

**The Stunning Controversy:**  
**Marcus Horovitz and Jewish Animal Slaughter**

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## **Introduction**

In his “Aphorisms,” the founder of modern gastronomy Jean Anthelme Brillat-Savarin asserted famously, “Tell me what you eat, and I shall tell you what you are.”<sup>1</sup> Indeed, the thrust of Brillat-Savarin’s book is that eating and identity are inextricably bound together. This truth, of course, is familiar to Jews, who, since biblical times, have understood their particular dietary regulations and customs as sacred markers of national/religious/cultural identity.<sup>2</sup> This thesis, then, is a study of a single issue and a single moment in the history of Jewish dietary culture with implications for the larger fields of the history of Jewish cultural identity and the history of *halachah* (Jewish law). Below, I explore one Orthodox rabbi’s response to the movement to

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<sup>1</sup> Jean Anthelme Brillat-Savarin, *The Physiology of Taste: Or, Meditations on Transcendental Gastronomy*, trans. M. F. K. Fischer (New York: Alfred A. Knopf, 2009), 15.

<sup>2</sup> For a panoramic history of Jewish dietary practices, see David Kraemer, *Jewish Eating and Identity through the Ages* (New York: Routledge, 2007).

regulate *shechitah* (the slaughter of animals for consumption by Jews according to Jewish regulations) during the nineteenth century in Western Europe. In crafting his response, the rabbi in question, Marcus (Mordecai HaLevi) Horovitz of Frankfurt-am-Main (1844-1910), held fast to *halachah* and Ashkenazic Jewish custom while simultaneously acknowledging the concerns of the nineteenth century animal protection movement. In this way, Horovitz sought to moderate the effect of modernity on Jewish culture without negating the *halachah*—as some more liberal rabbis had done. His work testified to the belief that Jewish identity defined by the strict observance of *halachah* could be preserved in the modern age by elevating the twin values of *klal yisrael* (the unity of the Jewish people) and emancipation (the civil equality of Jews in Europe). Horovitz thus represented a more moderate vision of nineteenth century Jewish Orthodoxy, as compared to more conservative Orthodox authorities such as Moses Sofer (1762-1839) and Samson Raphael Hirsch (1808-1888).

My interest in this topic was born of a lifelong interest in gastronomy and a longstanding fascination with Jewish religious responses to modernity. Modernity, of course, is one of those slippery commonplaces of intellectual history referring to the cultural products of the historical period beginning with the French Revolution in 1789 and ending with the Second World War—though increasingly historians date the advent of modernity to the seventeenth century, the sixteenth century, or even the Italian Renaissance!<sup>3</sup> In this way, this project bridges my academic and personal interests and it is therefore a fitting capstone to my rabbinical education at the Hebrew Union College-Jewish Institute of Religion (HUC-JIR) and an appropriate commencement to my doctoral studies in History at Columbia University.

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<sup>3</sup> This work was pioneered by David Ruderman, see *The Jewish Enlightenment in an English Key* (Princeton: Princeton University Press, 2000) and *Early Modern Jewry: A New Cultural History* (Princeton: Princeton University Press, 2009).

The text of this thesis is divided into five chapters whose contents are summarized below: The first chapter deals with the history of the movement to regulate *shechitah* in Europe, with an emphasis on its ideological and cultural origins. Chapter two is a brief intellectual biography of Marcus Horovitz and a discussion of his Jewish worldview, especially in comparison to his mentor Esriel Hildesheimer (1820-1899) and his competitor Samson Raphael Hirsch. Chapter three is my translation of a responsum (pl. responsa, a legal opinion written in question-and-answer form) Horovitz wrote on the question of whether Jewish animal slaughterers may “stun” their animals after *shechitah* to speed their deaths and prevent unnecessary suffering. Chapter four is an in-depth explanation of the Jewish legal sources on which Horovitz’s responsum relied. Chapter five is a discussion of Horovitz’s conclusions on the issue in the context of his broader Jewish worldview. Finally, the thesis closes with a concluding section discussing the rationale behind and implications of Horovitz’s responsum on the topic.

This thesis could not have been written without the assistance of a number of individuals whom I wish to thank below: Above all, I offer my sincerest thanks to my advisor Rabbi Dr. David Ellenson, president of HUC-JIR. Rabbi Ellenson has been a mentor to me since my undergraduate days at Princeton. As a sophomore, I e-mailed him a paper I had written about the cultural Zionist figure Ahad Ha’am. He graciously agreed to share his comments. Since that time, Rabbi Ellenson has over and over again helped me develop my skills as a critical reader of Jewish texts and clarify my thinking as scholar of Jewish culture. At numerous points along the way, throughout rabbinical school and especially during the writing of this thesis, Rabbi Ellenson has offered crucial advice and encouragement. He is a true *dugmah* (a role model) for what it means to be a rabbi, a scholar and a *mensch*.

Additionally, I offer my thanks to Dr. Alyssa Gray, professor of codes and responsa literature at HUC-JIR, for being willing to spend countless hours with me developing my skills at reading classical Hebrew and Aramaic sources. I cannot imagine my four years at HUC-JIR-New York without her; she taught me the skills I needed so that I could one day call myself a rabbi. Dr. Gray also graciously agreed to proofread my translation of Horovitz's responsum (chapter 3). Of course, I take full responsibility for any errors found therein.

I also thank Dr. David S. Sperling, professor of Bible at HUC-JIR, who took time from his summer vacation to help me work through some complex Jewish legal texts on animal slaughter.

I also offer special thanks to Rabbi Baruch Horovitz, Marcus Horovitz's grandson and head of Yeshivat Dvar Yerushalaim in Jerusalem, Israel. After receiving an unsolicited telephone call from me, Rabbi Horovitz agreed to meet me at my hotel in downtown Jerusalem on the spur of the moment to discuss his grandfather. I had contacted Rabbi Horovitz as a last resort after searching unsuccessfully for a copy of his grandfather's collected responsa entitled, *She'eilot u'Teshuvot Mateh Levi*, to purchase for my personal use. Rabbi Horovitz came to my rescue and provided me with one of the few remaining copies of the book in its 1979 printing, as well as sharing his unique perspective on his grandfather.

Finally, *acharon acharon chaviv*, I would like to thank my bride, Rabbi Erin Glazer, who watched this project blossom, unceasingly providing encouragement and graciously tolerating the occasional frustrations that appeared on the road to its completion.

ברוך אתה ה' אלהינו מלך העולם שהחיינו וקיימנו והגיענו לזמן הזה:

N. B. All the biblical quotations below are excerpted from the New Jewish Publication Society translation of the Hebrew Bible (1985), except where noted otherwise.



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# 1

## **Shechitah under Assault**

On October 17, 1855, Yankoff Cohen, a Jewish butcher, was summoned to a London courtroom on the charge he “did unlawfully cruelly ill-treat and torture a certain ox by improperly cutting its throat” in violation of Britain’s animal protection law.<sup>1</sup> According to newspaper accounts, it was evident that the purpose of the trial was to condemn “the Jewish mode of slaughtering animals for food” generally, not only Cohen. For this reason, the

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<sup>1</sup> Cohen was charged with having violated the 1849 “Act for the More Effectual Prevention of Cruelty to Animals,” an extension of the 1822 Martin Act. *The Daily News*’ account of the trial appears to be the most thoroughly reported of all the newspaper reports. “The Police Courts,” *The Daily News* 2937 (17 October 1855). See also, “The Jew Butcher’s Case,” *Spectator* 28:1425 (20 October 1855), 1082-3 and Robin Judd, *Contested Rituals: Circumcision, Kosher Butchering, and Jewish Political Life in Germany, 1843-1933* (Ithica: Cornell, 2007), 66.

proceedings attracted the attention of “gentleman of great influence in the city,” including Sir Moses Montefiore, and reports of the trial circulated in newspapers across the Great Britain.<sup>2</sup>

Cohen’s trial was the first legal challenge to the Jewish method of animal slaughter—known in Hebrew as *shechitah*—we have recorded. Yet, the arguments deployed by the prosecution would become familiar to European Jews during the following decades. Moreover, the trial was emblematic of nineteenth century political trends: Politics shaped by social concerns resulting from industrialization and urbanization and influenced by a growing number of voluntary associations and pressure groups.

Cohen’s trial also raised many questions that would come to animate debates over the legality of *shechitah* (what in Germany were called, *Schächtfragen*) later in the century. Among them: (1) To what extent should governments intervene in citizens’ daily lives to solve social problems; (2) to what extent could voluntary organizations influence politics and shape legislation; (3) were new technologies and science enablers of human progress and betterment; (4) to what extent did religious prejudice and hostility influence legislation and jurisprudence; and finally, (5) could governments intervene in and regulate the religious practices of minorities? In the decades leading up to Cohen’s trial and the decades following it, these questions provoked a fierce debate over the legality of *shechitah* in many European countries. They also spawned unusual political and ideological alliances between the liberal and conservative elements in European society. For this reason, Cohen’s trial remains an excellent case study in the development of the *Schächtfragen* in Western Europe.

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<sup>2</sup> London: “Police,” *The Times of London* (17 October 1855). Bangor, Wales: “Miscellaneous,” *North Wales Chronicle* 1493 (20 October 1855). Bristol: “Alleged Cruelty to Animals—The Jews,” *The Bristol Mercury* 3422 (20 October, 1855).

*The Case*

According to the newspaper reports, London's metropolitan police brought the aforementioned charges against Cohen at the behest of the British Royal Society for the Prevention of Cruelty to Animals (RSPCA).<sup>3</sup> On trial day, RSPCA officials sat with the court prosecutor as advisors. This was not unusual at the time however, since as early as 1835, the society frequently investigated and accused butchers of mistreating animals.<sup>4</sup> In this way, for much of the nineteenth century, the RSPCA functioned as a shadow arm of the British judicial system.

In 1855, the RSPCA began a campaign to legally compel butchers to stun their animals into a state of unconsciousness prior slaughter. This was usually accomplished by hitting the animal on the head with a large mallet.<sup>5</sup> While some non-Jewish butchers already practiced stunning, requiring the procedure would have *de facto* prohibited *shechitah* since Jewish tradition required animals remain conscious up until the very moment of their deaths. However, the society, concerned that *shechitah* was inhumane, argued that stunning rendered animals incapable of feeling the pain and therefore it was preferable to any other method of slaughter. In the words of the prosecutor at Cohen's trial, Sir William Henry Bodkin,

This mode of slaughtering [*shechitah*] occupied nine minutes, during which time, judging by the appearance of the animal, by the moans, contortions, and

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<sup>3</sup> The RSPCA was the first organization of its kind in Europe or the United States and was founded in 1824 under the name the Society for the Prevention of Cruelty to Animals (SPCA). In 1840, the society received Queen Victoria's approbation and added the prefix "Royal." See Gerald Carson, *Men, Beasts and Gods: A History of Cruelty and Kindness to Animals* (New York: Charles Scribner's Sons, 1972), 54. The RSPCA had considerable political clout. It dispatched its influential members to lobby parliament (some members were MPs themselves) and sponsored myriad petition campaigns aimed at strengthening Britain's animal protection laws. Through the RSPCA's efforts, these laws were repeatedly amended during the nineteenth century and the definitions and penalties for animal cruelty became stricter with each modification.

<sup>4</sup> Britain's first animal welfare law, the Martin Act, became law in 1822. It was subsequently revised and amended in 1835, 1849, 1854 and 1876. See Carson, 53-55. The revisions in 1835 established legal penalties for such mistreatment and the SPCA took it upon itself to enforce the new law, see Moira Ferguson, *Animal Advocacy and the Englishwoman, 1780-1900: Patriots, Nation and Empire* (Ann Arbor: University of Michigan Press, 1998), 42.

<sup>5</sup> John M. Efron, "The Most Cruel Cut of All?: The Campaign Against Jewish Ritual Slaughter in Fin-de-Siècle Switzerland and Germany." *Leo Baeck Year Book* 52 (2007), 172.

efforts it made to relieve itself from its position, it was undergoing great torture. [...] Before the animal was operated upon [...] a blow, as according to the modern and generally adopted system, should be struck upon the head of the animal, which would have the effect not of depriving it of life but of suspending sensibility which would render the animal, during the remainder of the operation, perfectly free from pain and agony which, under the Jewish system, it necessarily endured.<sup>6</sup>

During the trial, Bodkin called eight witnesses, all agreed his conclusions above. In the words of one witness, “The common mode of killing [stunning] produces less pain to the animal than the mode adopted by the Jewish people” and thus *shechitah* should be forbidden.<sup>7</sup>

Cohen’s attorney, William Ballantine, took a different tack.<sup>8</sup> Rather than calling witnesses to refute the prosecution’s case that *shechitah* was inhumane, Ballantine himself spoke at length, challenging the premise of the trial itself: No court had the authority to question the religious behavior of an entire community, he argued. Jews were religiously bound to practice *shechitah* and could not change their traditions to accommodate new secular laws or mores:

They would be guilty of a great and heinous crime if they did not carry out strictly that which was enacted in the book to which they looked up not only as their directory, but as a complete and perfect revelation. The Jews could not conscientiously adopt any other mode than they were supposed to have adopted, and did adopt, in their slaughter-houses.<sup>9</sup>

According to Ballantine, the court could not compel Jews to forfeit their time-honored practices, especially when “A great deal of doubt, and the most marked difference of opinion, was to be found amongst the eminent of the medical profession upon the subject of the relative amount of pain” experienced by an animal undergoing *shechitah*.

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<sup>6</sup> Born into an Irish noble family, Bodkin was a politician and a jurist, see *Oxford Dictionary of National Biography* (2004-9) s.v. “Bodkin, Sir William Henry (1791–1874), legal writer.”

<sup>7</sup> According to Dr. Pavey, a physician, “The Police Courts,” *The Daily News* 2937 (17 October 1855).

<sup>8</sup> Ballantine (1812-1887) was a successful London-born attorney who represented defendants in a number of controversial cases, see *Oxford Dictionary of National Biography* (2004-9) s.v. “Ballantine, William 1812-1887, sergeant-at-law.”

<sup>9</sup> “The Police Courts,” *The Daily News* 2937 (17 October 1855).

After deliberating for ten minutes, the magistrate presiding over the trial, Sir Peter Laurie, ruled in the defense's favor.<sup>10</sup> The ruling, however, avoided the essential question of the legality *shechitah* and the benefits of stunning. Instead, Laurie honed in on the testimony one of the prosecution's witnesses, a butcher named Robert Morgan.

Morgan had testified that slaughtering an ox that had been stunned unconscious was more humane than slaughtering a conscious ox, but he could not explain why non-Jewish butchers often did not stun other species of animals. Under cross-examination Morgan stated, "In sheep the throats are cut with us. They are not stunned. I cannot say why it is so. Pigs bleed to death, some they stun with a mallet, some they do not."<sup>11</sup> In his ruling, Laurie referred to this inconsistency, "The Jewish mode of slaughtering oxen is that adopted by every Christian butcher in slaughtering calves, sheep, and pigs, and were I to hold their mode to involve the offense of cruelty no butcher whether Christian or Jewish, could carry on his trade."<sup>12</sup>

With that, Laurie cleared Cohen of any wrongdoing, but left room for the RSPCA's campaign against *shechitah* to continue.

