaina continued to occupy himself with the study of Torah even though it was forbidden by the authorities. One day R. Hanaina went to visit R. Jose, one of the greatest sages of his age. R. Jose was gravely ill, but was of the firm conviction that the Jewish community, R. Hanaina included should adhere to the Roman decree. R. Hanaina was of a different mind and because of his own faith in the ultimate redemption of the Jewish people, and despite a Roman edict threatening death he continued to study and organize public assemblies for prayer and study. Knowing this, R. Jose asked R. Hanaina, "Why do you so risk your life? Do you deny what is happening around you? The Romans have laid waste to the Temple, killed the pious, surely it is ordained in heaven that the Romans shall reign." However, R. Hanaina, in response, asserted, "Heaven will show mercy," thereby expressing his belief that God would watch over the Jewish people, especially those who hold fast to the Torah in prayer and in study. R. Jose, still unconvinced,

answered, "I am telling you plain facts, and you reply 'Heaven will show mercy'!
It would surprise me if they do not burn both you and the Torah scroll you clasp
to your chest with the same fire." R. Hanaina, then turned and asked R. Jose,
"Rabbi, how do I stand with regard to the world to come?" asking if, in R. Jose's
knowledge, there was anything he had done that would prevent him from
getting into heaven. R. Hanaina then answered his own questions and stated
about himself that he had once mistaken *tzedakah* money intended for Purim
with ordinary *tzedakah* funds, and thus distributed it without specifying the
purpose, he took his own money and distributed it as Purim money. Thus, he
did practice charity, says the Talmud, but not as much as he could have done.¹⁹
The transgression though was only a minor one, and its effect was felt by R.
Hanaina alone. However, the point that emerges here – one that was obvious to
both R. Jose and R. Hanaina – was that R. Hanaina was a *tzadik*, a righteous
person. Even in the face of overwhelming danger, it was fitting that he continue
to study Torah, pray publicly, and to hold out hope for divine redemption. For
such a man, any other action would be unthinkable.

¹⁹ Avodah Zarah 17b.

The Gemara continues by stating that R. Jose was so respected that when he died a few days later, even the local Roman authority attended his funeral. As the procession of Roman officials returned from the cemetery, they saw R. Hanaina sitting and occupying himself with Torah, publicly gathering assemblies for prayer, and clasping a Torah scroll tight to his chest. Immediately, the Roman authorities were filled with rage. They took hold of R. Hanaina, wrapped him in his very own Torah scroll, and set a slow fire so that he would not be consumed quickly. His daughter rushed to his side and wailed at the sight, "Father, O' that I should see you in such a state!" He replied, "If I were alone being burnt it would have been a thing hard to bear; but know that I am burning together with the scroll of the law. He who has regard for the plight of the Torah will also have regard for me."

The above aggadah raises two points that Oshry will later address. First, the aggadah speaks of R. Hanaina's character or piety. R. Hanaina was a tzadik. He not only inspired his students, his character and courage also earned the admiration of his executioner, who became so ashamed for what he had done that he jumped into the fire with the Rabbi, so as to likewise inherit the world to

come.²⁰ The issue of the character and stature of the one who performs such an act is of crucial import to R. Oshry, and we will see that this matter will constitute one of the key elements in the holding he renders in his teshuvah.

The second point that the aggadah addresses is that of defining which acts are of such sanctity and which transgressions are so inviolable that it would be preferable that one suffer martyrdom and death rather than violate them in anyway. In the talmudic tale related above, R. Jose initially appeared to disagree with the position that R. Hanaina adopted concerning the continued study of Torah in the face of the Roman decree. His first view was that one need not risk one's life for the sake of engagement in the study of Torah. However, he later reversed his stance and acknowledged that what R. Hanaina was doing was meritorious. Were the actions of R. Hanaina an obligatory act, or a superogatory one? Was it correct altogether?

R. Oshry attempts to resolve these questions by turning to Maimonides,²¹

Hilchot Y'sodei Ha Torah 5:1-4. There the Rambam clearly delineates under what

²⁰ The Executioner then said to him, 'Rabbi, if I raise the flame and take away the tufts of wool from over thy heart, will thou cause me to enter into the life to come?' 'Yes,' he replied. 'Then swear unto me' [he urged]. He swore unto him. He thereupon raised the flame and removed the tufts of wool from over his heart, and his soul departed speedily. The Executioner then jumped and threw himself into the fire. And a bathkol exclaimed: R. Hanina b. Teradion and the Executioner have been assigned to the world to come. When Rabbi heard it he wept and said: One may acquire eternal life in a single hour, another after many years." (Avodah Zarah 18a)

conditions the Jew is commanded to suffer martyrdom and to engage in the act of *kiddush hashem*.²² It will be instructive to cite Maimonides' posture on this matter at length. Maimonides writes:

1. In the case of all other commandments, if the non-Jew compelling the Jew to violate them is doing so for his own personal benefit, advantage, or pleasure, then the Jew should violate them rather than be killed.
2. If the non-Jew's purpose is not some personal advantage for himself, but to compel the Jew to violate the ordinances of his religion, and if this took place privately and ten fellow Israelites are not present, the Jew should commit the transgression and not suffer death.
3. If the attempt to coerce the Jew to violate the ordinances of his religion was made in the presence of ten Israelites, he should suffer death and not transgress; thereby fulfilling the commandment, "and I will be sanctified in the midst of the children of Israel." (Leviticus 10:3)
4. All the foregoing applies to a time free from religious persecution. But at a time when decrees are issued against Israel with the purposing of abolishing its religion or any of the precepts, whether the coercion is in private or public, then it is the Jew's duty to suffer death and not violate any of the commandments.²³

²¹ MAIMONIDES, MOSES (Moses ben Maimon; known as Rambam from the acronym of Rabbi Moses ben Maimon; 1135- 1204). Greatest Jewish thinker of the Middle Ages; philosopher, Talmudist, and physician. he was born in Cordova, Spain. Author of a number of very important Jewish legal texts and commentaries including The Guide to the Perplexed and the Mishneh Torah.

²² This literally means to sanctify God's name

²³ Hilkot Yesodei Ha-Torah, 5:1-4 This summary and translation is taken from Rosenthal, Holocaust and Halakhah, pp. 47

The above formulation of the Rambam is quite extensive and based solidly on Talmudic citations.²⁴ Oshry further states what the Rambam already assumes his readers know on the basis of rabbinic teachings. For Jewish law explicitly states that one is compelled to perform the act of kiddush hashem, i.e., to suffer death rather than transgress, in only three instances -- 1) Murder, 2) Forbidden Sexual Relations,²⁵ and 3) Idolatry. In these instances, death is preferable to transgression. The question before Oshry in this responsum is whether these categories apply to the situation under discussion. If so, then martyrdom must be the path taken by Reb Weintraub. If not, then two possibilities remain. One is that Reb Weintraub must cease Torah study altogether, for the halachah could be interpreted to hold that it is forbidden to suffer death in order to engage in Torah study. On the other hand, one might hold that it is left to the judgment of the individual to decide whether the mitzvah of Torah study is of such import that the Jew has the option to choose martyrdom rather than fail to engage in it.

It would appear that the study of Torah, in the Rambam's view (halachot

1 and 2) would fall under the category of *ya'avov v'al ye-horeg* (transgress and not

²⁴Sanhedrin 74a, Avodah Zarah 27b, Yoma 82a, Pesachim 25b.

²⁵This term is taken to include: rape, incest, adultery, bestiality

be killed). Oshry points out that on this the Rambam is quite specific. After all the Torah, speaking of its own words, declares, "live by them". It does not state, "die by them".²⁶ Thus the Rambam seems to be of the opinion that one must not die for the study of Torah. He states even further that anyone who does die when he had an opportunity to live for the sake of the Torah has committed a great sin, such a person has risked his life unnecessarily for the study of Torah.²⁷

It thus appears that the Rambam opposes the Gemara.²⁸ Students of Jewish law will appreciate this condition, and note that something further must still be explained about the Rambam's position, for it is not possible for him to be in opposition to the Talmud. Indeed Oshry gives voice to this "impossible turn of events" and states that he is 'astounded' by the Rambam's position and we must be missing something in how the Rambam reads the text. Oshry restates what we already know about the apparent contradiction between the Talmud and the Rambam's position on the question, "Can one risk his life for the study of Torah?" In trying to resolve the conflict Oshry focuses on halachah number 4.

There the Rambam states that all the above is disregarded in a time when

²⁶Leviticus 18:5

²⁷"If one is enjoined to transgress rather than be slain, and chooses death instead, he is guilty as if he himself had committed a capital offense - *mithayev be-nafsho* ." --(*Hilchot Yisodei Ha-Torah* 5:5)

²⁸ Commentary to the Mishnah contained in the Talmud. Mishnah and Gemara comprise the Talmud with additional commentaries included in the margins of a page.

decrees have been issued for the purpose of abolishing the Jewish people; in such a time a Jew is obligated to martyrdom rather than transgress any of the commandments. The Rambam bases this position on Sanhedrin 74a-b which Oshry then summarizes in his *teshuvah*.²⁹

In Sanhedrin 74a we read that R. Johanan said in the name of R. Simeon b. Jehozadak, that in every other law of the Torah except the three mentioned above one must sin and not suffer death. The three exceptions are then fully explained and justified in accordance with proof-texts provided from the scripture. Then comes R. Dimi at the very end of Sanhedrin 74a. Dimi explains the above Halachah to only be in effect if there has not been a royal decree forbidding the practice of Judaism upon the whole of the Jewish community. If this is the case, and a royal decree has been made, then an individual who is so challenged to transgress or die, must die a martyr, rather than transgress even a minor commandment. Rabin, another tanna, adds to this in the name of R. Johanan. He states that even without a royal decree, transgression of even a minor commandment is only permitted in private. However, in public, one must be martyred for even a minor precept rather than violate it. And what is

²⁹ The part of the responsum that comprises the answer.

meant by a minor precept? "Even the commandment on how one is to tie their shoes." And what is public? "At least a minyan of ten".³⁰

The conflict between the Rambam and the Talmud has now been resolved, R. Hanaina was not acting contrary to the Rambam's understanding of the halachah. R. Hanaina did just what he was required to do because the matter was both public and occurred in a situation when the whole of the Jewish community was in peril. Oshry now understands that there is no conflict between the Talmud and the Rambam. R. Hanaina, considered himself to be a *Tzadeek*;³¹ as evidenced by his rhetorical question to R. Jose about the tzedakkah money. In the view of the halachah, he was obligated to martyr himself rather than transgress the commandment to study. Thus, his doing so did not violate the Rambam's understanding of Leviticus 18:5, "Live by the words of Torah, do not die by them."

