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**THE TRADITIONAL LAW OF AGENCY AND MODERN  
SYNAGOGUE STRUCTURE AND MANAGEMENT**

**REBECCA YAËL EINSTEIN SCHORR**

Thesis Submitted in Partial Fulfillment of  
Requirements for Ordination

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Hebrew Union College-Jewish Institute of Religion  
Graduate Rabbinic Program  
New York, New York

1999

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Michael Chernick, Ph.D.

20-3104

## Report on the Rabbinical Thesis of Rebecca Einstein-Schorr

### Entitled

### "The Traditional Law of Agency and Modern Synagogue Structure and Management"

Ms. Einstein Schorr has produced an unusual and detailed thesis which combines both scholarship in rabbinic legal texts and advocacy of a particular approach to practical concerns of the modern synagogue as it strives to discharge its duties as a Jewish religious institution. She argues that the classic laws of agency provide a model for the modern synagogue structure, and which may guide the conduct of its real-world business and be a constant reminder of the ethical dimension which is present in every aspect of synagogue structure and management.

The thesis is composed of four main chapters plus a brief introduction, brief conclusions and an extensive bibliography. The main chapters amply demonstrate scholarship in various fields: Jewish history, modern Jewish sociology, law, and traditional rabbinic law—halakhah. The material is carefully and logically arranged. The argument and flow of discussion are clear.

Ms. Einstein-Schorr prepares the reader for her unique thesis in chapters one and two, which sketch the pre-modern synagogue as an institution located in particular cultures at various times. She then does the same for the modern synagogue, highlighting how and why the modern successor institution and the pre-emancipation synagogue differ from each other. She eventually focuses on the modern synagogue as it developed in North America.

Her third and fourth chapters are the heart of the matter in which she presents her analysis of the *dine-shelihut* as found in *Tur*, *Hoshen*, *Mishpat*, and in other classic rabbinic sources. This portion of the thesis also analyzes the manuals and other materials available to synagogue boards and personnel as guides in the proper "Jewish" approach to their several duties. Ms. Einstein-Schorr demonstrates that these materials are inadequate on several grounds and then posits that the classic rules of *Shilihut* do in fact describe a model for the fundamental relationship among laity, lay leadership, and professional staff in a synagogue. Her thesis is extremely well thought out, and presented with logical consistency. The thesis is indeed a new conceptual approach to the modern synagogue, the people it serves, and the people it employs.

Ms. Einstein Schorr exhibits a good command of her sources. She marshals them thoughtfully and creatively.

Whether or not her thesis and conceptual model will actually become a point of reference in synagogue life remains to be seen. She has made a reasonable and attractive contribution to the ways in which the entity of the modern synagogue may be considered.

It is a pleasure to recommend the acceptance of Ms. Einstein Schorr's thesis.

Stephen M. Passamaneck

Referee



## Summary

### The Traditional Law of Agency and Modern Synagogue Structure and Management

examines and critiques the current documents of the Reform movement available to the modern synagogue, and presents a theoretical model based on the halakhah of agency. Passages from Jacob B. Asher's *Arba'ah Turim* and Joseph Caro's *Shulchan Arukh* are used to develop the proposed template, and practical applications are provided as a way to show how this template might be applied in the modern synagogue.

This six-chapter thesis begins with a historical overview of the pre-modern synagogue and continues with an explanation regarding how the modern synagogue differs from it. Four documents published by the Reform movement are then critiqued, and finally, an extensive translation of the text provides foundation for a new paradigm; the application of the principal/agent model to the modern synagogue. This comprehensive model succeeds in many of the areas that the earlier manuals fail. Most importantly, the principal/agent model provides an active role for the congregational membership, an area that is not touched upon in the other documents.

The common assumption is that the modern synagogue is a direct descendant of the pre-modern synagogue. In this work, it will be asserted that although the modern synagogue does have its root in the legal tradition, in its current form, it reflects the principal/agent model more accurately than it reflects the pre-modern synagogue. While this thesis does not provide a one-for-one application of the model, it does allow for further consideration of how the principal/agent model is the most comprehensive, and how it might be applied to the modern synagogue.

## Acknowledgements

I could not have accomplished this labour-of-love without the nurturing guidance of my advisor, Stephen M. Paśasmaneck. His keen sense of humor and authoritative command of language enhanced our time together. "Only the lesson which is enjoyed can be learned well." (Judah HaNasi, BT, *Avoda Zara* 19a.)

My gratitude also to my New York advisor, Michael J. Chernick, whose faith in my ability to complete this work from 3,000 miles away, enabled me to return home for my last year of studies.

It is with sorrow that my rabbinic education was not completed until after the death of my beloved teacher, Samson H. Levey, z"l. It was Rabbi Levey who first recognized my capacity to be a rabbi to others, and I will always be grateful for his kindness. His memory bestows blessings on me each day.

My parents have bequeathed to me our beautiful heritage and a lifelong love for the text. Their continued support has been a source of strength throughout this process.

And to Warren. שימני כחותם על-פך כחותם על-זרועך כי-עזה כמות אהבה. Thank you.

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## Chapter One - Introduction

Nahman of Kasovir asks, "Since people inevitably think of business while they are at the synagogue, is it asking too much that they should think of God while they are at business." Yet, synagogue boards are quick to separate religion and business in the making of their "good" business decisions. This thesis will attempt to determine the ethical context of the modern synagogue. There is general agreement that a synagogue should be created, fostered, and managed as an institution which adheres to the highest ethical standards of the Jewish tradition. How are these standards developed and communicated?

Synagogue manuals strive to spell out the highest ethical standards of the Jewish tradition. Unfortunately, they fall short of this goal and appear to take a haphazard approach to ethical concerns. Ethical decisions are rarely couched in terms of the ethics of Jewish law. The manuals provided for synagogue board do not present an overarching concept of the Modern Synagogue as having a place or representing a phenomenon that has relations to classic Jewish law and ethics.

It will be argued that the extant manuals are in fact haphazard. The synagogue manuals developed by the Reform movement, while encouraging boards to make fair and equitable decisions, do not appear to involve traditional Jewish law in their decisions. The language used by the Reform movement is suggestive, at best. As a religious and spiritual institution, the synagogue is **mandated** to behave in a Godly manner. Although certainly well intentioned, the documents do not represent any fundamental, conceptual approach beyond insisting that the

synagogue follow applicable laws of the state and in general be ethical. An alternative to this haphazard approach will be presented here; the Modern Synagogue will be located in the classic categories of Jewish law and its concomitant ethical demands. There will be an attempt to demonstrate a specific halakhic model for the modern synagogue that may give shape and direction to the relationship among its components - laity, lay leadership, and professional staff in terms of Jewish law and ethics.

In order to present this argument, the thesis will first explore the pre-modern and also the modern synagogue as a phenomenon quite different from its pre-modern ancestors. Successively, the thesis will thoroughly critique modern synagogue manuals from the point of view of depth and consistency. Then the thesis will examine possible classic models for the modern synagogue: e.g. corporation, partnership, and present an alternative model to them, the model of principal and agent. This latter concept will be examined both from the point of views of its relevance with the actual process of forming a modern synagogue and from the point of view of Jewish legal and ethical demands. In the course of this discussion, other aspects of halakhah will be presented, e.g. sale and purchase and the engagement of employees, as they relate to the model of principal and agent. It will be argued finally that the principal-agent template or model provides a consistent and legitimate basis for understanding the modern synagogue and a basic principle for its conduct and the conduct of those affiliated with it.

In order to understand what role the synagogue has in the life of the contemporary Jew, it is important to examine how the pre-modern synagogue



functioned in the life of the Jew living during the Medieval period. There was a time that every Jewish individual knew what the community expected. Social order was maintained by living according to the framework of the halakhic deference. The synagogue as we know it today did not serve as the primary institution in the pre-Emancipation Jewish community. It was the rabbinical courts and the community leaders in the community house, which was also a place of prayer and study, which kept the community together.

The communities throughout Europe and the Middle East enjoyed a type of autonomy during the Middle Ages. Each community, depending on the amount of power granted by the secular ruling power, developed its own structure and methods of keeping order. This type of society is known as corporativism<sup>1</sup>, in which the population is divided into separate and generally autonomous corporations.

Citizenship, as it is understood today, simply did not exist in the pre-modern world. For example, in feudal Europe, individuals belonged to the land, and served the landowner. Jews were not granted this same type of status. Rather, they were given a special status, which was subject to change at the whim of whoever was in power. As a result, "membership" to the Jewish community was obligatory, for there was no where else for a Jew to go. The only "out" for the Jew was formally to convert to another religion if the individual felt mistreated. One exception emerged in the late 16th century, and that was the position of the court Jew,<sup>2</sup> when in the early modern period, Jews served as purveyors and merchants for the kings, dukes, and armies. These select individuals were able to succeed in those roles because

<sup>1</sup>Howard M. Sachar, The Course of Modern Jewish History (New York: Vintage-Random, 1990), 4.

<sup>2</sup>H. Sachar, 22.



the government was exceedingly dependent on their commercial skills. There were a number of incentives for the Jew who served a royal court, including permission to live outside the ghetto, the right to live at court, and other privileges.<sup>3</sup> These concessions on the part of the ruler were small in comparison to the usefulness of the select Jews who served as financial administrators and purveyors.

On the whole, however, the ruling governments had little concern about what the Jews did or how they organized themselves as long as their special taxes were paid in a timely fashion and they remained quiet. For the most part, this system was advantageous for the Jewish community. It allowed its members to live according to Halakhah with little interference from the outside secular world.

All of this changed with Emancipation, which led to the breakdown of communal authority. The halakhic system went awry because of the loss of communal rule, which was no longer necessary in Western and Central Europe with the introduction of individual citizenship or civil status. As a result, the Jewish community has, for the most part, ceased to exist.<sup>4</sup>

The modern synagogue has emerged as the primary institution and other area of Jewish life; e.g., charity has largely been taken over by other organizations. Since participation in the modern Western Jewish community became voluntary, a number of religiously unrelated institutions appeared on the scene. Once emancipated, European Jewry found itself confronted with the responsibilities of citizenship. Furthermore, it became even easier for the individual Jew to opt out of the Jewish community if his or her needs were not being met.

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<sup>3</sup>Sachar, 23.

<sup>4</sup>See Chapter 1.

The nature of the emerging modern community was voluntaristic, with the synagogue at the center of the Jewish community. Membership in this modern synagogue is determined by the payment of dues. It is possible of course to join a synagogue without ever setting foot into the actual building. Conversely, one may frequent the synagogue without ever financially supporting it. Once a synagogue is established, it must meet certain requirements of secular civil law. These requirements must be in concert with the ethical teachings of the Jewish faith. As the inheritors of an emancipated world as well, it is often difficult for the contemporary individual Jew to reconcile the old expectations with the new style of life.

This thesis proposes a theory of synagogue organization for the modern synagogue from the point of view of Jewish Law. As an institution, the synagogue provides for certain needs in the modern community, such a prayer, study, communal events, and *g'milut chasadim*.<sup>5</sup> Furthermore, it promotes the Jewish ritual life of the community. It acts as an instrument of the Jewish religion and people to such extent as its leadership commits itself. In order to function as the central religion institution in the Jewish community, there needs to be coherence in what Jewish principles should apply to it. Through examining certain texts and materials, the modern synagogue may be located as a genuine successor to no longer extant institutions created in part under the classic halakhic system.

This thesis will look at such questions as: does the community have a financial obligation to the synagogue? Can synagogue membership be considered

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<sup>5</sup>Hayim Halevy Donin, To Be A Jew (New York: Basic Books, Harper Collins Publishing, 1972), 183.

charity, and if so, is that charity considered voluntary? If membership dues are considered as taxes, are they considered charitable contributions? How are the financial responsibilities of members decided? What obligations do individuals have to the community, and which community? Our tradition can speak to these modern issues and also to our liberal sensibilities, but first the text is to be explored with due regard for what the tradition requires of Jews who undertake to work together.

The synagogue in its modern form is a place of employment for professional, support, and custodial personnel. Does the congregation have to be incorporated as a legal entity of the state? Is it considered a non-profit organization or corporation? What guidelines must it adhere to in the areas of contracts, wages, benefits, pension, and workman's compensation? As a Jewish religious institution, the ethical behavior it exhibits **should** be higher. What does halakhah say about the timely payment of wages or about the financing of conference fees and continuing education for the professional staff?

There are a number of models that might form the basis for the modern day synagogue. Both a corporation and a partnership provide possible frameworks, but they are flawed. Jewish tradition does not really have a concept of a corporate entity as such. Further, the synagogue cannot operate as a partnership because not everything is held in common among the membership, the lay board, and the professional staff. It is the concept of the relationship between a principal and agent that might provide us with the most comprehensive model. In other words, it will be argued that the modern synagogue does have a template in the traditional law and that is the legal concept of principal/agent. This is a theoretical exploration of the

idea that the synagogue may rely be ethically and Jewishly by reference to the traditional law regarding agency. Furthermore, we shall inspect the law of agency, and see how it might inform the institution and give it some sort of conceptual shape within the traditional law.

## Chapter Two - The Pre-Modern Jewish Community

This chapter sketches, in broad strokes, the status and structure of the pre-modern Jewish community, roughly from 1000 CE to the early 19<sup>th</sup> century. In order to understand the place of the Jew and the Jewish community in medieval society, one must be cognizant of the difference between "privileges" and "rights."<sup>6</sup> During the Middle Ages, the concept of human rights as understood in modern Western times did not exist. It was not until the Age of Enlightenment in the 18<sup>th</sup> century that human rights were contemplated as a natural ordering of the human condition and, consequently, universal. Prior to the Enlightenment, groups, and sometimes individuals, were granted certain privileges, which could also be withdrawn on a more-or-less arbitrary basis. In that Medieval system, one might easily perceive the Jews' situation as that of "second-class citizenship," but the concept of citizenship, as it is presently understood, did not exist. Rather, individuals of all types and groups as well belonged to an overlord of one sort or another in the Middle Ages. The term "citizenship" is used here with the caveat that it is imprecise when it is used in a medieval context, particularly a Christian medieval one.

### Preliminary considerations

Privileges amounting to de facto rights were granted to the individual based on one's legal status. According to R.W. Southern in his *Making of the Middle Ages*,<sup>7</sup> "legal status is the most deceptive of all standards of a people's well-being."<sup>8</sup>

<sup>6</sup> David Biale, *Power & Powerlessness in Jewish History* (New York: Schocken Books, 1986), 60.

<sup>7</sup> R.W. Southern, *The Making of the Middle Ages* (New Haven: Yale University Press, 1953), 75.

<sup>8</sup> Mark R. Cohen, *Under Crescent and Cross-The Jews in the Middle Ages* (Princeton: Princeton University Press, 1994), 30.



This statement could not better describe the gap between the theory and reality when we consider the legal status of the Jews and the Jewish communities during the Middle Ages. Legal status is, as Mark Cohen writes, the "earliest aspect of the problem of gentile-Jewish relations that we can know with clarity."<sup>9</sup>

Interestingly, there are a number of similarities between the legal status of the Jews of Islam and that of the Jews in Christian lands, the most important being the autonomy in Jewish practices that Jews enjoyed in both societies. The differences in Jewish legal status in both Christendom and Islam reflected each society's contrasting attitudes towards the Jews,<sup>10</sup> and an examination of this contrast discloses pertinent features for an understanding of the pre-modern Jewish community.

## **Pre Modern Jewish communities**

### **Structure – leadership**

The process of appointing leadership positions in the pre-modern Eastern European Jewish communities was democratic for persons of a certain level of wealth. The very poor did not often have significant standing in community councils. The administrative leaders of the community were called פרנסים, and were generally elected from the more affluent and prominent sector of the community.<sup>11</sup> The responsibilities of the פרנסים focused on the collection of taxes, the internal

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Shlomo Eidelberg, Jewish Life in Austria in the XVth Century (New York: Shulsinger Bros. Linotyping & Publishing Co., 1962), 61.



organization of the Jewish community, and representing the community to the external government officials.<sup>12</sup>

## 1. Officials

- **Magnates** – טובי העיר – In most Jewish centers, a lay tribunal existed in addition to the בית דין. The magnates of the lay tribunal were known by a variety of names, טובי העיר, meaning "good men of the city," among them.<sup>13</sup> They also had administrative duties.
- **Rabbi** – The primary duty of the Rabbi, in communities which had a rabbi, was serve in a judicial capacity and to enforce the decrees of the community upon its members.
- **Hazan** – The *hazan* was considered an employer of the community, and enjoyed a position of honor.<sup>14</sup> His responsibilities included the leading of prayers during religious services as well as the chanting of Torah.
- **Sexton** – שמש – The sexton, or שמש, was responsible for the conduct of weekday religious services as well as delivering summons on behalf of the court.<sup>15</sup> The שמש was sometimes called upon to inflict corporal punishment on a Jewish individual condemned to the penalty.<sup>16</sup> He was thus a court officer and also a religious functionary.

<sup>12</sup> Ibid.

<sup>13</sup> Menachem Elon, The Principles of Jewish Law (Jerusalem: Keter Publishing House Jerusalem Ltd., 1974), 22.

<sup>14</sup> S. Eidelberg, 68.

<sup>15</sup> Idem, 68-69.

<sup>16</sup> Isaac Abrahams, Jewish Life in the Middle Ages (New York: Atheneum, 1975), 56.

- **שוחט** – The ritual slaughterer was considered a communal employee, and was under direct supervision of the rabbi.<sup>17</sup>
- **גבאים** – These were the officials responsible for the collection of taxes from Jewish individuals for the gentile authorities, whomever they might be, as well as collecting any internal taxes, such as charity.<sup>18</sup>
- **Teachers** – Schoolteachers were not official community employees since their salaries were paid directly by the parents of their charges. However, the community as a whole was responsible for the tuition of children whose families could not afford to pay the fees.<sup>19</sup>

## 2. **Services Provided to the Community**

- **Worship (ritual matters, burials, and dietary provisions)** - The synagogue was the center for worship and related religious activities.
- **Education** – As will be discussed later, the community was mandated by Jewish tradition to provide an education for its youth.
- **Charity (sick care, orphans, widows)** - Jewish poorhouses, hospitals, orphanages, and homes for the aging did not exist prior to the

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<sup>17</sup> S. Eidelberg, 67.  
<sup>18</sup> M. Elon, 665.  
<sup>19</sup> S. Eidelberg, 69.

thirteenth century. The community itself provided for these communal needs.<sup>20</sup>

- **Settlement of internal disputes** – Since the Jews did not have equal standing before gentile magistrates, and since it was contrary to Jewish law to settle internal Jewish disputes outside the community,<sup>21</sup> the Jewish community provided as necessary a בית דין, a court of Jewish law, to hear and decide cases and disputes among its members.
- **Go between with the civil government** – The community leaders acted as the intermediary between the civil government and the Jewish individual.
- **Collection of taxes** – One of the most important responsibilities of the internal organization of pre-modern Jewish community was to arrange to collect the appropriate taxation for the gentile government. The external authority expected prompt payment of communal taxes, and so a system was required for taxation purposes.<sup>22</sup>

<sup>20</sup> I. Abrahams, 35.

<sup>21</sup> See *Gittin* 88b.

<sup>22</sup> I. Abrahams, 40.

## History of Jewish communities in Europe and Near East from 1000 –1800

### Pre-Modern World - The Medieval Period 1000-1500

There were two main factors, clearest with respect to countries under Christian rule, which contributed to the development of the European Jewish communities during the Middle Ages.<sup>23</sup> The first factor was the general tendency for the population as a whole to be divided and stratified according to social groups. Second, the Jews themselves were a "historically conditioned community of political, economic, religious, and cultural interests."<sup>24</sup> Thus, the Jews were a microcosm of medieval society with their own stratification as well as their own political, religious, cultural, and economic interest as a group. They were an *imperium in imperio*. The social groups of the Christian medieval state were considered a "closed political organization recognized by the state with jointly responsible obligations,"<sup>25</sup> more to the point, the medieval state was a series of closed economic organizations with interlocking obligations. The Jewish communities, for their part, were, in theory, completely autonomous in their internal social and religious affairs while coming under the jurisdiction and control of some external ruler, whether that ruler was a king, a noble, or a member of the clergy.

The focus here is on this legal phenomenon, the legal status of the Jewish community within host cultures, and it is thus pertinent to consider the gentile medieval law, which pertained to Jews. Legal scholar Guido Kisch<sup>26</sup> terms Christian

<sup>23</sup> Joesf Meisel, "Jewish Community," in Universal Jewish Encyclopedia, 2nd ed., 102.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> M. Cohen, 30.

legal material regarding the Jews as "Jewry law."<sup>27</sup> Jewry law had its initial source in Roman law, where Judaism was considered an association (*collegium*),<sup>28</sup> whose members were able to gather for religious purposes and live according to their "ancestral laws."<sup>29</sup> Tolerance towards other religions was inherent in ancient polytheistic societies, but monotheism, for its part, was inherently exclusive.<sup>30</sup> Not only did the Jews not return the feelings of religious acceptance towards their pagan Roman rulers, but also they even sought converts from the Roman population. Christianity inherited from their Jewish roots their intolerance for Roman idolatry, and eventually lost patience with the Jewish inability to accept their version of revelation.<sup>31</sup>

The mixture of tolerance, as inherited from polytheistic Rome, and intolerance, inherent in monotheistic theology, is reflected in the statement regarding Jewry law in the Theodosian Code, which was completed in 439 CE, by order of Emperor Theodosius II.<sup>32</sup> Judaism was recognized as legitimate,<sup>33</sup> albeit in very prejudicial terms, e.g., *superstitio*.<sup>34</sup> Jews were protected from wanton assault on their persons or property, however even such safeguards were often phrased in

<sup>27</sup>Guido Kisch, The Jews in Medieval Germany: A Study of Their Legal and Social Status 2d ed. (New York, 1970; first pub., 1949).

<sup>28</sup>M. Cohen, 31. *Collegium* was often used, when referring to the Jews, interchangeably with *religio licita* (licit religion).

<sup>29</sup>See Ancient Roman Statutes, trans. Alan Chester Johnson et al., ed. Clyde Pharr (Austin, Tex., 1961), index.

<sup>30</sup>M. Cohen, 32.

<sup>31</sup>Ibid.

<sup>32</sup>Robert M. Seltzer, Jewish People, Jewish Thought: The Jewish Experience in History (Englewood Cliffs, New Jersey: MacMillan Publishing Co., Inc., 1980), 255.

<sup>33</sup>M. Cohen, 33.

<sup>34</sup>A pejorative referring to any non-Roman religion.

grudging language.<sup>35</sup> One example of grudging language can be observed in the following excerpt from the Theodosian Code:

We have suppressed the spirit and audacity of the abominable pages, of the Jews also, and of the heretics. Nevertheless...it is Our will...that those persons who commit many rash acts under the pretext of venerable Christianity shall refrain from injuring and persecuting [the Jews].<sup>36</sup>

The Theodosian Code, which had tremendous influence during the early Middle Ages, remained the foundation of Jewry law in Latin Christendom.<sup>37</sup>

Jewish life under Islamic rule was quite different. Once the Moslems conquered Christian Spain in 711 CE<sup>38</sup>, a new era began for Jewish communities, which lived in the now Islamic territories. The Moslem invaders were initially far less concerned with converting non-Christians than they were with collecting poll taxes.<sup>39</sup>

The status of *dhimmi* (dependant people)<sup>40</sup> was granted to the non-Muslims living under Islamic rule. *Dhimmi* status guaranteed religious toleration, judicial autonomy, and security of life and property, in exchange for acknowledging the supremacy of the Islamic rulers.<sup>41</sup> *Dhimmis* were required to pay a poll tax (*jizya*) and a land tax (*kharaj*).<sup>42</sup> The so-called Pact of Umar, most likely redacted in the 7<sup>th</sup> century on the Arabian Peninsula,<sup>43</sup> clearly spelled out the restrictions and

<sup>35</sup> M. Cohen, 34.

<sup>36</sup> CTh. 16.8.26, Theodosian Code, 470-471. Compare Amnon Linder, Jews in Roman Imperial Legislation (Detroit, 1987; Hebrew original published in Jerusalem, 1983), 289-91. See M. Cohen, 34.

<sup>37</sup> M. Cohen, 32.