### *The Politics of the Nineteenth Century*

Cohen's trial was the opening salvo in the RSPCA's campaign to use the British judicial system to protect domestic animals from acts it perceived as cruel.<sup>13</sup> At the time of the trial, however, the notion that government had a responsibility—or even had the authority—to intervene in the daily lives of the populace to solve social problems like animal cruelty was only

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<sup>10</sup> Sir Peter Laurie (1778-1861) was a Scottish-born saddler and politician. He served as a magistrate from 1826. See *Oxford Dictionary of National Biography* (2004-9) s.v. "Laurie, Sir Peter (1778–1861), saddler and politician."

<sup>11</sup> "The Police Courts," *The Daily News* 2937 (17 October 1855).

<sup>12</sup> "The Police Courts," *The Daily News* 2937 (17 October 1855).

<sup>13</sup> Questions about the role of the society in public policy and law enforcement were asked at the society's founding meeting. See "Society for the Prevention of Cruelty to Animals," *The Morning Chronicle* 17212 (17 June 1824).

just taking hold in Europe. On the continent, Napoleon made the first attempts at government intervention in social life by abolishing feudal privileges and guild regulations in 1804. In Britain, industrialization spurred the newly founded Liberal party to introduce legislation that regulated factory conditions and child labor in the 1830s.<sup>14</sup> Similarly, in Germany, seeking to prevent social unrest in the wake of the dissolution of the Napoleonic regime, “Poverty and other ills were now designated as structurally determined problems with possible solutions,” wrote George Steinmetz, during “the years leading up to 1848.”<sup>15</sup>

At the same time, during the early and mid-nineteenth century, the number of voluntary associations dedicated to moral and social improvement—concerns such as slavery, disease, crime, public disorder, temperance and unfair labor practices—increased across Western Europe. David Blackbourn has called this period one of “passion for association” in Germany and the same could be said for other regions.<sup>16</sup> R. J. Morris has identified a flowering of voluntary organizations in Britain during the first half of nineteenth century as well.<sup>17</sup> It is not surprising that the first animal protection organizations—such as the RSPCA (née SPCA) in London in 1824, the *Vaterländischer Verein zur Verhütung der Tierquälerei* in Stuttgart (1837) and the *Tierschutzverein* in Berne (1844)—emerged in this climate of activism. What these organizations shared, regardless of their unique concerns, was a mission to convince governments (and often the public) of their responsibility to improve moral standards and social conditions. These groups

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<sup>14</sup> The Liberal party was an alliance of disaffected Whigs and radical liberals who controlled Parliament after 1832 and enacted a series of laws regulating the lives of factory workers. See John Offner, *An Intellectual History of British Social Policy: Idealism Versus Non-Idealism* (Bristol, UK: Policy Press, 2006), chapter 2.

<sup>15</sup> George Steinmetz, *Regulating the Social: The Welfare State and Local Politics in Imperial Germany* (Princeton: Princeton University Press, 1993), 65.

<sup>16</sup> David Blackbourn, *The Long Nineteenth Century: A History of Germany, 1780-1918* (New York: Oxford University Press, 1999), 178-9; Dorothee Brantz, “Stunning Bodies: Animal Slaughter, Judaism, and the Meaning of Humanity in Imperial Germany,” *Central European History* 35, no. 2 (June 2002), 170; and Carson, 48.

<sup>17</sup> R. J. Morris, “Clubs, Societies and Associations,” *The Cambridge Social History of Britain, 1750-1950*, ed. F. M. L. Thompson (Cambridge: Cambridge University Press, 1990), 414.

used similar tactics too, from political advocacy and lobbying to grassroots petitioning and judicial intervention—as we saw in Cohen’s case.

With regard to animal protection, by the 1850s, local organizations dedicated to the cause could be found across Europe. In Britain, following its receiving Queen Victoria’s royal approbation in 1840, the RSPCA became a national and even international organization with branches across the isles and in the United States.<sup>18</sup> Similarly, in Switzerland, by 1861, animal protection societies existed in most Swiss cities. That same year, these groups banded together to form the *Schweizerischer Thierschutzverein*—a national organization. By the same token, in Germany by 1881, there were 150 municipal animal protection societies and they too banded together to found a national group, *Verband der Thierschutzvereine des Deutschen Reiches*, in 1881.<sup>19</sup> While these groups were a testament to a continent-wide flowering of volunteerism and activism, historians have described the development of animal protection groups in particular as a reaction to the phenomena of urbanization and industrialization.

### *The Animal Protection Movement: Intellectual and Social Origins*

It is well known that urban populations across Europe increased dramatically during the nineteenth century. By 1850, more Britons lived in cities than in the countryside and one third of Britons lived in cities of over 50,000 inhabitants. One hundred years earlier, only two British cities had populations over 50,000—London and Edinburgh.<sup>20</sup> Similarly, in Germany, the number of cities with populations greater than 100,000 nearly doubled during the two decades

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<sup>18</sup> Carson, 54.

<sup>19</sup> For a short history of the emergence of these groups in Germany and Switzerland, see Ulrich Tröhler and Andreas-Holger Maehle, “Anti-Vivisection in the Nineteenth-century in Germany and Switzerland: Motives and Methods,” *Vivisection in Historical Perspective*, ed. Nicholaas A. Rupke (Kent, UK: Croom Helm, 1987), 149.

<sup>20</sup> Eric Hobsbawm, *Industry and Empire: The Birth of the Industrial Revolution* (New York: The New Press, 1999), 64.

leading up to German unification in 1871. Twice as many Germans now lived in cities, as the largest of those cities—Berlin, Hamburg, Leipzig and Dresden—nearly doubled in size.<sup>21</sup>

The growth of Europe's cities during the nineteenth century radically altered Europeans' relationship to agriculture. Dorothee Brantz contends, "Traditionally, animals had been slaughtered on farms or on the premises of individual butcher shops, exposing neighbors to all the noxious smells, the cries of animals, and bloody sights that accompanied slaughtering. However, with evolving notions of the quality of city life and urban planning, the public presence of slaughter was increasingly criticized and considered to be demoralizing, unhygienic, and inefficient." In response, European municipalities established public slaughterhouses on the outskirts of cities, out of the public eye—Paris in 1818, Vienna in 1851, Brussels in 1865 and Berlin in 1881.<sup>22</sup> These facilities produced the larger quantities of meat needed to supply growing urban populations. Indeed, Brantz notes that the number of animals slaughtered in Berlin between 1870 and 1900 "more than doubled, rising from 731,000 in 1871 to 1,614,791 by 1900."<sup>23</sup>

Western Europe's first animal protection societies emerged, in part, in response to these dramatic agricultural transformations. These groups sought to correct the wrongs inherent in this new agricultural system by limiting the brutality they associated with modern agriculture and by enhancing animals' quality of life and death. Two types of concerns motivated the members of the nineteenth century animal protection organizations: the "anthropocentric" (human-centered) and the "theriocentric" (animal-centered).<sup>24</sup>

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<sup>21</sup> Blackbourn, 199-201. I've been unable to find accurate Swiss statistics in this area.

<sup>22</sup> Brantz, 169.

<sup>23</sup> Brantz, 169.

<sup>24</sup> Some scholars, most notably Robin Judd, have argued that the European animal protection societies generally began with anthropocentric concerns and later shifted to more theriocentric concerns. My research suggests that these two motivations were always intertwined.



Philosophically, the anthropocentric view emerged in the thought of the German philosopher Immanuel Kant (1724-1804).<sup>25</sup>

Kant, in his *Groundwork for the Metaphysics of Morals*, argued that only beings with rational ability—namely, human beings—possessed “rights.” To his mind, animals were, “Beings the existence of which rests not on our will but on nature” and therefore they had “only relative worth, as a means and are therefore called *things*.”<sup>26</sup> Their status as “things,” however, did not imply that they could be mistreated. Kant, in fact, rejected the notion that human beings could wantonly dominate animals (a view articulated by the French philosopher Descartes) because he believed unchecked cruelty could diminish a person’s compassion for the suffering of his fellow human beings. In Kant’s words, “Violent and cruel treatment of animals is far more intimately *opposed to a human being’s duty to himself* [...] for it dulls his shared feeling of their suffering and so weakens and gradually uproots a natural predisposition that is very serviceable to morality in one’s relations with other men.”<sup>27</sup>

Kant’s argument that cruelty to animals promoted cruelty among human beings appeared over and over again in the literature of nineteenth century animal welfare organizations. In 1824, the RSPCA described its mission in this way:

To spread amongst the lower orders of the people, especially amongst those whom the care of animals are intrusted [sic], a degree of moral feeling which might impel them to think and act like those of the superior class, instead of sinking into comparison with the poor brute, over which they exercised brutal authority.<sup>28</sup>

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<sup>25</sup> For a discussion of the Aristotelian roots of Kant’s ideas, see Shai Lavi, “Animal Laws and the Politics of Life: Slaughterhouse Regulation in Germany, 1870-1917,” *Theoretical Inquiries in Law* 8, no. 1 (January 2007), 4-5.

<sup>26</sup> Immanuel Kant, *The Groundwork for the Metaphysics of Morals*, trans. Mary Gregor (Cambridge: Cambridge University Press, 1997), 37. See also Kant, *Anthropology from a Pragmatic Point of View*, trans. Robert B. Loudon (Cambridge: Cambridge University Press, 2006), 169.

<sup>27</sup> Kant, *The Metaphysics of Morals*, trans. Mary Gregor (Cambridge: Cambridge University Press, 1996), 192-3.

<sup>28</sup> Foxwell Buxton, Esq. M.P. and Chairman of the first meeting of the SPCA, “Society for the Prevention of Cruelty to Animals,” *The Morning Chronicle* 17212 (17 June 1824).

During its first decade, the RSPCA sought to “prevent the exercise of cruelty to animals” by focusing on the moral status of human beings and not on directly affecting the lives of animals themselves. It did so through “moral education”—the publication of sermons, educational tracts and the like designed to inspire “the lower orders of the people” to treat animals kindly.

In Germany, animal protection societies sought to encourage local governments to regulate agriculture more closely by pursuing legislation requiring farmers to provide adequate conditions for animals during transport to market, requiring governments to move slaughterhouses to city-limits and requiring slaughterhouse supervisors to restrict admittance to licensed adult men.<sup>29</sup> These groups argued that witnessing the brutal spectacle of animal slaughter “could emotionally devastate women and children or drive individuals to act brutally toward one another.”<sup>30</sup> This view led the *Verband der Thierschutzvereine des Deutschen Reiches*—the union of local German animal protection organizations—to spend its first decade petitioning German municipal governments and the Reichstag “that all slaughter be moved away from public view, because the visibility of such a bloody spectacle was abhorrent and contributed to the brutalization of the youth.”<sup>31</sup>

Following the emendation of Britain’s animal protection laws in 1835—emendations that established specific punishments for “wantonly and cruelly ill-treating, abusing or torturing” domestic animals—the RSPCA’s efforts began to take a theriocentric turn. The society began to take an active role in preventing animal cruelty by hiring investigators to inspect British

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<sup>29</sup> Tröhler and Maehle, 150.

<sup>30</sup> Judd, “The Politics of Beef,” 122.

<sup>31</sup> Brantz, 175. See also, Robin Judd, “The Politics of Beef: Animal Advocacy and the Kosher Butchering Debates in Germany,” *Jewish Social Studies* 10, no. 1 (Fall 2003), 122.

slaughterhouses and prosecutors to bring charges against butchers, like Cohen, whom they found in violation of the new statute.<sup>32</sup>

It should be noted, however, that the majority of animal protection society members—in Britain and on the continent—had “little or no direct contact with the animals they vouched to protect.”<sup>33</sup> Their work was inspired by what Peter Pulzer has termed, in the German context, “rural romanticism”—nostalgia for an imagined agrarian past, free from the “elaborate, sophisticated, intellectual, and legalistic urban concepts we associate with nineteenth-century civilization.”<sup>34</sup> It is therefore ironic that as Europeans became more urban and removed from the animals they ate, animal protection societies began to focus directly improving animals’ quality of life and death.

The theriocentric approach was first articulated by the English philosopher Jeremy Bentham (1748-1832) and the German philosopher Arthur Schopenhauer (1788-1860).

Bentham rejected Kant’s view that animals were “things” and not “persons” and emphasized animals’ capacity for experiencing pleasure and pain. In his *Introduction to the Principles of Morals and Legislation*, Bentham stated that criterion for determining whether a being was a “person” was not whether it possessed “the faculty of discourse” but rather “can it suffer?”<sup>35</sup> Because animals could experience pleasure, Bentham argued, they possessed the right to avoid suffering whenever possible. He wrote famously, “The day may come when the rest of

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<sup>32</sup> Britain’s first animal welfare law, the Martin Act, became law in 1822. It was subsequently revised and amended in 1835, 1849, 1854 and 1876. See Carson, 53-55. The revisions in 1835 established legal penalties for such mistreatment and the SPCA took it upon itself to enforce the new law, see Moira Ferguson, *Animal Advocacy and the Englishwoman, 1780-1900: Patriots, Nation and Empire* (Ann Arbor: University of Michigan Press, 1998), 42.

<sup>33</sup> Brantz, 170.

<sup>34</sup> Peter G. J. Pulzer, *The Rise of Political Anti-Semitism in Germany and Austria* (Cambridge: Harvard University Press, 1988), 63.

<sup>35</sup> Jeremy Bentham, *Introduction to the Principles of Morals and Legislation* (Oxford: Clarendon Press, 1907), 311.

the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny.”<sup>36</sup>

Cohen’s trial is a salient example of how the RSPCA deployed theriocentric arguments in a judicial context. Indeed, all of the prosecution’s witnesses focused their testimony on comparing the pain an animal experienced during *shechitah* to the amount of pain an animal experienced when stunned prior to slaughter. Further, all of the witnesses testified that stunned animals expired more quickly and less painfully than those that died conscious. The witnesses evaluated the experience of animal suffering on the basis of the animal behaviors they observed—the “moans, contortions, and efforts [...] to relieve itself from its position” and the like—behaviors they identified with pain.<sup>37</sup> In the words of one witness, Dr. Edward Lloyd, “The mode of killing by the Jewish people is by no means the most humane. A previous blow by the poleaxe [sic] [stunning] would, I have no doubt, shorten the sufferings. I believe the pain would cease after the blow of the pole-axe, and yet the animal would be alive.”<sup>38</sup> Another witness, the policeman who observed Cohen at work, testified, “The animal appeared to me to suffer pain very much” and “for nine whole minutes it kept struggling, and during that time the animal seemed to suffer great pain.”<sup>39</sup>

Like Bentham, Schopenhauer rejected Kant’s approach as well, but rather than focus on animals’ capacity for suffering, he stressed the importance of treating animals with justice and empathy. According to the philosopher Ze’ev Levy, he was unique among nineteenth century philosophers in “expressly extend[ing] ethical norms to animals.”<sup>40</sup> He objected to what he

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<sup>36</sup> Bentham, 311. Bentham coined the term “animal rights” which remains in use today.

<sup>37</sup> Brantz points out rightly that many animal protection advocates equated “appearance with suffering, they considered any movement of the animal’s eyes or convulsions of its body a sure indicator of pain.” These assumptions were by no means correct. See Brantz, 171.

<sup>38</sup> “The Police Courts,” *The Daily News* 2937 (17 October 1855).

<sup>39</sup> “The Police Courts,” *The Daily News* 2937 (17 October 1855).