This resolved, Oshry seems to have the answer to part 'A' before him; there can be no argument that the Nazi decree against the Jews is the equal of a royal decree to annihilate the Jews, and that the question facing the Gabbai of Gapinovitch's Synagogue is very much a public one. Thus halachah number four

³⁰ Sanhedrin 74a-b.

³¹ Righteous individual.

of *Hilchot Yisodei Ha-Torah* chapter five applies. The answer seems to be obvious. The Gabbai must risk his life for Torah study.

But two questions remain about the Rambam's position. One, the term used with regard to transgressing a commandment is 'violate' (*ya'avur*). Does this refer only to the transgression of a negative commandment, that is doing something that is prohibited by the Torah, i.e. stealing. Could it be only under these circumstances that one must suffer death? Or does this mean that in a time of religious persecution one must try to fulfill the positive commandments, such as the study of Torah even if doing so may lead to death? Oshry points to the opinion of Rabbenu Nisim³² (RAN) (Shabbat, Ba-meh Tomnin). Rosenthal describes the position of the RAN as follows:

Rabbenu Nisim is of the opinion that one is *not* obligated to suffer death in order to fulfill a *mitzvat aseh* (positive commandment). He argues that since it is in the power of the idolator to prevent the Jew from fulfilling the commandment by measures short of death - for example, imprisonment - the provision of *ye-horeg v'al ya'avur* (die and do not transgress) does not apply. This too is the viewpoint of the *Sefer Ha-hinukh*, 296. The Rambam apparently, but not

³² NISSIM BEN REUBEN GERONDI (known as the Ran, an acronym of Rabbenu Nissim; d. c.1380). Spanish halakhist, talmudic commentator, and physician. The name Gerondi indicates that he was born in Gerona. Rabbi and Dayyan in Barcelona, Nissim was also head of the community's rabbinic academy (yeshivah). He was considered the head of Spanish Jewry, and together with others was imprisoned for a time on an unknown charge. Nissim's fame rests on his commentary on Alfasi's compendium of the Talmud, in which he concentrates on giving the practical legal ruling.

certainly, holds that the obligation to incur martyrdom exists in the case of all types of commandments.^{33/34}

The second question is about the Rambam's position that one who suffers martyrdom when he is not obligated to do so is "guilty of a capital offense." The RAN and *Sefer Hahinukh* believe this individual to be praiseworthy and declare his action a *midat hasidut*, a measure of 'special' piety. Thus, they hold that while his actions are praiseworthy, it is not something that every man should arrogate for himself when it is not demanded by the halachah.³⁵ Oshry feels the tradition makes an important distinction here between the *gedolai ha dor* (the leaders of a generation, the great tzadikim) and everyone else. He thus cites *Sefer Hahinukh*

296:

Those instances where we are told of individuals who suffered death rather than not fulfill a positive commandment as in (*Mekhilta, Yitro*) the episodes of one who was stoned for circumcising his son, and another who was crucified for carrying the *lulav*, deal with great and wise men who saw that the generation needed such examples. If they had not been great and wise men they would not have been permitted to sacrifice their lives, for it is not permitted for every ordinary man to give himself over to death where the Sages did not obligate him to do so.³⁶

³³Kesef Mishanah, Y'sodei Ha-Torah 5:1

³⁴Rosenbaum, *Holocaust and Halachah*, p. 48.

³⁵Ibid., pp. 48-49.

³⁶*Sefer Hahinukh* 296, as by Rosenthal, *Holocaust and Halachah* p. 49.

The issue then with regard to whether one is required to risk one's own life for the study of Torah is one of context – is it public or private? Is there a threat of their total annihilation? Does he consider himself a tzadeek, and will his actions set a needed example for the community?

Oshry began his teshuvah with a discourse on the emotional and spiritual value these study sessions had on the community in Kovno, how they seemed to give hope and purpose to a people that had little reason to cling to anything. It follows then that the ultimate issue for him is the same voiced by *Sefer Hahinukh* 296. Will the continued study of Torah undertaken by a leader in the community provide a needed boost to the community spirit, and thwart the efforts of the oppressors to destroy the Jewish spirit and people? For Oshry the answer is yes. He is of the opinion that the continued public study of Torah will boost the spirits of the community and send a message of defiance to the Nazis. However, Reb Weintraub must judge for himself if he is of the caliber of individual to make such a bold statement with his own life.

The teshuvah then turns to the question of prayer and whether one is obligated to risk one's life to fulfill that mitzvah? Prayer is a different matter for Oshry because unlike study, one may pray in private and/or pray silently. Thus

the required risk can be significantly lessened without transgressing the commandment. The question thus actually centers upon risking one's life to participate in public prayer, as it would seemingly be impossible to stop the Jew from, at the very least, rendering the silent prayers of the heart.

Oshry cites the example of the biblical prophet Daniel as one who prayed publicly even when it was decreed, on pain of death, that no one in the community should offer prayers but the King. Oshry specifically cites Daniel 6:7 in which he risks his life to "pray in plain view"³⁷ three times a day.³⁸ But the tradition is critical of Daniel on this point, and Oshry's teshuvah then goes about illuminating the textual criticism of Daniel. In so doing, he offers perspective on the decision facing Reb Weintraub.

Oshry raises Malbim's³⁹ criticism of Daniel risking his life for the recitation of prayers in public. His criticism is the same as that offered by the Rambam

³⁷The verse reads: "Now when Daniel learned that the writing was signed, he went into his house; his windows were open in his chamber toward Jerusalem, and he kneeled upon his knees three times a day, and prayed, and gave thanks before his God, as he had done previously." (Daniel 6:11)

³⁸It is from this verse that the Halachah concerning the mitzvah to pray only in a room with windows is derived. (Berachot 31a)

³⁹MALBIM, MEIR LEIB BEN JEHIEL MICHAEL (1809-1879). Volhynian-born rabbi and Bible commentator. An uncompromising champion of Orthodoxy, Malbim was appointed chief rabbi of Romania in 1858, but his stand on religious fundamentals (such as the dietary laws) and his strenuous opposition to Reform antagonized the Bucharest Jewish community leaders, who favored acculturation. He wrote halakhic works, sermons, and an autobiography, but it was his commentary on the Hebrew Bible (1845-76) that achieved lasting renown. Its popular title, based on the acronym of the author's name, is "The Malbim." This commentary's purpose was ideological as well as expository -- to show that the Written and Oral Law are both of Divine origin, to elucidate the plain meaning (*PESHAT *)

earlier on the matter of Torah study. Malbim sees Daniel's actions as contrary to the commandment in Leviticus 18:5, "You shall live by the words of Torah." Malbim thinks that Daniel was foolish for risking his life, when he could have simply prayed in silence or in secret without fear of discovery and putting his life in peril.

It is an interesting point that calls upon the individual not to be so consumed with fulfilling the letter of the mitzvah that he neglects to see a safer course of action when his life is at stake. This is a note of caution that will ring out in other holocaust responsa as well. In large part, the Jewish community, knowingly or not, used such discretion. Countless stories and personal accounts have been brought to light that testify to the ability of the Jewish people, even under the harshest conditions, to maintain Jewish traditions and still reduce or limit personal risk or exposure to the Nazis who sought to prevent and destroy them.

Malbim's contention that Daniel unnecessarily risked his own life is supported by the Rambam in *Sefer Inyan HaHochma al HaMitzvah*, where he also states that Daniel risked his life when it was not necessary for him to do so. But

of the biblical text, and thereby to undermine the Reform movement's prestige in the sphere of exegesis.

The Sheria Gaaon⁴⁰ disagrees. He says it was necessary for Daniel to risk his life, as the whole community was in peril. The Sheria Gaon follows Rambam's rule #4 in *Yisodei HaTorah* 5:4 Daniel, whose righteousness and piety are without parallel in his age, must therefore risk his life as a sign to the Jewish people not to loose faith. Oshry supports Sheria Gaaon's position by citing other rabbinic sources which testify to Daniel's status as a tzadeek in his generation, including *Sefer Hasidim*, where it is written that one of the particular acts of the pious is to pray even at risk of one's own life. The example of Daniel is specifically given as a level of piety to which all should aspire. It is in this vein that Oshry cites R. Judah the Pious who states that one can choose to do so (i.e. pray in public) even in a time when the whole community is not in peril.

As this is the case, it is all the more so in this time, according to R. Oshry, when the attempt was to reduce the Jews to a sub-human status, and then wipe them off the face of the earth. In such an era, they are permitted to risk their lives for the continuation of public prayer. Oshry however surely states while

⁴⁰ SHERIRA GAON (c.906-1006). Head of the Academy in Pumbedita. Descended from a long line of ge'onim, he was appointed to the office in 968. Sherira managed to revive and strengthen the Babylonian Academies, also promoting contact with Jews in other lands. He wrote numerous responsa, many of which were sent to the North African community of Kairouan. Of especial importance was his famous Letter (Iggeret ha-Rav Sherira), addressed to a representative of that community (Jacob bar Nissim) in 987.

the text supports allowing one to risk one's life for prayer, it cannot be required of any one individual, as it is a matter of that person's own degree of piety. Oshry references a parable in Pesachim 53b which asks if frogs are permitted to perform Kiddush HaShem even though they are not commanded to do so. The answer from the text is, yes they are, because they like all human beings are commanded to enter into heaven. If this is so with frogs, then human beings, who are commanded concerning Kiddush HaShem, can certainly risk their lives for the sanctification of the divine name through prayer!

But Rashi⁴¹ is not convinced by this position and he returns to the question of Leviticus 18:5, does it not say you should live by the words of Torah? He then asks what was it that the Rabbis of the Talmud saw in the example of Daniel that permitted them to ignore this demand?

⁴¹ RASHI (acronym of Rabbi Shelomo Yitshaki; 1040-1105). The outstanding Jewish biblical and talmudic commentator. Rashi was born in Troyes, northern France where for the greater part of his life conditions for the Jews were generally favorable. Rashi's great reputation rests on his commentaries on Bible and Talmud. His commentary on the Pentateuch, which was to become the standard text for every student from childhood onwards, was the first Hebrew book to be printed: in 1475, in Reggio, Italy. In his work on the Bible, Rashi set himself a clear aim: to give the plain meaning -- *Peshat* -- of the text. His style is clear and concise and his Hebrew simple. In his commentary on the Talmud Rashi's method is more consistent, as his sole aim was to elucidate for his students the meaning of the text before them. His true genius is evident in his skill as an expositor of the text; he provided Talmud students with the most comprehensive and yet clearest explanations. Without his commentary the Talmud would long have remained a closed book. Modern day students of the Talmud continue to make extensive use of the commentary that has become an indispensable tool for comprehension.