<sup>38</sup> Abram Leon Sachar, The History of the Jews (New York: Alfred A. Knopf, Inc., 1955), 168.

<sup>39</sup> *Ibid.*, 169.

<sup>40</sup> R. Seltzer, 331.

<sup>41</sup> *Ibid.*

<sup>42</sup> Norman A. Stillman, The Jews of Arab Lands (Philadelphia: The Jewish Publication Society of America, 1979), 25.

<sup>43</sup> M. Cohen, 54-55.



obligations of the "dependent ones"; it was the "theoretical treaty between the People of the Book, as Jews and Christians were termed in the Koran, and the Muslim state."<sup>44</sup> It was originally conceived as a writ of protection (*dhimma*).<sup>45</sup> The Pact of Umar prohibited Jews and Christians from proselytizing, erecting new religious buildings, public displays of religion, carrying weapons, and riding horses. They were also obligated to wear distinctive clothing<sup>46</sup>, although most scholars agree that this particular rule was not seriously enforced when the Pact was first drawn up.<sup>47</sup> In return, *dhimmis* were allotted a considerable amount of internal autonomy as long as they paid their taxes, kept the peace, and acknowledged their place in Muslim society.<sup>48</sup> As a result, the old restrictions vanished as Jews were able to enter into general social life. In fact, it was possible for them to possess power beyond what was permitted to them according to their status.<sup>49</sup> Many Jews became landowners, financiers, physicians, and statesmen. Jews further contributed to medieval Spanish Islamic civilization by acting as intermediaries between Christian and Arabic parties.<sup>50</sup>

After the Arab invasion of Babylonia in the 7<sup>th</sup> century, a caliphate system was implemented and Jewish officer who headed the community, known as the Exilarch, was considered the most powerful Jewish official.<sup>51</sup> Since at least as far back as the

<sup>44</sup>N. Stillman, 25.

<sup>45</sup>Ibid.

<sup>46</sup>D. Biale points out that distinctive garb or markings were not originally intended for purposes of humiliation. Each of the many classes and guilds were distinguished by its dress. This concept was not particularly anti-Jewish in its origin. See D. Biale, 67.

<sup>47</sup>R. Seltzer, 331; N. Stillman, 26.

<sup>48</sup>N. Stillman, 39.

<sup>49</sup>D. Biale, 61.

<sup>50</sup>A. Sachar, 169.

<sup>51</sup>R. Seltzer, 334.

first century CE,<sup>52</sup> the political leader of the Jewish community in Babylonian exile was called the Exilarch. The authority granted the Exilarch was a result of the tradition of tracing the Exilarch's ancestry to the Davidic House.<sup>53</sup> (As an eleventh century French writer stated, "Even today, when on account of our sins monarchy and power are lost, we the children of Exile are commanded to appoint unto as a prince of the progeny of David to serve as Exilarch."<sup>54</sup>)

The Exilarch was responsible for representing the Jewish community to the caliphate, supervise the charitable obligations of the community, and collect the poll tax for the Muslim government.<sup>55</sup> This communal power was later shared with the heads of the great rabbinical academies of Babylonia, known as גאונים (*geonim*), during the eighth century.<sup>56</sup> The Exilarch continued to maintain authority as far as the caliphate court was concerned. However, the rabbinic academies were determined to assert their authority, especially concerning the appointment of the exilarch.<sup>57</sup>

The Jewish community continued to prosper throughout the tenth century, particularly in Spain. Moorish Spain was then a place of dazzling splendor,<sup>58</sup> with the capital city of Cordoba considered the urban center of the Western world.<sup>59</sup> The phrase "Golden Age," borrowed from classical literary history,<sup>60</sup> was centered in

<sup>52</sup> Ibid.

<sup>53</sup> D. Biale, 42.

<sup>54</sup> Nissim of Marseilles, *Ma'ase nissin*. See Baron, *Jewish Community*, 1:176.

<sup>55</sup> R. Seltzer, 334.

<sup>56</sup> Idem, 334-335.

<sup>57</sup> Idem, 335.

<sup>58</sup> N. Stillman, 53.

<sup>59</sup> R. Seltzer, 345.

<sup>60</sup> N. Stillman, 53.

Cordoba<sup>61</sup> during the tenth and eleventh centuries.<sup>62</sup> Andalusia, as Muslim Spain was termed by the Spanish,<sup>63</sup> was organized into provinces and ruled by caliphs.<sup>64</sup> Andalusian society experienced political, ethnic and societal shifts during the eleventh century, which furnished opportunities for Jews to rise to positions of power in the government and courts.<sup>65</sup> A number of personalities represent the widespread influence Jews had on gentile society during the Golden Age of Spain. For instance, Hasdai ibn Shaprut (c. 915 – 970) was the spiritual leader of the Jewish community in Cordoba,<sup>66</sup> bearing the princely Hebrew title נָסִי,<sup>67</sup> and serving as court physician and diplomat under two of the greatest Ummayyad caliphs of Spain, Abd al-Rahman III and Hākam II.<sup>68</sup> Contemporary Arab writers noted his important contributions in the diplomacy of the Andalusian caliphate.<sup>69</sup> The most famous man of his generation,<sup>70</sup> as well as the highest-ranking Jewish courtier in Spain,<sup>71</sup> was Samuel ibn Naghrela (c. 993 – 1056). In recognition of his exalted position, he became the first to be known by the Hebrew title נָגִיד.<sup>72</sup> Besides his accomplishments in mathematics and poetry,<sup>73</sup> Samuel ha-Nagid was the head of the army of Muslim

<sup>61</sup> R. Seltzer, 345.

<sup>62</sup> Alfred Werner, "Spain," in Universal Jewish Encyclopedia 2nd ed. 1948, 686.

<sup>63</sup> N. Stillman, 54.

<sup>64</sup> Ibid.

<sup>65</sup> Idem, 57.

<sup>66</sup> Werner, 687.

<sup>67</sup> N. Stillman, 55.

<sup>68</sup> R. Seltzer, 345.

<sup>69</sup> M. Cohen, 66. For more information concerning the Jewish achievements in the Muslim government of Andalusia, see Eliyahu Ashtor, Qorot he-yehudim bi-sefarad ha-muslimit [History of the Jews in Muslim Spain], 2 vols. (Jerusalem, 1960-66); English trans., The Jews of Moslem Spain, trans. Aaron Klein and Jenny Machlowitz Klein, 3 vols. (Philadelphia, 1973-84).

<sup>70</sup> R. Seltzer, 346.

<sup>71</sup> N. Stillman, 57.

<sup>72</sup> R. Seltzer, 346.

<sup>73</sup> Ibid.

Grenada, a post hardly ever given to a non-Muslim.<sup>74</sup> He is considered the best-known Jewish military figure of the Middle Ages.<sup>75</sup> Clearly, the status of the Jewish community was eminent and the community flourished.

In the Islamic world, urban life was considered an organic outgrowth of Islamic civilization. The early Islamic town with existed as a town prior to Islamic settlement or was a converted military outpost.<sup>76</sup> Local administration and organization remained with the local civil officials, and they turned to the leaders of the individual religious groups to collect taxes from their own communities.<sup>77</sup> This allowed the Jewish community a great measure of freedom in the conduct of its own communal affairs.<sup>78</sup> Religious and ethnic groups were divided into separate residential quarters. One historian has described urban Muslim dwelling as follows:

Almost universally, Muslim cities contained socially homogenous quarters. Such quarters were found in cities created by a coalescence of villagers, by the settlement of different tribes, or by the founding of new ethnic or governmental districts. Quarters based on the clienteles of important or religious leaders, religious sects, Muslim and non-Muslim ethnic minorities, and specialized crafts, were also found in cities throughout the Muslim world.<sup>79</sup>

Therefore, a Jewish section in a Muslim town would be considered normal since residential division of religious and ethnic groups was a general practice.<sup>80</sup>

<sup>74</sup> M. Cohen, 114.

<sup>75</sup> D. Bjale, 76.

<sup>76</sup> M. Cohen, 125.

<sup>77</sup> N. Stillman, 27.

<sup>78</sup> Idem, 38.

<sup>79</sup> Ira M. Lapidus, "Muslim cities and Islamic Societies," in Middle Eastern Cities: A Symposium on Ancient, Islamic, and Contemporary Middle Eastern Urbanism ed. Lapidus (Berkeley and Los Angeles, 1969), 51. See M. Cohen, 126.

<sup>80</sup> M. Cohen, 126.

In Moslem Spain at the beginning of the eleventh century, a civil war broke out, and the unity of the region rapidly disappeared.<sup>81</sup> With the conquest of Islamic Spain by the Berber Almohads<sup>82</sup> in 1146,<sup>83</sup> life changed drastically for the Jewish community. All non-Moslems were given the choice of exile or conversion.<sup>84</sup> All non-Moslem practices were forbidden, and Jewish buildings were torn down. It was during this period that a great many Jews fled into Christian Spain, and it was under Christendom that the remainder of Spanish Jewish history occurs.<sup>85</sup>

The initial status of the Spanish Jewish communities under Christian rule was similar to that of the communities in Northern Europe.<sup>86</sup> The communities<sup>87</sup> were granted charters<sup>88</sup> that protected the economic rights of the individuals and allowed the community to govern itself according to Jewish custom and religious law. These communities were larger in population than their northern European counterparts, and co-existed alongside and within Christian towns.<sup>89</sup> For two centuries, the Jews were able to live under Spanish Christian rule with little difficulty. Under increasing pressure from the Roman Catholic Church, Spanish rulers began to narrow the scope of Jewish communal activity. The hostility eventually escalated to violence, and finally came to a head with the edict declaring Judaism illegal in Spain in the year 1492.<sup>90</sup>

<sup>81</sup> A. Sachar, 171.

<sup>82</sup> Berber Almohads - a puritanical Muslim sect that fought against the anthropomorphisms that had crept into Islamic practices. See M. Cohen, 166.

<sup>83</sup> R. Seltzer, 348.

<sup>84</sup> A. Sachar, 177. Other experts state the choice as death or conversion, see M. Cohen, 166.

<sup>85</sup> R. Seltzer, 348.

<sup>86</sup> Idem, 365.

<sup>87</sup> Or *aljamas*, as Sephardic communities were called.

<sup>88</sup> Or *fueros*.

<sup>89</sup> R. Seltzer, 365.

<sup>90</sup> R. Seltzer, 370-371.



The legal status of the Jews under trinitarian Christian rule in places such as Spain, France, Germany, and Eastern Europe during the early Middle Ages, was considerably better than that of the gentile peasants. Unlike those enserved to the land, the Jews possessed freedom of movement, a necessity for any individual engaged in commerce,<sup>91</sup> a common enterprise among the Jews who could not become landowners in their own right or members of guilds because they were unable to take oaths involving the name of Jesus. Although their status set them outside the social and economic hierarchy, the Jews enjoyed many freedoms that belonged to the nobility and burgher classes.<sup>92</sup> More importantly, the Jews regarded themselves as a free people.<sup>93</sup> As R. Meir of Rothenburg wrote in the second half of the thirteenth century<sup>94</sup>:

Jews are not subjugated to their overlords as the Gentiles are, in the sense that they have to pay taxes to a particular overlord even when they do not live in his domain. The status of the Jew in this land is that of a free landowner who lost his land but did not lose his personal liberty.<sup>95</sup>

Up until the thirteenth century, the Jews mingled more or less freely in Christian European society.<sup>96</sup> For various reasons due to various shifts in the power balance within gentile medieval society, Jews were then slowly marginalized in one area after another and eventually enclosed in ghettos in some places. Ghettoization

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<sup>91</sup> D. Biale, 63.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

<sup>95</sup> Meir ben Baruch of Rothenburg, *Responsa*, Prague ed. (reprinted Sdilow, Russia, 1835), no. 1001. The translation is an expansion of the original text by Agus, *Meir of Rothenburg*, 141. See also Tosafot commentary to BT, Baba Kama 58a.

<sup>96</sup> M. Cohen, 123.



remained voluntary until it became governmentally forced in the fifteenth century. This separation from the host society prompted an even more vigilant internal self-government among the Jews.

The Jewish communities are occasionally described as "corporations." Modern scholars define "corporation" as "legal bodies with their own laws and customs and a judiciary system separate from the court of the overlord."<sup>97</sup> The Jewish community is viewed in modern scholarship as an example of a "corporation" of the Middle Ages. These corporations covered enormous variety of phenomena such as guilds, towns, and municipalities. (The four hundred thousand Jews of eighteenth century Western Europe were distinguished from the rest of society on the basis of their corporate status.<sup>98</sup>) Indeed since political unity was not the benchmark of medieval society, each Jewish community may be perceived from its earliest appearance as a separate corporation, certainly in Spain and in Northern Europe. In Spain, each individual Jewish community was separately chartered, while in Christian communities, a single gentile nobleman might in fact own several Jewish communities, each one maintaining its own internal organization. Since they existed in a decentralized society, the Jews were responsible for governing themselves as well as providing for themselves. The Jews, who were considered an economic asset, were valuable property and a place within the system was found for them; they belonged to or relied on a king, duke, baron, or cleric, paying a collective tax to the particular individual.<sup>99</sup> The Jewish leaders embraced the opportunity

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<sup>97</sup> M. Cohen, 122.

<sup>98</sup> H. Sachar, 5.

<sup>99</sup> Ibid.

afforded by self-government to maintain order according to *halakhic* (Jewish legal) tradition. As the headquarters of activities of all types, the synagogue became the place where the communal leaders met to exercise their authority as administrators and even judges. The synagogue attained a place at the center of Jewish life.<sup>100</sup>

Simulated royal dignities were occasionally accorded to rabbis and communal leaders. The rabbis and lay leaders acted in a sense as "substitute kings" while the communal institutions served as surrogates for political sovereignty.<sup>101</sup> This self-perception of Jewish communities as a microcosm of the gentile feudal world and as a mythic sovereignty endured for hundreds of years. Indeed, Nathan of Hanover, who chronicled the Chmielnitski pogroms in the seventeenth-century, described the Council of the Four Lands thus:

The pillar of justice was in the Kingdom of Poland as it was in Jerusalem before the destruction of the Temple....The leaders of the Four Lands were like the Sanhedrin....They had the authority to judge all Israel in the Kingdom of Poland...and to punish each man as they saw fit.<sup>102</sup>

The rabbis in Christian Europe could, and did claim that their authority stemmed from a chain of tradition, going all the way back to the transmission of power from Moses to Joshua.<sup>103</sup>

The communal leader, known as the נגיד in early Moslem Spain and North Africa, by contrast, was without such sacerdotal authority. Rather, this leader often attained to power because of his position vis-à-vis the outside world as a court

<sup>100</sup> Ibid.

<sup>101</sup> D. Biale, 45.

<sup>102</sup> Nathan of Hanover, *Yeven Metzula* (Tel Aviv, 1945), translated in Bernard Weinryb, The Jews of Poland (Philadelphia, 1972), 173.

<sup>103</sup> D. Biale, 45. See also Pirkei Avot 1:1.

physician or a financier.<sup>104</sup> The rabbis and communal leaders, who were able to govern from positions based on learning and wealth, controlled the medieval community. The lower classes, Jewish or gentile, rarely participated significantly in political life.<sup>105</sup>

The Bible itself does not elaborate the concept of a Jewish community as an isolated and generally self-sustaining unit within a larger non-Jewish context; Scripture perceives a Jewish community as a sovereign Jewish state under the rule of a Davidic monarch. The Talmud however does contain such statements as "the townspeople are at liberty to fix weights and measures, prices and wages and to inflict penalties for the infringements of their rules."<sup>106</sup> Such rules might apply in a wholly Jewish context but they may also serve in Jewish communities which are self-governing corporations, ultimately subject as a community to some gentile authority. Unfortunately, the Talmud does not shed much light on what constitutes a town, but defines who has status as a resident (30 days or more of continuous residency<sup>107</sup>). The establishment of religious educational institutions was so essential that the rabbis decreed that an individual be forbidden to reside in a community that does not provide them.<sup>108</sup> Maimonides stated the following in his treatment of Jewish religious education:

If a city has made no provision for the education of the young, its inhabitants are placed under a ban, till such teachers have been engaged. And if they persistently neglect this duty, the city is

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<sup>104</sup> D. Biale, 46.

<sup>105</sup> Idem, 82.

<sup>106</sup> BT, Baba Batra 8b.

<sup>107</sup> Mishnah, *Baba Batra*, 7b.

<sup>108</sup> *Mishneh Torah, Hilkhhot De'ot* 4:23, and commentaries thereto.

excommunicated, for the world is only maintained by the breath of schoolchildren.<sup>109</sup>

There is an opinion that authority within the Jewish community stemmed from an implied contract among all of its members. If an individual disputed the authority of the community, he was considered as one who had originally agreed to this implied contract and then changed his mind,<sup>110</sup> placing him at a disadvantage. Each community, or קהל,<sup>111</sup> established its own regulations, and was able to maintain order through the threat of excommunication, know as חרם. If carried out, חרם deprived the individual of any social relationship in the Jewish community, and such an individual would be completely cut off from Jewish society.<sup>112</sup> A person who felt himself wronged could take advantage of the דין תורה – in which the person demanded in the course of a worship service, that the liturgy stop until arrangements were made to hear his complaint. It is important to remember, however, that it was the non-Jewish government that ultimately granted the political power to each קהל.<sup>113</sup>

## Early Modern – Absolutist states 1500-1800

### • Concentration of Jews in East Europe and Ottoman Empire

The political atmosphere of Western Europe greatly affected the stability of the Jewish communities. Shifting powers throughout Western Europe, the Reformation, and the overall decline of feudalism contributed to the eastward

<sup>109</sup> Yad, Talmud Torah, 11:1.

<sup>110</sup> D. Biale, 49.

<sup>111</sup> Or kehilla.

<sup>112</sup> R. Seltzer, 353.

<sup>113</sup> D. Biale, 46.

movement of the Jews.<sup>114</sup> Jews, having been banished from Spain, England, and France, fled to the perceived safety of Poland, Holland, and the Ottoman Empire. These geographic localities remained under medieval rule substantially longer than Western Europe, and as a result, the Jews who immigrated eastward found themselves affected by Emancipation much later than their contemporaries in places such as France.

Jewish autonomy in Poland was extensive under the feudal Polish kings, who had invited Jews to their realms in the sixteenth and seventeenth centuries. The Jews had been organizing their internal affairs since the early sixteenth century,<sup>115</sup> and referred to their all-inclusive community authority as a קהל.<sup>116</sup> The external rulers did not interfere with this authority as long as taxes were collected regularly and cared for its own needy.<sup>117</sup> The communities in the East organized into a federation known as the Council of the Four Lands,<sup>118</sup> comprising of Great Poland, Little Poland, Volhynia, and Lithuania.<sup>119</sup> As intermediary between the Jews and the Polish court, this federation was able to defend and protect Jewish interests. It was also responsible for dividing the taxes due the government among the four constituent קהילות.<sup>120</sup> As Poland drifted into political chaos in the 17<sup>th</sup> and 18<sup>th</sup> centuries, Jewish autonomy declined.<sup>121</sup> The massacres of 1648 marked the

<sup>114</sup> *An Introduction to the History and Sources of Jewish Law* ed. N.S. Hecht, B.S. Jackson, S.M. Passamaneck, D. Piattelli, and A.M. Rabello. (New York: Oxford University Press, 1996), 324.

<sup>115</sup> H. Sachar, 12.

<sup>116</sup> The term *kahal* was used to refer to the community as a whole, as well as the communal leaders. See Seltzer, 353.

<sup>117</sup> Majer Samuel Balaban, 279.

<sup>118</sup> Or *Va'ad Arba'ah Aratzot*.

<sup>119</sup> H. Sachar, 13.

<sup>120</sup> Ibid.

<sup>121</sup> H. Sachar, 14.



beginning of the end for the Jews of Poland, and Jewish communities declined economically and socially (though not intellectually) until Russia, Austria, and Prussia finally partitioned the entire kingdom of Poland.

The Ottoman Empire had become a home for Spanish exiles, where communities from Spain and Portugal were reconstituted to a degree and flourished in the 16<sup>th</sup> and 17<sup>th</sup> centuries. When the Spanish and Portuguese communities were faced with expulsion, they found asylum within the Ottoman Empire. The Turkish rulers were pleased<sup>122</sup> to incorporate the skills and talents brought to their society with the new arrivals.<sup>123</sup> Life was far more secure and the Jews were responsible for the same poll tax as any other non-Moslem.<sup>124</sup> It did not take long for Constantinople to become the largest Jewish community in Europe.<sup>125</sup> It was possible for individual Jews to gain positions of considerable power, despite the restrictions based on Islamic law. The secure position of the Jews in the Ottoman Empire began to deteriorate in the early nineteenth century, with the establishment of a bureaucratic government and army by Sultan Mahmud II.<sup>126</sup> The army replaced the Corps of Janisaries, a semiautonomous military unit that has previously engaged in heavy financial dealings with Jewish merchants and purveyors. Jewish economic power and influence came to an end, as the Ottoman Empire declined in the face of

<sup>122</sup> In response to the influx of Jewish immigrants, the Sultan, Bejazet II was reported to have said, "You call Ferdinand a wise king, he who has made his country poor and enriched ours!" A. Sachar, 221.

<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

<sup>125</sup> Idem, 222.

<sup>126</sup> D. Biale, 96.



European imperialism supported by nationalism and industrialization in the nineteenth century,<sup>127</sup>

### • **The Absolutist State in Western Europe**

The consensus of historians posits an intermediate period between the end of feudalism as such, and the rise of modern Western society, which is characterized by capitalism, democratic institutions, and a liberal tradition. This intermediate period begins to emerge in Western Europe with the rise of more-or-less modern geographically defined nation-states from the late sixteenth to the eighteenth centuries. Absolutist monarchs and an economic program known as mercantilism characterized this intermediate period. Mercantilism is the economic system that developed during the decay of feudalism to unify and increase the power and the monetary wealth of a nation by a strict governmental regulation of the entire national economy. In other words, feudalism slowly, and occasionally painfully, gave way to an early modern absolutist state that followed mercantilist economic principles in Western Europe; other parts of Europe slowly followed suit, although a modern political geography of Europe did not emerge until the nineteenth century.

Absolutism is the political theory that absolute power should be concentrated in one ruler or ruling entity. The beginning of the absolutist or early modern stage, in all countries with the possible exception of Spain is considered to have occurred somewhere around the middle of the seventeenth century and the absolutist approach to geopolitics extended into the eighteenth century.<sup>128</sup>

<sup>127</sup> Idem, 97.

<sup>128</sup> D. Biale, 89.

Absolutist rulers were opposed to any power beyond their immediate control. Therefore, any corporation with internal authority posed a threat to the absolutist regime. As a result, absolutist monarchs exerted their control over the free movement of Jews, which led to greater ghettoization and even expulsion.<sup>129</sup> These measures led to the primary absolutist objective; a decrease in the powers of the autonomous communities of individuals and subjugation to the state.<sup>130</sup> These policies applied equally to Jews and to other autonomous groups.<sup>131</sup>

#### • **Effects of Absolutism and Capitalism on Jews in Western Europe**

Between the end of the 13<sup>th</sup> and the end of the 15<sup>th</sup> centuries, the Jews had been expelled, variously, from England, France, Spain, and certain principalities of Germany.<sup>132</sup> It was not until the middle of the 17<sup>th</sup> century that the Jews began to openly resettle in England and France.<sup>133</sup> The early 17<sup>th</sup> century saw the appearance of Portuguese marranos in Holland.<sup>134</sup> The Jewish community in Amsterdam grew in numbers and wealth, helping to develop their adopted city as the European financial center. The end of the medieval period occurred at different times in different locales in Europe, but most Jews lived in Germany, Eastern Europe, and the Ottoman Empire, which latter areas retained a 'feudal' framework and thus a pattern of autonomous, self-governing Jewish communities under lay and rabbinic leadership until well into the 19<sup>th</sup> century. The framework of a nation-state

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<sup>129</sup> Idem, 91.

<sup>130</sup> Idem, 92.

<sup>131</sup> Ibid.

<sup>132</sup> M. Cohen, 168.

<sup>133</sup> R. Seltzer, 453-454.