<sup>40</sup> Ze’ev Levy, “Ethical Issues of Animal Welfare in Jewish Thought,” *Judaism* (Winter 1996), 50.

perceived as the paternalism of Bentham-style arguments. Instead, of treating animals “mercifully,” Schopenhauer wrote animals deserved the “consideration and respect” due to any human being.<sup>41</sup> In his *Parerga and Paralipomena* (1851), he wrote, “A man must be bereft of all his senses or completely chloroformed [...] not to see that, in all essential respects, *the animal* is absolutely identical with us and that the difference lies merely in the accident, the intellect, not in the substance which is the will.”<sup>42</sup>

Schopenhauer’s view that empathy ought to guide human relationships with animals influenced the platforms of many of the German animal protection societies. Brantz notes, for example, that the Munich animal protection society’s mission statement, published in 1845, proclaimed, “Our main principle is and remains the deep-seated conviction that (1) compassion is a crucial source of all virtues; (2) empathy must be taught especially to children; and (3) without consideration for animals, a truly compassionate spirit cannot exist.”<sup>43</sup> Here, was a clear example of how one group merged anthropocentric and theriocentric concerns: While the dominant theme of the Munich’s three principles was extending ethical norms to animals, the group also argued that animal protection not only benefited animals but also human society through the nurturing of positive virtues and educated children.

Moreover, Schopenhauer was one of nineteenth century’s the most prominent advocates of stunning animals prior to slaughter. He recommended, “The death of the animals we eat should be rendered quite painless by the administration of chloroform and of a swift blow on the lethal spot.”<sup>44</sup> Interestingly, this view only took hold in the 1850s in Britain and the 1860s in Germany. Until that point, many animal protection societies favored slaughtering conscious

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<sup>41</sup> Arthur Schopenhauer, *Parerga and Paralipomena: Short Philosophical Essays* 2, trans. E. F. J. Payne (Oxford: Oxford University Press, 2000), 375.

<sup>42</sup> Schopenhauer, 375.

<sup>43</sup> Quoted in Brantz, 171.

<sup>44</sup> Schopenhauer, 375.

animals (*à la shechitah*). During Cohen's trial, one medical witness said as much under cross-examination, "It was formerly considered that bleeding to death was an easy death. A different opinion and principle now exist."<sup>45</sup>

According to Robin Judd, prior to the 1860s, stunning practices were rudimentary and relied on the brute strength and skill of the practitioner; multiple blows were common.<sup>46</sup> Even by 1869, an international congress of animal protection groups in Zurich could not agree that stunning was the single "most painless form of slaughter."<sup>47</sup> However, stunning had important advocates in the animal protection movement from as early as the late-1830s. In Liverpool, England, for example, a group of animal advocates and veterinarians published an article in favor of the practice, in 1838.<sup>48</sup> Almost three years later, in 1841, Munich's animal protection society, mentioned above, made stunning a key plank in its platform.<sup>49</sup> The RSPCA began its own efforts on behalf of stunning in 1855 with Cohen's trial. That same year, animal protection societies in the Swiss canton of Aargau pressured the canton's government to pass "stunning laws." At first, Jews were exempted from these laws, however in 1867, the canton's government revoked this exemption and *shechitah* was prohibited outright. That same year, the canton of St. Gallen also made stunning compulsory and outlawed *shechitah*.

By the 1860s and 1870s, new techniques were developed to mechanize stunning and make the process less reliant on human strength and skill. These techniques included "the bouterole, which covered the animals head but left a space through which butchers could stun it with a heavy mallet; the Bruneau's Mask, which allowed for a slaughter to drive a bolt to spike

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<sup>45</sup> Dr. Edward Lloyd, "The Police Courts," *The Daily News* 2937 (17 October 1855).

<sup>46</sup> During Cohen's trial the butcher Robert Morgan testified, "It very often happens that more than one blow with the poleaxe [sic] is given. A bullock must put up with it." "The Police Courts," *The Daily News* 2937 (17 October 1855).

<sup>47</sup> Quoted in Judd, *Contested Rituals*, 67.

<sup>48</sup> "Slaughtering Of Animals—Dr. Carson's Improved Method," *Liverpool Mercury* 1442 (28 December 1838).

<sup>49</sup> Efron, 171.

through the animal's skull; and the Sigmund's mask, which was like the Bruneau's mask but was connected to a revolver."<sup>50</sup> Animal protection groups across Europe seized on these inventions as signs of humanity's continued progress and betterment and argued they were more humane than any previous technique. Whether this was actually the case was subject to debate, of course. However by the 1880s, as a consequence of these advances, German animal protection groups in all of the country's major cities began agitating for municipal and national stunning laws.<sup>51</sup>

### *The Animal Protection Movement: Scientific and Ideological Motivations*

Animal protection advocates made two kinds of claims in support of their cause: They either mustered scientific (and sometimes, pseudo-scientific) evidence in favor of the humaneness and public health benefits of stunning or they derided *shechitah* because of anti-Jewish and anti-Semitic biases.<sup>52</sup>

The prosecution's case in Cohen's trial followed the scientific approach. Besides the fact that Bodkin called three medical doctors to the stand, all the witnesses invoked either the scientific method or scientific techniques in their testimony. Each drew general conclusions about the humaneness of *shechitah* from their observations in the slaughterhouse. They measured and compared the time it took for an ox to expire when stunned to the time it took for an ox to expire when slaughtered according to *shechitah*, and concluded that stunned animals died sooner. (They differed, however, as to how much sooner.) One witness, a medical doctor, drew conclusions about animals' abilities to perceive pain from his experiments on human patients. "A

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<sup>50</sup> Judd, "The Politics of Beef," 121.

<sup>51</sup> Judd, "The Politics of Beef," 120.

<sup>52</sup> Shai Lavi calls these ideological camps "strands of animal-law politics" and argues that there were in fact three groups: those that promoted "the humane character of stunning," those "made up of anti-Semitic associations" and those "concerned with public health." Because the first and the third of these groups based their arguments on scientific claims with an emphasis on enabling social betterment and progress, I've chosen to link the two groups. See Lavi, 229.

human being or animal does not suffer pain under chloroform,” he testified, “because the human being testifies to the fact. I conclude that he is not sensible to suffering pain.” The doctor then deduced, animals do not suffer pain when they are rendered unconscious, whether by chloroform or by stunning.<sup>53</sup>

Over and again, during Cohen’s trial, stunning was referred to as the most “modern” system of slaughter. “Modern” was, of course, more than a nineteenth century catchword. The term represented what David Blackbourn has called Europe’s “culture of progress” during the nineteenth century. Blackbourn coined that phrase to describe the “rampant celebration of technology and material improvements” that accompanied industrialization and unification in Germany.<sup>54</sup> However, the phrase “culture of progress” was just as apt to describe the self-conscious embrace of technological innovation, civil emancipation and secular education in other regions of Western Europe. Achievements in science, politics and culture led many nineteenth century Europeans to believe they were living in an age of untold advancement and betterment, brought on by the human mind’s curiosity and capacity for understanding. The future looked bright and the term “modern” came to represent that faith in human potential.

For the members of Western European animal protection societies from the 1850s through the 1910s, stunning tangibly represented the achievements of modernity. They professed what John Efron has termed “a blind faith in technology” that led them to reject older practices in favor of “modern ‘scientific’ methods”—even if the benefit of those new methods was questionable. They believed, in the words of the secretary of the Munich animal protection society in 1888, new stunning mechanisms were a “vast improvement over past methods” and

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<sup>53</sup> George Seaman, an official of the RSPCA, argued that it took ten minutes longer for a conscious ox to expire than a stunned ox. James Anderson, an expert butcher, argued that it took 12 minutes longer. “The Police Courts,” *The Daily News* 2937 (17 October 1855).

<sup>54</sup> Blackbourn, 271.



would correct the “abuses [that] occur with the slaughter of animals,” particularly with regard *shechitah*.<sup>55</sup>

While “blind faith” in new technologies led animal protection advocates to push for compulsory stunning laws, beginning in the 1870s, these scientific arguments were frequently accompanied by denigrations of *shechitah* and of Judaism in general. In fact, this hostility can be traced back to Schopenhauer’s critiques of modern agriculture in the 1850s. Schopenhauer blamed Judaism for what he perceived as pervasive cruelty to animals. He argued that the Kantian argument that animals were “things” and not “persons” originated in the Hebrew Bible, which taught that God created animals to be of use for humankind. Christianity, Schopenhauer argued further, had absorbed that assumption and propagated it. “It is obviously high time,” he wrote, “that in Europe Jewish views on nature were brought to an end, at any rate as regards animals. [...] We should do this not out of ‘the righteous man’s regard for the life of his beast’ as the Old Testament expresses it but from our bounden duty to the eternal essence.”<sup>56</sup>

In Cohen’s trial, we glimpse this hostility to Judaism obliquely: The prosecutor took pains to prevent observers from perceiving any anti-Jewish bias in his case. He began his opening statement by professing, “Any intentional cruelty, or any indifference which would amount to cruelty, would be far from receiving their [i.e. Jews’] sanction, on of their chief characteristics being kindness of disposition and acts of benevolence.”<sup>57</sup> (Perhaps he doth protest too much?) Indeed, the only matter about which the prosecution and the defense agreed was, in Cohen’s attorney’s words, that people of the “Jewish persuasion were proverbially persons

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<sup>55</sup> Quoted in Judd, *Contested Rituals*, 97.

<sup>56</sup> Schopenhauer, 375. See also Levy, 50.

<sup>57</sup> Sir William Henry Bodkin, “The Police Courts,” *The Daily News* 2937 (17 October 1855).

whose conduct was characterized by justice and mercy.”<sup>58</sup> Beginning in Switzerland in the 1870s, however, debates over stunning and *shechitah* took an anti-Jewish and anti-Semitic turn.<sup>59</sup>

Beatrix Mesmer has identified three different forms of hostility toward Jews and Judaism in the Swiss animal protection campaigns of the 1870s. First, “Swiss animal-welfare campaigners now argued that the traditional form of Jewish slaughter was not based on biblical precepts but rather on long-superseded oriental customs.” This kind of supercessionism was a hallmark of Christian polemics against Judaism since the medieval period.<sup>60</sup> Second, they contorted the classic Kantian anthropocentric argument—that a person capable of treating animals cruelly would be just as likely to treat other human beings cruelly—and argued that “such a person had clearly not reached the high level of civilisation displayed by Christians.” Once again, they portrayed Christian civilization as superior to Judaism. Third, they charged Swiss Jews with “infringing on public order” by not complying with local compulsory stunning laws—laws that had existed since 1867 in the Swiss cantons of Aargau and St. Gallen. For some years, Jewish butchers had refused to comply with these regulations and this led Swiss animal protection advocates to the conclusion that “Jews were living in Switzerland as foreigners, according to internal laws infringing on the required loyalty to their host country.”<sup>61</sup>

While the first two claims—variations on the theme of Jews stubbornly clinging to an inferior culture in the face of Christian superiority—were typical of pre-modern anti-Jewish rhetoric, the last claim—that Jews were incapable of loyalty to the modern state—represented the

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<sup>58</sup> William Ballantine, “The Police Courts,” *The Daily News* 2937 (17 October 1855).

<sup>59</sup> On the distinction between anti-Judaism and anti-Semitism, see Shulamit Volkov, “Antisemitism as a Cultural Code: Reflections on the History and Historiography of Antisemitism in Imperial Germany,” *Leo Baeck Year Book* 23 (1978), 25-46.

<sup>60</sup> It is worth noting that these animal protection advocates received aid in making these claims from the radical German Reform rabbi Jakob Stern.

<sup>61</sup> Beatrix Mesmer, “The Banning of Jewish Ritual Slaughter in Switzerland,” *Leo Baeck Year Book* 52 (2007), 188.

“anti-emancipatory” sentiment that was a hallmark of modern anti-Semitism.<sup>62</sup> The latter viewpoint was most clearly expressed by the German Protestant theologian Bruno Bauer who argued in his “The Jewish Problem” (1843) that Jewish emancipation in Western Europe was impossible: “As long as he is a Jew, his Jewishness must be stronger in him than his humanity, and keep him apart from non-Jews.”<sup>63</sup>

Indeed, over and above the chauvinism and unflattering stereotypes of the pre-modern era, the historian Shulamit Volkov has described the phenomenon of modern anti-Semitism as a “cultural code:” Hostility to Jews and Judaism became the symbol of a broader worldview, a matrix of intersecting attitudes—among them, German nationalism, social Darwinism, racism, and opposition to democracy, capitalism and emancipation. As well, Volkov has distinguished between modern anti-Semitism and pre-modern anti-Judaism because of its preponderance of contradictions: In the modern era, “Jews were hated because they were different and poor, and because they were different and rich. Some dreaded the impoverished Jewish pedlar, others the wealthy Jewish banker.”<sup>64</sup>

One such contradiction was evident in the Swiss animal protection campaigns of the 1870s and 1880s. These groups decried the involvement of Jews in European economic, political and culture life and, simultaneously, argued that Jews sought to segregate themselves from the Swiss people by maintaining traditional religious practices, such as *shechitah*. Switzerland had emancipated Jews in 1874, yet animal protection advocates there portrayed Jews as the ungrateful recipients of the state’s beneficence. Rituals such as *shechitah* (as well as

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<sup>62</sup> Volkov, 37.

<sup>63</sup> Bruno Bauer, “The Jewish Question” in *The Jew in the Modern World: A Documentary History*, eds. Paul Mendes-Flohr and Jehuda Reinharz (New York: Oxford University Press, 1995), 322. See also David Ellenson, *After Emancipation: Jewish Religious Responses to Modernity* (Cincinnati: Hebrew Union College Press, 2004), 149-153. I thank Rabbi Ellenson for suggesting this emendation.

<sup>64</sup> Volkov, 32-7.

circumcision) enforced a social isolation that was incompatible with the assimilation and integration—these being the twin goals of emancipation.<sup>65</sup> Thus, in Switzerland (as well as in Germany) debates over stunning and *shechitah* gradually turned toward the question of toleration—namely, how much dissent could a modern state tolerate? Or, could a modern state, professing equality before the law, legally privilege social groups exempting them from specific legislation?<sup>66</sup> And for many animal protection advocates, *shechitah* was too great a challenge to the state's legal integrity to bear.

Another series of anti-Semitic contradictions emerged in German debates over stunning and *shechitah*: These contradictions dealt with blood and savagery.

The German obsession with blood and its influence on nineteenth century politics is well known.<sup>67</sup> This obsession also animated the German debates over stunning and *shechitah*. From the 1880s until the 1910s, Jews were repeatedly attacked for not consuming blood and thereby wasting a nutritious food which Germans themselves enjoyed when made into sausages. Yet, at the same time, Jews were accused of “blood-thirst” and “vampirism.” *Shechitah* was thought to be an especially bloody ritual and German anti-Semites accused Jews of drinking the blood of the animals they slaughtered, contaminating meat meant for Christian households with it and profiting from such sales. The process of bloodletting involved in *shechitah* was thought to be “not only visually repulsive but also immoral.”<sup>68</sup> Not surprisingly, emergence of these arguments paralleled the reemergence of medieval blood-libel allegations. In 1892, German police in the Rhineland arrested a Jewish butcher for decapitating and bleeding a Christian child to death. In

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<sup>65</sup> The noted German anti-Semite Otto Böckel even proclaimed on the floor of the Reichstag that “if Jews wanted to be Germans, they had to accept German customs. According to him this meant accepting the animal protectionists’ proscriptions,” see Brantz, 186.

<sup>66</sup> Judd astutely introduces the concept of toleration into the historiographic record. As she says, most studies of the stunning and *shechitah* debates focus on “antisemitic and scientific elements,” see Judd, *Contested Rituals*, 124-7.

<sup>67</sup> See Sander L. Gilman, *Franz Kafka, the Jewish Patient* (New York: Routledge, 1995), 110-3.