Oshry answers Rashi's challenge by citing the *Beit Yosef* on *Yoreh Deah* 157.

There it states that Jews may perform the mitzvah of Kiddush HaShem over the issue of public prayer if they are a tzadeek and of pure motive, the same condition given by the Rambam in *Igeret Taiman*. However, one cannot be required to do so. It was Daniel's choice as a leader and as a righteous man, to do so in order to make a statement for his generation and his followers. Still, Oshry cannot instruct Reb Weintraub to follow in these ways as it must be left to the individual to judge if he is of the caliber of Daniel. Rather, Oshry notes that the Rambam provides a warrant for not committing an act of martyrdom, indicating, that if one is challenged by an authority to give up prayer or die, he should make a false confession and say that he will give up prayer rather than be killed. His point is that there are many ways to pray without risk, and it is only those who see themselves of the caliber of Daniel need risk their lives for public prayer.

Oshry concludes that while one may risk his life for Torah study or prayer, he is not required to do so by the halachah. In fact, while the halachah does permit it, it only requires it of one who is as righteous as Daniel. Therefore it is not a mitzvah, or obligation upon an ordinary Jew, and, in fact, if one does

not consider himself to be of the highest degree of piety, it is better that he should observe the commandment of Leviticus 18:5 and live by the words of Torah rather than risk his life.

Oshry concludes his teshuvah with a historical anecdote concerning the true conviction and piety that marked the Jews in his community. So great was their Jewish belief that not only did the great majority of them continue to pray, but, on Rosh Hashanah 5703 (September 12, 1942), they sounded the Shofar⁴² without the slightest fear of the Germans who would certainly hear it. And not only did they continue to assemble for services to pray, but they even organized services in the ghetto hospital, an endeavor undertaken by the 'assimilated' Jewish doctors of the hospital.

Oshry himself writes that he continued his daily classes. The *Teferet Bahurim* refurbished a building at 8 Kaklo Street, painted it, cleaned it and constructed a secret room in which to hide during the Nazi searches. It was there that they continued their public prayer and study.⁴³

⁴² Ram's Horn

⁴³ Rosenbaum, Holocaust and Halachah, p. 52.

Resonsum #14: "Is one permitted to teach Torah to the Nazis?"⁴⁴

During the Holocaust, Dr. Alfred Rosenberg, chief Nazi ideologue of race, served as Director of the *Institut zur Erforschung der Judenfrage*. This pseudo-scientific organization was charged with the 'study' of the Jewish people as a culture and as a race. They maintained warehouses of Jewish cultural artifacts that they boasted would someday be on display in a museum of this "dead race." Hebrew texts -- particularly *sefrei kodesh*⁴⁵, including *sefrei Torah*,⁴⁶ tractates of the oral law, and traditional rabbinic commentaries -- were among their primary objects of acquisition.⁴⁷

In February of 1942, Rosenberg's organization learned that the Kovno ghetto had once been home to a famous yeshiva with an extensive and valuable library. Rosenberg sent one of his associates, a Dr. Benkard, to meet with the commandant of the Kovno Ghetto. Their goal was to "secure" all the Hebrew books (Jewish and secular) housed in the Ghetto. The books were to be collected in a central warehouse. There they would be stored until the Final Solution was completed and a museum could be established.

⁴⁴ She'elot u'Teshuvot Mi-Ma'amakim 2:14, pp. 93-101.

⁴⁵ Holy books

⁴⁶ Torah scrolls

⁴⁷ Rosenbaum, Holocaust and Halachah, p. 57.

Hearing of this impending decree, the Jews of Kovno worked diligently and at great personal risk to hide as many sefrei kodesh as possible, including a number of sefrei Torah, to avoid Nazi confiscation. Though the Jews of Kovno were able to salvage many important and sacred texts, the majority of the yeshiva library, plus personal collections found in the community, fell into Nazi hands. Benkard was instructed to organize and catalog the stolen books, and he retained R. Oshry as well as R. Abraham Gerstein to assist him in cataloging the collection. R. Oshry, who spoke of this position on a number of occasions, regarded it as a "mixed blessing." On the one hand, it put him in close proximity to the Nazi authorities, with all the danger and discomfort that entailed. On the other hand, it granted him unique, albeit limited, access to volumes of Jewish law and scripture that provided both solace and perspective as he struggled to guide his community through the most perilous of circumstances.

While working in the warehouse, R. Gerstein was summoned by the Nazis to bring a tractate of the Talmud to them. Benkard himself asked that R. Gerstein read, translate and explain the first page of that volume to him. This was to take place on the following day, and Gerstein went to Oshry seeking advice. He knew well the biblical and talmudic prohibitions that forbid Jews

from teaching Torah, and most certainly the Oral Torah, to non-Jews.⁴⁸ However, he asked R. Oshry if, given the circumstances, it would be permissible for him to do this. There was a slim chance that he could avoid this task. Yet, it would involve great personal risk, and outright refusal would likely lead to death. Oshry informed him that it was permissible for him to teach the one requested *daf* (page) of Talmud to Benkard, and that it was not necessary for him to risk his own life not to do so. Oshry's decision was rendered orally and on the spot, but, as with many of his teshuvot, he wrote and published his decision after the war. The responsum he later wrote on the matter is quite extensive and lengthy, and it examines nearly a dozen legal texts on the matter. It is highly unlikely that Oshry consulted all these texts before rendering his oral decision to Gerstein. Nevertheless, the fact that his ultimate ruling was well supported by the texts when he later composed it is evidence of his command of the Jewish legal tradition as well as his extensive knowledge of the sources.

Oshry began his teshuvah by citing Hagigah 13a. In this passage, there is a famous discussion among R. Yohanan ben Zakkai, R. Hiyya and R. Ammi

⁴⁸ Hagigah 13a - "One does not teach Torah to a non-Jew, for it is said, 'He hath not dealt so with any nation; and as for his ordinances, they have not known them' (Ps. 147:20) see also Sanhedrin 59a "An idolator who engages in the study of Torah is deserving of death, and he who teaches him Torah violates the commandment of 'thou shalt not place a stumbling block in the way of the blind.'"

concerning the "secrets of Heaven," the esoteric knowledge that would unlock the meaning of the universe. In this text, there is a story told of a wicked gentile who claimed he could discover these "secrets." According to the Talmud, he boasted, "I will ascend above the heights of the clouds. I will be like the Most High." A *bat kol* (heavenly voice) then rebuked him by asking, "How many are the years of man?" To this rhetorical query, the *bat kol* offered its own response, "The days of our years are threescore and ten, or even by reason of strength fourscore years."⁴⁹ At this point, the *bat kol* explained that the distance from the earth to the heavens was at the very least 500 years, and not a journey any mortal -- certainly not a non-Jew -- could ever make. The "secrets of heaven" were permanently unknowable to him.

R. Hiyya and R. Zera then explain that while the full content of these teachings were not to be offered this man, the headings of the chapters could be transmitted to him. R. Ammi then added, in the sentence relevant to the query placed before R. Oshry in this responsa, "The teachings of the Torah are not to be transmitted to an idolater."

⁴⁹Psalm 110:10.

It is this citation that R. Oshry, following the Jewish legal tradition, saw as enunciating a rule that forbade teaching Torah to non-Jews in general, and certainly persons like the Nazis in particular. However, as in most matters, R. Oshry noted that the tradition was not univocal on this issue. For, he followed this seemingly sweeping prohibition of teaching Torah to a non-Jew, with a citation from Sanhedrin 59a that presented the issue in a more complex way.

The passage reads:

R. Johanan said: A heathen who studies Torah deserves death for it is written, Moses commanded us a law for an inheritance; it is our inheritance, not theirs. Then why is this not included in the Noachian Laws?... R. Meir used to say, Whence do we know that even a heathen who studies the Torah is as a High Priest? From the verse, "You shall therefore keep my statutes and my judgements which if man do, he shall live in them. Priests, Levites and Israelites are not mentioned, but men: hence you may learn that even a heathen who studies the Torah is as a High Priest! -- That refers to their own seven laws.⁵⁰

From this passage, several conclusions can be drawn. First, there is a distinction made between Written Torah and Oral Torah. While it remains seemingly forbidden to teach the latter to a non-Jew, there appears to be, on the basis of the stance adopted by R. Meir, an obligation to teach the non-Jew parts of the Written Law. As the non-Jew is elsewhere seen as being responsible for

⁵⁰Sanhedrin 59a.

the seven Noahide commandments given by God to all humanity,⁵¹ the non-Jew must be permitted to study these basic moral laws. Indeed, in R. Meir's exegesis, the use here of the word 'man' emphasizes that all persons, not just Jews, must be taught these universal laws contained in the Torah. Consequently, the prohibition against teaching Torah to non-Jews is not as all encompassing as it first appeared. Hence, R. Oshry has a significant precedent for allowing at least elements of Torah to be taught a non-Jew -- even a Nazi.

This permission is expanded even further by R. Oshry's citation of a discussion found in Pesachim 22b. In this rhetorical exchange, R. Nathan raises the questions, "How do we know that a man must not hold out a cup of wine to a Nazarite or the limb of a living animal to the children of Noah?" The answer given by R. Nathan is that a person who performs these acts violates the injunction contained in Leviticus 19:14, "You shall not place a stumbling block before the blind."⁵² The Talmud and R. Oshry understand this passage to mean that non-Jews are required to study the Noahide laws as found in the Torah. For, if non-Jews, the Children of Noah, are not well versed in these commandments, they are likely to transgress them. Indeed, if they do not know

⁵¹See Sanhedrin 56b.

⁵²Leviticus 19:14

them, it would be impossible for them to observe them. This verse from Leviticus is cited to indicate that if Jews did not teach gentiles these parts of Torah, then they are culpable for the transgressions of the Noahide laws that would ensue. Hence, elements of Torah can surely be taught non-Jews.