<sup>134</sup> Idem, 503.

with sovereign authority residing in the monarchy allowed for the foundation of equal rights.<sup>135</sup> The loss of internal Jewish autonomy for the small communities of Western Europe – found in Holland, England, the Bordeaux area and eastern France – was a necessary price to pay for the ability to participate more fully in society, and the leaders of the old style Jewish community were not always happy with these developments, which led to loss of power. For example, with the granting of full citizenship by the Dutch republic in 1796, the Jewish community lost its status as an independent corporate body, and was required to renounce all rights formally granted. This requirement met with opposition from some Jewish leaders.<sup>136</sup> However, the edicts that abolished Jewish autonomy were generally accompanied by edicts that extended toleration or emancipation.<sup>137</sup> One example of this was the edict that abolished the rabbinical courts of Austria. This edict, issued by Joseph II, followed on the heels of his Edict of Tolerance in 1782.<sup>138</sup> The judicial autonomy of the rabbinical courts, which had administered justice among the Jews for centuries, was in direct opposition to the emerging concept of citizenship: the idea of removing self-governing corporate elements and their replacement of them with universal citizenship or tolerated residence.

Coincident with this absolutist political thrust towards unification of the nation-state and the diminution of independent self-government within it, was the rise of the philosophical and intellectual spirit, beginning in the 17<sup>th</sup> and flowering in the 18<sup>th</sup> centuries, which we now call Enlightenment. Particularly in France with Rousseau

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<sup>135</sup> D. Biale, 93.

<sup>136</sup> R. Seltzer, 523.

<sup>137</sup> D. Biale, 94.

<sup>138</sup> Ibid.

and Voltaire and earlier in England with Locke, there was a growing consideration of such novel concepts as universal human rights that indeed undermined the ancient strata of society that characterized medieval society. While the United States Federal Constitution of 1789 was the first document to declare civil rights for all individuals, it did not affect many Jews, who were for the most part residing in pre-Emancipated Eastern Europe or the Ottoman Empire. The French revolutionaries, in 1789, issued the Declaration of the Rights of Man and the Citizen,<sup>139</sup> which proclaimed that, "All men are born, and remain, free and equal in rights: social discriminations cannot be found but on common utility..." and that "No person shall be molested for his opinions, even such as are religious, provided that the manifestation of these opinions does not disturb the public order established by the law."<sup>140</sup> The French declaration eventually affected Jews and gentiles all over Europe. It was the first step on a long and twisting road toward emancipation and the eventual acceptance of Jews into a secular culture in Europe.

Napoleon Bonaparte, in order the better to understand the position of Judaism vis-à-vis the state, gathered an "Assembly of Jewish Notables" in 1806.<sup>141</sup> A set of questions was presented to the Assembly by the government. Bonaparte later convened the Great Sanhedrin in 1807<sup>142</sup> for the purpose of joining full citizenship for the Jews with the dissolution of their former independent, communal authority. He posed a set of questions to the Sanhedrin, questions that were similar

<sup>139</sup> Inspired by the Declaration of Independence of the United States, the National Assembly of France incorporated the slogan of the French Revolution ("liberty, equality, and fraternity") into the French constitution. See Benjamin Flower, ed. and trans., The French Constitution (London, 1792), 17-18.

<sup>140</sup> The Jew in the Modern World – A Documentary History ed. Paul R. Mendes-Flohr and Jehuda Reinharz. (New York: Oxford University Press, 1980), 103.

<sup>141</sup> R. Seltzer, 525.

to the ones asked of The Notables. The Bonapartist government demanded eventually that, in the case of the Jews, all medieval judicial and legislative powers be abolished in exchange for full citizenship and equal rights.<sup>143</sup> The response of the Sanhedrin to the Napoleonic examination was affirmative, as noted by its president Abraham Furtado, "We no longer form a nation within a nation. France is our country. Jews, such today is your status: your obligations are outlined, your happiness is waiting."<sup>144</sup> By convening a body denominated as a Sanhedrin, attention was drawn to an event which had not occurred since the destruction of the Temple in the year 70 CE, and Napoleon ironically granted the Jewish authorities more power than their predecessors has enjoyed during the Middle Ages. Rather than dissolving Jewish communal institutions, Napoleon instituted a system of *consistoires*, councils that would govern the Jewish communities under the guidance of the secular government.<sup>145</sup>

The rise of the absolutist state and the political and social results of the Enlightenment played out quite differently in the Middle East and Spain. The expulsions from the Iberian Peninsula in the fifteenth century constituted the beginning of the end of the medieval system of protection and privileges for the Jews. It is important to note that the expulsion from Spain occurred when the separate kingdoms of Aragon and Castille were united under Ferdinand and Isabella, and Granada, the last Moslem territory in Spain, was reconquered.<sup>146</sup> The

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<sup>142</sup> H. Sachar, 50.

<sup>143</sup> Idem, 49.

<sup>144</sup> Idem, 50-51.

<sup>145</sup> D. Biale, 95.

<sup>146</sup> R. Seltzer, 370.



United Spanish Kingdom created what might be considered the first absolutist Christian state,<sup>147</sup> but that state, which also embarked upon empire building at that time was in fact entirely closed to the political and social theories of Enlightenment, which exerted influence on France and to varying degrees upon the whole of western Europe, upon England and the English colonies, soon to become the United States of America.

### **Jewish Communal Life in the 19<sup>th</sup> Century**

This synopsis of legal status of the various Jewish communities in the pre-modern period set the stage for the American Jewish community, which presently occupies a unique position as the freest and most powerful Diaspora community in Jewish history.<sup>148</sup> The modern Jewish community is the heir to the Enlightenment theories of the universal human rights enshrined in the United States Federal Constitution of 1789, and the coincident practical application of the Industrial Revolution in the late eighteenth century and nineteenth century that gave rise to capitalism and unparalleled economic growth which tend to make people less apt to recognize social and religious differences among those who were willing to work. The ability to integrate fully into American society over the last two hundred years, however, has meant that Jewish communities in the United States never had a legacy of communal autonomy after the European model, or even the *consistoire* model of Napoleonic France, which was modified and adapted in much of Western and Central Europe in the 19<sup>th</sup> century. The United States Jewish community was

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<sup>147</sup> D. Biale, 68.

<sup>148</sup> Idem, 177.

never as *imperium in imperio*, a corporate entity unto itself, responsible as a community to the government. When the Jews first established themselves economically and politically in the United States in 1654, at New Amsterdam,<sup>149</sup> they turned to the task of creating a community.<sup>150</sup> The American Jewish community, enjoying an atmosphere of unparalleled freedom without the ghosts of older medieval communal structures to impede them, had to develop a Jewish community that was in fact unlike any other Jewish community before.

Whatever they did in their Jewish lives might draw on what was previously done, i.e., institutions for charity, care for the sick, burial societies, etc., but in terms of structure, something entirely different emerged: there was diffusion and the centrality of the old system was now separated into various organizations. A synagogue, once established, might oversee and encourage some aspect of the various communal efforts required by the individual members. Each synagogue and each emerging institution to meet Jewish needs was wholly independent. By the middle of the nineteenth century, dozens of associations and organization had been founded, but no central Jewish authority or institution existed.<sup>151</sup> Umbrella organizations, under which independent synagogues chose to identify, emerged. Like the synagogues, they were voluntary in nature, and served as an advisory board to the member synagogues. America was too democratic and society too free in nature for any Jewish organization with authoritarian pretensions to flourish.

<sup>149</sup> P. Mendes-Flohr and J. Reinharz, 357.

<sup>150</sup> H. Sachar, 180.

<sup>151</sup> Idem, 192.

The ability to integrate into the general society has led, according to some, to assimilation. Emancipation has allowed for the separation of Jewish peoplehood from Jewish faith. The Jewish individual could retain his Jewish descent while becoming a citizen of the country in which he or she resided. In other words, the individual would be considered a "person of the Mosaic persuasion."<sup>152</sup> The United States allowed the individual so much freedom that the Jew could be secure in the knowledge that if he or she was unhappy, or his or her needs were not being met, the individual could just go on his or her own way, and not be pursued by the officers of the Jewish community.<sup>153</sup> Full integration, in its most complete form, into American society means that the individual has even more paths out of the Jewish community.<sup>154</sup> However, this same society has presented new opportunities for maintaining Jewish social cohesion and Jewish self-awareness.<sup>155</sup> The United States thus offered options for the Jew unknown in medieval European society or even in absolutist or early modern society. A Jew who had opted out of the Jewish community in Europe (or Turkey) could find a home in the Christian or (Moslem) society but the deep seated religious orientation of European institutions of government - even in Napoleonic France - demanded some association with religion. In the United States, there was no state-established religion and no serious pressure to remain tied to the community. Participation in Jewish religious life

<sup>152</sup> Arnold Eisen, "Saving the Remnants of Jewish Faith in a Faithless Time," New Traditions 2 (Spring 1985): 38.

<sup>153</sup> H. Sachar, 720.

<sup>154</sup> D. Biale, 183.

<sup>155</sup> R. Seltzer, 626.

became and remains voluntary. The old corporate, autonomous Jewish community, a mix of many institutions, simply does not exist in the United States.

We now turn to an examination of this modern syniagogue, in terms of its structure as a voluntary organization of Jews for purposes of fostering the Jewish religion. This institution is the heir of the medieval institution of the same name, but its structure in a free society, its mode of operation, and its claim upon the loyalty of its members do not resemble its historical antecedents. From now on our focus will be the structure of the modern synagogue and attempt to enhance that structure by finding a model for it in traditional Jewish law.

### Chapter Three - The Structure and Formation of the Modern Synagogue

In this chapter we shall proceed on the basis that a modern Synagogue is an autonomous and voluntary religious institution that may reflect a connection with the pre-modern synagogue in form but no longer in substance.

The term בית קנמת is translated as "a house of gathering or assembly."<sup>156</sup> The word synagogue comes from the Greek, meaning a place of assembly, gathering, or meeting.<sup>157</sup> The word synagogue is a direct translation of בית קנמת, suggesting that the synagogue functioned in ways other than as a center for public worship.<sup>158</sup> The synagogue is considered to be the central communal institution where the central public activities of Jewish communal life occur,<sup>159</sup> which was certainly true of the modern community, as we have seen. Jews regard the synagogue as the institution that embodies a primary thrust in Jewish communal activity, according it the responsibility for the religious, educational, and much of the cultural and social programs of the community.<sup>160</sup> In fact, the traditional concept of the synagogue as a בית תפילה (house of prayer), and בית מדרש (house of study) might provide a model for what the modern synagogue should emulate.<sup>161</sup> These functions are from the pre-modern world but again the content has changed while the form has remained similar, mostly as a result of a shifting external society.

<sup>156</sup> H. Donin, *To Be A Jew*, 183.

<sup>157</sup> Wayne Dosick, *Living Judaism: The Complete Guide to Jewish Belief, Tradition, and Practice* (New York: HarperSanFrancisco, HarperCollins Publishers, Inc., 1995), 210.

<sup>158</sup> H. Donin, *To Be a Jew*, 183.

<sup>159</sup> W. Dosick, 210.

<sup>160</sup> Stephen J. Einstein and Lydia Kukoff, *Every Person's Guide to Judaism* (New York: UAHC Press, 1989), 158.

<sup>161</sup> Jonathan Woocher, "Toward a 'Unified Field Theory' of Jewish Continuity," *A Congregation of Learners: Transforming the Synagogue into a Learning Community* ed. Isa Aron, Sara Lee, and Seymour Rossel (New York: UAHC Press, 1995), 40.



The motivating reason for synagogue affiliation is not out of a deep desire to pray. They might have a desire to pray because that is what they always did, but not because of any deep-rooted desire to connect with the Divine. Prayer is not a daily phenomenon, nor is study a regular pastime. The modern theological orientation no longer involves a profound sense of the Divine in ordinary activities. Rather it is out of a desire to identify with the Jewish people, the Jewish community, and possibly with the Jewish faith.<sup>162</sup> Some join a synagogue out of necessity, for example, if one is isolated because of living in a small town. Also, one wants a place that will provide a sense of family for life-cycle events. The most obvious way for the individual living in the Diaspora to identify as a Jew with the Jewish community is through affiliation with a synagogue, which is the center of religious activity. This is one reason why the modern synagogue has such a large responsibility to the community. In fact, it is therefore primary that the synagogue leadership recognizes its role in managing such a vehicle for Jewish education and identity, as well as its role in influencing the spiritual growth of its membership. The modern synagogue is to be regarded not only as a house of worship but as the institution in Jewish life instilled with the responsibility of promoting all the values of the faith.<sup>163</sup> It can play a crucial role in encouraging identification with the Jewish community.<sup>164</sup> Yet, Jonathan Woocher argues that:

The voluntaristic and highly selective model of Jewish identity that is dominant in American Jewish life, especially the extreme psychologization of identity that is often heard ("I feel Jewish. Isn't that enough?"), is problematic as a basis for continuity because it places

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162 Hayim Halevy Donin, To Pray as a Jew, (New York: BasicBooks, HarperCollins Publishers, 1980), 4.

163 H. Donin, To Be a Jew, 189.

164 Ibid.

the locus of Jewish meaning in the individual rather than in the collective enterprise of the Jewish community, where it must reside if continuity is to be a persuasive value.<sup>165]</sup>

We turn now to the origin and growth of the modern synagogue, which is really a result of the particular social and religious atmosphere that developed in Colonial and later Federal America and Canada.

The first group of Jews to arrive on American shores received a chilly reception from the Governor of New Amsterdam Peter Stuyvesant in American shores in 1654. He requested permission from his employers, the Dutch West India Trading Company, to expel the Jews so that "the deceitful race, - such hateful enemies and blasphemers of the name of Christ, - be not allowed further to infect and trouble this new colony."<sup>166</sup> The Dutch Jewish Community, which was well organized, pressured the Dutch West India Company to allow Jewish settlers to remain in the New World. They were most effective with the following statement: "Your Honors should consider that many of the Jewish nation are principal shareholders in the Company."<sup>167</sup> In the end, Stuyvesant was ordered to permit the Jews into the new colony. Stuyvesant responded bitterly to this injunction by warning the Jews that while they were being permitted entry into New Amsterdam, they were not to become public charges. Thus, he indicated what has become one of the hallmarks of the Jewish community: a focus on philanthropy.

<sup>165</sup> J. Woocher, 18.

<sup>166</sup> Peter Stuyvesant to the Directors of the Amsterdam Chamber of the Dutch West India Company, in Samuel Oppenheim, "The Early History of the Jews in New York, 1654-1664," Publications of the American Jewish Historical Society, 18 (1909), 4-5. Reprinted by permission of the American Jewish Historical Society, in Mendes-Flohr, 357.

<sup>167</sup> Howard Muggamin, The Jewish Americans, (New York and Philadelphia: Chelsea House Publishers, 1996), 38.

The gentile community immediately regarded the twenty-seven Jews as a cohesive group; the first American Jewish community was however lacking in cohesive organization.<sup>168</sup> Evidence does not seem to point to any common goal pursued by this group other than basic survival in a new land. They did not come together with the idea to pray, but initially to escape the Inquisition.

Once these initial Jewish settlers managed to convince the Dutch East Trading Company to allow them to settle in the new land, they found themselves in a circumstance that was quite different from anything that they (or their 17<sup>th</sup> century contemporaries) understood. The Jewish community was no longer responsible as a corporate body to the government. It is not for another couple of centuries that the Jews of America form a community out of necessity. The circumstances surrounding the first Jewish community in the United States suggests a general pattern for the development of synagogues in the United States ever since.

### **Brief review of German and Eastern European Jewish Immigration**

When Jews first arrived in the United States, they voluntarily settled in separate neighborhoods so that they could reside near fellow Jews. These synagogues, in addition to providing a venue for communal worship, were the centers for educational, social, and philanthropic activities.<sup>169</sup> It remained this way until the beginning of the German migration in the 1820's and 1830's, when the synagogue began to decline. The German Jewish community began in its own way by

<sup>168</sup> Maurice J. Karpf, "Jewish Community," in Universal Jewish Encyclopedia, 2nd ed., 123.

<sup>169</sup> H. Sachar, 180.

establishing their local charitable societies, which later developed into synagogues, which functioned in a manner similar to the synagogues of Europe.

Governor Stuyvesant's dictum warning the Jewish settlers against becoming public charges was not viewed as an external pressure but became an internal motivation that prompted the growth of the early Jewish community in the United States. By 1860, over sixty burial, mutual aid, and charitable organizations existed in the United States. It is significant to note that rather than relying on public welfare agencies, the Jews established their own charitable institutions.<sup>170</sup>

The first wave of Eastern European immigration began in 1881, with the second wave beginning around 1891.<sup>171</sup> Until the German migration to the United States in the mid-nineteenth century, the majority of American Jews were of Sephardic background. The masses of immigrants who arrived in the German and Eastern European waves of immigration radically shifted the social profile of the American Jewish community.<sup>172</sup> Mass numbers of German Jews arrived in the United States during the 19<sup>th</sup> century.<sup>173</sup> They arrived with little capital, and poor employment opportunities. The chief economic pursuit of the German immigrants was trade and peddling,<sup>174</sup> however it did not take long for many of these immigrants to "achieve *petit-bourgeois* status."<sup>175</sup> The German Jews rapidly adapted themselves to

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<sup>170</sup> Idem, 192.

<sup>171</sup> H. Sachar, 365.

<sup>172</sup> R. Seltzer, 643.

<sup>173</sup> H. Sachar, 182.

<sup>174</sup> Idem, 186.

<sup>175</sup> Idem, 187.

American culture,<sup>176</sup> and, as a result of their Americanization, felt an obligation towards their Eastern European brethren.<sup>177</sup>

The Eastern European migration brought a more ethnically diverse group of Jews to the United States. These immigrants organized their own societies, known as *landsmanshaftn*,<sup>178</sup> which made provisions for illness and burial needs of its members.<sup>179</sup> There was considerable animosity between the German Jews and the Jews from Eastern Europe. Jews of German origin tended to perceive Eastern European Jews as noisy, unsophisticated, and ill bred. Eastern European Jews, on the other hand, regarded the German Jews as haughty, pretentious, and irreligious.<sup>180</sup> The German Jews were responsible for founding many of the immigrant settlement houses and benevolent aid societies that provided the Eastern European Jews with some of the basic necessities required for starting life over in a new country. No doubt the Eastern European Jews felt an unwelcome sense of obligation to the German Jews, who had preceded them to the United States, which added to the social chasm between the two groups.

Individualism was an essential part of nineteenth century Americanism, including individual authority in religious matters.<sup>181</sup> As Ralph Waldo Emerson explained, "the doctrine meant a willingness to break sharply with the past, to rely on the sovereign self, and almost never on tradition."<sup>182</sup> This attitude certainly affected

<sup>176</sup> R. Seltzer, 643.

<sup>177</sup> H. Sachar, 365.

<sup>178</sup> *Landsmanshaftn* are groups of Jews from a specific area in the Old Country.

<sup>179</sup> R. Seltzer, 644.

<sup>180</sup> Idem, 645.

<sup>181</sup> Michael A. Meyer, *Response to Modernity* (New York: Oxford Publishing Company, 1988), 226.

<sup>182</sup> Cited from Sydney E. Ahlstrom, *A Religious History of the American People* (New Haven, 1972), 603-604.



those seeking asylum on the shores of America after fleeing persecution in other lands. Arriving in the New World presented the opportunity to break with the past and forge a new independent life in the United States. Political theory rooted in Enlightenment, capitalism, the growing pace of industrialism, and in the United States, the fact that there is a great deal land and opportunity to divert the attention of the individual, have instilled in the contemporary individual an aversion towards community obligation. So much emphasis has been placed on the interests of the individual that there has developed a fear of a community, even one which is governed by democratic process.<sup>183</sup>

As Jews, Arnold Eisen points out that "we have all learned to distrust hierarchy, exclusivism, authority wielded in the name of tradition--and Judaism has all of these things and more in abundance."<sup>184</sup>

The multitude of Jewish immigrants to the United States between 1880-1914 required almost immediately the establishment of agencies to assist with the adjustment of moving to a new country. These agencies focused on the problems most often associated with immigration including the care of the sick, poor, aged, widow, and orphan.<sup>185</sup> Each wave of Jewish immigration prompted the establishment of distinctive Jewish organizations, created to serve the needs of newest members of the Jewish community. These agencies were loosely based on seven categories established in rabbinic literature: feeding the hungry, clothing the naked, nursing the sick, burying the dead and comforting the mourner, redeeming

<sup>183</sup> Michael Lerner, *Jewish Renewal*, (New York: G.P. Putnam's Sons, 1994), 297.

<sup>184</sup> Arnold Eisen, "Seek My Face, Speak My Name: A Contemporary Jewish Theology." *Tikkun* 8:1 (1993): 71(3).

<sup>185</sup> M. Karpf, 124-125.

the captive, educating the orphan and sheltering the homeless, and providing a dowry for indigent brides.<sup>186</sup> Welfare of the group was intertwined with the welfare of the individual.<sup>187</sup> The charge to care for their own, given by Governor Stuyvesant, became emblematic of the Jewish community that has followed in the 350 years since Jews first settled on the shores of the United States. The American Jewish community, now considered the most affluent Diaspora community,<sup>188</sup> continues to view the care of the poor as a primary concern to the leaders of the Jewish community.<sup>189</sup>

### **The Modern Synagogue as Distinguished from the Old European Model**

During the earlier years in the United States, Jewish communities were established in such places as Newport, Rhode Island, and Philadelphia. These communities evolved out of the needs of the Jews residing in those locations, but they were never under any compulsion of the crown or colony or state. They certainly did not have an internal mechanism for cooperation. Each community was an autonomous entity. As they were members of a congregation, so too were the members denizens or citizens of the colonies or states. Once they stepped onto the shore, they were emancipated. The Jewish settlers of New Amsterdam set

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<sup>186</sup> Idem, 124.

<sup>187</sup> Ibid.

<sup>188</sup> Daniel R. Herschberg, "The American Jewish Non-Community," in Diaspora: Exile and the Contemporary Jewish Condition, ed. Etan Levine (New York, Shapolsky Books, Steimatzky Publishing of North America, Inc., 1986), 195.

<sup>189</sup> M. Karpf, 123

up the matrix for the modern synagogue: a system of voluntarism, individualism, decentralization, and autonomy.

The American Jewish community is unique today not only because of its sheer size but also for the level of acceptance by the general society, it has enjoyed.<sup>190</sup> One particular factor must be considered in understanding why the American society has welcomed Jews into its midst. The Jews of the United States were never legally emancipated because they already enjoyed many civil freedoms under the British Colonial government.<sup>191</sup> The civil liberties extended in the United States, as well religious self-determination, enabled the Jews to enjoy freedoms they had not known in pre-modern Europe.<sup>192</sup> Life in "these United States" has encouraged most American Jews to participate in an elite culture that is resolutely secular. Until more recent times, American society viewed any type of particularistic commitments with suspicion and discomfort.<sup>193</sup> It was easy for the individual Jew to blend into the fabric of normative American society. And yet, the individual Jew still found him or herself drawn to an association with other Jews, even in activities that were void of any specific religious content. This "social-clannishness"<sup>194</sup> has not prevented full and active participation in the political, economic, and cultural life in the United States.

One other unique aspect of the American Jewish community is the completely voluntary nature of participation in its institutions. Or as Michael Lerner so aptly

<sup>190</sup> R. Seltzer, 646.

<sup>191</sup> P. Mendes-Flohr and J. Reinharz, 354.

<sup>192</sup> R. Seltzer, 646.

<sup>193</sup> Arnold-Eisen, "Seek My Face, Speak My Name: A Contemporary Jewish Theology," in *Tikkun* 8:1 (1993): 71(3).