<sup>68</sup> Judd, *Contested Rituals*, 112-3.

1900, a Jewish butcher in West Prussia was accused of the same crime. Details of these accusations circulated across Europe.<sup>69</sup>

The invocation of blood in the German stunning and *shechitah* debates was often accompanied by references to Jewish savagery and German civilization. Robin Judd has pointed to a popular German cartoon from this period which depicted a Jewish butcher as “a savage-like creature who was unable to stand erect but could cut an animal severely.” In numerous publications, German animal protection advocates and anti-Semites portrayed Jewish rituals as inherently brutal. Jewish butchers were depicted wielding knives of “exaggerated length and serration” and showing no compassion for the “innocent creatures” they slaughtered.<sup>70</sup>

In contrast to the savagery of *shechitah*, animal protection advocates and anti-Semites in Germany rallied around stunning as a means of shoring up Germany’s reputation as a *Kulturstaat*, a civilized state. While they depicted Jews as holding fast to a culture of brutality, German animal protection advocates and anti-Semites portrayed themselves as guardians of civilization. Judd has argued that “anxiety concerning Germany’s reputation as a civilized state was particularly salient to German authorities and to many middle-class citizens during and after German unification (1869-71) when they attempted to define state and society.”<sup>71</sup> During the 1880s, the topic stunning regularly came to the floor at meetings of the Reichstag. There, supporters argued that “if Germany wanted to compete in the theater of nations, its humanitarian standards including animal protection had to be improved.” Members of the National Liberal Party (the leaders of the *Kulturkampf*—the movement to unify Germany politically and culturally through the persecution of Catholicism) “argued that improvements in livestock killing,”

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<sup>69</sup> Judd, *Contested Rituals*, 113-4.

<sup>70</sup> Judd, *Contested Rituals*, 108-9.

<sup>71</sup> Judd, “The Politics of Beef,” 122.

especially stunning, was one way to unify the German people and assert governmental authority.<sup>72</sup>

Between the 1880s and 1910s, numerous German municipal governments and agencies debated restrictions on *shechitah*.<sup>73</sup> In 1889, for instance, the Prussian Ministry of Interior passed an ordinance regulating the ways Jewish butchers could subdue animals prior to slaughter. The ordinance stopped just short of requiring stunning. The most severe legal challenge to *shechitah* occurred in Saxony in 1882 where the municipal government passed its own compulsory stunning law with no exceptions for Jews.<sup>74</sup> All told, Saxony's stunning law was an aberration, while debate over stunning and *shechitah* was fierce for much of the late-nineteenth and early-twentieth centuries in Germany, no other municipal government passed compulsory stunning legislation.

On the national level, the question of a national ban in *shechitah* and compulsory stunning was debated on the floor of Bundesrat and Reichstag on three occasions prior to World War I—in 1887, 1893 and 1899.<sup>75</sup> Moreover, the members of Germany's new anti-Semitic political parties made the issue a national *cause célèbre* by mentioning it frequently in debate. However, according to Dorathee Brantz, while their efforts contributed to the notoriety of the issue, they also had the paradoxical affect of dissuading potential supporters who believed “the anti-Semites had conjured up their proposal and their discussion about anti-Shehitah testimonies simply in order to veil their actual attack against Jews.”<sup>76</sup> This was in fact correct, though anti-

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<sup>72</sup> Brantz, 185.

<sup>73</sup> Judd notes that, “Between 1880 and 1890, eleven German municipalities considered kosher butchering, but that number grew exponentially after 1890,” *Contested Rituals*, 89.

<sup>74</sup> Brantz, 187.

<sup>75</sup> Judd, *Contested Rituals*, 89.

<sup>76</sup> Brantz, 190.

Semites denied the point. The consequence of association of the two movements, however, was that the ban on *shechitah* was voted down on all three occasions it came to a vote.

The failure of Germany's anti-Semitic political parties to pass a definitive ban on *shechitah* may be a reflection of the larger failure of these parties in German political life. The historian Richard S. Levy has argued famously, "The legacy of antisemitic political parties in Imperial Germany [...] was one of discord and incompetence."<sup>77</sup> On the other hand, Switzerland, where there were no anti-Semitic political parties, was the only country in Europe to successfully ban *shechitah* prior to World War I. Beatrix Mesmer has argued that the success of the Swiss ban was a reflection of the way anti-Semitism infused Swiss animal protection campaigns.

While anti-Semitic political parties co-opted the cause animal protection in Germany, in Switzerland animal protection societies' efforts were shaped by anti-Semitism but were not dominated by it. During the 1870s and 1880s they amassed significant political influence and by 1893, they pressured the Swiss National Council in Berne to hold a national plebiscite to determine whether the Swiss constitution should be amended to prohibit *shechitah*. A vote was held on August 20, 1893 and when tallied, the vast majority of Swiss citizens voted in favor to the amendment, which stated: "It is expressly forbidden to bleed animals being slaughtered without stunning them beforehand. This applies to all methods of slaughtering and all types of animals, without exception."<sup>78</sup>

In the course of this chapter, we have come to see how the great social, political and cultural transformations of the nineteenth century—urbanization, democratic political advocacy, new technologies, and anti-Semitism—led to the banning of an ancient Jewish practice in

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<sup>77</sup> Quoted in Volkov, 26. See Richard Levy's book, *The Downfall of Anti-Semitic Political Parties in Imperial Germany* (New Haven: Yale University Press, 1875).

<sup>78</sup> Efron, 174.

Switzerland and repeated challenges to its legality in Germany and Britain. Upon reflection, the controversies over stunning and *shechitah* (*Schächtfragen*) have forced us to reconsider the common understanding of nineteenth century politics as a dichotomy between liberal and conservative forces. In point of fact, we have seen how the debates over stunning and *shechitah* provoked unusual political and ideological alliances. Liberals who championed of technological and scientific progress and conservatives who romanticized pre-modern agrarian life found common cause in compulsory stunning legislation. Anti-Semitism—an ideology identified with the most conservative elements in society—entered the consciousness animal protection advocates who sought to extend the nineteenth century “culture of progress” to animals.

Against these efforts, in 1885, Marcus Horvitz (1844-1910), the communal Orthodox rabbi of Frankfurt-am-Main, issued a responsum on stunning and *shechitah*. This responsum sought to accommodate the demands of animal protectionists—who at the time were petitioning the Swiss and German governments to require stunning immediately after *shechitah*—while remaining true to Jewish tradition. Horovitz’s creative attempt to find a middle-ground between the forces of modernity described above and *halachah* (Jewish law) is focus of the subsequent chapters of this thesis.



## 2

### **Marcus Horovitz: Moderating German Orthodoxy**

Marcus Horovitz was born in 1844 in a Hungarian village, near the city of Tokaj in the northeast of Hungary.<sup>1</sup> He received his rabbinical education first in Verbo, Hungary under Chaim Zvi Mannheimer and then under Esriel Hildesheimer in Eisenstadt.<sup>2</sup> He ultimately received rabbinical ordination from Hildesheimer and the latter counted Horovitz as one of his most distinguished students.

Horovitz and Hildesheimer remained close throughout their careers: Horovitz dedicated his collected responsa to Hildesheimer, and in an elaborate epigraph called his mentor “the prince of Torah and a pillar of piety,” among other praises. David Ellenson has demonstrated the

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<sup>1</sup> Isaac Heinemann, “Rabbi Mordecai HaLevi Horovitz and his Jewish Outlook” (Hebrew), *Sinai* 7 (1944), 162.

<sup>2</sup> *Encyclopedia Judaica* 2<sup>nd</sup> ed. s.v. “Horovitz, Marcus.”

two men's close kinship, both in terms of their personal relationship—which took on the character of that of a father and son—and in terms of the influence of Hildesheimer's religious outlook on Horovitz's aspirations and achievements.<sup>3</sup> Hildesheimer encouraged Horovitz to pursue a secular doctorate following his ordination—advice Horovitz eagerly accepted. However, the most significant decision of Horovitz's career would, for a time, strain their relationship and pull the two men apart.

### *The Jewish Community of Frankfurt-am-Main*

In 1878, after serving as rabbi of the Jewish communities of Lauenburg and Gnesen, Germany, Horovitz was appointed “communal Orthodox rabbi” (*orthodoxer Gemeinderabbiner*) in Frankfurt-am-Main—against his mentor's advice. The title “communal Orthodox rabbi” belies the difficulty of the job and complexity of the city's Jewish communal politics. Since the middle of the nineteenth century, Frankfurt was the site of a fractious debate over Jewish religious reform and modernization. The majority of the city's Jews favored modernization—such as the introduction of the organ into worship services and the preaching of a sermon in the vernacular. In 1845, “the Gemeinde”—the municipal authority in charge of all Jewish religious matters and responsible for the collection of compulsory taxes and fees from Jews—hired its first “reform rabbi.”<sup>4</sup> The decision triggered a permanent split in the community—a majority in favor of religious reform and a vocal minority in favor of what were called “Orthodox,” or unmodernized, practices. In 1851, the Orthodox group founded its own synagogue, called the *Israelitische*

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<sup>3</sup> See David Ellenson, *Rabbi Esriel Hildesheimer and the Creation of a Modern Jewish Orthodoxy* (Tuscaloosa, AL: University of Alabama Press, 1990), 94-7 (hereafter cited as *Hildesheimer*).

<sup>4</sup> Saemy Japhet, “The Secession from the Frankfurt Jewish Community under Samson Raphael Hirsch,” *Historia Judaica* 10, no. 2 (October, 1948), 104.

*Religionsgesellschaft*, and hired Samson Raphael Hirsch (1808-1888) to be its spiritual leader.<sup>5</sup> At the time, Hirsch was already a respected leader of Orthodox Jewry in Central Europe, well known for his works the *Nineteen Letters on Judaism* (1836) and *Horeb* (1837).

Over the course of his career in Frankfurt, Hirsch proved to be a powerful and divisive figure. By all accounts, he detested the modernizers and perceived them as the worst sort of religious heretics.<sup>6</sup> To Hirsch, such reforms threw the divine origins of Jewish tradition into question. Moreover, he took aim at the Gemeinde for tolerating and abetting the reformers' efforts—even if its leadership included many Jews who considered themselves “Orthodox.” According to Isaac Heinemann, an historian of and a witness to these events, “Hirsch considered the community [the Gemeinde] as nothing else but a religious association of like-minded people. From this it followed that an association lost its meaning as soon as the likemindedness of its members on which it was based, had ceased.”<sup>7</sup> In other words, for Hirsch, compromise and toleration of differing points of view within the Gemeinde was impossible. The only option was complete separation.

Hostilities among Frankfurt's Jewish community reached their nadir during the summer of 1876 when the German Reichstag passed the bill “Concerning Secession from the State Church.” This bill permitted individual Jews to sever all ties from their municipal communal organizations (organizations like the Frankfurt Gemeinde). In large measure, it was the result of a successful lobbying campaign by Hirsch and his ally in parliament Eduard Lasker.<sup>8</sup> Jews who chose to secede no longer were required to pay taxes to their local communal bodies and were

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<sup>5</sup> *Encyclopedia Judaica* 2<sup>nd</sup> ed. s.v. “Hirsch, Samson (ben) Raphael.”

<sup>6</sup> Japhet catalogues Hirsch's vituperation against the reformers and the Gemeinde in his essay, 112.

<sup>7</sup> Heinemann, “Supplementary Remarks on the Secession from the Frankfurt Jewish Community under Samson Raphael Hirsch,” *Historia Judaica* 10, no. 2 (October, 1948), 125.

<sup>8</sup> This bill was an extension of Bismark's anti-Catholic *Kulterkampf*, applied to Jews. On the ironic origins of this legislation, see Ellenson, *Hildesheimer*, 86-7.

free to found their own religious institutions. Then in the fall of 1876, Hirsch took to the pulpit to demand that his congregants secede from the Gemeinde and drive a wall of separation between it and the true-believers of the *Religionsgesellschaft*. By Simchat Torah, Hirsch, his family and a number of prominent members of his congregation had seceded.

Soon thereafter, the Gemeinde sought to coax Hirsch and his followers back into its ranks. With the cooperation of many of its more liberal supporters, it tried to assuage Hirsch by agreeing to operate its charitable and ritual programs (such as its hospital, its ritual bath and of course, its slaughterhouse) under Orthodox supervision. These negotiations, however, failed to achieve a compromise. Seeing that Hirsch and his followers would not be moved, those members of the Gemeinde who rejected modernization but also rejected secession established their own Orthodox congregation under the Gemeinde's auspices. Frankfurt's "communal Orthodox" synagogue was thus founded—an alternative to Hirsch's separatist *Religionsgesellschaft* within the framework of the "state-sanctioned" Jewish communal body. In 1878, Horovitz was appointed its first rabbi.

In fact, in 1876, following the failure of the communal negotiations, the Gemeinde had petitioned another of Hildesheimer's students, Israel Goldschmidt, to take the post. However, according to Ellenson, "Hildesheimer encouraged Goldschmidt to decline this offer not because of religious principle but because of the particular nature of the Frankfurt community and Rabbi Hirsch's presence there." Hirsch and Hildesheimer were cut from the same cloth: They were disciples of the same teachers Jacob Ettlinger and Isaac Bernays and they shared similar religious outlooks.<sup>9</sup> Moreover, Hildesheimer supported Hirsch's effort to legalize communal secession and

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<sup>9</sup> Hirsch and Hildesheimer's similar education and religious outlooks should not, however, cloud our vision of the significant differences between the two men, especially with regard to engaging with the non-Orthodox. See Ellenson, *Hildesheimer*, 86-94.

shared his disdain for the reformers.<sup>10</sup> At the same time, Hildesheimer had a strong sense of personal loyalty and he regretted that one of his students would be in direct competition with a revered colleague.<sup>11</sup> Goldschmidt ultimately declined the Frankfurt Gemeinde's offer. When Hildesheimer offered Horovitz the same advice, however, Horovitz spurned his teacher.

### *Horovitz, the Moderate*

Horovitz's decision to accept the Gemeinde's offer to lead the new Orthodox congregation in competition with Hirsch's *Religionsgesellschaft* led to a rift with Hildesheimer. According to Ellenson, Hildesheimer's opposition to Goldschmidt's and Horovitz's candidacies for the position was motivated more by personal than ideological concerns. Even though Hildesheimer supported Hirsch's secession campaign, "he had a greater sense of Jewish solidarity than did Hirsch" and he was not opposed to the position to communal Orthodox rabbi itself. What Hildesheimer opposed was the continued straining of Frankfurt's internal Jewish communal relations and any action that might be perceived as disrespectful to a rabbinic luminary such as Hirsch.<sup>12</sup>

Yet, Ellenson has also shown how Horovitz's decision to spurn his teacher's advice and accept the position was marked by an overarching concern for the Jewish principle of *klal yisrael*—the unity of the Jewish people—a principle instilled in him by Hildesheimer. Unlike Hirsch, Hildesheimer "did not view the Jewish people solely as a religious entity." Rather, Hildesheimer understood the Jewish people as both a religious and national entity and believed

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<sup>10</sup> Ellenson, *Hildesheimer*, 87

<sup>11</sup> Ellenson, *Hildesheimer*, 93.