R. Oshry continued in this expansive vein by then citing Sotah 35b. In this passage, the question is raised, "How did the Israelites inscribe the Torah?" R. Judah explained that they inscribed it upon stones as they were commanded. The passage continues by explaining that eventually every nation of the world came and made a plaster copy of the tablets so they could study them and learn from them. However, because they failed to study the laws, they failed to live by them. They were condemned by their ignorance. Despite this, R. Judah observed that it was possible for the 'heathen', presumably should they study and observe Torah, to repent. God would then forgive them their evil ways and accept them as part of the covenant. While they had thus far failed to do so, the possibility of repentance remained open to them. At the same time, this possibility was contingent upon their study.⁵³ For R. Oshry, most crucial was the fact that this opportunity had not only been extended gentiles in the past.

⁵³Sotah 35b

Rather, there remained a requirement for them to engage in such study in the present, as the obligation remained a contemporaneous one.

By citing this Sotah passage, R. Oshry has seemingly broadened the scope and reinforced the obligation of what Torah could be taught to non-Jews. No longer is the content of that teaching confined to the Noahide Laws. R. Oshry understood the Sotah text as a warrant for the position that the non-Jew must be taught the entire Written Torah. Otherwise, their ignorance of these teachings would prevent them from performing teshuvah. R. Oshry neither elaborates fully on what this text entailed, nor does he cite it as the reason for his ultimate ruling allowing R. Gerstein to teach the Nazis Torah.⁵⁴

However, R. Oshry did note that R. Zvi Hirsch Chajes, a nineteenth century central European rabbinic authority, had raised an objection to employing the Sotah passage as a broad warrant for teaching the entirety of Torah to a non-Jew. Indeed, Chajes had pointed out that the Hagigah text explicitly contradicted the edicts that emerged from the Sotah passage. Yet, Oshry demonstrated that Chajes himself offered a solution to this seeming

⁵⁴ Of course, this does raise an interesting ancillary idea. Perhaps one should teach the Nazis Torah, even in the midst of the Holocaust, for the possibility always obtained that they might see the sins of their ways and seek to repent! Of course, this runs contrary to a caution voiced by the Rabbis in the Hagigah passage that a non-Jew should not be taught Torah because they might use the teachings found in it against the Jews.

contradiction. For earlier rabbinic authorities had drawn a distinction between Written and Oral Torah. God revealed the Oral Torah only to the Jewish people. Consequently, it was incumbent upon and only permitted to Jews to study it. However, as R. Oshry noted, no less eminent a personage than Rashi, in his commentary upon Sotah 35a, had maintained that non-Jews were given copies of the Torah to study and accept if they so desired. The reason for this, Rashi wrote, was that they not be given "an opening to say that it was never offered to them, or that they never had a chance to learn it." Thus, for R. Oshry this fact was clear. Non-Jews were taught Written Torah in the past, and the Haggigah passage in no way proscribed this. Consequently, there could be no prohibition against this activity in the present. Indeed, he relied upon the Sanhedrin text -- that a stumbling block not be placed before the blind -- as an added justification for why it was possible to teach Torah to gentiles in this instance.

While R. Oshry had demonstrated that gentiles could be instructed in the Written Law, R. Oshry still had not produced a precedent that could serve as a warrant for allowing gentiles to study the Oral law. As R. Gerstein had been asked to teach a part of the Oral Law to the Nazis, the prohibition against such teaching would appear to remain in force.

However, R. Oshry continued by citing a number of talmudic passages with their attendant commentaries that contravened the seeming proscription against teaching Oral Law to non-Jews. Ketubot 28a, for example, told of a gentile slave who was taught a specific commandment of the Oral Torah by his Jewish teacher. From this, R. Oshry drew the conclusion that it was permissible to teach a single mitzvah based on the Oral Law for a specified purpose to a non-Jew. Other authorities, including Judah Aszod and the *Me-Or v'Shemesh* argued that while a Jew could teach several such mitzvot to non-Jews, the rationale for the *mitzvot* could not be disclosed to them.

Most significantly, R. Oshry then turned to the Bible and the Talmud itself for several examples that would indicate that there was no prohibition at all against teaching all of Torah to gentiles. In one instance, the texts stated that God specifically command Joshua to write the Torah in every language. In this way, it would be accessible to all.⁵⁵ In addition, Shabbat 31a contains the story of Hillel instructing a potential convert in both Written and Oral Torah. If a ban against such teaching actually existed, then Hillel could not have offered such instruction.⁵⁶

⁵⁵*Mashiv D'var* 4:67.

⁵⁶Shabbat 31a

R. Oshry did not let his argument stop here with the marshalling of these sources. Instead, he cited the tale of R. Gamaliel and Proclos found in Avodah Zarah 44b as a powerful warrant for extending the permission for a Jew to instruct a non-Jew in the study of the Oral Law. In the mishnah of this talmudic passage, a story is told that once R. Gamaliel⁵⁷ was bathing with the heathen Proclos in a communal bath house that contained a statue of the mythical god Apphrodite. Proclos challenged R. Gamaliel, and, assuming that it was forbidden for a Jew to bathe in the presence of what for the Jew would be an idol, Proclos asked him how he could do so. R. Gamaliel initially deferred his response, stating that Jewish Law forbade discussion of matters relating to Torah in a bathhouse. However, when they left the bathhouse, R. Gamliel turned to Proclos and explained that he had not come into the domain of the statue. Rather, she had entered into his realm (i.e., the bath house existed and was used by R. Gamliel before the statue was erected.)

The incident disturbed the later rabbis and, in the Gemara, the question was raised – in light of the prohibition against teaching matters of Jewish law to a non-Jew – how R. Gamliel could have justified such a thing. After all, in offering

⁵⁷ Nassi of the Sanhedrin in Yavneh in the years following the destruction of the Second Temple.

his explanation to Proclos, R. Gamaliel had instructed a non-Jew in matters relating to the Oral Law. The rationale for this, according to the Talmud, was that it was permissible to do so because the information imparted here was not part of an established course of study. Rather, it was a discrete act, a single case of instruction, provided on a temporary, non-permanent basis. R. Oshry drew a parallel between what was being asked of R. Gerstein as well as himself in this instance, and the case presented in the Talmud. In light of the analogy provided by the example of R. Gamaliel, it was surely permissible to teach the Nazis. Indeed, the current context made the obligation to do so all the more pressing, as there was danger to life in the present situation.

R. Oshry then provided further talmudic support for this last point by citing Baba Kamma 88a. There, it stated that two commissioners of Rome were sent to the Sages of Israel to be taught Torah. The sages taught the whole Torah to them three times! At the conclusion of the final lesson, the Romans stated to the sages, "We have found the text correct on all but a single point (the fact that the Jewish owner of an ox that gores the ox of a Cannanite does not need to compensate the Cannanite). However, we will not report this to our

government."⁵⁸ Clearly, if the emissaries were to make such a report, the Jewish people could be in danger. In light of the conditions that marked the current the situation, the parallel between past and present was obvious. The Jewish people stood then to be endangered. In the context of Nazi Germany, the Jews were already threatened.

That issue aside, the major issue raised by this passage, in light of the concerns of this responsum, is one stated in the Tosafot⁵⁹ to this passage. How was it permissible for these sages to teach Torah to the Romans, as such instruction was seemingly prohibited by the Haggigah text? The Tosafot replies that the sages were compelled to do so by the Roman government. As there was no obligation in such an instance to surrender one's life rather than transgress the commandment,⁶⁰ Jews must not forfeit their lives in light of the rabbinic prohibition found in Haggigah 13a.

For all these reasons, R. Oshry rule that R. Gerstein was permitted to teach the Nazis this page of Talmud. It would be a sin for him to endanger his

⁵⁸Baba Kama 88a

⁵⁹ A commentary to the Gemara found in the margins of the Talmud itself.

⁶⁰ See the previous chapter.

life by resisting the Nazi request. Rosenbaum, commenting on Oshry's response to this question, notes the following:

Rabbi Oshry was further asked by the Germans to explain some hand written margin notes in the Talmud of Rabbi Isaac Elhanan Spektor... They then requested that Rabbi Oshry read to them from the *sefrei torah* which were also stored in the warehouse. He complied with all these demands of the Nazi 'cultural experts' in accordance with his opinion that, on a temporary basis or where life is endangered it is permitted to teach a non-Jew Torah - even a Nazi.⁶¹

The rule R. Oshry had established for R. Gerstein he applied to himself. *Pikuach nefesh* (saving a life) surely took precedence over the prohibition against teaching Torah to a gentile. The diverse positions contained in the tradition on the matter of teaching Torah to a non-Jew surely demanded the adoption and application of lenient precedents in a situation where the circumstances were those that obtained in the terror of the ghetto. R. Oshry, in issuing this ruling, not only displayed the elasticity of Jewish law in this matter. His flexibility allowed R. Gerstein to cling to life and conscience amidst the horror that marked his world.

⁶¹Rosenbaum, Holocaust and Halachah, p. 59.

Responsum #12: "Is one permitted to make Tzitzit from stolen German wool?"⁶²

During the time that R. Oshry was held captive in the Kovno Ghetto he still continued to study and teach Torah to his students. One group of students, known as the *Tiferes Bachurim*, were young men, most of high school age, who met daily with R. Oshry to study Torah and seek his guidance in all matters of religious practice, even under these extreme circumstances. One member of this group was Meir Abelow who, according to Oshry's own comments in this responsum, was a particularly zealous and pious student. Meir was always seeking new and creative ways for his classmates and himself to fulfill the mitzvot. In this particular instance Meir had the idea that it would be possible to fulfill the mitzvah of tzitzit⁶³ by stealing some wool from one of the *Werkstaten*⁶⁴ where he was assigned to work. Wool thread, the kind needed to make tzitzit was an impossible commodity to obtain in the ghetto, and with no contact with Jews hiding and living in secret outside the ghetto, it was impossible to smuggle it in. For similar reasons, it was also impossible for those in the ghetto to acquire ready made tzitzit from the outside. Anyone caught communicating with Jews outside the ghetto was put to death immediately.

⁶² She'elot u'Teshuvot Mi-Ma'amakim: Responsum 1:12, pp. 77-87.

⁶³ Numbers 15:38-40

⁶⁴ Workshops

In this responsum, R. Oshry reported that Meir had concocted a plan to obtain at least enough wool thread to make tzitzit for the members of the Tiferes Bachurim. Or, to be more exact, Meir felt he could acquire this thread by "stealing" it from the Nazis. However, to do this, he had to put his own life at risk. For, if apprehended by the Nazis while committing such a deed, he would surely be put to death. Consequently, he came to R. Oshry and asked the following questions:⁶⁵

1. Is it permissible to fulfill the mitzvah with *tzitzit* made from stolen wool?
2. How does this affect the person taking the wool?
3. Since it is impossible to obtain any cloth from which to make a garment on which to put the tzitzit, may one take a large *talit*⁶⁶ and cut it in two in order to turn it into two small *tallitot kattannot*⁶⁷? Would this constitute demoting a sanctified object to a lesser degree of sanctity?