<sup>194</sup> H. Sachar, 731.

observes in his Jewish Renewal, "today every Jew is a Jew by choice."<sup>195</sup> It is free personal choice to identify as a Jew.<sup>196</sup> Emancipation, as Arnold Eisen points out, led to the disintegration of the קהלות of Eastern Europe, "meaning that Jewish institutions and commitments would henceforth be voluntaristic." One positive outcome is that unlike the autocratic קהל of Eastern Europe or the *Gemeinde* of Germany, the United States allowed for Jewish self-expression, leading to a fragmentation of the Jewish community.<sup>197</sup> The American Jewish community is far more democratized than the קהל or *Gemeinde*, as a result of the democracy in the United States. As Eugene Borowitz comments, "emancipated Jewry imported the notion of self into Judaism primarily under the rubric of ethics, which commanded itself for uniquely integrating freedom, duty, Jewish change, and social responsibility."<sup>198</sup> Individualism is emblematic of American society and for the Jew as well. Individualism is always in tension with the necessary requirements of communal institutional Jewish life. The voluntary nature of the modern synagogue is fraught with problems for any group that tends to greater authoritarianism and there is a greater possibility for people to flaunt traditional Jewish laws in what amount to be an anti-social way. As a result, most authoritative traditional Jewish communities have had to see assistance from the civil authorities in order to deal with issues.

The modern American Jewish community is highly decentralized and is divided into overlapping associations of various kinds. It is actually a set of

<sup>195</sup> M. Lerner, 293.

<sup>196</sup> R. Seltzer, 647.

<sup>197</sup> H. Sachar, 720.

<sup>198</sup> Eugene B. Borowitz, Renewing the Covenant: A Theology for the Postmodern Jew, (Philadelphia: The Jewish Publication Society, 1991), 285

organizations designed to meet specific needs. This is not so different from Mordecai Kaplan's vision of American Jewish life as a "community of communities."<sup>199</sup> However, since the community is fragmented in this fashion, Jewish identity is reinforced as an individual phenomenon.<sup>200</sup> Leonard Fein suggests, "A culture of organizations is not a culture congenial to the preservation and transmission of values; it lacks the required nutrients."<sup>201</sup> There is not a clear concept of an intertwined Jewish community. Jonathan Woocher promotes community as the context for Jewish culture, which provides the content necessary for the development and support of Jewish identity.<sup>202</sup> The community is complex because none of its functions are centrally directed – although it may be part of a central fundraising effort. Yet, as Woocher argues,

Communities are defined by more than the relationships among their members. Martin Buber emphasized that a true community has a Center – a shared vision, purpose, and commitment – to which its members are linked like the spokes to the hub of a wheel. It is this common relation to the Center that binds the members together.<sup>203</sup>

Woocher would support the opinion that this decentralization broadens the options for participation in the community.<sup>204</sup> Typically, the individual Jew selects a particular element within the Jewish cultural system as the focus of his or her identity.<sup>205</sup>

<sup>199</sup> J. Woocher, 18.

<sup>200</sup> Idem, 20.

<sup>201</sup> Leonard Fein, Where are We? The Inner Life of America's Jews (New York: Harper & Row, Publishers, 1988), 207.

<sup>202</sup> J. Woocher, 33.

<sup>203</sup> J. Woocher, 33-34.

<sup>204</sup> R. Seltzer, 647.

<sup>205</sup> J. Woocher, 17.



## Post World War II: 1945 and Beyond

As the Jews became acculturated and felt at home in the freer society of the United States, they developed an appreciation for what the gentiles did and valued. The actions of the gentiles, while always tinged with suspicion were to be emulated rather than disparaged.<sup>206</sup> For example, the new arena for synagogue life after the Second World War was the suburb. Just as their gentile neighbors affiliated with local churches, Jews were expected to fulfill their obligations as good citizens and belong to their own houses of worship.<sup>207</sup> The perceived model of good citizenship has influenced Jews living in America for the last 150 years. This exerted subtle pressure on all urban Jewish communities because in order for the Jew to become part of the United States society, the Jew assessed what America did and then copied the behavior. In other words, if they belong to a church, the Jew found his church in the local synagogue. This behavior has become the pattern of affiliation in the past fifty years.

## Modern Synagogue

Unlike in Europe, the Jewish individual in the United States is not born into a Jewish community; rather he or she affiliates with a certain synagogue. Affiliation is a conscious voluntary choice.<sup>208</sup> The United States shelters the largest, wealthiest, and best – educated (secular) group of Jews in the history of our people. And yet,

<sup>206</sup> Arnold Eisen, "Theology, Sociology, Ideology: Jewish Thought in America, 1925-1955," Modern Judaism 2:1 (1982): 92.

<sup>207</sup> M. Mayer, 354. See Liberal Judaism, June-July 1949, 62-65; CCARJ, April 1955, 4-7, 47; Jacob Sodden, "The Impact of Suburbanization on the Synagogue" (Ph.D. dissertation, New York University, 1962).

<sup>208</sup> M. Meyer, 226.

most American Jews do not belong to a synagogue. A survey taken by the Union of American Hebrew Congregations in 1970/1971<sup>209</sup> found that the majority of those who responded "did not regard their temple as an object of significant emotional investment."

The modern synagogue is an autonomous institution. Synagogues are maintained by groups rather than by the community as a whole.<sup>210</sup> Any gathering of Jews who wish to establish a synagogue may do so, and they retain the authority to organize, maintain, and control it as they so determine.<sup>211</sup> In theory, the Codes of Jewish Law bind the synagogue to certain ritual and other practices. However, nothing prevents a synagogue from establishing its own policies and procedures in both ritual and general areas, such as finances, programs, and community relationship.<sup>212</sup> Lay leadership is responsible for the upkeep of the synagogue as an institution.<sup>213</sup> No institutional authority exists, as each synagogue is completely autonomous.<sup>214</sup> As Milton Steinberg writes, "in the total absence of central control, international, national, and local, each congregation, whether for better or worse, does pretty much what is right in its own eyes."<sup>215</sup> Steinberg, writing in 1947, did not accord such matters as peer pressure. While all of this is true, there is certainly in the Reform and Conservative movements, a central clearing house for

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<sup>209</sup> Idem, 371.

<sup>210</sup> M. Karpf, 125.

<sup>211</sup> H. Donin, To Be a Jew, 186.

<sup>212</sup> Ibid.

<sup>213</sup> Idem, 185.

<sup>214</sup> Milton Steinberg, Basic Judaism (San Diego: Harcourt Brace Jovanovich, Publishers, 1947), 151.

<sup>215</sup> M. Steinberg, 152.

assistance.<sup>216</sup> These organizations cannot control the individual synagogues, but the lay groups can offer assistance. Ultimately, though, the synagogue is made up of individuals who have gathered together voluntarily. Steinberg continues, "the final seat of authority in Jewish religious organizations is lodged in the individual and his conscience."<sup>217</sup>

There is a marked difference between 'joining' a synagogue and 'worshipping' in a synagogue. Membership in the modern American synagogue is defined by 'joining' rather than by 'worshipping.'<sup>218</sup> Synagogue membership cannot necessarily be viewed as any indication of religious commitment on the part of the individual. The individual Jew is free to enter, worship in, and join any synagogue, regardless of his or her own level of observance or religious commitment.<sup>219</sup> Membership in a synagogue is, however, a reflection of the willingness to support the institution as well as be considered a member of a particular Jewish community.<sup>220</sup> That financial support is extremely important to the synagogue for most synagogues rely on its membership for support and financial commitment.<sup>221</sup> In other words, yearly dues act as a primary source of income for synagogues.<sup>222</sup> It is as if the synagogue is sending the message that all that is required to be a member of the Jewish community is money.<sup>223</sup>

<sup>216</sup> The umbrella organizations of the Reform and Conservative movements are, respectively, the Union of American Hebrew Congregations (UAHC) and United Synagogue of Conservative Judaism (USCJ).

<sup>217</sup> M. Steinberg, 151.

<sup>218</sup> H. Donin, To Be a Jew, 187.

<sup>219</sup> Ibid.

<sup>220</sup> Ibid.

<sup>221</sup> S. Einstein, 158.

<sup>222</sup> H. Donin, To Be a Jew, 187.

<sup>223</sup> Michael Goldberg, Why Should Jews Survive? Looking Past the Holocaust Toward a Jewish Future (New York: Oxford University Press, 1995), 139.

Contemporary American life is characterized as a "culture of consumerism based on individual preference,"<sup>224</sup> and the Jewish community is no different. The synagogue is viewed by many as the supplier of private needs, a "service institution," providing the religious ceremonies connected with life cycle events.<sup>225</sup> Jewish institutions have incorporated a consumer-based philosophy in their activities, placing the emphasis on programs and services they hope will attract new members while retaining current members.<sup>226</sup> Michael Goldberg, in his Why Should Jews Survive, develops this consumer-based philosophy in the following manner:

- Members = consumers in the marketplace, exerting individual preference.
- Board = management team responsible for income and tracking market share.
- Rabbi = counter help, responsible for keeping customers satisfied and encouraging a high rate of return business.<sup>227</sup>

While this is an overly simplistic analysis, it clearly reflects a contemporary mindset regarding synagogue life.

## Functions and Officers of the Modern Synagogue

The primary function of the modern synagogue is within the sacred realm; however, the synagogue can become sacred only through the activities that take place within its walls. It provides for certain religious experiences such as prayer and study. It promotes the sacred life of the Jewish community, but, as Donin is

<sup>224</sup> Idem, 136.

<sup>225</sup> M. Meyer, 381.

<sup>226</sup> J. Woocher,

<sup>227</sup> M. Goldberg, 136-137.

quick to point out, is "only an instrument of the Jewish faith."<sup>228</sup> . It serves as the center for worship for its membership, as well as providing the members with support for life-cycle events. The synagogue is also responsible for the Jewish religious education of its youth, as well as, to a greater or lesser extent, being involved in other activities. It no longer functions as the structure used by the community for any and all meeting purposes. The synagogue does not superintend a court any longer. The בית דין has been generally separated from the synagogue, and is the locus for charity. The synagogue does not any longer supervise the ritual slaughtering of animals nor does it ensure a supply of kosher meat. And finally, the synagogue is not responsible for the collection of taxes due to the civil government.

The structure of the modern synagogue also differs from the structure of its earlier forms. While there is an individual responsible for leading services, this individual may or may not be an individual trained as a rabbi. The size and financial situation of the congregation will determine whether to engage a rabbi and other professional staff. Also, teachers must be hired to provide religious education.

### **Establishing the Synagogue as an Organization**

With so many options of Jewish affiliation available to the individual, the modern synagogue is competing with other organizations for the membership of the individual. One positive aspect of this competition is that when a group of individuals come together to form a synagogue, they are partially motivated by the feeling of competition. There is an element of genuine loyalty to their newly formed

<sup>228</sup> H. Donin, To Be a Jew, 185.



synagogue, and a true desire for the success of the synagogue, which redounds to the benefit to the larger Jewish community.

When a synagogue forms, it is motivated by a sense of need. It operates in and among other organizations and institutions but when a group of Jews feel the need to provide Jewish education and to establish a place of worship that is uniquely theirs, we see a genesis of a matrix within an interlocking organization. As a general principle, they get together for the purpose of educating their children.

### **Formation of the Synagogue as an Organization**

Up to this point, we have observed the general structure and status of the Jewish community, both old and new, and its primary public institutions: the synagogue. At this point, we come to the heart of this thesis: the positing of a general paradigm for the foundation of a synagogue. We have set in brief form the social, political, and cultural matrix in which synagogues have been founded for the last fifty years. What occurs in the foundation of a synagogue in a microcosm is what concerns us now. In most cases, a group of laity initiates the process, and then this private enterprise slowly builds the organization and reaches out to some national organization of synagogue identification for membership.

In the initial foundation stages, founders are very busy developing membership. This can take a great deal of effort since support of the synagogue is voluntary. With no external pressure from a civil authority to form an internally autonomous corporation or no communal taxation to provide financial support, the founders are at

a disadvantage in enticing previously unaffiliated individuals to join the new congregation.

As the congregation develops and reaches a critical number, it must hire a full time staff. This comes generally when they need their own space, e.g., the need to buy an existing building, rent a building, or construct their own building. A number of these enterprises, which are now necessary, have halakhic significance, including the synagogue as an employer, a seller, a buyer, and a renter. We now have an entity that may now have received non-profit status, may or may not be chartered or licensed, will need to open a bank account, is an employer with full and part-time functionaries, and above all, has both a leadership and a membership.

Since this is an organization that focuses on religion and religion-related activities, the leadership and membership assert a manifest interest in conducting their business in accordance with the principles and values of the religion, as they understand them. The founding body is creating an institution that on the one hand is necessarily involved with various secular matters, the conduct of which reflects well or ill upon the Jewish tradition, and on the other hand, they must maintain themselves and their business activities in a prudent fashion.

They therefore will usually reach out to a synagogue organization to assist with certain material including manuals outlining the proper protocol for the modern synagogue. Prior to the appearance of these manuals, there was no guidance for the synagogue other than rabbis who might have been in the vicinity and other interested persons in the community. Today, however, manuals and other documents have been created in order guide synagogues through many important

and difficult operations. We return to a brief discussion of the national synagogue umbrella groups, which while they do not have power to order the individual synagogue to comply, may offer extensive guidance in all the areas that a new synagogue may find troubling. We should keep in mind the following axioms in modern synagogue foundation.

1. A synagogue is founded by a group of people.
2. They tax themselves with yearly dues.
3. Depending on their own level, style, and taste, they reach out to the UAHC, United Synagogue, or other umbrella group to seek help.

A fledgling congregation will often establish itself as a not-for-profit entity so that it may enjoy certain federal and local tax benefits. The leadership group will usually consult a lawyer or accountant in its inner circle who will counsel the wisdom of such a move. Registering for this status is a matter of civil law or as it were, דמלכותא דינא, <sup>229</sup> and achieving this status in the eyes of the government clearly imparts an advantage to the new group. They are in good standing with the secular world. How they achieve good standing within the Jewish tradition in terms of discharging their tasks according to the standards of Jewish tradition will be the subject of Chapters 3 and 4. For the present, we review the relevant secular law applying to the foundation and structure of a synagogue as expressed in the statutes of several states (as examples) where there is a large Jewish population: California, Florida, Illinois, and Pennsylvania.

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<sup>229</sup> See B.T. *Gittin* 10a.

The congregation is eligible for tax-exempt status as a non-profit institution and may or may not be incorporated, since regulations vary by state.

### California:

The term "charity" is applies to any organization that performs charitable acts or designates monies for charitable purposes. The State of California defines "charitable purpose" as any purpose that is beneficial to the society, including "the relief of poverty, advancement of education or religion, promotion of health, governmental, or municipal purposes."<sup>230</sup> Over 80,000 charitable organizations are registered with the California Attorney General's Registry of Charitable Trusts<sup>231</sup>, however certain organizations such as hospitals, schools, and religious organizations are not required to register with the Attorney General's office.<sup>232</sup>

Within California, the majority of charities are considered nonprofit corporations. One type of nonprofit corporation is the religious corporation. Religious corporations are organized for the express purpose of promoting and fostering religion. Religious corporations receive tax-exempt status<sup>233</sup> even though they are not required to register or even report to the California Attorney General.<sup>234</sup> In order to qualify as a section 501 (c) (3) of the federal Internal Revenue Service Code organization, a corporation must be "organized and operated exclusively for

<sup>230</sup> Attorney General's Guide to Charities, 2.

<sup>231</sup> As of January 1998. See the 1998 Supplement, Attorney General's Guide for Charities.

<sup>232</sup> Attorney General's Guide to Charities, 2.

<sup>233</sup> Internal Revenue Code (IRC) section 501 (c) (3) and California Revenue and Taxation Code section 23701 (d). See Attorney General's Guide to Charities, 9.

<sup>234</sup> Idem, 3.

religious, charitable, scientific, testing for public safety, literary, or educational purposes.<sup>235</sup>

In order to be granted tax-exempt status, it must be organized and operated for one or more of the exclusive purposes described in 501 (c)(3) of the Internal Revenue Service Code. No individual may profit from the earnings of the organization, and the organization may not use its profits to influence legislation or engage in political activity.<sup>236</sup> The term 'charitable' is defined by the Internal Revenue Service as including "relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; elimination of prejudice and discrimination; defense of human and civil rights secured by law; and combating community deterioration and juvenile delinquency."<sup>237</sup> Requirements necessary for applying for tax-exempt status from the Federal government includes Form 1023<sup>238</sup>, the issuance of an Employee Identification Number, organizing documents such as Articles of Incorporation, Articles of Association, Constitution or other enabling document. By-laws do not qualify as an organizing document, but should be submitted along with the organizing document. A full description of the purpose and activities must accompany the application, as must a record of financial data or

<sup>235</sup> Idem, 9.

<sup>236</sup> Exemption Requirements – 501 (c)(3), 1.

<sup>237</sup> Ibid.

<sup>238</sup> Publication 557 – Tax-Exempt Status for Your Organization, 2.



proposed budget, if a new organization.<sup>239</sup> Unlike other tax-exempt organizations, churches<sup>240</sup> are not required to file an annual information return.

In order to qualify for exemption status, an organization must be organized exclusively for one of the above purposes. It must be a corporation, community chest, fund, or foundation.<sup>241</sup> A religious organization<sup>242</sup>, if it meets the requirements set down by the government, automatically qualify for exemption, and are not required to submit Form 1023.<sup>243</sup> However, a church may decide to file in order to receive a determination letter from the IRS recognizing its tax-exempt status. This letter is required by some states in order for an organization to receive exempt status from the state. The articles of organization must clearly limit the organization's activities to those previously described.<sup>244</sup>

The Internal Revenue Service maintain two basic qualifications in order to determine whether an organization meets the guidelines established by section 501

(c)(3):

- (1) That the particular religious beliefs of the organization are truly and sincerely held, and
- (2) That the practices and rituals associated with the organization's religious belief or creed are not illegal or contrary to clearly defined public policy.<sup>245</sup>

<sup>239</sup> Publication 557 – Tax-Exempt Status for Your Organization, 3.

<sup>240</sup> The term 'church' as defined by the Federal government, will be discussed shortly.

<sup>241</sup> Publication 557 – Tax-Exempt Status for Your Organization, 12.

<sup>242</sup> Religious organization includes churches, interchurch organizations of local units of a church, conventions or associations of churches, or integrated auxiliaries of a church, such as a men's or women's organization, religious school, mission society, or youth group. See Publication 557 – Tax-Exempt Status for Your Organization, 14.

<sup>243</sup> Ibid.

<sup>244</sup> Ibid.

<sup>245</sup> Idem, 20.

The IRS does not automatically recognize every assertion by an organization that it is a church because there is no single definition of the term 'church.'<sup>246</sup> IN order for a religious organization to qualify for exempt status, no individual may benefit from its net earnings.<sup>247</sup>

### **Pennsylvania:**

The State of Pennsylvania passed Act 55 of 1997, known as the Institutions of Purely Public Charity Act. This law requires that the following criteria be met in order to receive exemption from state taxes: (1) advance a charitable purpose; (2) donate or render gratuitously a substantial portion of its services; (3) benefit a substantial and indefinite class of persons who are legitimate subjects of charity; (4) relieve the government of some burden; and (5) operate entirely free from private profit motive.<sup>248</sup> Those organization included to receive exemption from state sales and use taxes and local property taxes are volunteer fire companies, relief associations, non-profit educational, religious, and charitable institutions.<sup>249</sup> The following documents must accompany the application in order to be considered for tax exempt status in the State of Pennsylvania:

- A copy of the Articles of Incorporation, By-laws, Constitution, or other governing legal document specifically including:
  - Aims and purpose of the institution;
  - A provision that expressly prohibits the use of any surplus funds for private inurement to any person in the vent of a sale or dissolution of the institution.

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<sup>246</sup> Ibid.

<sup>247</sup> Ibid.

<sup>248</sup> "New Law Defines Purely Public Charities," published by the Pennsylvania Department of Revenue.

<sup>249</sup> Ibid.

- The most current financial statement (new organizations may substitute a proposed budget) including:
  - All income and expenses listed by source and category;
  - A list of the beneficiaries (individual, general public, other organizations, etc.) of the institution's activities and how those beneficiaries are selected; and
  - A list of sales activities (gift shop, bookstore, social club, etc.) used to raise funds. The institution must apply for a Sales Tax License if engaging in sales activities.
- If the institution has tax exempt status with the Internal Revenue Service, a copy of the approval letter must be submitted.
- If the institution has voluntary agreements with political subdivisions, enclose copy of the same.
- If the institution files Form 990, provide a copy of the most recently complete form.<sup>250</sup>

An annual return is required by all tax-exempt organizations, as well as a copy of their IRS determination letter,<sup>251</sup> and must be filed with the Bureau of Charitable Organizations with the Department of the State.<sup>252</sup>

#### **Florida:**

In order to qualify for exemption from Florida Corporate Income Tax, organizations must submit their determination letter from the Internal Revenue Service. An organization does not need to supply subsequent returns as long as they continue to qualify as a federal tax-exempt organization.<sup>253</sup>

A church is defined as a religious organization that has established a physical place of worship. Individuals must regularly assemble for

<sup>250</sup> "New Law Defines Purely Public Charities," published by the Pennsylvania Department of Revenue.

<sup>251</sup> Instructions for Sales Tax Exemption Application, 6.

<sup>252</sup> "New Law Defines Purely Public Charities," published by the Pennsylvania Department of Revenue.

<sup>253</sup> Corporate Income Tax, 1.

worship and religious instruction.<sup>254</sup> A religious institution means "churches, synagogues, and established physical places for worship at which nonprofit religious services and activities are regularly conducted and carried on."<sup>255</sup> This term may also apply to "any nonprofit corporation that is qualified as nonprofit pursuant to s. 501 (c)(3), Internal Revenue Code of 1986, as amended, the sole or primary function of which is to provide, upon invitation, nonprofit religious services, evangelistic services, religious education, administration assistance, or missionary assistance for a church, synagogue, or established physical place of worship at which nonprofit religious services and activities are regularly conducted."<sup>256</sup>

Religious organizations are exempt from Sales Tax in the following circumstances:

- a. Sales or leases directly to churches or sales or leases of tangible property by churches;
- b. Sales or leases to nonprofit religious, nonprofit charitable, nonprofit scientific, or nonprofit educational institutions when used in carrying on their customary nonprofit religious, nonprofit charitable, nonprofit scientific, or nonprofit educational activities, including church cemeteries; and
- c. Sales or leases to the state headquarters of qualified veterans' organization activities. If a qualified veterans' organization or its auxiliary does not maintain a permanent state headquarters. Then transactions involving sales or leases to such organization and used to maintain the office of the highest ranking state official are exempt from the tax imposed by this chapter.<sup>257</sup>

## Illinois:

An organization, which would otherwise qualify for a tax exemption on its purchases of tangible personal property for use or consumption, must have an active exemption

<sup>254</sup> Florida Administrative Code, 12A-1.001 3c.

<sup>255</sup> Idem, 3d.

<sup>256</sup> 1998 Florida Statutes 212.08 Sales, Rental Use, Consumption, Distribution, and Storage Tax; Specified Exemptions.

<sup>257</sup> 1998 Florida Statutes 212.08 Sales, Rental Use, Consumption, Distribution, and Storage Tax; Specified Exemptions.

identification number issued by the Illinois Department of Revenue.<sup>258</sup> The following must be submitted before an identification number can be assigned:

- 1) If incorporated, copy of Articles of Incorporation.
- 2) If unincorporated, copy of organization's Constitution.
- 3) Copy of By-laws.
- 4) A narrative explaining purposes, functions, and activities of the organization.
- 5) Copy of Internal Revenue Service (I.R.S.) letter, respecting federal tax-exempt status, if organization has one.
- 6) Copy of brochures or other printed material explaining the purposes, functions, and activities of the organization.
- 7) Copy of the most recent financial statement (religious organizations need not submit a financial statement with the initial application).
- 8) Any other information which reflects the purposes, functions, and activities of the organization.<sup>259</sup>

The Retailers' Occupation Tax applies to all nonprofit institutions including those organizations that are exclusively charitable, religious, or educational.<sup>260</sup> There are, however, three limited exceptions, in which cases the institution would not be liable for the tax.<sup>261</sup> The first exception applies to sales made by the synagogue to its membership "primarily for the purposes of the selling organization," which in this case would be the synagogue.<sup>262</sup> One example that would qualify under this exemption in the synagogue setting, would be the sale of prayer books to the congregational membership. If, however, the synagogue were to make the prayer books available for purchase to the general public, it would incur Retailers'

<sup>258</sup> Title 86: Revenue, Part 130 Retailers' Occupation Tax, Section 130.2007 Exemption Identification Numbers, a.

<sup>259</sup> Idem, b.