<sup>12</sup> On Hildesheimer's sense of Jewish communal solidarity and his opposition to Horovitz's candidacy, see Ellenson, *Hildesheimer*, 93.

that “every effort possible” should be expended to uphold communal unity and quell factionalism and strife.<sup>13</sup>

Horovitz’s decision to go to Frankfurt then ought to be seen as a first step in a career devoted the promotion of *klal yisrael*.<sup>14</sup> Moreover, it is clear Hildesheimer ultimately recognized Horovitz’s noble motives: While Horovitz’s decision placed a great strain on the two men’s relationship, in 1879, Hildesheimer agreed to travel to Frankfurt to speak at the dedication of Gemeinde’s new Orthodox synagogue, where Horovitz presided. Hildesheimer, in a letter to a prominent critic of his rapprochement with Horovitz, described the emotions surrounding his actions, “a devoted student, who is like a child to me, and whose whole future perhaps depends upon my opinion, asks me for the exact same yes or no”—how could any “father” refuse such a request?<sup>15</sup>

Temperamentally, Horovitz was suited to the work of promoting communal unity and he struck a strong contrast with Hirsch. According to Heinemann, “It is certain he was very pleasant with all people and fled from quarrelsome words.”<sup>16</sup> Prior to his arrival in Frankfurt, Horovitz was one of the few Orthodox rabbis in Germany who refused to join Hirsch’s effort to legalize Jewish communal secession—unlike his mentor Hildesheimer. Horovitz had in fact proposed an alternate bill “compelling each community to arrange their religious institutions in such a manner that even the minorities could be fully satisfied.”<sup>17</sup> Here, at this early state, is a manifestation of Horovitz’s commitment to Jewish communal unity and internal pluralism. According to Hienemann, Horovitz opposed the secession law on the principle that “different religious convictions can exist in one and the same community, and that especially a strictly ‘Torah-true’

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<sup>13</sup> Ellenson, *Hildesheimer*, 92-3.

<sup>14</sup> Ellenson, *Hildesheimer*, 96.

<sup>15</sup> Quoted in Ellenson, *Hildesheimer*, 96.

<sup>16</sup> Heinemann, “Rabbi Mordecai HaLevi Horovitz,” 168, my translation.

<sup>17</sup> Japhet, 108.

Judaism can develop fully and purely in an ‘Einheitsgemeinde’ [united community].”<sup>18</sup> Unfortunately, Horovitz was not able to muster enough support to have his alternative bill considered by the parliament.

During his rabbinate in Frankfurt, Horovitz led numerous programs that brought the city’s liberal and Orthodox Jews together with common purpose—programs that Hirsch spurned. Mordecai Breuer recalls Horovitz’s role in the founding of Frankfurt’s B’nai B’rith chapter, the maintenance of the Gemeinde’s hospital, as well as a communal school and youth organization.<sup>19</sup> Like his mentor Hildesheimer, Horovitz believed “the Jewish community operated on two levels, the religious and the communal, and that divergence from the former did not exclude an individual from the latter.”<sup>20</sup> According to Heinemann, while “He had no relation of any kind to the liberal synagogue,” his objection was not so forceful as to prohibit his own sons from attending “classes in secular subjects at the Realschule of the Gemeinde, but it was only on condition that they be exempted from religious instruction.”<sup>21</sup> A Jew could participate in communal activities with other Jews with whom he had religious disagreements. Unlike Hirsch, he believed there was such a thing as an ideological “middle ground.”

Ellenson has written extensively about Horovitz’s attitude toward religious modernization on the basis of his responsa. Horovitz, for instance, defended the right of Orthodox rabbis in Germany to wear clerical gowns during religious services—a “modern” practice embraced by Reform rabbis.<sup>22</sup> He also urged *batei din* (rabbinical courts) and *mohalim* (functionaries who perform circumcisions) to allow the sons of non-Jewish mothers and Jewish

<sup>18</sup> Heinemann, “Supplementary Remarks,” 128-9.

<sup>19</sup> Mordecai Breuer, *Modernity within Tradition: The Social History of Orthodox Jewry in Imperial Germany*, trans. Elizabeth Petuchowski (New York: Columbia University Press, 1992), 191 and 271.

<sup>20</sup> Ellenson, *Hildesheimer*, 100.

<sup>21</sup> Heinemann, “Supplementary Remarks,” 131.

<sup>22</sup> Ellenson, *Tradition in Transition: Orthodoxy, Halakhah, and the Boundaries of Modern Jewish Identity* (Lanham, MD: University Press of America, 1989), 56. Of course, many Orthodox rabbis in Germany, even Hirsch, wore such gowns.

fathers to be circumcised. Horovitz's view on this matter was remarkably liberal as most Orthodox rabbis of his period forbid the practice outright. He was, in this regard, unique among his colleagues.<sup>23</sup> The latter demonstrates Horovitz's overriding concern for the unity of the Jewish people and his willingness to include within the bounds of the community those individuals whom other Orthodox rabbis attempted to exclude.<sup>24</sup> Horovitz did not compromise, however, on the question of the use of the organ in synagogue worship. Like his mentor Hildesheimer, Horovitz "proscribed the playing of the organ in a synagogue even on weekdays."<sup>25</sup>

Horovitz's willingness to permit his sons to study secular subjects in the Gemeinde's school demonstrates his benevolent attitude toward secular knowledge and German society in general. Heinemann comments that Horovitz was opposed to the "hatred of culture" that he believed was part and parcel of Hasidism and other conservative trends in Jewish Orthodoxy.<sup>26</sup> Instead, he, like his mentor Hildesheimer, embraced German culture—studying at German universities and interacting with Christians.<sup>27</sup> Ellenson notes that in another responsum, Horovitz demonstrated his respect for Christianity and arguing Christians even possessed God's favor. He did not equate Christian Trinitarianism with idolatry, like so many Orthodox leaders of his era.<sup>28</sup> Moreover, he actively sought to educate Christians about Judaism and engage the mainstream

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<sup>23</sup> Ellenson, "Accommodation, Resistance, and the Halachic Process" in *Jewish Civilization: Essays and Studies* 2, ed. Ronald A. Brauner (Philadelphia: Reconstructionist Rabbinical College, 1981), 95.

<sup>24</sup> Reform rabbis, by contrast, were willing to permit such rituals.

<sup>25</sup> Ellenson, *Tradition in Transition*, 54-5. Horovitz's opposition to the organ, however, was rooted in different concerns. Unlike Hildesheimer, who argued that the use of the organ in Jewish worship was a violation of the prohibition of "imitating apostates"—imitating, that is, the reformers whom the Orthodox considered apostates—Horovitz argued that the organ was prohibited because it was a violation of the rabbinic commandment to rest on the Sabbath. According to Ellenson, the distinction was crucial, Horovitz argued, because it demonstrated that the Reformers had no respect for the authority of "rabbinic authority."

<sup>26</sup> Heinemann, "Rabbi Mordecai HaLevi Horovitz," 169, my translation.

<sup>27</sup> Ellenson notes, "Hildesheimer's affirmation of Western culture distinguished him from his Orthodox rabbinical peers and earned him their enmity," *Tradition in Transition*, 38.

<sup>28</sup> Ellenson, "Jewish Covenant and Christian Trinitarianism" in *Jewish Civilization: Essays and Studies* 3 (Philadelphia: Reconstructionist Rabbinical College, 1985), 97.



German media and political class. Ismar Schorsch, for instance, recounts how Horovitz and Hildesheimer led a group of rabbis in issuing a statement defending the Talmud from charges of obsolescence, sectarianism and seditiousness. In Schorsch's words, "Clearly intended to reaffirm the suitability and trustworthiness of Judaism for the modern state, this declaration was subsequently sent to members of German legislatures, government officials, and newspaper editors." Hirsch refused to participate in this effort because he believed Hildesheimer and Horovitz had mistakenly differentiated between the authoritative status of the Written law (the Hebrew Bible) and the Oral Law (rabbinic tradition). Once again, for Hirsch, the force of religious principle trumped the necessity of communal cooperation and led him to exclude himself from the efforts of his Orthodox colleagues.<sup>29</sup>

Horovitz's critique of the emergent Zionist movement reflected his openness to and comfort with German culture. The summer before the First Zionist Congress in 1897, Horovitz joined with a number of German liberal rabbis to protest Theodor Herzl's effort to establish a Jewish state in Palestine. These "protest rabbis," as they became known, published a carefully-worded declaration stating (1) that "The efforts of the so-called Zionists towards the foundation of a Jewish national state in Palestine contradicts the Messianic prophecies of Judaism" and (2) that "Judaism obliges its followers to support the fatherland to which they belong, with all devotion and to serve its national interests with all their heart and all their power."<sup>30</sup> Horovitz authored this latter clause of the declaration himself and it was an outgrowth of his conviction that "Jews, as patriots, were obliged to be true to the state in which they lived."<sup>31</sup>

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<sup>29</sup> Ismar Schorsch, *Jewish Reactions to German Anti-Semitism, 1870-1914* (New York: Columbia University Press, 1972), 109.

<sup>30</sup> Reprinted in Yaakov Zur, "The 'Protest Rabbis'" in *The First Zionist Congress in 1897: Causes, Significance and Topicality*, ed. Heiko Haumann (Basel: Karger, 1997), 128.

<sup>31</sup> Zur, 129.

Like many Orthodox rabbis of his era, Horovitz rejected the concept of the establishment of a Jewish political entity in the present day; Jewish national aspirations would be fulfilled in the messianic age, he taught. Yet, at the same time, he did not disparage the efforts of Jews who sought to establish colonies in Palestine. The third clause of the “protest rabbis” declaration read: “The honourable intentions which relate to the colonization of Palestine by Jewish farmers do not stand in contradiction to this obligation because they have no relationship whatsoever to the foundation of a national state.”<sup>32</sup>

Like his mentor Hildesheimer—of whom Ellenson has written, “He did not view the Land of Israel in secular-nationalistic terms. He viewed Eretz Yisrael in religious terms only. Esriel Hildesheimer was not a modern Zionist”—Horovitz understood the Jewish people’s attachment to the land of Israel in purely religious terms.<sup>33</sup> In Heinemann’s words, “He couches his praise [of Zionism] in a religious point of view: He hopes that the revival of [Jewish] culture and nationalism will be brought about by a rebirth of faith.”<sup>34</sup> In this way, his perspective was in complete concert with the views of his Orthodox colleagues. What differentiated Horovitz, then, was his willingness to collaborate with those with whom he disagreed on issues of mutual concern and his embrace of Germany and German culture. He was, in his own unique manner, a consensus builder and a pluralist. In almost every respect, Hirsch’s opposite.

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<sup>32</sup> Reprinted in Zur, 128.

<sup>33</sup> Ellenson, *Hildesheimer*, 109.

<sup>34</sup> Heinemann, “Rabbi Mordecai HaLevi Horovitz,” 168, my translation.

### 3

#### **Horovitz's Responsum**

Marcus Horovitz's collected responsa were published under the title *She'eilot u'Teshuvot Mateh Levi* (The Responsa of the Tribe/Staff of Levi) in two volumes, the first during his lifetime in 1891 and the second under the supervision of his son Jacob Horovitz in 1933. The title is an allusion to Horovitz's middle name (Levi), the priestly tribe of Levi, and Numbers 17:23, where the "staff of Levi" magically brings forth blossoms. The responsum on stunning and *shechitah* below is an extract from the second volume of the collection, responsum 21.

I have sought to translate the Hebrew as literally as I could while rendering the text intelligibly. When necessary I made emendations to clarify Horovitz's intentions and these additions always appear in square brackets. I have spelled-out idiomatic expressions and

abbreviated phrases only when such an explanation would have profitably enhanced the reader's comprehension of the text, otherwise I have simply transcribed them into English characters (or replaced them with English language equivalents) and offered an explanation in a footnote. Footnotes here are also meant to aid the reader's immediate comprehension of the responsum and therefore I have supplied summaries of some of the more significant halachic sources to which Horovitz refers. However, because Horovitz's arguments and conclusions are complex, the reader is urged to consult the following two chapters as well.

\* \* \*

B”H<sup>1</sup>

Holy Sabbath eve of *Parashat Matot*<sup>2</sup> 5646 [1885]<sup>3</sup> here in our community of Frankfurt am Main, may God protect her!

Peace to the honorable rabbi, *av beit din*<sup>4</sup> of the holy community of Wildberg<sup>5</sup>, may God protect her!

[Regarding] you honor's words on the matter of the government's question about the petition of the society for [the prevention] of animal suffering (*Thierschutzvereinigung*) in Switzerland that proposes an inviolable law that all animals that are slaughtered according to the law of the

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<sup>1</sup> “Blessed is the Name [of God]”—a rhetorical flourish that often begins all texts of this sort.

<sup>2</sup> Horovitz dates this responsum according to the yearly Torah-reading (*parashah*) cycle. *Parashat Matot* denotes the text of Numbers 30:2-32:42 frequently is read in the late-summer (July or August).

<sup>3</sup> Horovitz cites the Hebrew lunar year, which I have converted to the Gregorian year in brackets.

<sup>4</sup> This is the title of the most senior member of a rabbinical court (*beit din*). In deference to this man's position, Horovitz refers to him as “your honor” throughout the responsum.

<sup>5</sup> Wildberg is a city Wildberg is a town in the northeast of Switzerland, outside of Zurich.

Jewish people Jewish butchers [must] hit on their heads immediately after slaughter in order that they will speedily die: I investigated [the matter] today and because your honor asked [me] to reply quickly and wanted to hear my view on this, I will also be quick to respond. However, my words will be few on account of my concerns which grew today very much.

That which your honor wrote concerning the Taz's opinion [on *Shulchan Aruch, Yoreh Deah*] §67:3:2,<sup>6</sup> is, in my humble opinion, not relevant because the *Achronim* wrote next to nothing worth considering on that matter—for if the blood stopped being emitted, the animal or the fowl is already dead and it has no life-force at all. [Moreover,] in this matter, we need only to reconcile Rema's<sup>7</sup> ז"ל<sup>8</sup> contradiction with the words of the Shach ז"ל [on *Shulchan Aruch, Yoreh Deah*] §67:3:9.<sup>9</sup>

What your honor wanted to explain about the Shach's [view] about the death [of an animal] that comes suddenly [was] that the concern for the absorption of blood in the limbs is not relevant since in death there is no absorption rather only loss [of blood through] emission. This, with all due respect, is not precise, because the reason for absorption of blood in the limbs in this case is

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<sup>6</sup> R. David HaLevi (the "Taz," 1586-1667) composed one of the seminal commentaries on the *Shulchan Aruch*, the *Turei Zahav*. In his commentary on In his commentary on SA YD 67:3, he wrote that a person could hit an animal on the head after *shechitah* if and only if the animal had stopped emitting blood. If blood had indeed stopped flowing, the blow to the head would not cause the "absorption of blood" in the animal's body—such absorption would render the animal's meat unfit for consumption. This was a stringent reading of the halachic sources, permitting stunning after *shechitah* in only the rarest of circumstances.

<sup>7</sup> R. Moses Isserles (the "Rema," 1525-1572) wrote in his glosses on the *Shulchan Aruch* that it was prohibited to "break the nape" and "stab the heart" of an animal after *shechitah*, while at the same time, he permitted "hitting" an animal "on the head" after *shechitah* if it "delays in dying." Some later scholars understood these two statements as contradictory—the first being a blanket prohibition and the second being a specific permission. See the discussion of this issue in chapter 4.

<sup>8</sup> "May his memory be a blessing."

<sup>9</sup> Shabbtai b. Meir HaCohen (the "Shach," 1621-1662) wrote that Isserles only outlawed the "breaking of the nape" and "stabbing the heart," and that "hitting" an animal on the head was a different case all together.

just like what the *rishonim*<sup>10</sup> wrote: because through slaughter blood is uprooted from its source and when it stops it becomes “blood that spread from place to place.”<sup>11</sup> If so, what is the meaning of what your honor wrote, that when [an animal] dies suddenly there is no concern for absorption of blood, only the movement outward [emission]?” This “movement outward” [emission] is the absorption of the very blood that already spread from its place in the act of slaughter! And if this is the case, then the very distinction about which your honor made between sudden death and the rest [other kinds of] deaths, is not really anything at all!