R. Oshry was well aware that one of the reasons his young students were so anxious to fulfill the mitzvah of tzitzit was that they knew they could be selected by the Nazis to be put to death at any moment. By wearing a tallit kattan under their garments at all times, they would thereby be able to fulfill the

⁶⁵ Ephraim Oshry, Responsa From the Holocaust, translated by Y. Leiman (New York: Judaica Press, 1983), pp. 97-98.

⁶⁶ A large four cornered garment, usually worn in prayer

⁶⁷ A small four-cornered garment, usually worn either over or under a man's shirt.

commandment of being buried in a tallit in the event of their murder. Indeed, Jewish tradition, in one place, holds this commandment, in typical hyperbolic fashion, to be so central that it contends that the soul may be saved through the fulfillment of this one mitzvah at the moment of death.⁶⁸

Despite this, the legal issue involved in this responsum was a complex one. For the question posed to R. Oshry by his student involved the matter of whether one can violate one commandment in order to fulfill another one. In this case, the specific query focused on whether it was permissible to violate the traditional prohibition against stealing so that the commandment of tzitzit could be observed. R. Oshry had to determine if Jewish law countenanced "stealing" in this instance as a means for achieving a worthy end -- the wearing of tzitzit. In addition the third question posed by Meir, the permissibility of destroying one religious object (tallit) to make another, is similarly complicated. It should therefore come as no surprise that R. Oshry's response to these questions is one of the most lengthy and detailed of all of his responsa.

While R. Oshry might have dealt here with the question of whether Meir was justified in risking his life for the sake of fulfilling a ritual commandment, it is

⁶⁸ She'elot u'Teshuvot Mi-Ma'amakim 1:12, p. 88.

noteworthy that he did not do so. Undoubtedly, this is because Meir had apparently expressed his determination to act in this way, and nothing R. Oshry might have said would have deterred Meir from so doing. At the same time, the fact that R. Oshry did not even attempt to dissuade Meir on the grounds that the principle of pikuah nefesh takes priority over all other commandments, is also a testimony to the importance R. Oshry and his students attached to the ritual demands Judaism makes. For devout Jews such as R. Oshry and his students, Judaism cannot be neatly compartmentalized into ethical and ritual demands. All mitzvot stem from God, and the holism that marks the system demands and inculcates a world view that regards it as necessary that all the obligations imposed by the tradition upon the Jew be fulfilled if at all possible.

Of course, in matters of life and death, R. Oshry could rely upon the halachah that in order to save a life all but three commandments might be transgressed.⁶⁹ However, in other matters, Oshry must contend with the Jewish legal position that all the other mitzvot, hyperbole notwithstanding, are of equal importance. Therefore, it is not self-evident precisely how one justifies the transgression of one commandment in order to fulfill another. Indeed, as we

⁶⁹ Murder, Sexual crimes, Idolatry

shall see below, the rabbinic phrase, "*mitzvah ba'ah b'aveirah* – a commandment that stems from a sin," indicates that such an act is normally forbidden.⁷⁰

Here, as in his other responsa, R. Oshry turns first to the Talmud, the primary source of Jewish law, for analogous precedents that would guide him in rendering a decision in this instance. In Sukkah 9a, R. Oshry notes that there is a discussion as to whether an "old sukkah," one made 30 days prior to the festival of Sukkoth, is valid for the holiday. In the Mishnah, Beth Shammai declares the sukkah to be invalid. However, Beth Hillel disagrees and argues that if the sukkah was made for the purpose of the festival, then, even if it was made a year in advance, it is valid. The halachah follows Beth Hillel and seems to favor Beth Hillel because an emphasis is placed here upon intent. That is, the decisive factor that determines whether the sukkah is ritually fit is whether the builders themselves intended to erect a sukkah. If they did so, then time is of no legal import. Thus, no matter when one built a sukkah, if the motivation for erecting the structure was to fulfill the commandment of constructing a sukkah, then it is valid. On the other hand, if one happens upon an old hut, or if one builds a shed

⁷⁰ Sukkot 31a

and later desires to use that shed as a sukkah, then it is not valid. One cannot fulfill the mitzvah of building a sukkah through such a dwelling.

Having cited the mishnah, R. Oshry immediately takes up the discussion that ensues in the Gemara. Here, the Gemara relates that R. Judah, in an attempt to better understand the position of R. Hillel on the matter of the "old sukkah," cites a related position of R. Hillel on the matter of tzitzit. The discussion centers over tzitzit made from loose hanging threads from a garment,⁷¹ and the question before the talmudic Sages is whether such threads fulfill the commandment of tzitzit if a man weaves them together and twists them as one would do for tzitzit. In the end, the rabbis of the Talmud hold that such fringes do not qualify as tzitzit. This is because they were not attached to the garment for the purpose of fulfilling the commandment, and the commandment, the rabbis rule, requires that tzitzit be attached intentionally. Here, as in the case of the "old sukkah" for Beth Hillel, the issue is one of intention.

In making this argument, Beth Hillel and the talmudic sages rely upon the language of Scripture itself. In regard to the commandment of sukkah, the text states, "You shall observe the Feast of Booths seven days, after you have

⁷¹ The unfinished fringes of a woven garment.

gathered in your grain and your wine."⁷² In relationship to the mitzvah of tzitzit, the Torah reads, "And it shall be to you for a fringe, that you may look upon it, and remember all the commandments of the Lord, and do them;"⁷³ The text further states with regard to tzitzit, "You shall make fringes upon the four quarters of your cloak, with which you cover yourself."⁷⁴

In each instance, the Sages, relying upon the word, "to you (*la'chem*)" understood this to mean that the commandments can be deemed fulfilled only if the actor in each case weaves the thread or erects the structure for the express purpose of the specific commandment. The phrase, "to you," understood by the Talmud to mean, "to yourself," also indicates that "a stolen Sukkah" or "stolen tzitzit" cannot be used to fulfill one's ritual obligation in either instance. One must both build a sukkah and weave tzitzit from one's own possessions, not from stolen materials.

This passage would seem to indicate that if Meir stole the wool to make the tzitzit, then the tzitzit that would be produced as a result of this act of thievery would be ritually unfit for the fulfillment of the commandment. R.

⁷² Deuteronomy 16:13

⁷³ Leviticus 15:39

⁷⁴ Deuteronomy 22:12

Oshry seems to reinforce this view by noting that the Rambam, in *Hilchot Tzitzit* 1:11, addresses this specific question. The halachah states, "Tzitzit may not be made be from stolen materials under any circumstances." As God, in Maimonides' view, abhors robbery,⁷⁵ his ruling is unambiguous. Furthermore, R. Joseph Caro supports the Rambam's position on this point in his commentary on the *Mishneh Torah*, the *Kesef Mishnah*, as do a number of other sources in the tradition, many of which R. Oshry cites. Clearly, the prohibition against the use of stolen property for the making of any ritual object in Jewish law, including wool for the making of tzitzit, is seemingly absolute.

However, the legal tradition here, as in other matters, is more complex than a first glance might indicate. Caro himself, in *Shulhan Aruh, Orah Hayim* 11:6, states that while the prohibition applies to thread, it does not apply to raw wool that has not been woven or processed yet. This distinction is legally significant, for it means that the thread that has been made from the raw wool that was stolen cannot return to its original state (*sheino l'hozer*). The processing of the wool has transformed it in such a way that it can no longer be returned to the owner. As the thief cannot now return the original object, he can only be

⁷⁵ Based on Isaiah 61:8 - "God loves justice and hates robbery."

held responsible for monetary damages. Furthermore, the person who now possesses the wool may not even know that the wool from which it was made was stolen. As a result, the person in possession of the wool is now its owner.

However, in this case, the person who would be in possession of the wool from which the tzitzit would be woven would know that the wool was stolen. R. Oshry therefore cites the halachah that asserts that one cannot fulfill a mitzvah by means of a transgression.⁷⁶ Therefore, it would seem to be impermissible to allow Meir to "steal" the wool in order to have tzitzit woven from it.

Despite this, R. Oshry pursues another legal avenue that will lead to a different legal conclusion. He does this by invoking the halachic concept of *yei-ush*, property that has been lost or abandoned and is unrecoverable. Such items, from the standpoint of Jewish law, become the property of whoever possesses them on the condition that the item in question has been permanently changed in status. Oshry bases this position on a lengthy discussion of *yei-ush* in Baba Kama 67a-b. In this talmudic passage, we read that a change in the status of an item, like raw wool to thread, transfers ownership as well. If the item has truly been abandoned, and one transforms it into a new item that cannot revert to its

⁷⁶ TAZ on *Orech Hayim* 105.

original state, then ownership is transferred to the one who converted it. If, however, someone comes along after the transformation has occurred and claims the abandoned item, the new owner is clearly unable to return the stolen item for it is now a "different thing." He must make restitution instead. However, this still leaves this item, falling as it did under the category of *yei-ush*, in the possession of the one who transformed it.

From all this, R. Oshry concludes that if one were to take seemingly abandoned wool and weave it into fine tzitzit, the owner of the tzitzit would retain ownership. This would be so even if someone later came and contended that the wool from which the ritual object had been made was stolen. Furthermore, the owner would only be responsible for the replacement value of the raw wool, not the tzitzit, as the wool itself would have fallen under the category of *yei-ush*. The issue here now becomes one of determining whether wool in the possession of the Nazis is considered to be *yei-ush*. If so, it might well be halakhically permissible to employ it in the manner that Meir had proposed.

In order to determine whether this was so, R. Oshry proceeds to clarify the difference between a stolen item, which would not be permitted for use, and

an abandoned item that would be permitted. To do so, he draws upon a talmudic discussion concerning a stolen Palm Branch⁷⁷ used during Sukkoth⁷⁸. The Halachah there asserts that a plam-branch that is stolen is invalid for such ritual use, as it would constitute "a mitzvah fulfilled through a transgression." The Gemara continues by discussing whether one is permitted to use a borrowed Lulav on the second day of the festival to fulfill the obligation imposed by the holiday. After all, the Bible states, "And you shall take on the first day the boughs of goodly trees, branches of palm trees, and the boughs of thick trees, and willows of the brook; and you shall rejoice before the Lord your God seven days."⁷⁹ Consequently, such use is permitted on the second day, as the commandment that it be "your own" obligates one for the first day of the festival alone.