<sup>260</sup> Title 86: Revenue, Part 130 Retailers' Occupation Tax, Section 130.2005 Persons Engaged in Nonprofit Service Enterprises and in Similar Enterprises Operated As Businesses, and Suppliers of Such Persons, (a).

<sup>261</sup> The exceptions apply only if the selling body is an exclusively charitable, religious, or educational organization or institution. Title 86: Revenue, Part 130 Retailers' Occupation Tax, Section 130.2005 Persons Engaged in Nonprofit Service Enterprises and in Similar Enterprises Operated As Businesses, and Suppliers of Such Persons, (a) (1) (A), (a) (1) (E).



Occupation Tax liability.<sup>263</sup> Textbooks for use the religious school would not be considered "primarily for the purpose of" the synagogue which does the selling, and therefore, the tax would be applicable in this case.<sup>264</sup> If the synagogue engages in a transaction that is noncompetitive with other business establishments, it would not be subject to the Retailers' Occupation Tax liability.<sup>265</sup> In order to come under this second exception, all proceeds of the transaction must go to the charity.<sup>266</sup> Furthermore, it cannot be an ongoing transaction but rather is must be held either on an annual basis or periodically throughout the year.<sup>267</sup> Occasional dinners or other social activities conducted by the synagogue are exempt from the Retailers' Occupation Tax liability under the third, and final, exception.<sup>268</sup> Whether or not the event is open to the public, it retains the exempt status as long as no more that two such events are held in any calendar year.<sup>269</sup> Should the synagogue hold more than two social activities in any given year, they may select which two events will be considered exempt. All other events held that year will incur the Retailers' Occupation Tax liability.<sup>270</sup> However, meals served by the synagogue may be exempt from the tax if it meet the following conditions:

- i) The profits, if any, are used for religious purposes;
- ii) The meals are confined to the members of such church and their guests and are not open to the public, and

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<sup>262</sup> Idem, (a) (2) (A).

<sup>263</sup> Idem, (a) (2) (B).

<sup>264</sup> Idem, (a) (2) (C).

<sup>265</sup> Idem, (a) (3) (A).

<sup>266</sup> Idem, (a) (3) (B) (ii).

<sup>267</sup> Idem, (a) (3) (B) (iii).

<sup>268</sup> Idem, (a) (4) (A).

<sup>269</sup> Idem, (a) (4) (B).

<sup>270</sup> Ibid.

- iii) The serving of the meals is connected with some religious service or function.<sup>271</sup>

There is no restriction as to the number of events, as described above, per calendar year. Even if this type of selling of meals is done on a regular basis, it is exempt from the Retailers' Occupation Tax because of being in the category of sales to members "primarily for the purposes of" the religious organization.<sup>272</sup> With regard to operating a synagogue gift shop, any retail transaction would be liable to pay Retailers' Occupation Tax.<sup>273</sup> The State of Illinois recommends that religious institutions apply for a single Certificate of Registration in order to cover the selling transactions made by the synagogue and all of its organizations. Registration must be completed prior to any selling transaction.<sup>274</sup>

While the new synagogue has been seeking good standing with the secular world, some of its leadership have probably been studying the pages of various publications of the umbrella organizations of their choice (Reform, Conservative, Reconstructionist, etc.), in order to find out how the synagogue can and should discharge its duties as a Jewish religious institution with an implicit responsibility to consider the requirements of Jewish tradition in its structure, function, and procedures.

It is very clear that the modern synagogue remains a very complicated and potentially powerful entity in the Jewish community even though it is substantially different from its pre-Emancipated ancestor. Nevertheless, the millennial tradition

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<sup>271</sup> Idem, (b) (3) (B).

<sup>272</sup> Idem, (b) (3) (C).

<sup>273</sup> Idem, (b) (2).

<sup>274</sup> Idem, (c) (4).

demands that the modern synagogue maintain spiritual and psychological links with the past even though the practical aspects of the pre-modern synagogue are now only a part of history.

The tradition has a claim on the synagogue, and the challenge has been to find some classic concept that might provide an explanation of the dynamics of the modern synagogue as a Jewish entity, while linking the modern synagogue uniquely and strongly to the tradition of law and ethics.

We turn now to a consideration and critique of those publications and the presentation of a concept which, it will be argued, may effectively serve as a comprehensive template or model for the discharge of the synagogue's duties as a Jewish religious institution.

## Chapter Four – Synagogue Manuals

This chapter will focus specifically on the Reform synagogue. Although the pattern for Reconstructionist, Conservative, and even Orthodox synagogues is not substantially different except that in the Orthodox world today, particular organization such as Chabad go out, seek people, and actively form a congregation. The movement is responsible for establishing a synagogue rather than waiting for a group of laity to contact the movement for guidance.

Among the materials available within the Reform movement that a congregation may receive for guidance in its formation and development are Guidelines for Rabbinical-Congregational Relationships, Guidelines for Administrator-Congregational Relationships, Temple Management Manual and Synagogue Ethics Manual: A Resource for Consideration of Ethical Issues in Synagogue Life.

- Guidelines for Rabbinical-Congregational Relationships was adopted and recommended by the Union of American Hebrew Congregations (UAHC) Board of Trustees and the Central Conference of American Rabbis (CCAR) in Fall 1984, and was reprinted in Fall 1986, replacing the 1973 version.<sup>275</sup> This document provides suggestions and guidelines to aid in establishing a positive relationship between the rabbi and congregation. Rabbi Eliot Stevens,<sup>276</sup> having attended several

<sup>275</sup> The 1973 version was known as the "Blue book." According to R. Eliot Stevens, the conference spent several hours reviewing each line of the book before voting adoption at the 1973 convention.

<sup>276</sup> Correspondence with this author on 2/25/99.

sessions, recalls that the 1984 version was a product of at least two years of regular meetings of a committee that "truly was a work of the committee jointly represented the UAHC and CCAR."

- Guidelines for Administrator-Congregational Relationships was approved by the UAHC Executive Board May 1993 and the CCAR Executive Board in January 1993, and adopted October 1993 at the 52<sup>nd</sup> Annual Convention of the National Association of Temple Administrators, an affiliate of the Union of American Hebrew Congregations. It is intended to assist congregations and administrators create equitable policies and procedures.

- Temple Management Manual was edited by Julian Feldman, F.T.A., Henry Fruhauf, F.T.A., and Myron E. Schoen, F.T.A., and published by the National Association of Temple Administrators, 1984.<sup>277</sup> Julian Feldman, who acted as the coordinating editor of this document, was the executive director of the Washington Hebrew Congregation, as well as a past president of the National Association of Temple Administrators and of the Synagogue Directors Association of Washington-Baltimore-Richmond. Henry Fruhauf was the Administrative Vice-President of Congregation Emanu-El of the City of New York, at the time that he edited this manual. He served the Reform Jewish movement as a member of the Commission on Synagogue Administration, an officer



of the Rabbinical Pension Board and a member of the UAHC Management Committee. Myron E. Schoen was the director of the UAHC/CCAR commission on Synagogue Administration. He was a member of the Executive Board of the National Administration of Temple Administrators, and was the Secretary to the UAHC/CCAR Board of Certification for Temple Administrators. This document is a comprehensive manual designed to provide synagogues with the information required operating a synagogue.

- Synagogue Ethics Manual: A Resource for Consideration of Ethical Issues in Synagogue Life was prepared in 1997 by the UAHC Ethics Committee Subcommittee on Synagogue Ethics. This committee was comprised of Dr. David Ellenson, Rabbi Daniel F. Polish, Rabbi Peter J. Rubenstein, Rabbi Arthur Gross Schaeffer and chaired by Evelyn Shlensky. This manual attempts to educate synagogues in the practice of ethical decision-making based on traditional Jewish texts.

Each of the following manuals will be examined and critiqued on the basis of the use of Jewish materials, texts, or references, and the application of such material to practical problems. One other area of concern is the presence or the absence of a general and cohesive framework for the synagogue. The excerpts selected will demonstrate that each document, while striving to provide the synagogue with a

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<sup>277</sup> Temple Management Manual, ix-x.

Jewishly-sound foundation, falls short due to the superficiality, inconsistency, and absence of a cohesive principle.

### **Guidelines for Rabbinical-Congregational Relationships**

Known as the "Gold Book, this guide has not been revised since 1984. The current Director or Placement of the Central Conference of American Rabbis, Rabbi Arnold Sher,<sup>278</sup> admitted that, (1) the "Gold Book" is outdated, and that (2) these are merely suggestions. They are by no means written in stone.

The preamble opens with the following sentence: "Sacred Jewish values underlie the partnership between Rabbi and Congregation."<sup>279</sup> There is, however, a missed teaching opportunity when the values themselves are not clearly outlined nor does the manual suggest any practical application of the values. Unfortunately, nothing else is mentioned to bridge these important values with the material contained in the guidebook. There seems to be no relationship between this sentence and the guidelines that are to follow. Furthermore, there is no mention of how these values will inform the specific guidelines. Without elaborating how the values might inform decisions, they cannot and do not function as a practical theme. Without a genuine sense of Jewish values in the forefront, there is a tendency to regard business arrangements as another and unrelated world.

<sup>278</sup> Conversation with this author on 1/20/99.

<sup>279</sup> Guidelines for Rabbinical-Congregational Relationships, 1.

This statement in the Gold Book, voiced with considerable timidity, is merely advisory:

"Nothing in this publication is intended to supersede existing applicable law or the constitution and by-laws of the Congregation.... For the Guidelines to apply to the individual Congregation and Rabbi, they must be specifically incorporated into the agreement between Rabbi and Congregation. Out of their firm conviction that the implementation of the Guidelines will prove beneficial to Congregation and Rabbis alike, the leadership of the Union and the Conference call upon their members to accept them and to pledge faithfully to fulfill their high responsibility to each other."<sup>280</sup>

## I. THE CONGREGATION AND ITS LEADERSHIP

### A. The Role of the Congregation

"For more than two millennia the Synagogue has served our people as Beth Hatefillah...as Beth Hamidrash...as Beth Hakeneseth.... As it fulfills these classic roles, the modern synagogue becomes worthy of the designation Kehillah Kedoshah, a "holy community."<sup>281</sup>

The synagogue did indeed assert these functions, but it served them in response to different societal and religious needs. The very glib assumption that the modern synagogue performs these classic roles implies an unawareness on the part of the authors regarding the definition these roles for in point-of-fact, the synagogue of today does not function in a classic manner.

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<sup>280</sup> Ibid. 1.

<sup>281</sup> Ibid. 2.

בית קנסת - We have noted in the Pre-Modern community that the synagogue was the venue of public discussion regarding legal matters affecting the entire community and matters of taxation that affected the entire community. Clearly, that kind of assembly is no longer required. While people may assemble for some sort of public purpose, assemblages are voluntary and are wholly separate from matters involving a classic <sup>282</sup>דין תורה (lawsuit), or communal taxation.

בית מדרש - The modern synagogue undertakes many educational programs, but it no longer represents the only educational institution, or even the only Jewish educational institution, available to Jews, as once it significantly did.<sup>283</sup> The synagogue of today is an adjunct educational entity, unless it chooses to undertake the enormous expense of operating a private day school.

בית תפילה - While the modern synagogue certainly functions as a house of worship, as a rule, it provides a venue for public worship only at specific times. Of course, many conservative and orthodox synagogues provide a daily minyan but this hardly involves the congregation as a whole and is usually a service for those saying kaddish.

By reading the description in the Gold Book, people are left with the impression that the modern synagogue is following the classic mold without understanding that the status and structure of the modern synagogue is simply different. The Gold Book characterizes the synagogue as a "*Kehillah Kedoshah*." It is an ancient characterization yet clearly holiness and sanctity are theological concepts with many ramifications. However, this handbook does not suggest the breadth or depth of the

<sup>282</sup> For a brief explanation on *Din Torah*, see chapter 1, page 18.

<sup>283</sup> It was not until Emancipation that Jews were permitted to attend university.

idea of a Holy Community. The classic "*Kehillah Kedoshah*" operated under rather strict and enforceable communal ordinances, and carried with it a sense of internal regulation, requirements, and community that is absent in the modern synagogue. Therefore, this is a rather empty, hollow use of the classic terminology.

#### B. The Role of the Congregational Leadership

"In most Congregations, however, the Board (of Trustees) has been delegated responsibility for governance. The Board is enjoined to direct the administrative and financial affairs of the Congregation. By virtue of its election by the membership at large, the Board derives authority from the Congregation as a whole, and it should represent the varied points of view of the membership. Those who are invested with positions of leadership, whether officers or trustees, should understand that their responsibility extends beyond the management of congregational business to include involvement in all phases of the Congregation's programs. Officers and trustees should set an example of commitment to the membership at large by participating actively in worship, study, and other activities offered by the Congregation."<sup>284</sup>

The lay leadership of the congregation is in a double role because on the one hand they are the servants of the congregation, charged to conduct its business. On the other hand, they are the role models for the congregation, who are bidden to participate actively in worship, study, and other worthwhile activities. They are both

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<sup>284</sup> Ibid. 2-3.



servants and leaders, but there is no direction on how a balance between the roles can be achieved.

In some ways, the lay leadership of today bears a similarity to the *פרנסים*, or the administrative leaders of the community, of old. The *פרנסים* were elected to their positions on the basis of their knowledge and involvement in the economic and ritual life of the community. The *פרנסים*, in the old system, were responsible for acting as the intermediary between the Jewish community and the civil authorities. While that is not a function of the modern lay leadership, often members of a congregational board do represent the synagogue when dealing with civil agencies such as the county building inspector or the electric company. The members of the lay leadership interact with the external society, certainly when a congregation is in its early stages of formation.

#### D. The Rabbi and the Board of Trustees

"In recognition of the fact that there may be religious, ethical, and/or programmatic implications in fiscal or administrative policy decisions, the Rabbi should be free to express opinions on these matters, and the Rabbi's viewpoint should be accorded a regard befitting the position of spiritual leader."<sup>285</sup>

The language suggests timidity on the part of the authors of the handbook. In any significant decision made by a synagogue board, indeed any significant life decision, there is always an ethical, and sometimes ritual, implication. Furthermore, there is no indication in the broadest terms what those religious, ethical and

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<sup>285</sup> Ibid. 4.

programmatic implications might be. However, there can be ethical implications in seemingly insignificant matters. For example, one might consider the selection of a certain toilet paper manufacturer to be without ethical ramifications, and a decision to be made only on a financial basis. Perhaps this particular manufacturer has a reputation for exploiting the workers who process the toilet paper, or for exposing them to harmful working conditions. What does it say about the congregation that is willing to overlook the conditions of the worker and financially support this unethical behavior? While financial matters are a legitimate concern, the ethical behavior of the manufacturer must also be considered. It is the responsibility of the rabbi to educate the lay leadership of the religious and ethical implications in all matters. The congregational board will be faced with significant and not-so-significant decisions, and it is important that all matters be considered within an ethical framework.

## I. THE AUTHORITY OF THE RABBI

### A. The Rabbi's Status in the Congregation

"While in a legal sense the Rabbi is an employee of the Congregation, the Rabbi is more than a professional staff person."<sup>286</sup>

This statement is inadequately expressed because the authority of the rabbi itself is a controversial matter. Only in one area is the rabbi *qua* rabbi considered an authority and that is the area of Jewish thought and traditions. Any authority that the rabbi attempts must come from this basis of expertise. In pre-modern times rabbis

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<sup>286</sup> Ibid. 5.

filled more than one position and were called upon to perform more than one function. Rabbis did not enjoy authority because of election to a pulpit. The identification of rabbinic authority with the election to a pulpit is grossly misleading in terms of what rabbinic authority is. It gives a misleading view of rabbinic authority, which has never depended on election to a pulpit. For example, Rabbi Mark Warshofsky, the leading rabbinic voice of Reform Responsa, has not been elected to a pulpit, but exercises rabbinic authority. Rabbi Solomon Freehof z"l was an authority in Reform Responsa and did serve a congregation, but his authority did not stem from his position as a pulpit rabbi.

## B. The Roles of the Rabbi

### 1. The Rabbi in the Pulpit

"The rabbi always enjoys complete freedom of the pulpit."<sup>287</sup>

The rabbi has been hired as the spiritual leader of the congregation, based on the understanding that he or she has certain skills or abilities, which is to say that person of certain accomplishments and training, inherently has the capacity to perform certain kinds of functions. By limiting the rabbi's ability to speak freely from the pulpit, the congregation would be preventing the rabbi from performing the job for which he or she was hired. It should be clearly understood that the congregational board, acting on behalf of the congregational membership, engages this individual as rabbi and does not extend authority but authorization for the rabbi to enjoy complete freedom of the pulpit.

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<sup>287</sup> Ibid. 5.

## 6. The Rabbi in the Community

"Rabbis may rightly identify themselves with causes, movements, or institutions which they judge compatible with the teachings of Judaism."<sup>288</sup>

Once again, the rabbi has been hired for the purpose of guiding the congregational membership in a manner that is in concert with the ethics and morals of the Jewish tradition. There must be a certain amount of trust in the rabbi on the part of the membership, so that he or she can identify with those causes or institutions that are believed to be compatible with the traditional ethics and morals.

## 8. The Rabbi and the Lay Leadership

"As has been noted previously... the Rabbi should interact on all levels with the lay leadership of the Congregation. Experience has demonstrated that a Congregation is best served when its rabbinic and lay leadership consider themselves to be partners in the sacred work of the Synagogue."<sup>289</sup>

This statement is arbitrary and glib. It suggests that there should be interaction but does not explain what "all levels" are. Furthermore, it may be taken to imply an unseemly closeness between the rabbi and the lay leadership. In a partnership, from a classic Jewish point-of-view, each individual is charged with the responsibility and property of the other, but all of the wealth is a common pool to which both contribute. This cannot be the case in an employment situation; the employee cannot be a partner with the employer. This is one example of how a

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<sup>288</sup> Ibid. 7.

<sup>289</sup> Ibid. 7.

template based on the traditional understanding of partnership would not be effective in the congregational setting.

#### IV. THE AGREEMENT BETWEEN CONGREGATION AND RABBI

##### A. The Nature of the Agreement

"The relationship between Congregation and Rabbi is a covenant through which each party undertakes the obligation of working together in the service of God and the Jewish people."<sup>290</sup>

The use of the term covenant, at first blush, sounds good. Altogether, this term implies a rather exalted idea, which may not be appropriate. There are at least three Jewish classic understandings of a covenant:

- Circumcision – the physical sign of the spiritual covenant made between God and Abraham, in which God had promised land to the descendants of Abraham, as well as blessing Abraham.<sup>291</sup> Circumcision has become the physical covenantal sign for male Jews in every generation.
- Sinai – the location of the giving of the Torah. God commanded the Children of Israel that if they keep the commandments, then they will be God's people.<sup>292</sup> Once again, this is a covenant binding between God and all generations.
- Marriage – the sacred covenant between two people. The term for covenant refers to an alliance of marriage in Proverbs<sup>293</sup> and Malachi.<sup>294</sup>

<sup>290</sup> Ibid. 12.

<sup>291</sup> Genesis 12:2, 17, 22.

<sup>292</sup> Exodus 19:5-6.

<sup>293</sup> Proverbs 2:17.

<sup>294</sup> Malachi 2:14.



The term 'covenant' is reserved for the most sacred of Jewish circumstances. Its use here is a misappropriation of the term, and shows disregard for the profundity of the concept. A covenant is a permanent and lasting relationship, while the relationship between a rabbi and the congregation is only as long as the duration of the rabbi's contract.

### C. Terms of Agreement

#### 1. Salary

"The ideal of Tsedek, righteousness and rightness, should permeate salary negotiations between Congregation and Rabbi.

The following criteria should be considered:

- a) The overall welfare of the Congregation;
- b) The length and cost of the Rabbi's education, both undergraduate and graduate;
- c) Salaries paid by other Congregations of similar size and category;
- d) Salaries received by other Rabbis of similar age, experience and background;
- e) Salaries being received by newly ordained graduates of the HUC-JIR;
- f) Information provided by the annual survey undertaken by the Central Conference of American Rabbis.<sup>295</sup>

Rabbis, not surprisingly, turn to exalted terms and use them as the proper ideals. The criteria listed in the Gold Book reflect יושר rather than צדק. יושר conveys a sense of

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<sup>295</sup> Ibid. 14.

straightness, equity, and integrity, while צדק carries a sense of that which is right and just. What has occurred is that the word צדק, which has a greater currency and has overtones of being in the legal right [להצדיק] and define it in the manner and criteria of יושר. This indicates a weakness in the usage of vocabulary when a term is used with little regard to its real meaning. The idea of צדק is associated with justice and magistracy with the law as such, while יושר connotes behaving in the right way or doing the right thing.<sup>296</sup>

## **Guidelines for Administrator-Congregational Relationships**

### ***Introduction***

"The profession of Temple Administrator has its antecedents in Jewish tradition."<sup>297</sup>

This statement is boldly made with no attempt to explain what antecedents in the Jewish tradition mean. No examples are given, nor is any guidance given as to how an antecedent in the Jewish tradition might inform the behavior of the Modern Temple administrator. In the pre-modern Jewish community, the person who functioned most like the modern day administrator was the גבאי.<sup>298</sup> There should be more elaboration regarding the historical evolution of the גבאי into the modern temple administrator. By understanding the classic role of the גבאי, an administrator would be aware of the ethical responsibilities of his or her job.

<sup>296</sup> A similar concept to that of דרך ארץ.

<sup>297</sup> Guidelines for Administrator-Congregational Relationships, 1.

<sup>298</sup> See Chapter One, page 4 for further explanation on the functions of the גבאי.

## I. THE ROLE OF THE CONGREGATION AND ITS LEADERSHIP

"The Congregation may retain and empower qualified professionals to carry on various aspects of congregational life. All are expected to operate under guidelines established by the Congregation and in consonance with its policies and practices."<sup>299</sup>

## II. THE ROLE OF THE ADMINISTRATOR

"The Administrator should provide leadership as a Jewish professional, in a manner that furthers the goals of the Congregation and Reform Judaism. The Administrator should be active in National Association of Temple Administrators [NATA], the UAHC and appropriate local, regional and national activities."<sup>300</sup>

The term "Jewish professional" is so vague as to have no definitive meaning, and therefore its use in an official document is highly questionable. Modern society does not view administrators as professionals. The American Jewish Community has declared certain positions enjoy a professional status, which has, however, never been fully examined.

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<sup>299</sup> Ibid. 2.

<sup>300</sup> Ibid. 3.

### III. QUALIFICATION FOR AN ADMINISTRATOR

B. "A Jewish background and a knowledge of Jewish history, life cycle events, holidays, and liturgy increase the Administrator's ability to fulfill the role. Familiarity with Jewish organizations and agencies, ideals and goal is also important."<sup>301</sup>

The language here is vague and bland. Wherein does this differ from what any layperson or Board Member should know? If the temple administrator is to be considered a "Jewish professional," then some foundation of Jewish knowledge must be required. It is not enough to suggest that a Jewish background will increase the Administrator's ability to succeed in the job. At the very least, a "Jewish professional" must have a certain command of Jewish knowledge regarding texts, rituals, and history.

## **Temple Management Manual**

### *I. INTRODUCTION TO TEMPLE MANAGEMENT*

#### 1. History of the Synagogue

"The art of temple management has roots and antecedents that go back almost 2600 years."<sup>302</sup>

This manual provides a concise, yet fairly complete overview of the history of the synagogue and how that history relates to the daily management of the modern synagogue. It presupposes that the modern synagogue is a direct descendant of the pre-modern synagogue. This introduction does acknowledge the shift in

<sup>301</sup> Ibid. 4.

<sup>302</sup> Temple Management Manual, I: 1.

communal authority over the last century, however it does not delve into how the synagogue functions differently in modern society.

## 2. Thrust and Organization of this Manual

"It is NOT an authoritative and firm set of rules for managing a synagogue. It IS a compendium of guidelines, suggestions, and examples, garnered from a variety of sources, which, over the years, have proven themselves to have validity and relevance."<sup>303</sup>

No where is there mention of any Biblical or rabbinical sources which will help provide a Jewish framework in which to understand these "suggestions." While each section of the notebook is adorned with a Biblical quotation, they seem arbitrarily placed. The use of Biblical material seems gratuitous, at best.