What I think about this, in my humble opinion, is this: Everything the Shach and the Taz found troubling in the Rema ז”ל, is apparently troubling in Rashi<sup>12</sup> ז”ל too. Look at Rashi on BT Hullin 113a. He explained (and Ba’al Ha’Ittur<sup>13</sup> followed him) the pericope “One who breaks the nape of a beast” that concluded in “*teiko*” also with regard to salting and roasting. This is not like Rabbeinu Gershom<sup>14</sup> (see *Or Zarua*<sup>15</sup>, at the end of the *halachot* dealing with salting) or like the Rif<sup>16</sup>, the Rambam<sup>17</sup> and the Rosh<sup>18</sup> and the Ran<sup>19</sup> who explained [the pericope] according to the

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<sup>10</sup> A technical term referring to the “earlier” halachic authorities. Most likely, Horovitz here is referring to the Ashkenazic Tosafists, a rabbinic movement of the eleventh through thirteenth centuries in Northern and Western Europe.

<sup>11</sup> The Tosafists had argued that if blood “spreads from place to place” within the body of an animal after *shechitah* the animal’s meat is considered damaged and cannot be eaten. See BT Hullin 110b and below, chapter 4, where this concept is discussed at length.

<sup>12</sup> R. Shlomo Yitzhaki (Rashi, 1040-1105) is the commentator of record on the BT among Ashkenazic and many Sephardic Jews. His (genealogical and ideological) descendants were the Tosafists. Rashi argued, in his commentary on BT Hullin 113a, that a person may not consume meat from an animal whose nape had been broken following *shechitah*, even if it had been salted or roasted before consumption.

<sup>13</sup> R. Isaac b. Abba Mari of Marseilles (c. 1120–1190), author of the Ittur, a compendium of dietary laws.

<sup>14</sup> R. Gershom Ben Judah (known as the *Me’or HaGolah*, “the light to the exile,” c. 960–1028), one of the earliest Ashkenazic authorities.

<sup>15</sup> The *Or Zarua* was a medieval compendium of Ashkenazic ritual and commercial law authored by R. Isaac b. Moses of Vienna (1180-1250).

<sup>16</sup> R. Isaac b. Jacob Alfasi (1013–1103) the Sephardic commentator of record on the BT. His commentary is entitled *Hilchot HaRif*.

<sup>17</sup> R. Moses b. Maimon (Maimonides, c. 1135-1204).

<sup>18</sup> R. Asher b. Yehiel (c. 1250–1327), author of one of the seminal compendia of Jewish legal sources according to the order of the BT, the *Hilchot HaRosh*.

<sup>19</sup> R. Nissim Gerondi (d. 1376) was the author of celebrated commentary on Alfasi’s *Hilchot HaRif*.

idea of eating raw meat [*basar bunt'zah*].<sup>20</sup> If it is the case that Rashi prohibited eating such meat on account of [the rationale of] “the absorption of blood in the limbs” and also [prohibited eating such meat even after] salting and roasting because [of the rationale of] “blood that spread,” [than why did] Rashi himself in BT Hullin 32a lemma “*Teiko*” write that it is permitted to hit [an animal] on the neck after slaughter in order to speed its death?

Further, the Tur brought Rashi's words above [as], “He hits it on the head.” But the Or Zarua, page 43, quoted Rashi's language, just as we have before us, “on the neck.”

And, if it is the case that Rashi ז”ל contradicted himself, then why were the Shach and the Taz troubled [only] with the Rema and not troubled with Rashi ז”ל?

In truth, in the Or Zarua at the end of the laws of salting, he [R. Isaac Or Zarua] wrote in the name of Rabbi Baruch in the name of Rabbi Samuel, etc.:

My teacher knew that here butchers customarily, following slaughter, before the departure of the soul, encircled the neck of the animal and inserted a knife behind it into the spinal cord.... And I kept silent, since I learned that very teaching of Samuel [in BT 113a]: “One who breaks the nape of an animal...[renders the meat unfit to eat].” Namely, [it is prohibited] precisely [when] “he breaks” [the spinal cord]—since on account of the pain of breakage delaying the departure of the soul, the blood burns and is absorbed in the limbs. But cutting the spinal cord I didn't hold prohibited.... And Samuel also [held that the prohibition] states “he breaks,” and not “he cut.” For if cutting is prohibited than we understand breaking is all the more so [forbidden]. End quote.

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<sup>20</sup> The distinction Horovitz is citing here pertains to the various manuscripts of the BT which these authorities possessed. These manuscripts led these authorities to the view that a person may consume meat from an animal whose nape had been broken after *shechitah* as long as such meat was not consumed raw. This issue is discussed in full detail in chapter 4.

Now, we see how the Shach [on *Shulchan Aruch, Yoreh Deah*] §67:3:9 reconciled the Rema's contradiction and wrote, "It is possible that the blood is not dragged out of the head so much," end quote. This is not relevant for reconciling Rashi's *z"l* contradiction, since in Rashi's [statement] before us it is valid, in his opinion, to hit [an animal] on the neck. In a similar vein, the Or Zarua quoted Rashi's *z"l* words. (It is possible that the Shach understood Rashi's words just like the Tur quoted [them].) But the solution the Or Zarua offered to reconcile the custom he mentioned with the contradiction in the *gemara* about "One who breaks the nape of a beast" is also relevant for solving the Rema's *z"l* contradiction—for, it is possible for him to hit [an animal] on the head without breakage (namely, without suffering.) Indeed, even though it was not said to reconcile thusly, since [Rashi said] "he hits it" it is possible to explain this as well as "breaking." In any case, he succeeds [at reconciling the contradiction] since we can speed the death through cutting, according to the Or Zarua it [i.e. hitting] is permissible. If this is done to the head, we fulfill our obligation according to the Shach. If the two of them [i.e. hitting/cutting the neck and the head] are performed together in a way that the animal does not feel pain, namely through cutting, and the like in the head—this is the best way.

Accordingly, if the government wishes to establish a law to speed an animal's death following slaughter, we need to choose the way this will be accomplished according to the permission of Or Zarua's opinion and the Shach's opinion.

Surely we are obligated to awaken the mind of the government to these views that it know the nature of these matters and say: "Through *shechitah* in accordance with our holy Torah the blood of an animal is emitted and flows out, and through this [process] the meat is good and fine for the



human body. It does not spoil and [it] holds its taste better than the meat of an animal that had not lost its blood, as is known.” Who knows the intention of the holy Torah whose ways are ways of pleasantness and all its paths are peace (Proverbs 3:17)?

It is possible that if the blood does not flow and is not emitted properly, the meat [could] damage he who eats it. Perhaps Rashi ז”ל intended this in his words: “That which absorbs blood will not release it again, and he eats blood,” end quote. Here, Rashi ז”ל did not make any mention that salting was not effective [in drawing out absorbed blood]. If Rashi’s intention was this, namely, that besides the very blood that is emitted through salting, one needs to wait a long time following slaughter so that the blood flows and is emitted, as is its nature, and if an impediment is made in this [process], namely the blood is not emitted and does not flow out, then the Ran’s question will be solved through Rashi’s ז”ל opinion, simply and easily.

The heart of this matter is, in my humble opinion, that we are obligated to say that we do not use any device to delay the emission of blood after slaughter, since it is possible that the holy Torah’s intention was the very same as the reason that scientists [*yodei dat ha’teva*] give: that the movement outward of blood [from within the meat] damages the meat and damages humankind [i.e. those who eat it]; The foundation of *shechitah* is like the foundation of all the laws and statutes that YHWH our God commanded for our betterment every day, [namely, it is] “very deep and who can discover it?” (Ecclesiastes 7:24).

But if, however, the mind of the government is not quieted in one way or another, it is forbidden to make changes in a manner not justified by either the view of the Or Zarua or the view of the

Shach. When a matter concerns a weighty law for all Israel, your honor could write his view to the government and state that it is good to take counsel with the great rabbis of Israel, that they should not do anything for one place before other rabbis of our country tell their views. Without a doubt, everyone will agree with this, as if they were of one mind, if they consider the matter fully.

The words of the writer with great urgency and [they] conclude with blessing and peace.

Mordecai HaLevi Horowitz

## 4

### *Responsa and Reading the Sources*

Writing about the characteristics of rabbinic responsa literature, David Ellenson has commented, “[Responsa are] *the crossroads where text and context meet in the ongoing tradition of Jewish legal hermeneutics*. As such, each responsum is an autonomous text, to be analyzed synchronically, written in a particular milieu by a specific author. However, and equally important, each should be viewed diachronically as an individual reflection of a continuous body of Jewish literature with its own style, language, and logic.”<sup>1</sup> We will explore Horovitz’s “particular milieu” and its influence on our responsum in the next chapter. Beginning with Ellenson’s second characteristic, however, it is crucial to emphasize how even as a “continuous

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<sup>1</sup> Ellenson, *Tradition in Transition*, 10. Italics original.

body of Jewish literature” responsa are deeply enmeshed in the larger halachic tradition. A rabbinic respondent wades through a sea of inherited tradition in order to draw his own conclusions. In fact, as Peter Haas has shown, the respondent’s ability to navigate through inherited tradition and use exegetical tools to draw conclusions confirms his authority as a rabbinic jurist and the ruling’s authority as an extension of the “Oral Torah” first revealed to Moses at Sinai.<sup>2</sup>

Ellenson and Haas have both commented that responsa literature is an “elite” and “technical” genre. In Haas’s words, “Responsa are not written in the vernacular of the addressee, but in the arcane, academic, and holy language of the rabbis. This choice of language not only stresses the communal nature of the generic responsa readership, but turns the legal and moral discourse of responsa into a technical exercise in which only certain people—basically the educated elite—are able truly to engage.”<sup>3</sup> Yet, the difficulty of understanding responsa is not simply a result of the complexity of their “arcane, academic, and holy language.” Their difficulty is also a result of the complex of earlier texts to which they refer, sometimes explicitly and often implicitly.<sup>4</sup> Thus, in order to best understand Horovitz’s responsum, it is necessary to explore the large swath of rabbinic texts dating as far back as the Babylonian Talmud (BT) of the sixth century CE to which he refers.

The purpose of this chapter is thus threefold: First, provide background on the genre of rabbinic responsa and discuss its basic conventions. Second, to describe the case Horovitz

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<sup>2</sup> Peter J. Haas, *Responsa: Literary History of a Rabbinic Genre* (Atlanta: Scholars Press, 1996), 49.

<sup>3</sup> At the same time, the use of this “holy language of the rabbis” links the respondent and the responsum in the chain of halachic tradition. Haas comments, interestingly, on the implications of modern responsa that are written in the vernacular: Do such responsa, by virtue of the language of their composition, consciously remove themselves from the chain of tradition? See Haas, 59.

<sup>4</sup> See Ellenson’s discussion of a responsum of Solomon Kluger in *Tradition in Transition*, 15.

addressed in his responsum. (This will also be discussed in greater detail in the next chapter.) And third, to catalogue and explain the halachic sources that informed Horovitz's opinion.

### *Responsa Literature and its Conventions*

To students of Jewish law, responsa are known by the Hebrew acronym “*Shut*” (ש"ת), for *she'eilot u'teshuvot* (literally, “questions and answers”). The Hebrew nomenclature may be more expedient than the English, as responsa are in fact composed of two components: questions posed in writing to rabbinic authorities and the written responses those questions provoked. Often however, in printed collections of responsa, the questions (*she'eilot*) are not published—due to the fact they were often not preserved—and readers are generally left only with a particular rabbinic authority's responses (*teshuvot*). Often an authority will summarize the question (*she'eilah*) he received early on in the responsum, but like all summaries, readers are frequently left without important or interesting details. In such cases, like game-show contestants, readers are left to deduce the facts of the question which prompted the respondent's answer. Horovitz's responsum requires this sort of deductive analysis, as we will see in the next chapter.

Structurally, a responsum typically consists of three parts: (1) summary of the question posed; (2) a lengthy “corpus” where the respondent reflects on legal precedents and debates the merits of particular arguments and offers his “ruling,” or in technical terms, his “holding”; and (3) a concluding section (the “*eschatocol*”) that often includes “moral and religious exhortations” and “the protestation of weakness and humility,” as well as the respondent's signature.<sup>5</sup> All three of these sections are present in our responsum, with the caveat that the concluding section (3) is

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<sup>5</sup> See Ellenson, *Tradition in Transition*, 15.

unusually lengthy and elaborate. There, Horovitz details the moral and theological significance of the issue and his ruling.

### *The Case*

Horovitz begins his responsum in the characteristic manner, recording the date (by reference to the weekly Torah reading and the Hebrew lunar year) and place of composition, as well as a “*captatio benevolentiae*,” an ornate greeting meant to flatter the questioner.<sup>6</sup> He then proceeds to state the case presented in the *she’eilah*—namely, that the *Schweizerischer Theirschutzverein* (the Swiss society for the protection of animals) had petitioned the Swiss government to enact a law requiring that Jewish butchers hit animals on their heads (in other words, stun them) immediately after cutting their throats (*shechitah*) in the traditional manner. The animal protectionists’ goal was to prevent what they perceived as the suffering of animals during the time between slaughter and their ultimate death. In this, the *Schweizerischer Theirschutzverein* was motivated both by theriocentric and anti-Semitic interests. They perceived *shechitah* as a painful procedure and questioned the morality of the *halachah* in general. The question that both the questioner and Horovitz sought to resolve was, was it in fact permissible for Jewish butchers to stun their animals after slaughter so that the animal—in accord with animal protectionists’ views—died more quickly? And more generally, was it in fact possible—from the standpoint of *halachah*—for Jews to modify their sacred dietary regulations in this way to suit the will of non-Jewish governments under whose auspices they lived?

### *The Sources*

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<sup>6</sup> For a discussion of this convention, see Ellenson, *Tradition in Transition*, 13.

In order to understand our responsum and to assess Horovitz's argument, it is necessary to explore the history of halachic debate on the issue of animal stunning itself. Like so many debates in the history of *halachah*, our responsum originates in an ambiguous statement in the BT. Ultimately, Horovitz's responsum—and all post-Talmudic discussion of the issue of stunning—sought to reconcile this ambiguity.

By way of introduction, it is important to recall that the *halachah* contains detailed requirements concerning the slaughtering animals for food (*shechitah*).<sup>7</sup> The central requirement is that the animal's throat be cut in a single swift motion.<sup>8</sup> As a result, the animal dies of blood loss and the animal does not die immediately. This process forces the animal to hemorrhage as much blood as possible in the aftermath of *shechitah* before death.

The central concern that undergirds the entire system of *shechitah* is the biblical prohibition against consuming blood—"Any person who eats any blood that very person shall be cut off from his kin."<sup>9</sup> The rabbis of the BT, in Kritut 21a, elaborated on this prohibition, arguing that specific punishment of being "cut off" (כרת) was prescribed only for the person who ingested the blood that poured forth from the animal immediately after slaughter. They called this blood *dam hanefesh* (literally, "soul-blood," דם הנפש) because—following from the statement in Leviticus' Holiness Code, "the soul of the flesh is in the blood"—they believed an animal's soul or life-force resided in blood that poured forth after slaughter.<sup>10</sup> According to the Tosafot (the twelfth and thirteenth century French commentary on the BT), blood that remained within

<sup>7</sup> The laws of kosher slaughter originate in the BT, see Hullin 9a.