However, what of a Lulav that has been acquired through *yei-ush*? The halachah here is not completely clear. R. Isaac asserts that it is permitted on the second day, while R. Nahman retorts mockingly, "A stolen or withered palm branch is invalid, from which it follows that a borrowed one is valid?!"⁸⁰ In his

⁷⁷ Lulav: one of the four species used in the festival of Sukkoth, as commanded in Leviticus 23:40.

⁷⁸ Sukkah 30a

⁷⁹ Leviticus 23:40

⁸⁰ Sukkah 29b

view it is not permitted at all. Yet, Raba counters R. Nahman's assertion by pointing out that if the item is truly acquired through *yei-ush*, then it is not considered stolen at all. Consequently, it is permitted. The Talmud is thus careful to rule that property acquired through *yei-ush* is not considered stolen. This definition will provide a crucial warrant for the decision R. Oshry will render here.

R. Oshry now holds that wool "stolen" from a Nazi slave labor workshop could be considered fit for ritual use if it falls under the category of *yei-ush*, and this can be determined by seeing whether it meets two tests. First, it must fall under the category of an abandoned item, i.e. an object that the owner has no likely expectation will ever be returned to him. Secondly, the object, in this instance the raw wool, must be transformed into another item that cannot be returned to its original state, i.e., raw wool into woven thread.

Having established these two criteria for determining whether an object falls into the category of *yei-ush*, R. Oshry observes that the raw wool which is now in the possession of the Nazis is itself a stolen item. Indeed, this wool, in all likelihood, was originally stolen from Jews. Furthermore, since the Nazis have not changed its status, it can surely be "liberated" from them. In addition, the

original Jewish owners of the wool could never in their wildest dreams have imagined that the Nazis would return or that they would recover this wool. Consequently, it is clearly an abandoned item – *yei-ush*.

Moreover, even if the wool actually belonged to the Nazis, one would still be permitted to take it from them. For, as R. Oshry points out, the Talmud, in Sanhedrin 73a, permits one in self-defense to kill a *rodef*, a murderer who is pursuing you in order to kill you. As the Nazis delight in the murder of Jews, they surely fall under the category of *rodef*, and as one is permitted to kill such persons in self-defense, he is surely permitted to seize their property and "steal" from them.

This argument, combined with the warrant derived from the concept of *yei-ush*, reinforces the position that the commandment here is not being fulfilled through the commission of a sin. Consequently, the rabbinic prohibition that asserts that the obligation to observe a commandment cannot be discharged through a transgression is not applicable here. The wool taken by a Jew in a case such as this immediately becomes the property of the Jew who takes ownership of it and transforms it into tzitzit. The requirements stated in Numbers 20 -- that the tzitzit be made intentionally for the purpose of the commandment and that

they be the property of the one who wears them – are thereby met. R. Oshry concludes that you can even perform a blessing over these new tzitzit without any reservation whatsoever. In fact, R. Oshry approvingly reports in this last part of this section of the responsa, that a woman in the ghetto, the wife of a Mr. Meir made tzitzit for all of the *Tiferes Bachurim* out of the stolen raw wool.

Having answered the first two questions posed to him, R. Oshry concludes the responsum by turning his attention to the third question -- can a large tallit be cut in two to make two small tallitot kitanot to which the new tzitzit would be affixed? The question centers on the use of religious objects and whether they can be altered or transformed and then used for other religious purposes. This very question is taken up in Talmud, Arachin 6b, where the rabbis discuss a *ner tamid*⁸¹ that was donated to the synagogue. The individual who donated the *ner tamid* is not permitted to exchange it for another one, nor is the synagogue permitted to use the *ner tamid* for any secular purposes. On these two matters, the rabbis of the Talmud are in complete accord.

However, another question remains? Can the *ner tamid* be used for another religious purpose inside the synagogue? The halachah follows R.

⁸¹ Literally, "eternal light". It is the lamp that perpetually burns above the ark containing the Torah scrolls in a synagogue.

Johanan, who explains that if a non-Jew gave the gift to the synagogue, it may not be used for any other purpose than the one for which it was given. If, however, a Jew donated the object and sufficient time has elapsed so that the name of the person who gave it has been somewhat forgotten, then it may be used in the synagogue for other religious purposes. The reason for this distinction is that a non-Jew would not understand why his gift was being used for some other purpose, and he might make an issue of it. The Jew, on the other hand, would understand and so long as sufficient time had elapsed so as not to embarrass the donor, then it is permitted to use the object he had donated for some religious purpose other than the one for which it had originally been given. This position is later qualified by *The Mordecai*, which states that a religious object may not be used for a "lesser mitzvah" than the one for which it was first employed. The example provided is that a menorah given to the Temple may not be melted down and used for something else in the Temple. All this accords with the halachic principle espoused by the Rambam, that "we ascend in holiness, and do not descend."

R. Oshry then cites Megilah 26b, where a classification of religious objects is delineated. Some items fall under the category of "accessories to holiness –

tashmishay kedusha," and may not be used for anything other than their original purpose. These, like the menorah, are Torah covers, tefillin (bag and straps included), mezuzoth, the mantle of the Torah, the Torah reading stand, and the Ark. Jewish law holds that these items are not interchangeable with one another, and they may not be demoted to other religious items. The meaning of this is illustrated by the following example. If a holy ark is falling apart, it is permitted to employ that wood and make it into a smaller ark. On the other hand, one cannot use that wood and make it into a reading stand, even for the Torah.

The second category of religious items, identified as "accessories to religious observance - *tashmishay mitzvah*", includes ritual objects such as a sukkah, a lulav, a shofar, and tzitzit. These items may be discarded when they fall into disuse, or, if possible, they may be converted into other holy items of the same category. The fact that the second category specifically includes tzitzit, while not mentioning tallitot, is somewhat troublesome for R. Oshry. He cannot simply rely upon this talmudic passage as a warrant for allowing a tallit to be cut into two for use as tallitot k'tanot.

However, R. Oshry discovers a precedent contained in the writings of the Maharik that is relevant to the matter before him. The Maharik views the list of objects that are contained in the category of "accessories to holiness" as all-inclusive. Thus, all religious objects not specified in the list concerning "accessories to holiness" fall into the category of "religious observance" and are therefore open to new applications. For the sake of fulfilling another mitzvah, you may change the status of one of these items to another item in the same category. The splitting of a tallit into two tallitot kitanot would therefore be permitted by this view of the Maharik, and this is the view adopted by R. Oshry. Furthermore, the Beit Yosef rules that the halakhic principle mentioned above – "we ascend in holiness, and do not descend" -- does not apply to items of the category of 'accessories to observance'. Consequently, it poses no obstacle in this instance.

R. Oshry returns then to the present situation before him and rules that not only may Meir "steal" the wool to make tzitzit, as well as cut a tallit in two to make two tallitot kitannot, but to do so is a great commandment, a mark of true piety. He reasons that the young men live in constant fear that the next hour will be the hour of their death, and to be able to fulfill this particular mitzvah will

bring them great joy and consolation. He reasons that the mitzvah of tzitzit is of special significance, as tradition teaches that all the other mitzvot follow from it.⁸²

In classical midrashic style, R. Oshry notes that rabbinic tradition holds that the fringes and knots of the tzitzit are tied in such a way that they symbolically represent the 613 commandments given by God through Moses to the Jewish people. Indeed, the commandment to affix fringes to the corners of the garment, given in Numbers 20:38, states that when one looks upon the fringes, "one will remember all the commandments of God." The young men, through their determination to observe this commandment, display the piety and religious fervor that continued to mark and inform their lives despite the efforts of the Nazis to exterminate them and their religious devotion.

⁸² She'elot u'Teshuvot Mi-Ma'amakim 1:12, p. 88.

Responsum #13: "Does a ghetto home need a Mezzuzah?"⁸³

Throughout our analysis of Jewish religious life and practice in the holocaust, one theme has been overriding — the struggle to maintain a religious and moral life in the face of overwhelming challenges to the contrary. As we have discovered, often these challenges were to a person's morality, character, integrity, religious conviction. However, in this responsum, we discover that a lack of access to the physical materials needed to live a Jewish life was also a significant challenge to Jews who were determined to maintain religious practice. Previously we examined the case of stolen wool to make tzitzit. In that situation the material could be acquired, but by means that were seemingly suspect. In the case now before us, the material in question could not be obtained or replaced in anyway. The few mezzuot⁸⁴ that remained in the ghetto had become ritually unfit and could no longer be employed to fulfill the commandment.⁸⁵ The Jewish community of Kovno was packed and compressed into the dense and squalid conditions of the ghetto, and many whole families were forced to live in a single room. Under these conditions the question was asked of R. Oshry, did these tiny apartments require mezzuzot on the doorposts? In the

⁸³ She'elot u'Teshuvot Mi-Ma'amakim 2:13 pp. 88-92.

⁸⁴ Plural of mezzuzah

⁸⁵ Deuteronomy 6:4-9 and 11:13-21

view of the inhabitants, and most certainly the Nazis, the ghetto dwellings were tantamount to prison cells, and in the uncertainty of ghetto life, they could hardly be considered a permanent residence. These two characteristics, as we shall see, are highly relevant to the question posed in this halachic inquiry, for in order for a dwelling or a room, to require a mezzuzah it, must be considered a permanent residence and it must be regarded as a place of honor.

R. Oshry begins his response by citing the halachah of mezzuzah as codified in Rambam's Mishnah Torah 6:1. There, Maimonides lists the ten requirements a dwelling must meet in order to require a mezzuzah. If a dwelling fails to meet just one of the ten, it does not require a mezzuzah.

The commandment concerning *keviat mezzuzah* has a long history in Jewish tradition. The practice can be traced back to biblical times when the Israelites placed a mark on their doorposts to ward off the angel of death during the tenth Egyptian plague. Since the dawn of rabbinic Judaism, the rabbis have interpreted the verses in Deuteronomy chapters six and eleven, as literal instructions to set the words of those verses on the doorposts of one's house and on their gates. However, for a dwelling or a room to require a mezzuzah, two

criteria must be met. First, it must be a permanent residence. Secondly, it must be a place of honor.