One example of the random placement of Biblical material is the use of the following verse on the section divider of the introductory section, "And they shall make me a Sanctuary that I may dwell among them."<sup>304</sup> The authors miss the opportunity to explore this Scriptural phrase within the context of the first section. According to Rabbi Samson Raphael Hirsch, this central sanctuary was, in fact, to become a reminder not only of God's abstract presence, but also of God's laws and ethics. He suggests that the Sanctuary represents Israel's obligation to sanctify itself in its personal life, as expressed in later verses. When Israel carries out that responsibility of living an ethical life, Hirsch concludes, God responds by dwelling among them. This same idea is mirrored in the corresponding portion, First Kings,

<sup>303</sup> Ibid. I: 4. This is just one example given of what this manual is not meant to be.

<sup>304</sup> Exodus 25:8.



Chapter 6, Verses 12 and 13. God informs Solomon that, "if you follow My laws and execute My judgements and faithfully keep My commandments, then I will dwell among the children of Israel." It is not enough simply to select a relevant-sounding verse. In order to infuse the document with Jewish ethics and precepts, the conclusions between the verse and the subject matter must be drawn.

### 3. The Philosophical Framework of Temple Administration

"The philosophical orientation of a commercial enterprise is the pursuit of profit. Today's modern, complex, multi-faceted synagogue does not operate with a single philosophy, however."<sup>305</sup>

This statement leaves open the possibility that one philosophy available to the modern synagogue is the pursuit of profit. Furthermore, it allows for a synagogue to be regarded as a commercial enterprise. While a synagogue must consider its financial situation at all times in order to keep its doors open to the public, it cannot, and should not, be considered a commercial enterprise. The synagogue is not in the business to make money for the sake of profit.

"In serving as the "House of Prayer," it [the synagogue] embraces the theology of our heritage. In serving as the "House of Study," we find a meld of many philosophies, from which we must extract the best and the most relevant. Although administration is vital to all those aspects of the synagogue, it is as the 'House of

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<sup>305</sup> Temple Management Manual, I: 5.

Assembly' that administration is **most** concerned, and here too there are many philosophical doctrines from which to draw."<sup>306</sup>

These viewpoints completely disregard the historical context of the different functions of the synagogue. Certainly during pre-modern times, there was a certain amount of administration needed to maintain the internal organization of the Jewish communities, which meant much more than a single synagogue. That administration relied on the philosophy and law outlined in traditional Jewish documents. While the modern administrator has many doctrines from which to draw, the modern synagogue must minimally draw its primary philosophical doctrine from the vast ethical tradition that has been handed down through the generations.

"Despite the difficulties in translating to the synagogue the techniques of 'business,' we would ignore them at our own peril. Here, again, our task becomes one of selection—choosing those processes which advance the Temple's goals and adapting these 'good' elements, while avoiding the 'bad' practices of the market place which do not reinforce our mission to be 'a light unto the people.'"<sup>307</sup>

The idea presented here is a positive one. It is necessary for the synagogue to avoid practices that may be acceptable in the secular marketplace, but are contrary to Jewish ethical behavior. This statement would be strengthened by the addition of language that reflects the origin of "good" behavior, with a citation from a biblical or rabbinic source.

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<sup>306</sup> Ibid. I: 5.

<sup>307</sup> Ibid. I: 6.

"If any one rule is to be observed in making use of the resources outside the synagogue, it is that we must **never** forget who we are and what we are."<sup>308</sup>

However, unless the manual clearly delineates what is the foundation that makes us who we are, it is impossible to maintain a clear understanding of what sets the synagogue apart from other organizations or businesses.

## II. MANAGING OUR HUMAN RESOURCES

### 1. The Structure and Process of Management

#### 3. The Governing Board

"The board must cooperate with the rabbi, or rabbis, even though it must devote considerable time and effort to the "business areas" of synagogue operation."<sup>309</sup>

There is an implication that the "business area" is separate from the jurisdiction of the rabbi. The danger in separating the rabbi from the business matters of the synagogue is that it becomes easy to remove ethical implications from the business decisions.

**Composition of the Board:** "It is also important that the board concern itself with ritual practices, and therefore should include members who are Jewishly knowledgeable and have demonstrated religious commitment."<sup>310</sup>

First, this does not require all board members to possess any particular level of Jewish knowledge. Furthermore, it is unclear what is meant by "religious

<sup>308</sup> Ibid. I: 6.

<sup>309</sup> Temple Management Manual, II: 2.

<sup>310</sup> Temple Management Manual, II: 4.

commitment." This might refer to ritual practice, synagogue attendance, personal belief, or some mixture thereof. Clarification is needed in order to understand what is meant by "religious commitment." It is not possible to expect certain behavior from individuals without clearly outlining what those expectations are.

**Leadership Development:** "Finally – and this is an overriding responsibility – the temple board member has the obligation to be an informed, dedicated, and practicing Jew. This does not mean that he/she must necessarily attend every single worship service, but she/he should not be a stranger to the sanctuary."<sup>311</sup>

Again, the idea behind the sentiment is a good one, but more clarification is needed in order to provide clear guidelines for the board member to follow.

#### 4. Working with The Professionals

**The Lay Leaders and the Rabbi:** "The question is often asked by sincere lay people: "Why doesn't the Rabbi stick to running the spiritual part of the temple program and leave the business aspects of the congregation to us?" The answer is that there can be no such dichotomy.... The synagogue is maintained, embellished, expanded and improved with the single spiritual purpose of helping it fulfill its three-fold function as a house of prayer, a house of study and a house of assembly."<sup>312</sup>

This viewpoint expresses what is arguably the crux of the relationship between the board and the rabbi. There can be no complete separation between

<sup>311</sup> Temple Management Manual, II: 7.

<sup>312</sup> Temple Management Manual, II: 21.

the business aspects and religious aspects of the synagogue. However, this appears to contradict an earlier statement from this manual.<sup>313</sup>

"As a result, the rabbi should refrain from taking a position on any issue under debate unless and until it is absolutely necessary in order to bring ethical and moral issues into clear focus, or to protect the prerogatives of the rabbinic role."<sup>314</sup>

The rabbi has a responsibility, as the spiritual leader and Judaic resource to the lay board, to bring to its attention any information, of which it might be unaware, in order for the board to make the best ethical and moral decision possible. This statement establishes an unrealistic expectation for the rabbi, who might often be compelled to take a position when he or she feels it to be necessary for the well being of the synagogue.

**Ethics and Morality:** "On rare occasions actions may be contemplated which, in a commercial enterprise, might be tolerated or condoned because of their economic benefit. It is possible that the lay leadership may not even be aware of all the consequences of certain courses of action, since it is not their customary responsibility, outside the synagogue, to consider such ramifications. In these cases it is imperative that the rabbi and/or the administrator bring into consideration "the Jewish view," which mandates the application of the highest moral and ethical

<sup>313</sup> See Temple Management Manual, II: 2.

<sup>314</sup> Temple Management Manual, II: 21.



standards to every action of the synagogue. If there is a choice between dollar and Torah, there can be no question which must prevail in the temple."<sup>315</sup>

Once again, the participation and input of the rabbi is necessary in order to ensure decisions are made in concert with the ethics and morals of the Jewish tradition.

### 3. Members – Getting Them and Keeping Them

#### 5. Personnel Functions

"In any organization, the management philosophy which is applied to its human resources must take into account both the needs of the organization and the needs of its employees. However, a synagogue bears a far greater responsibility with respect to its human resources than does the typical business organization. Judaism has a great deal to say about how an employer treats his employees. The synagogue must approach its employees with a full commitment to fairness and equity and the synagogue must set an example for both its members and for the community of which it is a part."<sup>316</sup>

It would be particularly informative and helpful if some examples of the Jewish approach to employer/employee relations were offered.<sup>317</sup> It is not enough just to say that Judaism has much to say on a particular subject. One cannot know what the Jewish view is in any area if there are no references made available. For

<sup>315</sup> Temple Management Manual, II: 22.

<sup>316</sup> Temple Management Manual, II: 53.

<sup>317</sup> This will be discussed later on page 97.

example, in regards to fair treatment of employees, Jewish tradition is clear that the employer must pay his or her employees in a timely fashion. This concept is based on statements found in Leviticus 19:13 and Deuteronomy 24:14-15, and discussed in greater detail in Shulkhan Arukh, *Hoshen Mishpat* 97:3. Providing citations for a certain legal view educates the individual with regards to both the specific dilemma, as well as an understanding of the general traditional point-of-view.

## 5. Wages

"Congregations are not always aware of local and/or federal employment laws under which they must operate. It is wrong to assume that non-profit organizations are totally exempt from these employment laws."<sup>318</sup>

A more detailed discussion of non-profit status and employment regulations may be found in chapter two.

## III. PROPERTY MANAGEMENT

### 1. Use of Facilities

**Meeting the Needs of the Outside Community:** "Though the Jewish community is no longer governed by the synagogue leadership as it was in the days of the medieval kehillah, it is still the central institution of Jewish life. Whether every member of a Jewish community is affiliated with a synagogue or not, it is not conceivable that Judaism in the Diaspora can continue for many generations without strong and vibrant synagogues. It is essential therefore, that the synagogue be

<sup>318</sup> Temple Management Manual, II: 56.

perceived as the central institution that it is, by all elements of the Jewish and general community."<sup>319</sup>

It is particularly interesting that this manual promotes the concept that the modern synagogue functions as the central institution of the Jewish community. The synagogue in urban areas is one of several such entities as a matter of fact. It may be "central" to its members, but not "central" to members of another synagogue.

#### IV. FINANCIAL MANAGEMENT

"אין כסף אין תורה" (without money, there is no Torah) is the underlying justification for this section."<sup>320</sup>

This statement<sup>321</sup>, for which no citation is provided, is the only reference to any particular Jewish value in the section concerned with financial management. The presence of this Talmudic quote is strictly token. It has been placed at the beginning of this chapter with no attempt to outline how such a quote might inform financial decisions. Furthermore, its placement here is completely inappropriate for it has taken such liberty with the translation as to render an otherwise reasonable teaching quite frivolous. If the editors of this manual felt it necessary to use a rabbinical statement regarding financial equity, they should have chosen a citation that points out the ethical implications in making financial decisions. Rather, the citation selected implies a crude relationship between money and the fiscal perpetuation and upkeep of the synagogue.

<sup>319</sup> Temple Management Manual, III: 2.

<sup>320</sup> Temple Management Manual, IV: 1.

<sup>321</sup> Avot 3: 21.

## 5. Operating Income

**Dues:** "The education of the young is the responsibility of the community, yet there should be some acknowledgment by the parents (both of them) of their responsibility, too."<sup>322</sup>

Mishnaic sources<sup>323</sup> do emphasize the communal responsibility of educating the youth. Again, a source citation should be given, in order to educate the lay leadership as to where in the tradition one can find the obligation of educating the young, as well as why it is so important to provide an education for all children.

## **Synagogue Ethics Manual: A Resource for Consideration of Ethical Issues in Synagogue Life**

### **UAHC ETHICS COMMITTEE MISSION STATEMENT**

"Ethical behavior and the performance of ethical mitzvot have always been seminal to the Torah and tradition of our people. Reform Judaism during its early years in the 19<sup>th</sup> century asserted the primacy of ethical performance over ritual observance. In more recent years, even as we have witnessed a heightened appreciation of the place of ritual in our Jewish lives, we continue to assert the essential ethical imperative: "and you shall do what is right and good in the eyes of the Eternal." (Deut. 6:18)"<sup>324</sup>

<sup>322</sup> Temple Management Manual, IV: 10.

<sup>323</sup> Mishneh Torah, *Hilkhot De'ah* 4:23, and commentaries thereto. See Chapter 1, pp. 17-18.

<sup>324</sup> Synagogue Ethics Manual, iii.

One may argue that the performance of all mitzvot is seminal to the Torah. The Reform movement has continued to separate ethical mitzvot from ritual mitzvot, giving the impression that one form assumes a higher value than the other. That division still enables Reform Jews to discard ritual while maintaining an adherence to mitzvot based on a perceived ethical value alone. Reform Judaism does not promote the arbitrary abandonment of ritual commandments, nor of the commandments in general. Reform Judaism, as understood in contemporary times, grants authority to the individual concerning the observance of the *mitzvot*. However, the ability to make decisions requires knowledge; one cannot discard a ritual or ethic of which he or she has no knowledge or true understanding.

"Doing what is right and good" has been interpreted by Reform Judaism, as indicated by the above statement, as applying to ethical behavior. Rabbi W. Gunter Plaut, in his Torah commentary<sup>325</sup>, offers a traditional textual insight, which would agree with the idea that 'right' applies to the legality of an issue, while with 'good', applies to the morality, which often surpasses the strict definition of the law.<sup>326</sup> However, Nachmanides<sup>327</sup> understands right and good as the sole purpose of keeping God's commandments.<sup>328</sup> There is no implication that right and good apply only to the ethical statutes. The previous statement from the manual assumes that

<sup>325</sup> The Torah – A Modern Commentary, with commentaries by W. Gunther Plaut and Bernard J. Bamberger. (New York: UAHC Press, 1981).

<sup>326</sup> G. Plaut, 1368.

<sup>327</sup> Nachmanides, also known as the RaMBaM, was born in Gerona, Spain, in 1194. His greatest contribution to rabbinic literature was his commentary, *Torat Ha'adam*, which served as a major source for the *Tur* and *Shulkhan Arukh* in the areas of diseases and their cures, the legal responsibility of the physician, and all issues related to the saving of a human life, the burial of the dead, and the laws of mourning.

<sup>328</sup> The Soncino Chumash ed. The Rev. Dr. A. Cohen, (New York: The Soncino Press, Ltd., 1983), 1024.



the move towards higher ritual observance bears no relation to the Deuteronomy verse. Yet, "doing what is right" can imply a physical action, which can be expressed by a ritual or social action.

"Additionally, the synagogue itself and other Jewish institutions in which we are involved, must be models of the highest ethical standards."<sup>329</sup>

It should be self-evident that the synagogue must be a "model of the highest ethical standards." What might be added to this statement from the manual is a reason as to why ethical behavior should be demanded from the synagogue, and, by extension, all those associated with it. It cannot be pointed out enough that the synagogue is regarded as a model for what is proper Jewish behavior, and if it engages in behavior that is not in concert with the teachings of the Jewish faith, it is presented a poor and false example for others to follow. It would be helpful, however, if the manual continued with an explanation addressing why it is so imperative for the synagogue to be a "model of the highest ethical standards."

"Therefore, while the Ethics Committee will raise the issue of societal responsibility as one aspect of our examination of the synagogue as an ethical institution, it is the sphere of personal and individual conduct in daily life, and of institutional behavior as a reflection of that conduct, which will become the object of our concentrated concern."<sup>330</sup>

<sup>329</sup> Synagogue Ethics Manual, iii.

<sup>330</sup> Synagogue Ethics Manual, iii.

This is an important assertion made on the part of the Ethics Committee; the synagogue is an ethical institution. It sets up the expectation that the synagogue conducts its business according to an ethical and moral code.

### **INTRODUCTION<sup>331</sup>**

"It [the synagogue] offers Jewish ethical principles which might guide both temple leadership and membership in creating religious communities which are ever more reflective of Jewish values."<sup>332</sup>

The principles themselves, when properly outlined, *should*, not "might," guide both the temple leadership and membership. It is appropriate to make a stronger statement about how decisions are made in the synagogue if the movement truly espouses these beliefs.

### **THE CONTEXT AND THE CHALLENGE: ETHICS IN THE SYNAGOGUE AND OTHER INSTITUTIONS OF REFORM JUDAISM**

"These institutions need to be viewed as proper guides and models of ethical conduct."<sup>333</sup>

This is a fundamental sentiment. The institution can only serve as a role model of ethical conduct when it insists on behavior that is guided by the teachings of the Jewish heritage.

<sup>331</sup> Synagogue Ethics Manual, xi.

<sup>332</sup> Synagogue Ethics Manual, xi.

<sup>333</sup> Synagogue Ethics Manual, 1.

"Among all institutions of Jewish life, the synagogue especially can demonstrate the pursuit of ethical behavior through the decisions it makes, the policies it fosters and the activities in which it engages.... In the end, our ethical standards will be viewed in what we do as well as in what we say."<sup>334</sup>

It is important to note that unlike an earlier sentiment expressed in the Guidelines for Rabbinical-Congregational Relationships,<sup>335</sup> no distinction is drawn between significant decisions and seemingly insignificant decisions. Every action made by the synagogue has an ethical implication.

"We cannot presume to declare a single and absolute model for moral choice. We can, however, call attention to the need for conscious ethical inquiry and examination within our institutions. The study of traditional sources and texts is a significant part of this task. The process of *Halachah* and the decisions made by our forebears can provide guidance in our struggle with challenging ethical problems and issues."<sup>336</sup>

Unlike earlier manuals, this manual strives to draw ethical mandates out from the tradition and apply them to specific situations. One such example is an explanation of a particular rabbinic precept; "All Israel is responsible for one another." (B.T. Shevuot 39a), followed by an ethical dilemma based on this Talmudic citation. This example is one of the many included in this document that

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<sup>334</sup> Ibid. 1.

<sup>335</sup> See pp. 5-6.

<sup>336</sup> Synagogue Ethical Manual, 1.

provide lay leaders with possible applications of ethical behavior in a manner that will be of some use to them.

## 6. SYNAGOGUE ETHICS AND INTERPERSONAL RELATIONSHIPS

"*Mitzvot bein adam l'chavero*,"<sup>337</sup> commandments concerning the relationship between an individual and other persons, lie at the heart of Judaism.... The community must be aware that the way in which persons treat one another within its confines provides powerful messages, both to persons within as well as beyond the community, about the ideal way in which human life out to be conducted. It is therefore neither desirable nor possible for a Jewish institution to avoid its responsibility as a role model, both for itself as well as others, as to how ethical relations between individuals are to be fostered. As a result, a synagogue, or any other Jewish institution, must strive to act, "*lifnim mi'shurat hadin*," (T.B. Berachot 7a) beyond the letter of the law.<sup>338</sup>

The foundation for all behaviors in which a synagogue might engage stem from the tradition, and, in this document, they are clearly stated and outlined. In this manner, it is possible for a synagogue board to learn how to apply Jewish principles to its decision-making. Furthermore, it establishes the expectation that the synagogue will act in a way that will bring honor to the Jewish people.

<sup>337</sup> Talmud, *Shabbat* 127a.

<sup>338</sup> *Synagogue Ethics Manual*, 2.

## 7. FINANCIAL ETHICS IN A SYNAGOGUE

"The synagogue is primarily a house of prayer, of study, and of communal gathering. But there are aspects of the life of the synagogue that can best be understood in terms of economic and financial categories.... Indeed, because the synagogue is a teaching institution and strives to be a model and an exemplar in all that it does, it is all the more imperative that it conduct its business life in keeping with the highest ethical principles."<sup>339</sup>

This statement reflects an understanding of the representative role that the synagogue plays in the larger Jewish community. Additionally, a clear explanation is presented of how the synagogue must function as a religious institution while fulfilling its fiscal responsibilities. Once again, however, no distinction is made between the three-fold definition of the synagogue in pre-Modern times and today.<sup>340</sup>

## 8. Collection of Dues

"A synagogue has a responsibility to collect the funds necessary to meet its expenses and obligations. At the same time, it has a duty to provide its services to the community – even to members of the community who cannot afford to pay the level of dues prescribed by the congregation."<sup>341</sup>

The idea that services should be provided to all members of the larger community hearkens back to earlier times, when all members of the קהל were taken

<sup>339</sup> Synagogue Ethics Manual, 4.

<sup>340</sup> See pp. 4-5.

<sup>341</sup> Synagogue Ethics Manual, 4.



care of, in certain respects. While this would be an appropriate place to insert traditional sources, which mention communal obligations<sup>342</sup>, the tenor of this statement is certainly an improvement over earlier manuals, which focus more on dollars and cents.

## 9. Responsibility to Employees

"The congregation should be expected to conduct itself toward its employees with the same concern Jewish tradition demands of all employers – as exemplified in the Biblical injunction that "the wages of a hired servant should not remain with you until the morning..." (Lev. 9:13).... Jewish tradition calls on us to treat employees equitably and fairly."<sup>343</sup>

Our tradition presents a clear view of the proper way to treat employees, and this statement reflects that clarity. There can be no question, in light of the Levitical verse, that employees must be paid in a timely fashion and must be regarded with fairness. This same requirement, regarding the treatment of employees, should be extended to any and all businesses with which the synagogue leadership deals. If a value is essential to the synagogue, then it should apply both directly and indirectly to all its business transactions. Therefore, if a certain vendor does not treat his employees fairly, the synagogue would be amiss in conducting business with that individual. Ethical consistency is imperative in order for the synagogue to establish itself as "a model of the highest ethical standards."<sup>344</sup>

<sup>342</sup> Obligations such as the education of the children of a community. See pp. 24.

<sup>343</sup> Synagogue Ethics Manual, 5.

<sup>344</sup> Synagogue Ethics Manual, iii.

Above all, most of the documents explored in this chapter lack a consistent pattern of Jewish values, the Guidelines for Rabbinical-Congregational Relationships and Guidelines for Administrator-Congregational Relationships highlighting virtually no consistent pattern of Jewish values. Those values mentioned seemed to have been placed within the manuals with no real thought as to the appropriateness of their meaning or placement. We have before us an eclectic collection of statements, patched together to form a haphazard manual. The misuse of certain traditional concepts, as well as the timid language, present a weak statement regarding which ethics and values are of importance to the Reform Movement. Only the Synagogue Ethics Manual, the most recent of the documents, reflects the changes which have occurred within the Reform movement; most especially the move towards action based on the understanding traditional Jewish values. Clearly, the lack of focus and direction present in the earlier manuals precipitated the evolution of a document based on the ethics and mandates of our tradition.

There is a big difference in the approach each document takes towards the Jewish texts. It is important to note that makeup of the individuals involved in the authorship of each document is quite different. The various backgrounds clearly has affected and determined the focus of each manual. For example, a committee exclusively made up of rabbis, with the notable exception being the chairperson, prepared the 1997 document. The chairperson, while not a rabbi herself, has extensive experience and knowledge of Jewish traditional materials, having been

involved with the UAHC Committee on Social Action and continuing her own private education for the past several years.

While there is much good material in some manuals, especially the Synagogue Ethics Manual, there is no specific principle that informs synagogue activity as such. The Jewish material selected as the basis for certain ideals in the documents are a random grab bag of pithy ethical statements. It is not possible to foresee the psychology behind it without an overriding template. All of these manuals, which focus on the institution of the modern synagogue as it is found, try to superimpose certain Jewish ideals and values on it. I am turning this process around and projecting a new model.

This new model is the principal/agent relationship, which rises superior to the model of partnership or employer/employee because, as we have seen, the terms and values have a high sounding ring to them, but appear more decorative than substantive. The principal/agent model gives a substantive pattern, rooted in tradition, understandable to modern mind, and that possesses a degree of accuracy.

A member of a congregation probably does not see him or herself as in a covenantal relationship within that congregation. Nor does the person consider him or herself a partner. However, the congregant would have no difficulty understanding his or her role as ultimately a Principal to the Agency role of the lay and professional leadership of the congregation.

The concept of principal/agent shifts the focus of the material on synagogue management, professional relationships, and so forth. The membership is not viewed as a passive set of "consumers" but as the ultimately responsible body; this

body has every right to have its wishes met if at all possible. The concurrent duty is to practice the religion and not allow the institution to become a surrogate for the individual. The agent cannot perform commandments for the principal; that is an individual responsibility. The agent, however, can help, assist, and facilitate the obligations of the individual.

Attempt to connect problems that I present my own case and structure

1. The majority of the material produced by the Reform movement has been from people who are devoted to synagogue management, but clearly lack the knowledge of the legal tradition. For all their good will, they have limited knowledge, and that limits the possibility of further insight.
2. The manuals continue to focus on the three-fold concept of the synagogue. The old one has been adopted uncritically, even when it has been shown to be outdated. This concept speaks to function, and does not address the reality that the structure and functions of the modern synagogue differ from the pre-modern synagogue.
3. Most of the focus of the manuals is on the details of functions; e.g., who does what and how the functionaries treat one another.
4. Finally, and most importantly, the role of the membership is conspicuously absent. The synagogue cannot be examined and discussed without mentioning the membership as a whole. The membership is critical to both the function and structure of the modern synagogue.