<sup>8</sup> This requirement is described in reference to the laws of דרסה (single motion) and שהייה (swift without hesitation) in BT Hullin 9a and subsequent folio.

<sup>9</sup> Leviticus 7:27, my translation.

<sup>10</sup> כי נפש הבשר בדם הוא, Leviticus 17:11, my translation.

the meat of the animal after slaughter could be ingested as long as it had not “spread” (פִּירֵשׁ)—clotted, for instance—within the meat.<sup>11</sup>

Of course, concern for expediency might lead the slaughterer to try to speed the death of the animal after he had slaughtered it. Thus, a debate emerged in the BT and subsequent halachic literature over whether a slaughterer might use techniques known as *kiruvei mitah* (קִירוּבֵי מִיתָה) to speed the death of the animals after *shechitah*. Whether or not such practices were halachically permissible depended on whether they inhibited the emission of blood and/or caused the meat to absorb blood after *shechitah*—such blood would be considered *dam shepiresh* (“blood that spread,” דָּם שֶׁפִּירֵשׁ) and would render the meat unfit for Jewish consumption.

The debate over *kiruvei mitah* begins in the BT in Hullin 113a. There, the *gemara* recalls a teaching of Samuel, a third century authority from the Land of Israel:

“He who breaks the nape of an animal before its soul departs, behold this makes the meat heavy and he steals from humankind and causes the limbs to absorb blood.”<sup>12</sup>

For subsequent generations of halachic authorities, Samuel’s teaching and the debate it provokes in the *gemara* serves as a legal precedent on whose basis it is possible to determine the permissibility of *kiruvei mitah*. It is therefore crucial for us to understand Samuel’s terminology:

Samuel refers to the case where a person breaks (שבר) the nape (מפרקתה) of an animal immediately after *shechitah* and before “before its soul departs” (קודם שתצא נפשה)—namely, before it has died. The term “nape” describes back or top part of an animal’s neck. According to the dictates of *shechitah*, a slaughterer makes his cut perpendicular and across the front of an animal’s neck. In doing so, he severs the animal’s jugular veins and allows its blood to pour forth. “Breaking the nape” implies breaking the spinal cord of the animal from the opposite side

<sup>11</sup> See Tosafot on BT Hullin 110b *lemma* כבדא מה אתון ביה.

<sup>12</sup> אמר שמואל משום ר' חייא: השובר מפרקתה של בהמה קודם שתצא נפשה - הרי זה מכביד את הבשר, וגוזל את הבריות, ומבליע דם באברים.



of the animal's neck. The phrase "before its soul departs" refers to the hemorrhaging process whereby the animal spews large quantities of *dam hanefesh* in the seconds following *shechitah*.

We should note that Samuel does not prohibit a person from consuming meat from an animal whose nape has been broken outright. He only states that a person who breaks the nape of an animal after *shechitah*, "makes the meat heavy and he steals from humankind and causes the limbs to absorb blood." What he means by each of these three statements is discussed subsequently in the *gemara*.

Not surprisingly, the *gemara* records that Samuel's teaching provoked debate among the *stamma'im*, the anonymous redactors of the *gemara*.<sup>13</sup> Our attempts to understand this debate are complicated by various manuscript traditions that recall that Samuel's teaching provoked two different conversations. The classical medieval halachic authorities who sought to draw firm conclusions about the permissibility of *kiruvei mitah* appear to have possessed one or the other of these traditions, but not both. And this fact, that they knew one or the other of these traditions but not both, led them to draw very different conclusions about the permissibility of *kiruvei mitah*.

The standard Vilna printed edition of the BT recalls that Samuel's teaching provoked the following debate among the *gemara*'s redactors:

"They were asked: What does this [i.e. Samuel's teaching] mean? He makes the meat heavy and he steals from humankind because he causes the limbs to absorb blood. [If] it [the

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<sup>13</sup> The anonymous redactors of the BT, also called the *stamma d'gemara* (סתמא דגמרא) or the *stamma'im* (סתמאי'ם), were commented on and discussed the named-traditions within the *gemara*. Their work can be identified by its propensity for dialectic, its use of aramaicized Hebrew and the lack of attributions within it. See, H. L. Strack and Günter Stemberger, *Introduction to the Talmud and Midrash*, trans. Markus Bockmuehl (Minneapolis: Fortress Press, 1996), 206.

meat] is his [and he intends to eat it himself], is the case permitted? Or perhaps [if] it [the meat] is his it is also prohibited? The matter was left undecided.”<sup>14</sup>

Samuel taught that a person who breaks the nape of an animal “makes the meat heavy and he steals from humankind and causes the limbs to absorb blood.” In the passage above, the *stamma'im* assume that breaking the nape of an animal after *shechitah* “makes the meat heavy” by causing the flesh to retain inordinate amounts of *dam hanefesh*. The medieval commentator Rashi (R. Shlomo Yitzhaki for Alsace, 1040-1105) clarified the *stamma'im*'s assumption: The *stamma'im* understood that breaking the nape of an animal would artificially inflate the weight of the meat allowing the slaughterer to sell it at a higher price when the “blood is weighed” along with the meat.<sup>15</sup> The slaughterer therefore “steals” from his customers. Thus, the *stamma'im* assume that breaking the nape of animal after *shechitah* is primarily a nefarious technique slaughterers used to inflate the price of meat in the marketplace.

The *stamma'im* go on to ask, however, whether a slaughterer may break the nape of an animal after *shechitah* if he plans not to sell the meat but to eat it himself. Were a slaughterer to eat such meat himself he would clearly not be “steal[ing] from humankind” since he does not intend to sell his meat by weight. The *gemara* leaves this question unanswered with the Aramaic code-word *teiku* (תיקו), meaning “The matter was left undecided.” The fact that the *gemara* left this question unanswered leads to the ambiguity surrounding the halachic status of *kiruvei mitah* and led to vigorous debate among the classical medieval authorities. However, before we discuss this debate, it is important to consider the variant manuscript traditions for our passage mentioned above.

<sup>14</sup> איבעיא להו: היכי קאמר מכביד את הבשר וגוזל את הבריות משום דמבליע דם באברים. הא לדידיה - שפיר דמי? או דלמא - לדידיה נמי.  
This is the reading found in the Vilna printing of the BT (c. 1880) אסור? תיקו.

<sup>15</sup> הדם נבלע באבריה ומכביד הבשר ונמצא גוזל את הבריות כשהוא מוכרה במשקל והדם שוקל.

Thus, the standard Vilna printed edition of the BT leaves the question of whether a person may break the nape of an animal after *shechitah* unresolved. Other manuscripts of the BT, however, tell a different story.

Both the Munich and Vatican Ebr 122 manuscripts of the BT recall that Samuel's teaching provoked a very different conversation among the *stamma'im* than the one discussed above. The Vatican Ebr 122 manuscript reads:

“They were asked: What does this [i.e. Samuel's teaching] mean? He makes the meat heavy and he steals from humankind because he causes the limbs to absorb blood. [If] he wants to eat from it *b'umtzah* (בְּאוֹמְצָא), it is permissible? Or perhaps [since] he causes the limbs to absorb blood, if he wants to eat from it *b'umtzah*, is it prohibited? The matter was left undecided.”<sup>16</sup>

The passage above begins like the one found in the printed Vilna edition. The *stamma'im* are asked what Samuel's teaching—“He who breaks the nape of an animal before its soul departs, behold this makes the meat heavy and he steals from humankind and causes the limbs to absorb blood”—means. The standard answer is offered that breaking the nape of an animal after *shechitah* “makes the meat heavy” by causing the flesh to retain *dam hanefesh*. The conversation then moves to a new topic, however: Would it be permissible for a person to eat such meat when it is prepared as an “*umtzah*” (אוֹמְצָא)?

The term *umtzah* is rare in BT and according to both the linguists Marcus Jastrow and Michael Sokolov it was “a dish made from raw meat.”<sup>17</sup> The medieval authorities defined it

<sup>16</sup> The version of the recension quoted above is taken from MSS Vatican Ebr 122: “איבעיא להו היכי קאמר מכביד את הבשר וגוזל את הבריות משום דמבליע דם באברים הא בעי למיכל מיניה באומצא שפיר דמי או דילמא מבליע דם באברים נמי האי בעי למיכל מיניה באומצא אסיר מאי תיקון.” While the recension found in the printed edition is found in both MSS Vatican Ebr 120-1 and MSS Munich. On the medieval authorities who quote the recension not found in the printed edition, see below.

<sup>17</sup> See Marcus Jastrow, *Dictionary* s.v. “אוֹמְצָא,” 27 and Michael Sokolov, *A Dictionary of Jewish Babylonian Aramaic of the Talmudic and Geonic Periods* s.v. “אוֹמְצָא #2” (Ramat Gan: Bar Ilan University Press, 2002), 91.

similarly, R. Nissim Gerondi (also known as “the Ran,” d. 1376) defined *umtzah* this way, “raw [meat] and not salted.”<sup>18</sup> Thus, according to this manuscript of the BT, the *stamma'im* debated whether it was permitted or prohibited for a person to eat raw meat from an animal whose nape had been broken after *shechitah*. They therefore assumed, according to this text, that it was permitted to eat such meat in cooked preparations (presumably after it had been salted or roasted to remove any excess blood).

Thus, between the standard printed edition of the BT and the manuscript editions, we possess two very different texts with two very different understandings of the halachic status of meat that has been taken from an animal whose nape had been broken following *shechitah*: (1) the standard printed edition questions whether it is permitted to eat such meat under any circumstances; and (2) the Munich and Vatican manuscripts assume that it is permitted to eat such meat when cooked in some way, but the question whether it is permitted to eat it raw.

The difference in these manuscript traditions had a decisive influence on the development of the *halachah* of *kiruvei mitah*. The text that appears in the standard printed edition of the BT was the one possessed by Rashi and subsequent Ashkenazic authorities. Rashi, in his glosses on this passage, writes that whether or not the slaughterer plans to sell meat from an animal whose nape he broke after slaughter or eat it himself, “the two are forbidden.”<sup>19</sup>

On the other hand, Sephardic authorities by and large possessed the second text found in the Munich and Vatican manuscripts. R. Isaac Alfasi (also known as “the Rif,” 1013-1103)—whose commentary on the BT achieved similar preeminence in the Sephardic world as Rashi’s commentary in the Ashkenazic world—possessed this text. In his commentary, Alfasi wrote that

<sup>18</sup> See R. Nissim Gerondi’s commentary on R. Isaac Alfasi’s *Hilchot HaRif* on Tractate Hullin 84b s.v. “ואיבעיא.”

<sup>19</sup> See Rashi’s commentary on the BT in the printed Vilna edition of the BT, *lemma* או דילמא לדידיה נמי אסור.

a person could not eat the meat in question “*b’umtzaḥ*” (that is, raw and unprocessed) but could eat it after it cooked.<sup>20</sup>

Not surprisingly, the two interpretations—one stringent and the other lenient—that these two versions of the same passage in the BT provoked among the medieval Ashkenazic and the Sephardic authorities respectively lead to articulation of divergent views on *kiruvei mitah* in these communities. These views ultimately became enshrined in the halachic literature these communities produced. Sephardic rabbis tended to permit the use of *kiruvei mitah*, as long as the resultant meat was not eaten raw, while Ashkenazic rabbis expressed reservations. We need only look to the Sephardic scholar R. Joseph Karo’s (1488-1575) *Shulchan Aruch* (literally, “the set table”)—a terse summary of the *halachah*, taking into account the practical needs of religious adherents and seeking to unite Jewish communities the world over under the banner of a single legal standard—for a confrontation between these two opinions.<sup>21</sup>

Karo, in his excursus on the laws of blood (הלכות דם), used the language of the BT to make his point:

<sup>20</sup> See Alfasi’s *Hilchot HaRif* on Tractate Hullin 42b.

<sup>21</sup> According to Amnon Raz-Krakozkin, “The explicit purpose of this book [the *Shulchan Aruch*] was popularization – making the law available to every Jew – though the main intention was to bring about unification through a standard book serving both scholars and laymen. [...] The composition was written with the explicit awareness that it would become an authoritative and standard text. Karo was an obvious, albeit exceptional, example of ‘a new author’, who was well aware of the advantages and the rules of the innovation of print.” See Amnon Raz-Krakozkin, “From Safed to Venice: The *Shulhan ‘Aruch* and the Censor” in *Tradition, Heterodoxy and Religious Culture: Judaism and Christianity in the Early Modern Period*, eds. Chanita Goodblatt and Howard Kreisel (Beer-Sheva: Ben-Gurion University of the Negev Press, 2006), 97-98.

“He who breaks the nape of an animal, it is forbidden to eat from its flesh raw unless it is salted well. Through salting it is permitted [to eat it], even for a stew, and roasting it is permitted [to eat] even without salting.”<sup>22</sup>

Thus, Karo—following Moses Maimonides—permits eating meat from an animal subject to *kiruvei mitah* as long as it is well salted or roasted.<sup>23</sup> R. Moses Isserles (c. 1525-1573)—the celebrated Ashkenazic scholar whose glosses on the *Shulchan Aruch* have been printed alongside Karo’s *halachot* since the sixteenth century—held a different opinion. Commenting on Karo’s opinion above, he wrote:

“One must be careful at the outset [not to] break the nape of an animal or to stab a knife in its heart in order to speed its death because of the absorption of blood in the limbs.”<sup>24 25</sup>

Thus, in this gloss, Isserles follows Rashi and—out of a concern that an animal might retain *dam hanefesh*—forbids using any kind *kiruvei mitah* (such as breaking the nape or stabbing the animal’s heart).<sup>26</sup>

The controversy over the permissibility of *kiruvei mitah* does not end with Karo and Isserles’s divergent opinions, however. Two of the primary Polish commentators on the *Shulchan Aruch*—R. David HaLevi (known by the acronym, “the Taz,” 1586-1667) and R. Shabbtai b. Meir HaCohen (“the Shach,” 1621-1662)—noted that Isserles’ prohibition of all

<sup>22</sup> השובר מפרקתה של בהמה, אסור לאכול מבשרה חי אא"כ מולחו יפה. וע"י מליחה מותר אפילו לקדרה, ולצלי מותר אפילו בלא מליחה. *Shulchan Aruch* (Jerusalem: Leshem Press), *Yoreh Deah, Hilchot Dam* §67:5.

<sup>23</sup> See Maimonides’ *Mishneh Torah, Hilchot Ma’achalot Asurot* 6:9.

<sup>24</sup> יש לזהר לכתחלה לשבור מפרקת הבהמה או לתחוב סכין בלבה כדי לקרב מיתתה משום שמבליע דם באברים (בנימין זאב וב"י בשם שבולי) *Shulchan Aruch* (Jerusalem: Leshem Press), *Yoreh Deah, Hilchot Dam* §67:5.

<sup>25</sup> Isserles prefaces his opinion here the words, “יש אמרים”—There are those who say.” According to the *Yad Malachi*, an eighteenth century commentary on key terms in rabbinic literature by Melachi b. Jacob ha-Kohen (d. 1785-1790), Isserles uses the phrase “there are those who say” to cite a normative opinion contrary to Karo’s view.