In his *Mishneh Torah*, Maimonides asks whether a prison cell requires a mezzuzah. He concludes, in *Hilchot Mezuzah* 6:1, that inasmuch as a prison cell is a temporary dwelling, it, like a sukkah,⁸⁶ does not require one. However, before resolving this issue, Maimonides raises a position that might challenge this ruling. After all, if one is incarcerated in a prison cell for a long period, one might hold that such imprisonment is no different than dwelling in an apartment or a rented dwelling. In these latter cases, a mezzuzah would be required. Nevertheless, Maimonides rejects this analogy on two grounds. First, he observes that a prison cell is never intended to be a permanent dwelling, for the entire time one is in jail, one hopes for liberation. Secondly, a jail cell is not only "temporary," it is also not a place of honor. Just as a bathroom is not considered a place of honor and, therefore, does not require a mezzuzah, so a jail cell does not require one.

In light of these considerations, R. Oshry concludes that ghetto home cannot be considered a permanent dwelling. Like a prison, the people who dwell

⁸⁶ A temporary home built to fulfill the commandment contained in *Leviticus* 23:42.

within it regard themselves as incarcerated, and they only yearn to escape it. Furthermore, the overcrowded nature of the rooms further marks them as temporary abodes. Finally, R. Oshry observes that the horrific predicament that marks the lives of those Jews who dwell in the ghetto is reflected in how they greet one another. Theirs was an existence that was precariously perched between life and death. Their realization of this caused them to remark ironically that they were really "dead persons on vacation." For all these reasons, R. Oshry stated that their dwellings could not be considered as permanent. When people said goodbye upon taking leave of one another, they could never be certain that they would ever see their neighbors again.

R. Oshry then turned to the Talmud for an analogous discussion of rooms that were employed as temporary dwellings that did require a mezzuzah at certain times. In Yoma 10a-b, the rabbis engage in a lengthy discussion of whether the rooms that housed both the common priests as well as the High Priest himself during their days of service in the Temple required mezzuzot, inasmuch as such cells were not their permanent dwellings. The Rabbis observed that while the compartments of the common priests did not need mezzuzot, they all agreed that the cell of the High Priest (*prachadrin*) minimally

required a mezzuzah during the seven days of Sukkoth. However, they disagreed over the other days of the year. While a dispute ensued between R. Judah and the other Sages on this issue, the Rabbis, in the end, decided that a mezzuzah was to be affixed permanently to the High Priest's Cell. They did this by rabbinic decree so that the people would not say that the room in which the High Priest dwelt was akin to a prison. The criterion that a room marked as a place of honor requires a mezuzah was a consideration of such import that the rabbis decided the Halachah in this manner despite the fact that the room was not a genuinely permanent dwelling. Based upon this *sugya*,⁸⁷ R. Oshry held that the residents of the ghetto were not obligated to affix mezuzot to their apartments, inasmuch as they were not only compelled to dwell there, but because the ghetto was actually a place of ignominy for them. Consequently, the requirement that the Priest's Cell in the Temple boast a mezuzah was not applicable to the current case.

R. Oshry added one final consideration to this discussion -- the biblical city of refuge.⁸⁸ He asked whether people who dwelt in these cities required a

⁸⁷ Talmudic section

⁸⁸ The biblical cities of refuge were inhabited cities outside the land of Israel that people liable for involuntary homicide could flee to in order to escape retaliation by the family members of the killed.

mezzuzah on their door. Such dwellings were surely permanent. However, could these residences qualify as places of honor. To this query, he responded by asserting that the permanent inhabitants of such a city were surely obligated to place a mezuzah upon their dwellings. However, those who fled to these cities were exempt from the obligation. Fearing retribution at the hands of the blood redeemer (*go'el dam*), theirs was not a free choice to dwell there. Nor was it a place of honor for them. Consequently, their homes did not require that a mezuzah be affixed. R. Oshry thus concluded this responsa with this last warrant.

The ruling R. Oshry issued held that a ghetto resident need not place a mezuzah on the doorpost of his home. Of course, if a person possessed a mezzuzah and elected to put it up out of a sense of solidarity with the Jewish people or the comfort it might provide, they could do so. However, the individual, even in this case, should not recite the blessing while doing so, as the decision to affix under these circumstances was an elective act, not a required one. The ghetto home, while not a place of honor, was not entirely analogous to a jail cell, where there was a prohibition against having it affixed. Indeed, he justified this stance by relying upon Menachoth 43b, where it states that there

may be an emotional value in just gazing upon a religious object such as a mezzuzah. A reminder of all the other mitzvot, the presence of a mezuzah on some homes under contemporary conditions might well bolster the spirits of the people. Consequently, no Jew should regard this act as a *hovah* (obligation) under the circumstances that obtained. Those Jews fortunate enough to have a mezuzah at their disposal should not recite a blessing upon affixing it to their apartments. Those Jews and their community should receive whatever comfort might emerge from the fulfillment of the commandment. At the same time, no embarrassment or guilt ought to be felt by those Jews unable to observe this precious Jewish duty. In offering this ruling, R. Oshry once more revealed his determination to have the halachah speak so as to guarantee maximum human dignity and concern for his oppressed people. His love and concern for the Jewish people shine out in this ruling.

Responsa of Shabbat and Pesach

And the Lord spoke unto Moses, saying: Speak unto the children of Israel, and say unto them: the appointed seasons of the Lord which you shall proclaim to be holy convocations, even these are My appointed seasons.⁸⁹

In Irving Rosenbaum's Holocaust and Halachah, Rosenbaum includes the above quotation from Leviticus 23:1-2, and sadly notes that "the appointed seasons of the Lord' were also appointed by the Nazis for special acts of cruelty and bestiality against the Jews."⁹⁰ He and others holocaust scholars, point out that the Jewish holy days and festivals were times of both renewed hope and untold suffering for the Jewish communities during the Holocaust. When it was possible, marking these occasions with some manner of traditional ritual observance and religious practice helped reconnect and reinvigorate the victims of Nazi oppression. That they could save a little bit of a ration for an extra shabbat blessing, or manage a brief moment of prayer on the High Holy Days could, in the words of R. Oshry, "lift their souls out of the depths of despair."⁹¹

For this very reason, the Nazis would often exploit these moments as opportunities for cruelly sadistic acts. Holocaust studies are replete with stories

⁸⁹ Leviticus 23:1-2

⁹⁰ Rosenbaum, Holocaust and Halachah, p. 91.

⁹¹ She'elot u'Teshuvot Mi-Ma'amakim vol. 1: Pp. 130ff

of how on Yom Kippur the Nazis would double the rations of the Jews in the labor camps, and then force them to eat in the presence of the guards. This was done so as to taunt those who even thought of fasting on this holiest of days in the Jewish calendar. To compound, if this was possible, their evil, the Nazis would then prevent any Jew from saving the extra ration of food they had distributed for the following day. During Passover, the Nazis would bake fresh bread, and they would emphasize how the Jews had now been returned to slavery, this time at the hands of Nazi oppressors, not Egyptian taskmasters. However, the torments of the Jewish holidays were more than merely psychological or episodic. The enduring hardships imposed by the Nazis stemmed from the consciousness that it was Shabbat or Yom Tov, and yet the Jew could not rest from his/her labors, nor could he/she be with family or observe the holiday in any possible manner.

Yet, as we have seen in early chapters, learned Jewish individuals remained determined to observe the mitzvot. They were often extremely resourceful and conscientious in designing ways to maintain some semblance of religious life despite the horrors of life in the camps and the ghettos. In this chapter, we will examine three such examples of resourcefulness and

commitment to proper observance of the mitzvot of the holidays in their appointed seasons despite all the obstacles that obtained.

Electric Lights as Shabbat Candles

In 1942, it was impossible under any circumstances to obtain Shabbat candles in the Kovno ghetto. R. Oshry thus had a community of persons whose weekly rhythm of life had been disrupted. Their lives had been marked by a lifelong pattern of shabbat candle-lighting. This act granted them comfort and serenity. Now, because of the bestiality of their oppressors, they could no longer fulfill this familiar mitzvah.

In this setting, R. Oshry was approached by a representative of the community, and asked whether it might be possible to fulfill the mitzvah of kindling lights on the eve of shabbat with electric lights which were readily available in every home. If this was to be permitted, would it also be permissible to say the blessing, "*lehadlik ner shel shabbat* -- to kindle the lights of shabbat," over the electric lamps?

In answering these questions, R. Oshry turned initially to the Beit Yitzhak, a commentary of the *Shulhan Aruch*, *Yoreh Deah* 120:4. In this halachic text we read that it is permissible to use electric lights and to recite the blessing when

candles are absolutely unavailable. Not only is this permissible for Erev Shabbat, but the commentary continues by explaining that it is likewise permissible under such circumstances to employ electric lights for the ceremony of Havdalah, a ceremony that takes place at the close of shabbat on Saturday evening.

Nevertheless, here, as elsewhere, R. Oshry notes that there are other rulings on the subject. The Meorei HaAish, chapter five, contends that it is only permissible to fulfill these commandments using light bulbs if the light bulbs themselves are clear and provide an unobstructed view of the filament inside. Dark or smoked light bulbs are permitted for fulfilling the mitzvah of kindling. However, one is permitted to say the blessing only over clear light bulbs.

R. Oshry notes that this last restriction is not applicable in this case, as the electric lights in use in Kovno were all clear glass. He therefore permitted the Jews in his community to fulfill the commandment of kindling the sabbath lights with electric light bulbs and to say the blessing *lehadlik ner shel shabbat*, over them. Likewise, R. Oshry permitted the kindling of electric lights and the saying of the appropriate blessing to fulfill the commandment of Havdalah at the end of shabbat.

What to do with Hamatz During Passover in the Ghetto?

As was their custom, the Germans would deliver a two week ration of bread to the *Judenrat* to be distributed to the Jews of the Kovno ghetto for the ensuing two-week period. In their typically cruel and sadistic manner, the Nazis, prior to Passover, would deliver the bread immediately before the holiday, at the precise moment that the Jews, in observance of Jewish law, were struggling to rid their homes of all hametz.⁹² As the threat of starvation made it impossible for the Jews of Kovno to forego this bread ration for two weeks, it was necessary to receive the bread and make arrangements, in accord with classical Jewish law, to transfer ownership of the bread to a gentile during Passover.⁹³

In normal circumstances, sale of hametz to a non-Jew would be a routine activity. An unspoken, but expected part of the sale, would be that the hametz would be sold back to the Jew at the end of the holiday. However, this was simply not possible in the Kovno ghetto for a number of reasons. First, contact with non-Jews outside the ghetto was strictly forbidden and an offense

⁹² The technical term for leaven bread and leavening products forbidden by Jewish law to be in the possession of Jews during the Passover holiday.