The theoretical application of principal/agent will attempt to rectify these four issues.

It is from the traditional law and not the institution itself. Rather than look at the institution as it is, the following chapter will look at the law and see how it informs the way in which the institution operates and gives it some sort of shape within the traditional law as an ideal to which it can live up. The principal/agent theory will be presented as a clear, simple, and understandable principle for the total organizational, fiscal, and administrative management of a congregation.



## Chapter Five – The Traditional View of Agency and the Modern Synagogue

Agency, or שליחות, is the appointment of an agent, or שליח, to perform an act on behalf of the principal, or מושלח. The Talmud describes the original use of agents in the delivery of a divorce, the declaration of heave-offerings, and the paschal offering. In fact, the basic concept of agency can be derived from Scriptural passages, which have been applied by the Sages.

"R. Joshua b. Korcha taught the idea that: a person's agent like the person himself, as it is written, "all of the community of the assembly of Israel shall slaughter it," (Exodus 12:6) and does the whole assembly really slaughter? It is surely only one person that slaughters."<sup>345</sup> This verse cannot be literally interpreted because it would be physically impossible for the entire community to slaughter one animal. The efficacy of the sacrifice, with respect to the entire people, depends on the ability of the priest to act as the agent for all the people. Therefore, it may be inferred that the act of one person can be attributed to another and regards as his act. The same may be true even of an entire assembly.<sup>346</sup> It therefore follows that a man's agent is like himself.<sup>347</sup>

The acts carried out by the agent are as effective as if the principal himself had performed them. This is based on the tannaitic maxim, which can be found in *Kiddushin* 41b-42a, *Nazir* 12b, and *Nedarim* 72b, that "a man's agent it as himself."

<sup>345</sup> Eisenstein, *Otzar Dinim U'Minhagim*, (1917), 418.

<sup>346</sup> This method of logical interpretation is relative to *rerum natura* in Roman Law. See Elon, *Principles of Jewish Law*, 67.

<sup>347</sup> Mekhilta, Pisha 5; Kiddushin 41b.

But from here, we learn that the agent of a principal is like the principal himself. R. Gidal, in the name of Rav, said from this Biblical verse "And one prince for each tribe" (Numbers 34:18) That one person becomes the representative to the entire tribe through transmission of authority [to that person].<sup>348</sup>

In other words, the principal is bound by the acts of his appointed agent as if he himself had acted.

The large overlap of civil and religious law in Jewish law allows for the principle of agency to be applied in both areas. Thus, an agent can perform all fiscal transactions, sacrifices, separation of tithes, betrothal, divorce, and other actions.

The laws pertaining to agency apply in similar ways to הקדש, תרומה, and paschal sacrifices, as they apply to marriage, divorce, and debt collection. הקדש, or "consecrated property," is any property that an individual designates for use in the Temple or for sacrificial purposes. Ownership of the property designated for ritual or sacrificial use in the Temple is transferred from the individual upon the utterance of a pledge. The תרומה offering is taken from the first fruit of one's corn, wine, and oil,<sup>349</sup> and is to be given to a priest. It is considered holy, and can only be eaten by a priest and his household while they are in a state of ritual purity. The Sages extended this to include the first fruits of all produce. Other tithes cannot be set aside before the Terumah offering is dedicated. The paschal offering, or פסח, is an obligation<sup>350</sup> upon all Jews to bring a sacrifice to the Temple on the afternoon of the 14<sup>th</sup> of Nissan. The sacrifice, which must be a male goat or lamb under the age of one year, will then be eaten after sundown that evening. The תרומה offering is considered a

<sup>348</sup> Kiddushin 41b-42a.

<sup>349</sup> Deuteronomy 18:4.

<sup>350</sup> Exodus 12:1-28; Deuteronomy 16:2-8.

sacrifice of lesser sanctity. It can be brought by groups of individuals, acting in partnership. Only those individuals who, before making the sacrifice, have previously agreed to eat it as a group can eat it.

The power to bind the principal to an agreement allows the agent a certain freedom in conducting transactions without having to check first with the principal. If the mission for which the agent was engaged must be subject to a court matter of a later suit, both Beit Shammai and Beit Hillel concur that, the agent is disqualified from serving as a witness in the specific case.<sup>351</sup> The agent is not regarded as the principal, in the full sense of the idea "of himself",<sup>352</sup> since the agent would be able to testify with regard to the circumstances where the principal could not qualify as a witness. However, the amoraim in Kiddushin refer to a tannaitic tradition that speaks to the opposite effect, and the halakhah was decided based on the amoraic citation.<sup>353</sup>

### Limitations of the Laws of Agency

An agent can substitute for the principal in virtually all legal matters, but an agency cannot be formed for the purpose of the agent's fulfilling certain mitzvot<sup>354</sup> on behalf of the principal.<sup>355</sup> Some mitzvot require a specific skill, e.g.; leading prayers or performing a ritual circumcision, and in those cases, it is better to appoint an

<sup>351</sup> Tosefta, Kiddushin 4:1.

<sup>352</sup> See note 345.

<sup>353</sup> Kiddushin 43a.

<sup>354</sup> Such as the laying on of tefillin or sitting in a sukkah.

<sup>355</sup> Tosafot Rid, (explanations to the Talmud and decisions made by Isaiah b. Mali di Trani the Elder) to Kiddushin 42b.

agent<sup>356</sup> to fulfill the obligation. But in such cases where there is no necessity for a particular skill or it is a skill that people commonly possess, an agent cannot be appointed to do the mitzvah.

However, the principal cannot appoint an agent for the purpose of engaging in a transgression, as is expressed by the Talmudic statement that "there is no agent for a forbidden action."<sup>357</sup> This statement is explained with the following hypothetical question<sup>358</sup>: "If the Master's [God's] word conflict with the pupil's [the principal's] words, whose words shall we [the agent] obey?" Clearly, the human element is on a lesser level than that of the Divine. This type of agency is forbidden, and therefore any illegal acts carried out by the agent are his responsibility, and cannot be transferred to the principal. If the principal appoints the agent to commit a crime, the only criminal responsibility is of the agent who carried out the crime.<sup>359</sup> The presumption is that every individual should know the difference between right and wrong, and should an individual engage an agent for the purpose of committing that transgression, the agent should know better than to commit the transgression. However, if a principal were to instruct his agent, "Go forth and kill that soul!"<sup>360</sup>, the principal himself would be liable, but the halakhah follows the dictum that "in all matters a person's agent is 'as himself' except with regard to wrongdoing."<sup>361</sup>

One exception to the rule is that the principal is held accountable when the agent does not have the legal capacity to form criminal intent because the agent is a

<sup>356</sup> In these examples, the agent would be the *shali'ach tzibor* or the *mohel*.

<sup>357</sup> Kiddushin 42b.

<sup>358</sup> Kiddushin 42b.

<sup>359</sup> Kiddushin 42b-43a; Baba Kama 41a, 79a; Baba Metzia 10b, et al. See Elon, 470.

<sup>360</sup> Kiddushin 43a.

<sup>361</sup> Isserles to Shulkhan Arukh, Choshen Mishpat 182:1.

minor, imbecile, or a deaf-mute.<sup>362</sup> Further, if the agent were an innocent party to the crime because he was unaware of the crime that he committed, the principal would become liable.<sup>363</sup>

### **Some Procedures of the Law of Agency**

An agency must be entered into freely by both parties; otherwise, it is not valid. The relationship between the principal and the agent does not require a written document to make it formal and provide evidence of the relationship.<sup>364</sup> A verbal agreement between both individuals is all that is necessary to make the agency legally binding. Verbal agreement was acceptable in a variety of transactions, such as partnership. Although partnership was originally formed through an act of acquisition between the individuals<sup>365</sup>, it was later ruled that, "Where it is local custom to become a partner even by speech alone – there will be a partnership; such is the custom in this country too...and so we decide in every case, for custom is an important matter in the field of the civil law." (Resp. Radbaz<sup>366</sup> no. 380.) However, it became customary in some places to establish agency through a formal קנין קנין, or acquisition, is a formal procedure that renders an arrangement legally binding. Once קנין has occurred, ownership of an object is officially transferred. There are various modes of acquisition, which depend on the nature of the object in question. קנין can also apply to the ratification of an action that is not

<sup>362</sup> *Baba Metzieh* 10b; *Rema Hoshen Mishpat* 182:1, 348:8. See *Elon*, 470.

<sup>363</sup> *Tosefot* to *Kiddushin* 42b s.v. *amai*; *Tosafot* to *Baba Kama* 79a s.v. *natnu*; *Mordechai*, *Baba Metzieh* 1,237 and cf. *Redak*, *II Samuel* 12:9. See *Elon*, 470.

<sup>364</sup> See *Maimonides*, *Mekhirah*, 5:12-13. *Menachem Elon*, *The Principles of Jewish Law*, 169.

<sup>365</sup> *Ketubot* 10:4 and *Yad*, *Sheluhin* 4:1)



directly related to purchase, as is the case with regards to agency in which קנין binds the agent to the responsibility of performing the commission for which he was selected by his principal.<sup>367</sup> The custom to formalize agency through קנין was due, in part, to the desire of both parties, who wanted to establish the seriousness of the newly formed relationship. Also, since not everyone was able to write and read, the acceptance of a verbal agreement as legally binding allowed all eligible members of society to engage in agency. Even in the agreement between the agent and the principal, specific details are not required; the principal may grant the agent full discretion as to how best perform the duty. This is a characteristic of people who are in business. Businesspeople tend to avoid unnecessary formality in details. They prefer to get straight to the bottom line. Many informal methods used to make deals have developed, as a result of businessmen's desire to "take care of business."

The agent is expected to carry out his assignment to the best of his ability; if he is unable to do so, the principal may not have legal recourse against the agent. The agent is appointed "to uphold and not to depart from the mandate,"<sup>368</sup> and all of his actions might be rendered null and void if he is unable to carry out his assignment. However, a nullification can be avoided if a stipulation for such a circumstance is expressed at the outset of the agency.<sup>369</sup> There are always certain legitimate events or mishaps that might prevent the agent from carrying out the

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<sup>366</sup> RaDBAZ - Acronym of R. David b. Solomon ibn Abi Zimra, a 16<sup>th</sup> century Spanish author of over 3000 Responsa, and who served as Chief Rabbi in Egypt for over 40 years.

<sup>367</sup> For a more complete definition of *kinyan*, see Elon, "Acquisition," 206-210.

<sup>368</sup> Maimonides, Yad, Sheluhin 1:3, Shulkhan Arukh, Choshen Mishpat 182:2.

<sup>369</sup> Ibid.

mandate given to him by the principal. By indicating such unforeseeable inevitabilities from the outset, both the principal and agent are protected from an automatic nullification of the agency. It therefore became common practice for such a stipulation to be included in written documents regarding formal acquisition.<sup>370</sup>

The agent, in carrying out his commission, must act in the best interests of the principal who engaged him. If the agent in some way acts to injure the principal, the principal may respond, "I appointed you for my advantage and not for my disadvantage."<sup>371</sup> The principal may even go so far as to invalidate whatever action was taken on his behalf, by his appointed agent. This would not be the case, however, if the agency carried with it a specific condition that would bind the principal to whatever the agent might do.<sup>372</sup>

The rules of *איגרא* (lit. "overreaching"), which is the act of wronging an individual either by buying an article from him for less than its real value or selling him something for more than its real value,<sup>373</sup> do not generally apply in an agency relationship. In such a case, the sale would be void since the principal can say, "I delegated you for my good and not for my detriment."<sup>374</sup> If the purchaser is the wronged individual, some sages say that the transaction is void, as it would be if the case were reversed. However, it is generally accepted that in this case the law applies as if the agent was acting independently, and the purchaser waived a

<sup>370</sup> See Hai Gaon, *Sefer ha-Shetarot*, 65-67. Menachem Elon, *The Principles of Jewish Law*, 169.

<sup>371</sup> *Kiddushin* 42b; *Baba Batra* 169b.

<sup>372</sup> See Maimonides, *Hilkhot Sheluhin V'shutafin* 3:9.

<sup>373</sup> Arnold Cohen, *An Introduction to Jewish Civil Law*, (Jerusalem and New York: Feldheim Publishers, 1991), 218.

<sup>374</sup> *Kiddushin* 42b; *Yad Mekhirah* 13:9. See Menachem Elon, *The Principles of Jewish Law*, 218.

discrepancy of less than one-sixth.<sup>375</sup> If the purchaser is unaware that the individual is acting as an agent, the sale is valid as long as overreaching did not rise to the stipulated measure.<sup>376</sup> The principal can void or confirm a transaction, but the, e.g., purchaser cannot invalidate it.<sup>377</sup>

The principal and the agent must meet certain specific requirements in Jewish Law before an agency can be established:<sup>378</sup>

- (1) Both parties must be adherents of Judaism. This requirements is derived from the law about the setting apart of the heave-offering (*Num.* 18:28), in which case the principle of agency was first established. In this case, however, the adherence to Judaism does not mean that one must belong to the Jewish people, but to the Jewish "Covenant" (*bene berith*). In this sense, therefore, a Canaanite slave is regarded as belonging to Judaism.
- (2) The two parties must be competent to act in legal and in commercial matters. This excludes, as a matter of principle, minors, insane people, and deaf-mutes.
- (3) Both parties must be competent to perform the proposed action. For instance, Canaanite slaves, under Jewish law, can not enter into a marriage which is regarded as legally valid (*ius connub. i*). Hence they are not competent to act as agents for a marriage or a divorce.
- (4) The principal must be legally competent to proceed with the commission that he has given his agent, if necessary. For this reason, to cite a single instance, the priests are not to be regarded as the agents of the people, since the latter may not offer up the sacrifices; instead, their status is that of representatives of God. So, too, the principal can not appoint an agent to do a thing which he could not do himself at the time of the appointment of the agent, even though he might have been able to do it afterwards (*Nazir* 12b).

<sup>375</sup> Rosh, loc.cit; Shulkhan Arukh, Even HaEzer 104:6. See Menachem Elon, The Principles of Jewish Law, 218.

<sup>376</sup> Yad, Sheluhin, 2:4. See Menachem Elon, The Principles of Jewish Law, 218. In the majority of cases, there are three levels of prohibited profit: less than one-sixth discrepancy between the asking price and the market price; exactly one-sixth discrepancy; and, more than one-sixth discrepancy. See Baba Metzia 50b.

<sup>377</sup> *Netivot ha-Mishpat*, *Mishpat ha-Urim* 185, n.8. See Menachem Elon, The Principles of Jewish Law, 218.

<sup>378</sup> Israel H. Levinthal, "Agency," The Universal Jewish Encyclopedia, 1948 ed.

An agent has the authority to appoint a subagent to perform an act, but only if the act is ministerial in nature and is the execution of a specific instruction. A subagent cannot be appointed if the act requires an exercise of judgement, or if the principal specifies that the act must be carried out by the agent himself. However, if the act requires judgement, discretion, or a particular skill, the agent may obtain permission from the principal to delegate the task to a subagent. When permission is given by the principal to appoint a subagent, the subagent is considered in the same legal status as the original agent, and may even appoint a second subagent without obtaining permission from the principal.<sup>379</sup>

### Revocation of Agency

An agency is dissolved upon the death of the agent, the death of the principal, or if the principal discontinues the appointment of his agent, which can be effected at any time.<sup>380</sup> The death of a principal nullifies agency. (Resp. RaShDaM<sup>381</sup> No. 124). The revocation of the mandate of an agent can be done orally<sup>382</sup>, although when a formal קנין accompanies the agency, some have argued that verbal revocation is not permissible. The general opinion, however, allows for it.

<sup>379</sup> Even HaEzer 141:39.

<sup>380</sup> Kiddushin 59b. This is the opinion of Rabbi Johanan, which is regarded as authoritative.

<sup>381</sup> RaShDaM – acronym of R. Samuel of Medina, considered a legal authority in 17<sup>th</sup> century Ottoman Empire.

<sup>382</sup> Jerusalem Talmud, *Terumah* 3:4, 42a and *Gittin* 4:1, 45c; See also *Kiddushin* 59a.

### **Application of the Principal/Agent Model in the Modern Synagogue**

A number of texts that relate to the laws of agency will be translated, and will indicate how the principal/agent model can be carried out in the modern synagogue. This thesis will not propose a one-for-one application of שליחות, however the principle is there. In order to comprehend fully how the principal/agent model will be applied to the synagogue setting, each party involved in the modern synagogue needs to be properly identified in the roles of principal, agent, and subagent.

- (a) Principal – When applying the principal/agent template to the modern synagogue, the congregational membership is the principal in this relationship. The textual material allows for a group of individuals to act a principal. Therefore, each individual member is a principal, as well as the collective membership. We shall see in the text that e.g. a partnership or group of businessmen appointed one agent to act on their behalf, while it may be more complicated, there is nothing to preclude the agent from acting for a number of principals, if these principals are all doing the same thing. In other words, it would not be unlawful to have more than one principal. This is a matter of theoretical application. A group of people, all of whom are interested in the development of a congregation, appoint a group that acts on their behalf. It is in the same ways that, e.g.; ten wine merchants who are all interested in getting the best deal on vintages could send one agent to represent all of them.



(b) Agent – The lay board, acting as a corporate entity, serves as the agent.

They are chosen, in this case elected, by the principal to carry out certain responsibilities for which they possess special knowledge or ability. The lay leadership, in making a decision, is acting as a single entity. When a congregation is beginning, or even once it is already established, the actual business of the congregation is conducted by the board, which is ever and always responsible to the laity. According to the laws of agency, the agent may appoint a subagent or secure services of others to help the board in the enterprise.

(c) Subagent – There are a number of individuals who fill roles of subagent in the modern synagogue. Once the principal authorizes the delegation by the agent of certain responsibilities to a subagent, there is no limit to the number of subagents appointed by the agent. Furthermore, each subagent is empowered to appoint subagents on their behalf without going back to the principal each time for authorization.<sup>383</sup>

If one gives an authorization and then wished to declare it void and to authorize another agent, he may do so. The person authorized cannot authorize another to act in his place because the first party can say, "I do not wish my bailment to be in his hand." However, if he stipulates that the authorized agent may authorize a second, and the second a third, the agent can write an authorization to a second, and the second to a third, all according to the stipulation.

The agent is called upon by the principal because he or she has certain skills or abilities, which is to say that a person of certain accomplishments and training

<sup>383</sup> Maimonides, *Mishneh Torah, Hilkhos Sheluhin*, 3:2.

inherently has the capacity to perform certain kinds of functions. The congregational board, as the agent for the congregation, engages this rabbi and does not extend authority but authorization.

Is the rabbi considered to be speaking on behalf of the congregation? When an agent finds a new business opportunity for the principal or something new that the principal should be made aware of, it is the responsibility of the agent to get back to the principal with the new possibility. The rabbi, acting as the subagent, would be remiss in duties of the subagent if he or she speak about certain issues that the principal should be informed. The freedom, therefore, is of the rabbi as individual and not as representing the congregation.

This sets up a classic bind for the rabbi. It is the duty of the rabbi, as the subagent, when there is conflict, either to convince the principal of a certain course of action or which point-of-view is the proper one for the principal to follow.

The rabbi has a responsibility, as the agent to the lay board, to bring to its attention any information, of which it might be unaware, in order for the board to make the best ethical and moral decision possible.

The professional staff is another example of subagents, who are brought in because they possess special expertise and are trained to discharge certain duties. The lay leadership, in another example, might appoint a subagent to carry out a program requested by the membership. Let us say that the membership asks for a program with Jewish content. The lay leadership decides that it would like to plan a social action program. Once the agent has authorization to appoint a subagent, they have the freedom to delegate the matter to whomever they choose. They appoint

someone to serve as social action chair, and that individual becomes a subagent. Even though the principal did not specifically request a social action program, the agent has fulfilled the principal's desire for a program with Jewish content.

The *Arba'ah Turim*<sup>384</sup> will be used as the basic text since it was written in language similar to that used by the RaMBaM<sup>385</sup>. It is rarely used today as a basic legal text, since it was superseded by the compilation of the *Shulkhan Arukh*. While it tends to be somewhat discursive, in some ways and in some contexts, it stays on the point in this area, better than the *Shulkhan Arukh*, which has so many glosses that the basic point tends to become blurred. Finally, in such cases where there is some point that remains vague, both Josef Karo<sup>386</sup> and Moses Isserles<sup>387</sup> are available for consultation, as the *Beit Yosef*<sup>388</sup> and *Darkhei Moshe*<sup>389</sup> are included alongside Jacob B. Asher's text.

182:4      The agent of a person is like the person himself in every matter except in the performing of a transgression because we hold that there cannot be an agent in order to perform a transgression.<sup>390</sup> [i.e. the responsibility for an illegal act cannot

<sup>384</sup> The *Arba'ah Turim* appeared around 1340, and was written by R. Jacob b. Asher, son of the Rosh. It became the primary restatement of Jewish Law for over 200 years.

<sup>385</sup> RaMBaM – Acronym for R. Moses b. Maimon, who lived in Spain and North Africa from 1135-1204. Also known as Maimonides, he is considered one of the greatest Talmudic minds, as well as being a philosopher and physician.

<sup>386</sup> R. Josef Karo, born in Toledo in 1488, continues to be considered an authority on Jewish Law. He served as the head of the Beit Din in Safed, where he died in 1575.

<sup>387</sup> R. Moses b. Israel Isserles, also known as the Rema, lived from 1550-1572, in his native Cracow. In addition to the *Darkhei Moshe*, his other major contribution to Jewish Law was the *Mappah*.

Additionally, he composed numerous authoritative Responsa.  
<sup>388</sup> *Beit Yosef*, authored by R. Joseph Karo, is an extensive 16<sup>th</sup> century commentary, source analysis, and counterpoint on Asher's work. Karo later extracted a digest from this work, which became known as the *Shulkhan Arukh*.

<sup>389</sup> R. Moses Isserles produced a supplemental critique of the *Beit Yosef*, which he entitled, *Darkhei Moshe*.

<sup>390</sup> *Kiddushin* 42b; *Baba Batra* 10b.

be shifted to the principal.] The RaMBaM z"l wrote: the one who says to his agent, "Go out and sell for me immovable property or movables or buy for me," behold his agent can sell or buy or act, and all that he has done is binding.<sup>391</sup>

- Within the agency model, authority is extended by the principal, which in this case is the membership-at-large, to the board, acting as the agent. The synagogue board carries out its commission as the agent by acting on behalf of the membership in all areas of synagogue management, programming, and functions. In order to serve the needs of the principal, the board attempts to make decision that are in the best interests of the synagogue membership.

182:5 And the one who appoints an agent does not need formal acquisition, or any witnesses thereto [in order to appoint an agent]. Rather speaking in a general way between him and his associate [is sufficient]; and there do not need to be witnesses except in order to clarify the matter if [there is] a denial from one of them.<sup>392</sup>

A later responsum by the RaShDaM<sup>393</sup> indicates that: an agent with a letter of commission of agency is like a verbal commission, in that it does not require formal acquisition.<sup>394</sup>

<sup>391</sup> Shulkhan Arukh, *Hoshen Mishpat* 182:1; Maimonides, *Mishneh Torah*, *Hilkhot Sheluhin*, 1:1.

<sup>392</sup> Shulkhan Arukh, *Hoshen Mishpat* 182:1; Maimonides, *Mishneh Torah*, *Hilkhot Sheluhin*, 1:1.

<sup>393</sup> See note 381.

<sup>394</sup> Resp. RaShDaM, 4:146a.

- Synagogue membership is generally formalized with the submission of an application and payment of dues. The application often indicates the amount of yearly dues agreed upon by the prospective member and the administrator.<sup>395</sup> While formal acquisition (קניין) is not required in order for the agency to receive legal recognition, in the case of synagogue membership, a document is necessary. Since according to the RaShDam a letter of commission has the same standing as a verbal commission, the membership application acts can be accepted as proof of the relationship between the individual and the synagogue. The typical membership application, however, tends to outline the financial responsibilities of the member, and does not speak to the responsibilities of the synagogue. Within the agency template, it is the principal who engages the agent, and therefore, the responsibilities of the synagogue should be outlined in the document as well. It would be reasonable for the principal to see in writing to which services they will be entitled by virtue of dues payment. The board, by acting as the representatives of the membership-at-large, is entrusted with the responsibilities outlined in the document of agreement between the individual and the synagogue to the member, nor the religious duties that membership implies.

182:6 When the agent disregards the instructions of his principal, it is as if he has not done anything [i.e. it is as if no action has taken place]. The RaMBaM z"l

<sup>395</sup> Depending on the particular infrastructure of the synagogue, membership applications might be handled by someone other than the administrator. Furthermore, not all synagogues employ an



argued that this applies precisely when he [the agent] makes it known that he is the agent of so-and-so [that the agent's action is null]. Therefore in spite [of the fact that] he took possession or granted [possession], if it turns out that he disregarded the instructions of his principal, the sale is cancelled and restored [to the original owner]. But if he does not inform him [the seller] that he is the agent of so-and-so, the merchandise is acquired and the dispute would be between him and his principal.<sup>396</sup>

- The Synagogue Board is empowered and expected to carry out certain functions on behalf of the membership. If the Board disregards the expressed will of the congregation from a congregational meeting or a grass roots expression, then the Board has performed a nullity. While in fact the Board under civil law may have bound the congregation to fulfill certain contracts, they have acted contrary to the requirements of Jewish law and they should be made aware that they are acting improperly when a clear mandate by a congregation is rejected out-of-hand. The Board may try to sell their case, but if the answer is no and they proceed anyway, they have behaved in a manner that goes against the halakhah.

183:2 [With regard to] an agent that acquired for himself what he was appointed to acquire for the principal, the act is a fact, but behold he is called a swindler. But if the seller does not agree to the principal, he [the agent] can buy it

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administrator.

<sup>396</sup> Shulkhan Arukh, *Hoshen Mishpat* 182:2; Maimonides, *Yad Sheluhin*, 1:3, and *Mishneh Torah*, *Hilkhot Sheluhin*, 2:4.

for himself. In any event, he [the agent] needs to inform [the principal] about what is going on from the outset. And if he is scared perhaps in the midst of this when he is taking the time to he inform him another will snap it up, he does not need to inform him [the principal].

- Very often, when something needs to be accomplished within the synagogue, the board will try to find the most economical approach to the issue. For example, the building needs a new roof, and one of the board members happens to be a building contractor. The board might ask him to take care of the refurbishment, or he himself might offer. According to this paragraph, it is not permissible for the agent to acquire for himself that which he was chosen to do. As the agent to the synagogue, the board, as a whole, must repair the roof. However, allowing an agent to be hired for the job might be considered a conflict of interest under halakhah. It would not be acceptable in Jewish Law for members of the board to offer goods and services.

183:6      One who gives money to him to acquire for him wheat whether for food or as merchandise, and he buys barley or the reverse [he buys barley instead of wheat], if it is a loss, it is a loss for the agent. And if it increases [in price], the profit is for the principal. [If he erred and buys at a bad price even a small difference the purchase is void whether immovable or movable property because he said to him, "I

appointed you for my benefit and not for my detriment." <sup>397</sup> Therefore, if the stipulations are with him that he did it whether it was a benefit or a deficit. Even if he sold something to him that was worth a maneh for a dinar, or bought something worth a dinar for a maneh, it is not permissible to return to him and the principal is obligated to give according to the stipulation. <sup>398,399</sup>

The agent who has altered his commission and thereby not performed the wishes of his principal is at a legal disadvantage. If it is a loss, it is a loss for him, and if it is a profit, it is profit to his principal. (Baba Kama 102b) Because the principal says "I dispatched you for my benefit and not for my detriment."

- The synagogue board has, at its discretion, the annual dues collected from the membership. Their purpose is to use the funds in ways that will benefit the synagogue. This paragraph reinforces the precept that even though the agent is acting on behalf of the principal; they must always be cognizant that the money is not theirs. It has be entrusted in their care, with the understanding that their decisions should benefit those whom they represent, and not act irresponsibly, unless there is a disclaimer that will allow the agent (the Board) some discretion for some bad deals in good faith.

184:1 [If] three [individuals] appointed an agent to accomplish one [matter] and each one gives to money, that he should acquire [something] for them; if all [of

<sup>397</sup> Maimonides, *Mishneh Torah, Hilkhoh Sheluhin* 1:1.

<sup>398</sup> Maimonides, *Mishneh Torah, Hilkhoh Sheluhin* 1:2.

<sup>399</sup> Shulchan Arukh, *Hoshen Mishpat*, 182:3.

them] give to him [the agent] a [separate] bag of his money, for whomever he acquires with his money, it is his. [If three that give money to one to acquire for them a purchase, if the money was mixed and acquire with some of it, even though that was the intention of the agent that this that he acquired for a particular one of them, behold the purchase is all of theirs and they divide it according to their money. (Gloss deleted). The money that was from each one of them was mingled and sealed, although if that was the intention of this agent who bought did the transaction, it belongs only to the one whose separate funds were used.]<sup>400</sup>

- This is the textual basis that allows for the appointment of one agent as representative for more than one principal, which is of particular interest in the application of agency to synagogue management. The board, as a cohesive, unified agent, acts on behalf of each individual synagogue member, or principal.
- The text also presents the idea that the money put in by each principal is joined together for the common purchase. With synagogue membership, each member unit<sup>401</sup> pays annual dues. The synagogue board is responsible for determining how best to use the revenue, in order to maintain the physical building as well as fund programming, worship services, and other activities. All members received equal benefits for their dues; regardless of how much money they pay annually.

<sup>400</sup> Shulkhan Arukh, *Hoshen Mishpat*, 184:1.

<sup>401</sup> The member unit refers to the individual member or member family.

185:1        The RaMBaM z"l wrote: a broker [subagent] is the same [or, has the same status] as an agent except that he receives payment for his commission. Therefore if he alters the information [or, instructions] of his principal, he must pay that which he has lost, how does this work out in the case that he gives to him the article to sell and says to him, "do not sell this for less than 100." [If, for example, Reuben gave an object to Simeon the broker and told him: "Sell this for me, but do not sell it for less than one hundred," and he went and sold it for fifty, he make up the fifty from his own. If, however, he sold it for two hundred, it all belongs to Reuben. And so it is in all similar cases.

- - The agent is unpaid from his agency, and therefore he is like an unpaid caretaker of the property. The subagent is paid by the agent, but the one who appoints the agent without express condition is obligated to pay him for his trouble. (RaShDaM<sup>402</sup> Sefer 114)

- The rabbi and other members of the professional staff act as brokers, or subagents, in the agency model. These individuals all receive compensation for their work, and are responsible ultimately to the principal.
- Board members are unpaid representative of the synagogue membership, and therefore, are not fiscally compensated for their efforts. However, if a board member were to incur an expense while carrying out synagogue business, the responsum above clearly states that he must be reimbursed. There should not be any expectation that a board member need to pay for expenses out-of-pocket.

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<sup>402</sup> See note 381.



185:7 And any middleman [subagent] who loses the article that has been entrusted to him or if the article were stolen or destroyed while in his possession, he is obligated to pay for it because he is a paid trustee, and the Ravad z"l wrote: and if when this he entrusted it to him and did not say anything. But if he said to him, "sell for me this article for as much as you may find and behold it is found [a buyer] and that one would renege, and he says, "I do not want that money."

- The need for a synagogue to acquire insurance is clearly indicated in this paragraph. There will always be unforeseen circumstances that cause a financial loss. Insurance will ensure that individuals are protected from incurring such a loss.

187:1 The RaMBaM z"l wrote: any accident that has befallen an agent and the consequence of the accident caused a loss, he would swear an oath concerning his claim, and he is exempt. And if the loss [occurred] in a place where it is possible to bring witnesses or circumstances are such that it is a public matter because he could find evidence, he must bring forth evidence and if not, he is not believed and he must pay.<sup>403</sup> As the case of one that gave zuzim to another to purchase 400 vessels of wine. And he said to him, "I acquired them for you and it soured," since an event like this is taken to be public, had 400 vessels of wine soured on him, and he is not believed except with evidence. [One time it occurred that an individual said to his agent, acquire for me 400 jugs of wine with the money that he had with him, and he acquired it for him and it was found to be sour. The Sages said when a great

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<sup>403</sup> Shulkhan Arukh, *Hoshen Mishpat* 187:1; Maimonides, *Mishneh Torah*, *Hilkhos Sheluhin*, 2:9.

number of jugs such as this becomes sour it is a matter of public knowledge. Because if it is possible to bring evidence, he should bring evidence that the wine was not sour at the hour that he purchased it and he is exempt. But if he does not produce evidence, he must pay. And so it is the same as this in all matters in which evidence is available to them but in a secret matter if there is no available evidence, an oath may be submitted to him.]<sup>404</sup>

- When entering into a relationship of agency, there should be some understanding on the part of the principal that there are unforeseen circumstances that might prevent the agent from completing the commission.
- Within the synagogue setting, this paragraph expresses the concept that in major matters, someone must take responsibility when an error has occurred. It is imperative that liability be assigned to the proper individual, and that everything possible is done to correct the wrong.

188:1      A gentile cannot participate in agency. A gentile cannot act as an agent to an Israelite nor can an Israelite act as an agent [for a gentile].<sup>405</sup> [A heathen cannot act as an agent in any manner whatsoever, nor may an Israelite act as an agent for a heathen in any manner, because it is said: *Thus ye also shall set apart a gift* (Num. 18:28), and we infer therefrom that just as ye are Jews [lit. "sons of the Covenant"] so must your agents *also* be Jews.<sup>406</sup> This inference applies to all

<sup>404</sup> Shulkhan Arukh, *Hoshen Mishpat*, 187:2.

<sup>405</sup> Maimonides, *Mishneh Torah*, *Hilkhot Sheluhin*, 2:1.

<sup>406</sup> *Baba Kama* 83a.

matters enjoined by the Law. And just as (in the case of the above scriptural passage) the client (implied) is a Jew, so also must the client be a Jew in all matters enjoined by the Law. But a gentile may have an agent under the worse case scenario where there is some misdeed or difficulty because everyone agrees that he knows [the principle] that the agent of a person is like the person himself," but he may be unaware of the drash, "as you are Jews, so too must the agents be Jews." and he does not know the authority what you Jews. (RiVaSh<sup>407</sup> 276b)]<sup>408</sup> However, a woman, a male slave, and a female slave can be agents since they are obligated in some of the commandments, and they are of a mature mind. But a deaf-mute, an imbecile, and a minor [whether it is a male minor or a female minor],<sup>409</sup> because they do not possess a mature mind, cannot participate in agency. They cannot be appointed as agents, nor can they appoint others as an agent.<sup>410</sup>

- The issue regarding the participation of non-Jews in the synagogue is complicated one on many levels. This thesis will not attempt to reconcile the various aspects associated with participation of non-Jews as such. Rather, it will examine the possibility of participation by non-Jews in synagogue life within the principal/agent matrix.

As indicated by the paragraph from both the Tur and the Shulkhan Arukh, as well as the citation from Nazir,<sup>411</sup> both the agent and the principal must be "adherents of Judaism."<sup>412</sup> However, a slave is

<sup>407</sup> RiVaSh – acronym of R. Yitzchak b. Sheshet (Perfet), 1326-1407. He was born in Barcelona, and served as Chief Rabbi in Algiers.

<sup>408</sup> Shulkhan Arukh, *Hoshen Mishpat*, 188:1; Maimonides, *Mishneh Torah*, *Hilkhot Sheluhin* 2:1.

<sup>409</sup> Shulkhan Arukh, *Hoshen Mishpat*, 188:2.

<sup>410</sup> Shulkhan Arukh, *Hoshen Mishpat*, 188:2; *Eruvin* 78b.

<sup>411</sup> See page 110.

<sup>412</sup> Nazir, 12b.

permitted to participate in agency. The definition of an עֶבֶר כְּנַעֲנִי (lit. "a Canaanite slave") is any non-Jewish individual, purchased by a Jew.<sup>413</sup> A slave, upon purchase, must immerse in a ritual bath and, if male, undergo circumcision.<sup>414</sup> These acts signify the change of status. Although the slave is not considered a Jew in every respect, he or she is obligated to fulfill all positive commandments that are not time-bound.<sup>415</sup> Upon release from his or her bondage, the slave immediately assumes all the obligations and privileges of a Jew, and has the same status of a convert. The slave is permitted to participate in agency because, although not having the status of Jew, he or she is an adherent of Judaism. The slave is a part of the sacred covenant.

The non-Jewish partner, according to this requirement, would not be eligible to participate as either an agent or a principal. In other words, while the non-Jewish spouse would be welcomed into the congregation, the primary member must be the Jewish spouse. Additionally, a non-Jewish individual, under the agency rubric, would be unable to sit on the board in an official capacity. Even if the non-Jewish spouse is not a practicing non-Jew, that is, he or she subscribes to no other faith, a non-Jew is not part of the Jewish covenant, and therefore could not be responsible for the ultimate conditions that under Jewish Law only an agent can do.

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<sup>413</sup> Leviticus 25:44-46.

<sup>414</sup> Genesis 17:12-14.

<sup>415</sup> Exodus 20:10, 23:12; Deuteronomy 5:14-15, 12:18, 16:11-14.

182:5 If an agent caused a purchaser to err [i.e. to pay more or less than a reasonable price], his case [the agent's] is just like every other person's case in these circumstances, i.e. the sale is valid up to the 1/6<sup>416</sup> and the principal is entitled to any profit.

- This principle is no longer relevant since we are residing outside of land controlled by a Jewish government. The laws of the civil government are applicable. However, this expresses the viewpoint that the agent cannot perform an action that will be to the disadvantage of the principal.

Jerusalem Talmud, *Baba Metzia* 85:

The agent who accepted a commission and did not perform it is not exempt because he is covered by the principle of not "performing an overt act"<sup>417</sup> and one may only have a complaint against him. The person is only an approximate cause of any damage or loss that may occur and he is not subject to prosecution by a human court.

- Individuals often join a certain synagogue based on the programs and activities offered. Let us say that a family joins a synagogue at this time solely to enter their 4-year son into a preschool program. September arrives, and the Board decides that there are not enough children to justify financing a preschool class. The family may complain, but should they decide to quit, the synagogue would not be responsible for returning their

<sup>416</sup> See note 381.

<sup>417</sup> The rule that nonfeasance is not culpable; liability proceeds from an overt act.



annual membership fees to them, since the synagogue has not performed an overt act. However, had the school year started and the preschool class was already underway when the Board decided that there were not enough students to sustain it, the family could expect to be financially compensated. In this case, the synagogue would be responsible because they performed an overt act by canceling the class.

Shulkhan Arukh, *Even HaEzer* Ch. 35

The agency that has been nullified in part is considered entirely nullified. Prior to the completion of the commission, the principal could nullify it even if the commission had been established with קנין. (Mordechai<sup>418</sup> Kiddushin para. 536)

- This would hold true with synagogue membership. The member has the ability to resign from the synagogue at any time. Upon resignation, principal no longer uses the agent, and therefore, the member would lose the right to any and all benefits and services provided by the synagogue.

Maimonides, *Mishneh Torah, Hilchot Sheluchim*, 3:1.

If a man has a piece of land in the care of another person, or if he has movables deposited, and he wishes to appoint an agent to enter a lawsuit against that person and to take the land or the deposited object away from him, he should write an authorization for him. This authorization should be confirmed by the symbolical transfer of some article, referred to as קנין, and he should address him in writing with

<sup>418</sup> The halakhic compendium of R. Mordechai b. Hillel, a 13<sup>th</sup> century German commentator, which is arranged according to the tractates of the Talmud.

these words: "Plead, acquire, and dispossess for yourself," or something like this. If he has not written such an authorization for the agent, the latter cannot enter a suit against the other, who can say to him: "You are not entitled to sue me." And even if he has written such an authorization for the agent, the latter remains no more than an agent, and whatever he wins belongs to his principal. All the expenses that the agent incurs in a case to which he has been authorized must be defrayed by his principal, for it is written in the deed of authorization: "Whatever you will spend on this case I will have to pay."

- The Bylaws of the congregation need to detail carefully the authority of the agent, i.e. the Board, in legal matters and official representation of the membership is not attorney at law but an attorney of fact.

An agent can substitute for the principal in virtually all legal matters, but an agency cannot be formed for the purpose of the agent's fulfilling certain mitzvot<sup>419</sup> on behalf of the principal.<sup>420</sup> Some mitzvot require a specific skill, e.g., leading prayers or performing a ritual circumcision, and in those cases, it is better to appoint an agent<sup>421</sup> to fulfill the obligation. But in such cases where there is no necessity for skill or it is a skill, that one commonly possesses, an agent cannot be appointed.

- An agent cannot perform certain mitzvot as proxy for the principal. Synagogue members often assume that the rabbi of the congregation is

<sup>419</sup> For example, the laying on of tefillin or sitting in a sukkah.

<sup>420</sup> Tosafot Rid, (explanations to the Talmud and decisions made by Isaiah b. Mali di Trani the Elder) to *Kiddushin* 42b.

<sup>421</sup> In these examples, the agent would be the *shali'ach tzibor* or the *mohel*.

responsible for fulfilling the obligations for the entire membership. However, this precept clearly deflates the expectation that the rabbi is the "token Jew" for every single member. When a rabbi visits someone in the hospital, by way of example, he or she is regarded as the representative of the synagogue. However, by applying the agency principle to the synagogue, the rabbi who visits the congregant would merely be fulfilling his or her personal obligation of ביקור חולים.

The following material while not directly relevant to synagogue matters gives a more rounded understanding of the laws of agency.

182:10 One appointed an agent to acquire for him immovable property and he did acquire it for him but not with a warranty of title, the sale has been made in error and the sale is void. It says in the Gemara that the agent needs to repurchase it without a warranty of title and he [then must] sell it to the principal with a warranty of title.<sup>422</sup>

182:11 The RaVaD<sup>423</sup> z"l wrote. Thus is the matter with every agent who transgresses, that if the principal shall accept and acquiesce, what has been done is valid. The agent must repair all that he has done.

<sup>422</sup> Moses Isserles, *Darkhei Moshe* on the Tur

183:1        The one who gives money to his agent in order for the agent to acquire for him certain goods and he [the agent] does not buy them for him, there is nothing against him except a grievance.

The agent for the delivery of a גט (bill of divorce) who receives a stipend for his commission is not thereby disqualified from acting as a witness because he has taken payment to testify; since at the outset of the commission, a contract for payment had been made. (MaHaRiBaL<sup>424</sup> Resp. Sec. 4, no. 20)

Shulkhan Arukh, *Hoshen Mishpat* 182:4 There is an opinion that holds that as long as the principal does not make it clear that he has appointed the agent to buy something for him, the seller is able to say that he made a contract with him [the agent], whether for his benefit or his detriment, and the revelation from his associate upon him is the proof.

Shulkhan Arukh, *Hoshen Mishpat* 182:8 If one says to his agent, "sell a piece of my field large enough to plant a se'ah of seed in it," and the agent sells an area large enough for two se'ah, it is considered that he exceeded his instructions and the purchaser acquires title only to one se'ah's space. The purchaser however may rescind the sale because he may say "I only want two se'ah's area of land."<sup>425</sup>

<sup>423</sup> RaVaD – Acronym for R. Abraham b. David of Posquieres, who lived in from 1125-1310, from Provence.

<sup>424</sup> MaHaRiBaL – acronym of Joseph ibn Lev, a 14<sup>th</sup> century Spanish commentator on the RaMBaM.

<sup>425</sup> Maimonides, *Mishneh Torah*, *Hilkhot Sheluhin* 1:4

Shulkhan Arukh, *Hoshen Mishpat* 182:9 If he says to him [the agent], "Sell for me two se'ah's space," and the agent sells a field of one se'ah, he has deviated from his instructions and therefore the purchaser has acquired nothing.<sup>426</sup>

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<sup>426</sup> Maimonides, *Mishneh Torah*, *Hilkhos Sheluhin* 1:4.



## Chapter Six - Conclusion

The single-minded pursuit of wealth can lead to actions that permit behavior, which is in direct opposition of the legal framework. An act can be dishonest while still falling within the parameter of the law. The ultimate litmus test in making any decision is when participating in an act, will one remain clean before God and the community. A philosophical and ethical template is essential for the effective operation of any legal system, especially a religious one. The modern synagogue has been entrusted with both the history of the Jewish people as well as its future. It is imperative, therefore, that it operates with the highest values and ethics always at the forefront.

The current manuals available to the synagogues present a haphazard attempt to incorporate certain Jewish ideals and values into the daily operations of the modern synagogue. Without a comprehensive, overarching philosophy that is grounded in the Jewish tradition, it can be difficult for the lay person to balance the desire to make "wise" business decisions and the legalities inherent in Judaism. The current examples require the lay leaders to consider various Jewish values at every juncture, e.g. *shalom*, justice, and other virtues, instead of presenting a comprehensive model that insists on virtuous behavior in all matters. The principal/agent model presents a comprehensive approach to all issues that a synagogue faces.

While it is clearly rooted in a classic Jewish legal concept, the principal/agent model it is not high flown, nor is it pseudo-inspirational. Rather, it is clear and plain,

available to all without the necessity of contemplating the theological implications of (e.g.) covenant. Individuals who are involved with a congregation are already well aware that they are dealing with profound and spiritual matters. This model will provide them with a simple, uncomplicated focus for the work that they do.

The most important viewpoint that the principal/agent model addresses is that of the synagogue member. As mentioned earlier, the role of the membership is conspicuously absent from the current manuals. However, a synagogue functions for the sole purpose of providing certain necessities for its membership; for Jewish individuals. Therefore, it is nonsensical to consider the operations of a synagogue without giving considerable attention to the members. Within the principal/agent model, the synagogue member has an active role in its relationship with the synagogue, which is represented by the lay board.

Membership to a synagogue goes beyond the payment of annual dues. It is the responsibility of the individual to communicate his or her needs to the lay board. The individual cannot simply pay dues and expect that to relieve him or her of religious obligations. The synagogue is not and cannot be a surrogate for religious duty. The way is open for them to pay their money, but it cannot end there. The money can help defray the costs incurred by the synagogue. It is the membership that continues to give the synagogue its shape by passing on its needs to the lay board and professional staff, who, in turn, determine the most effective methods to achieve the wishes of the membership, all the while maintaining the highest ethical and moral standards.

In his book Synagogue Boards – A Sacred Trust<sup>427</sup>, author Daniel S. Schechter writes, “a new paradigm is needed for decision-making in synagogues, combining elements of Judaic value-based decision-making with the exercise of governance on management issues.”<sup>428</sup> Schechter does not present a paradigm in his book. Rather, he suggests some ways of keeping Jewish values at the forefront of discussions. Once again, the approach falls short of attaining its goal. The problem is that no paradigm, which is designed to combine elements of Jewish values with business management, can be effective. The new paradigm must be one that is comprehensive so that all matters can be handled appropriately without having to qualify specific decisions as Jewish or consider them to be “good business decision”.

The principal/agent model carries an implicit responsibility for all parties to behave in accordance with Jewish law. It would not be necessary to point to this certain behavior as falling under the heading of דרך ארץ, and that certain behavior being governed by the laws concerning employment. Agency inherently requires a certain standard of behavior, and therefore, all actions would be guided by the overarching principle.

I had certain questions that drew me to this subject matter. It was my original intent to find different principles from Jewish Law and apply them to the many dilemmas and decisions faced by the modern synagogue. Ironically, this turned out to be one of my criticisms of the manuals; their apparent haphazard application of

<sup>427</sup> This book is scheduled to be published in Summer, 1999.

<sup>428</sup> Daniel S. Schechter, Synagogue Boards – A Sacred Trust (New York: UAHF Press, forthcoming),

Jewish terms and platitudes. In my exploration of the texts, the principal/agency model emerged as the most comprehensive approach to the functions of the modern synagogue. I had hoped to answer certain question regarding the ethical treatment of business decisions within the modern synagogue, and many of my initial questions remain unanswered. Out of the lengthy process that has led to this thesis has emerged the knowledge that all questions can ultimately be answered within the principal/agent model. It was necessary first to locate the most comprehensive approach, and only now will it be possible for me to return to my original questions and answer them through the application of this new template.

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