⁹³ Not all Jews observed the prohibition of hametz during this period and there is precedent that one is permitted to eat bread during this period if it is a matter of life and death. Still many religious Jews chose to refrain from hametz during this time and exchange bread rations for potatoes or other available vegetables (On this point, see Rosenbaum, Holocaust and Halakhah, p. 100).

punishable by death for both Jew and non-Jew. Secondly, even if an arrangement of sale could be made with a non-Jew outside the ghetto, the shortage of food was extreme for non-Jews as well. One would have no assurance that the food would be returned uneaten. To give up one or two week's supply of bread while surrendering any hope that such bread would likely be returned was tantamount to imposing a death sentence on one's self and one's family. To be sure, the Jewish legal tradition had been compelled because of parallel situations in the past to adopt an additional method of divesting one's self of hametz in circumstances where it was not possible to sell it to a non-Jew or remove it from one's home and abandon it. According to *Schulchan Oruch, Orech Hayim*, 448:5 one can maintain possession of the bread, but declare it to no longer be in your own possession. In this situation, such a declaration satisfies the commandment to rid one's home of hametz, though there remains some dispute as to whether one can eat or sell the hametz for financial gain after Passover has concluded.

Having cited this source, R. Oshry then turned to *Torat Shelamim* #6 for a precedent that would address the problem before him. There the case of a man who was imprisoned and unable to sell or dispose of his hametz prior to

Passover is reported. Because of his circumstances he was able to nullify his ownership of the hametz by means of a declaration. The opinion of the Torat Shelamin held that this man could either use this hametz after Passover, or, if this hametz was not eaten, it could be sold and the money received from its sale could be used to purchase replacement food. He ruled thus on the grounds that the man was under duress and that he had complied with the biblical requirements concerning divesting one's self of ownership of hametz. Furthermore, this position was supported by other Jewish texts including, the *Maharim Mi-rakanti*, the *Kneset Hagadolah*, the *Olat Shabbat*, and the *She'elot u'Teshuvot Givat Pinhas*. However, as R. Oshry points out in his teshuva, the famed *Nodah Be'yehudah*, written by Rabbi Ezekiel Landau (1713-1793) of Prague, one of the greatest authorities in Jewish legal history, ruled in 1:19 of his responsum that such use is forbidden the individual, even when one disposes of it under duress. In addition, two great early nineteenth century central European rabbinic figures, Rabbi Akiva Eiger and the *Hatam Sofer*, 114, concur with this position.

While the positions of these latter sages must be honored, R. Oshry nevertheless explains that in the *Mishnah Berurah*, Rabbi Israel Meir Hacohen of

Poland, famed as the Chofetz Chayyim, rules, in *Orah Hayyim*, 448:28, in accord with the first authorities cited. In the case of great financial loss, where the owner of the hametz must, because of duress, divest himself of the hametz, he may be permitted to use it again after Passover.

R. Oshry however, after citing all these legal arguments and precedents, arrives at an ingenious solution that is characteristic of the resourcefulness and creativity he has displayed towards such matters throughout his teshuvot. He states that the Nazis have already decreed that Jews are forbidden from owning anything. This decree includes the bread that they ration to the Jews. Despite the fact that it is distributed in two-week allotments to the *Judenrat*, it is technically never the property of the Jews. To prove this point, R. Oshry observes that if a Jew were to take the bread he would be killed. Thus, he concludes that the Jews of Kovno are simply required to divest themselves of all ownership of this bread, or any other hametz they might have, by means of a simple verbal declaration. Furthermore, the bread may remain in the Jew's possession. Following the Passover observance, the Jews of Kovno are free to eat the bread that they divested themselves of during Passover. R. Oshry ruled that the Jews of the Kovno ghetto should follow this practice.

Other questions concerning Passover observance were also brought to R. Oshry around this same time. Of great concern was fulfillment of the commandment to eat matzah⁹⁴ during Passover, to properly prepare the matzah and the commandment not to eat hametz (leavening products) during the entire Passover holiday. With regard to the commandment to eat matzah the actual commandment is that an amount of matzah equivalent to the size of an olive be eaten on the first two nights of Passover.⁹⁵ This halachah is derived from Exodus 12:18 ("In the first month on the fourteenth day of the month at evening, you shall eat unleavened bread...") and the talmudic exegesis of that biblical passage located in Pesachim 120a. The question before Oshry with regard to this mitzvah is what lengths are the members of his community permitted to take in their preparation of the matzah so as to extend the dough mixture and have more portions available to the community? Indeed they want in this instance, to mix potato peelings in with their limited supply of flour to stretch the mixture.⁹⁶

The use of potato peelings is permitted by the halachah for this explicit purpose (Pesachim 38). However the concern is that given the filthy conditions

⁹⁴ Unleavened bread

⁹⁵ Ellenson, *Tradition in Transition*, p.15.

⁹⁶ This combination is normally permissible because vegetable and fruit juices are not leavening agents. (Leiman p. 69)

of the ghetto, there will be a need to clean the potato peelings before using them in the mixture. If the Jews clean the dirty peelings with water, leavening could occur. Yet, they must somehow be cleaned if they are to be usable. Avraham DovBer Kahana-Shapira, the Chief Rabbi of Kovno, had ruled that you could clean them with a dry rag, but not with water, on the basis of the prohibition found in Pesachim 38. R. Oshry relies upon his ruling and therefore recommends that the process of cleaning the peelings with a dry cloth be widely publicized to the community, and that no water be used in cleaning the peelings.

Another question arose concerning the eating of available legumes during the Passover period, a practice that is traditionally only permitted in Sephardic communities. R. Oshry was asked if, given the circumstances of the Jews in the ghetto, if they might eat the black beans⁹⁷ which were part of the ghetto food ration?

In response to this question, R. Oshry cites the *Chatam Sofer's* ruling in *Orech Hayyim* 122, who states that it is only permissible for Ashkenazic Jews to eat beans and lentils during Passover if a majority of the Rabbis in the community agree. R. Oshry concludes, however, that in a time of great danger and for the sake of saving lives, it is permissible even without such a formal meeting

of communal rabbis. At the same time, he maintains that the Jews of Kovno must eat their beans and lentils by boiling rather than baking them, a process similarly required by the *Chatam Sofer* in such instances.

It is important to note that for most Jews the only aspect of Passover that they were able to observe was the *maror*, the bitterness that occurred every day in the ghetto and in the camps. One group of Rabbis, aware that the Passover holiday, more than any other, served as a poignant connection to the suffering of Jews in a previous age, crafted a prayer to be said by Jews who, out of necessity and in order to save their own lives, needed to eat hametz during Passover. The author of the prayer was R. Zvi Hirsch Meisels, formerly Rabbi in Neumark and later in Waitzen, after the liberation of Auchwitz-Bergen Belsen where he was interned. He, like R. Oshry, published his responsa from the period.⁹⁸ R. Meisels wrote:

Our Father in Heaven. Its is evident and known before You that it is our desire to do Your will and to celebrate the festival of Passover by eating matzah and by observing the prohibition of hametz. With aching heart we must realize that the enslavement prevents us and we are in danger of our lives. Behold, we are prepared and ready to fulfill Your commandment: "And you shall live by the and not die by them." And we are warned by Your warning: "Be careful and guard your life carefully." Therefore we pray to You that You maintain us in life and

⁹⁸Rabbi Dr. H. J. Zimmels, The Echo of the Nazi Holocaust in Rabbinic Literature (Republic of Ireland: 1975), p. 111.

preserve us and redeem us speedily so that we may
observe Your statutes and do Your will and serve
You with a perfect heart. Amen.⁹⁹

⁹⁹ Ibid., p. 111.

Conclusion:

In terms of sheer volume, Holocaust era responsa, like those of R. Oshry that we have examined here are few. This stated, one must contemplate how this number might have been increased if the matters of Jewish law and religious practice contemplated by rabbis during the Holocaust could have been preserved at the time, rather than perishing namelessly with their authors in the inferno of the Holocaust. Norman Lamm explains in his forward to Rosenbaum's book, The Holocaust and Halakhah that even those responsa that were recorded are largely unknown to the general public and the rabbinic-talmudic community. He cites as an example of this fact; "The failure of [the rabbinic-talmudic] community to produce any major anthology of, or study on this unique literature of the Halakhah."¹⁰⁰

In a widely known Talmudic *machlochet*,¹⁰¹ the rabbis debate the merit of those who perform a mitzvah because they voluntarily elect to do so, as opposed to those who perform a mitzvah out of a sense of commandedness. The rabbis conclude that one who performs a mitzvah because he is commanded to do so is of greater merit. They reason that such a person has the added honor

¹⁰⁰ Norman Lamm, in "Forward" to Rosenbaum, The Holocaust and Halakhah, p. ix.

¹⁰¹ Debate

of fulfilling not only his own desires, but those of God as well.¹⁰² It is my hope that by examining the courageous deeds of those who maintained their Jewish way of life in the shadow of the high ghetto walls, we gain a fuller understanding of the decision of the rabbis in this machlochet.

These heroic Jews did not allow God to be forgotten in the midst of the greatest challenge to the covenant in our time. We must place these men and women among all of those nameless Jews who have contributed to the perseverance of the Jewish people in the face of hundreds of years of persecution and bloodshed. The Prophets of Israel called for the people to return to God and the covenant as our people were scattered in exile. The rabbis of Yavneh reconstructed Judaism amidst the smoke filled horizon of a temple and a religious system that lay in ruins. Throughout the Crusades, the inquisition in Spain, and the Pogroms of Eastern Europe, small groups of Jews held the banner of Torah high, and maintained and contributed to the growth of Jewish religious life and practice in the face of the most impossible and foreboding odds. In this tradition of indomitable faith, the religiously observant Jews of the Holocaust era

¹⁰² Avot 6:1

must be counted among those who have kept the light of Torah alive in the world, when it could just as easily have been extinguished.

We may never know the true and full record of their deeds, as the testimony of so many has been lost forever. But this must not discourage us from telling of their actions and courage. Rather, the dearth of information on the matter must compel us to dig deeper, to retell and explore the testimonies that remain. If much of Jewish religious practice is based on the commandment of zachor/to remember, then we must fulfill this commandment with regard to this aspect of the Holocaust as well. We must remember those, like R. Oshry, who took it as their sacred duty to remember, guard and record our tradition and our covenant with God.

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