<sup>26</sup> According to the *Beit Yosef*, Karo’s lengthy commentary on the R. Jacob b. Asher’s *Arba’ah Turim*, Karo knew of this stringent opinion but chose to reject it. See *Beit Yosef, Yoreh Deah* §67 lemma “*HaShover*.”

forms of *kiruvei mitah* appeared to contradict an earlier gloss on another passage of the *Shulchan Aruch*. There, Isserles wrote:

“Therefore, if after he cut the majority of the two [jugular veins] the animal or the fowl delays in dying, he hits it on its head to kill it and he does not slaughter [make another cut in the throat] again.”<sup>27</sup>

According to both the Taz and the Shach, this gloss appeared to permit *kiruvei mitah*, at least stunning an animal with a blow to the head. At the same time, the gloss we examined earlier outlawed all forms of *kiruvei mitah*—a seeming contradiction. Yet, beginning with the work of the *stamma'im* in the BT itself and continuing with Tosafistic commentaries on the BT, rabbinic authorities made it their aim to reconcile all perceived contradictions within the *halachah*. From their theistic point of view, the revealed law from Sinai could not contain imperfections. Thus, every seeming contradiction (סתירה) had to be settled and reconciled (לתרץ or ליישב). Successive generations of scholars not only made it their aim to reconcile all contradictions in the BT but also in later halachic works that were perceived to possess normative authority—such as Maimonides’ *Mishneh Torah* and Karo’s *Shulchan Aruch*. In fact, it was the very process of reconciling contradictions undertaken by rabbinic commentators that confirmed a particular work’s *halachic* authority.<sup>28</sup>

Thus, in a manner that had become typical rabbinic scholarship by the seventeenth century, the Shach and the Taz set about reconciling the contradiction they perceived among Isserles’ glosses. On the one hand, the Shach argued that Isserles had not outlawed all forms of

<sup>27</sup> ולכן אם לאחר ששחט רוב שנים שוהה בהמה או העוף למות יכנו על ראשו להמיתו, ולא יחזור וישחוט (תה"ד לדעת רש"י וסמ"ק ומהרי"ו *Shulchan Aruch, Yoreh Deah* §23:5 וע"פ).

<sup>28</sup> Writing about responsa literature, Ellenson has called this process “a dynamic one which requires the later court, through its ruling, to both determine what the actual holding was in a previous case as well as the weight to be assigned that holding in determining the contemporary one,” *Tradition in Transition*, 16.

*kiruvei mitah*, but in fact only outlawed the “breaking of the nape” and “stabbing the heart” in particular. Stunning the animal with a blow to the head was all together different.<sup>29</sup>

On the other hand, the Taz offered a more subtle and stringent opinion. He asserted that Isserles’ more permissive gloss—the one that permitted hitting an animal on its head if it took too long to expire—referred only the case “when much time passes and it [the animal] is still alive and already all the blood [*dam hanefesh*] has gone out from that which went out in its spurting and what little remains will be absorbed in the limbs.”<sup>30</sup> Therefore, according to the Taz, a person was permitted to use *kiruvei mitah* if and only if an animal remained alive long after all its *dam hanefesh* had drained out of its body and there was a fear that the remaining blood be permanently absorbed into the meat. This was, admittedly, a very unusual situation. In all other cases, however, the Taz prohibited the use of *kiruvei mitah*.

We began this chapter by citing Ellenson’s statement that responsa are “*the crossroads where text and context meet in the ongoing tradition of Jewish legal hermeneutics*.”<sup>31</sup> Indeed, as we have seen that the “text” of the halachic tradition is rarely simple to parse and understand. It is full of ambiguities and contradictions. The working out of these difficulties by successive generations of rabbinic authorities confirms the ongoing authority of the text—of “Torah” in its most basic sense—in ever-changing “contexts.”

Daniel Boyarin has written the following about *midrash* (Jewish biblical exegesis): “I wish to claim that midrash—the Oral Torah—is a program of preserving the old by making it new. The very surprise of the new meanings that were read in (not into nor quite out of) the Bible

<sup>29</sup> ואע"ג דלעיל סי' כ"ג ס"ה בהג"ה כתב דמותר להכותה על ראשה לקרב מיתתה אפשר דאין הדמים נגררין כל כך אחר הראש.

<sup>30</sup> ונראה דסבור ליה דלעיל מיירי ששה זמן רב ועדיין חי וכבר יצא הדם ממה שיש לצאת בזינוק ומה שנשאר קצת יהיה נבלע באיברים וכאן מיירי שרוצה למהר המיתה תקיף שאר השחיטה בעודו זונק ובזה יבליע דם באברים.

<sup>31</sup> Ellenson, *Tradition in Transition*, 10. Italics original.



by the rabbis was precisely the means by which the Torah was prevented from losing its ability to mold its ideology and shape behavior.”<sup>32</sup> Indeed, we can make the same claim about responsa: Responsa is the “program of preserving the old by making it new” and a means by which the norms of ideology and behavior of one generation—Torah—is confirmed and renewed by its decedents. Indeed, the length to which Horovitz goes to make sense of the sources above and apply them to the case at hand—as we shall see in the next chapter—is a demonstration of his commitment to this process—“the ongoing tradition of Jewish legal hermeneutics.”

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<sup>32</sup> Daniel Boyarin, *Intertextuality and the Reading of Midrash* (Bloomington: Indiana University Press, 1994), 37.

## 5

### ***Drawing Conclusions—Making the Past, Present***

We have already discussed the inherent challenge of studying responsa, that is, that the questions (*she'eilot*) respondents receive are rarely preserved for posterity. Later students of this material are left to deduce the content of these questions from the “clues” respondents leave in the corpora of their responsa.

Thus, this chapter begins with an attempt to determine the exact nature of the question that prompted Horovitz's responsum. It moves to a discussion of Horovitz's reaction, his assessment of the halachic sources in the previous chapter and the conclusions he derives from them. It places special emphasis on Horovitz's attempts to reconcile contradictions between and within those sources. The chapter concludes with a discussion of the implications of those

conclusions for our understanding of Horovitz himself and on the history of the rabbinic response to the movement to prohibit *shechitah* during the nineteenth century.

### *The Question*

We can deduce from our responsum that the questioner presented Horovitz with an elaborate halachic argument permitting the stunning of animals after *shechitah* and requested Horovitz's comments and/or approval. Horovitz begins by critiquing that argument and challenging the questioner's reading of the halachic sources. It is important to note the questioner's conclusion—that Jewish slaughters were permitted stun their animals after *shechitah*—did not differ much from Horovitz's conclusion. What was crucial for Horovitz was that the case for stunning after *shechitah* be made through a correct and accurate reading of halachic precedent. The questioner, of course, was an halachic authority in his own right—he was head of the rabbinical court in Wildberg, Switzerland—and he likely sought out Horovitz's approval—Horovitz being a better known authority—as confirmation of his view.<sup>1</sup>

It appears the questioner posited that stunning after *shechitah* was halachically permissible—and therefore Jewish communities would not be adversely affected by the Swiss animal protectionists' petition—because the procedure did not cause the “absorption of blood, only the movement outward [emission].”<sup>2</sup> The questioner supported his view by citing the Taz (R. David HaLevi, 1586-1667). The Taz, in his commentary on the *Shulchan Aruch* (*Yoreh Deah* §67:5:3), had written that a person could hit an animal on the head after *shechitah* if and only if the animal had stopped emitting blood. If blood had indeed stopped flowing, the blow to the head

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<sup>1</sup> Wildberg is a town in the northeast of Switzerland, outside of Zurich. I have been unable to determine the questioner's name, as there is next to no literature about the Jewish community of Switzerland in English or Hebrew.

<sup>2</sup> In this chapter, I quote from my translation of Horovitz's responsum on stunning after *shechitah*—see chapter 3—with some frequency. I leave these quotations uncited and assume the reader will infer their origin.

would not cause the “absorption of blood” in the animal’s body—such absorption would render the animal’s meat unfit for consumption. This was, of course, a stringent reading of the halachic sources, permitting stunning after *shechitah* in only the rarest of circumstances.

In his responsum, Horovitz rejects the questioner’s deployment of the Taz’s stringent opinion in the promotion a halachic leniency. Other more recent rabbinic authorities had never made such a claim—“the *Acharonim* wrote next to nothing worth considering on the matter,” Horovitz asserts. In basing his opinion on the Taz, the questioner negated the authority of his opinion (and perhaps his own rabbinic authority) by ignoring the absence of rabbinic precedent. As Ellenson has argued, a respondent’s ability to derive conclusions well-grounded in precedent is the heart of his rabbinic authority.<sup>3</sup>

Deducing from Horovitz’s responsum, it appears reasonable to assume that the questioner sought to buttress his opinion by citing the Shach’s (R. Shabbtai b. Meir HaCohen, 1621-1662) opinion, as well as the Taz’s. As we have seen, these two opinions are contradictory—one is stringent and the other is lenient—and Horovitz explains that there is no need reconcile the difference between them. Rather, he argues, any argument in favor of stunning after *shechitah* ought to be based *only* in the Shach’s lenient opinion and not in the Taz’s stringent opinion. The Shach, of course, had argued that stunning an animal after *shechitah* with a blow to the head was the only form of *kiruvei mitah* permitted by the *halachah*. All other techniques, such as “breaking of the nape” and “stabbing the heart,” were prohibited.

It appears that the questioner, in trying to explain why the Shach asserted that stunning after *shechitah* was different from other forms of *kiruvei mitah*, had argued that a blow to the head caused “no absorption [of blood] rather only loss emission [of blood].” Horovitz rejected this interpretation, calling it “not precise.” All techniques for killing animals have an effect on

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<sup>3</sup> See Ellenson, *Tradition in Transition*, 16.

the animal's blood, Horovitz explains, causing it to be “uprooted from its source and when it stops it becomes ‘blood that spread from place to place.’”

As we discussed above, the Tosafot taught that if blood “spreads from place to place” within the body of an animal after *shechitah* the animal's meat is considered damaged and cannot be eaten.<sup>4</sup> Horovitz thus explains that the questioner misread the Shach when he stated that the Shach believed that stunning caused “no absorption rather only loss [of blood through] emission.” The questioner's distinction between absorption and emission, Horovitz writes, is unfounded. Either phenomenon, if it were to occur in an animal after stunning would count as “blood that spread from place to place” and render the meat unfit for consumption. Rather the proper understanding of the Shach, Horovitz indicates, is that stunning after *shechitah* has *no* affect on either the absorption or the emission of blood and thus can be undertaken without fear of damaging the meat.

### *The Corpus of the Responsum*

Having dispensed with the questioner's arguments, Horovitz now moves to his own analysis of the halachic sources. The crux of the matter, Horovitz writes, is the apparent contradiction within Isserles' glosses, discussed above.

To reprise: Isserles appeared to contradict himself—at one point forbidding all forms of *kiruvei mitah* and at another point permitting the stunning of some animals after *shechitah*. As we have seen, the Shach and Taz were aware of this contradiction and each attempted to reconcile it—the Shach leniently and the Taz stringently. Horovitz's insight into this controversy was his awareness that the contradiction among Isserles glosses also appeared to exist among the Rashi's glosses on the BT.

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<sup>4</sup> See Tosafot on BT Hullin 110b *lemma* כבדא מה אתון ביה.

As we have already discussed, in his gloss on BT Hullin 113a, Rashi prohibited all forms of *kiruvei mitah* under any circumstances. Rashi's prohibition was taken up by R. Isaac Abba Mari of Marseilles (c. 1120-1190) in his influential work on Jewish eating and slaughtering customs, the *Sefer Ha'Ittur*.<sup>6</sup> Rashi and R. Isaac Abba Mari differed from most Sephardic authorities who permitted *kiruvei mitah*, forbidding only the consumption of such meat raw (*b'umtza*). Horovitz notes this difference of opinion in the corpus of his responsum.

<sup>5</sup> Quoted in Ellenson, *Tradition in Transition*, 15.

<sup>6</sup> Quoted in Horvitz's responsum. See *Sefer Ha'Ittur, Sha'ar Rishon: Basar Kasher* (Warsaw, 1874-1885), 3b.

<sup>7</sup> See Rashi on BT Hullin 32a lemma *תקן*: חז' חמור, and cf. Rashi on Bava Batra 17a lemma *והעוף* (1974-1985), 58.

Horovitz shows that no less an authority than the Tur (R. Jacob b. Asher, 1269-1343) cited this gloss in his authoritative halachic guide, the *Arba'ah Turim*: “Rashi explains [...] therefore [if] he cut one [either the windpipe or the gullet] of a bird or the majority of two [both the windpipe and the gullet] of an animal and it delayed in dying it is better to hit it on its head than to return and cut [again].”<sup>8</sup>

The Tur’s quotation of Rashi’s gloss on BT Hullin 32a, however, differed from the version of that gloss that Horovitz possessed and we possess in the standard Vilna printing of the BT. In the standard Vilna printing of the BT, Rashi advises “it is better to hit [an animal] on the neck” and in the Tur’s version he advises, “better to hit it on its head.” Thus, Horovitz has now elucidated two new controversies: First, Rashi appeared to contradict himself forbidding *kiruvei mitah* in one place and permitting it in another place and second, there is uncertainty as to what technique of *kiruvei mitah* he endorsed, either a blow to the neck or to the head.

Horovitz rejects the Tur’s version of Rashi’s gloss on BT Hullin 32a in favor of the version we have in our printed Vilna editions of the BT. He writes that the Or Zarua (R. Isaac b. Moses of Vienna, 1180-1250) also possessed the version we have. In his *Sefer Or Zarua*—a treatise on ritual and commercial law—the Or Zarua recorded a longstanding Ashkenazic custom from the venerated Jewish community of Speyer, Germany which Horovitz quotes in full. This custom—of “encircle[ing] the neck of the animal and insert[ing] a knife behind it into the nape” after slaughter—was further evidence of the veracity of our reading of Rashi’s gloss on BT Hullin 32a. The Or Zarua writes, “Namely, [it is prohibited] precisely [when] ‘he breaks’ [the nape]—since on account of the pain of breakage delaying the departure of the soul, the blood

<sup>8</sup> See *Arba'ah Turim Yoreh Deah* 32: ורש"י [...] לפיכך שחט רוב א' בעוף או רוב שנים בבהמה ושהה למות מוטב שיכנה על ראשה: ממה. שיחזור וישחוט

burns and is absorbed in the limbs. But cutting the nape I didn't hold prohibited."<sup>9</sup> Thus, the Or Zarua's testimony demonstrates that some Ashkenazic authorities understood Rashi's prohibition of *kiruvei mitah* as limited merely to "breaking" the nape of the animal and not to the "hitting" or the "cutting" of the nape.

Having established that there was adequate precedent for understanding Rashi's prohibition of *kiruvei mitah* as being limited to "breaking the nape" of an animal and not to other techniques, Horovitz moves on to reconcile the Shach's opinion in favor of "hitting" an animal on the head with the Or Zarua's custom of "cutting" the nape. The Shach, of course, forbade all forms of *kiruvei mitah* except "hitting [an animal] on the head" and thus appeared to contradict the Or Zarua.

Horovitz, however, focuses on the verbs these authorities used in composing their prohibitions. Rashi in his gloss on BT Hullin 113a referred specifically to "breaking the nape" of the animal and in his gloss on Hullin 32a he spoke of "hitting an animal on the neck." While these two actions appear at first glance to be equivalent, Horovitz explains that "breaking" and "hitting" are in fact very different. Or Zarua first made this point when he wrote that "breaking" and "cutting" were also not equivalent. In Horovitz's words, "It is possible for him to hit [an animal] on the head without breakage." Thus, Horovitz reads Rashi's prohibition of *kiruvei mitah* in the most minimalistic fashion—the BT only prohibited techniques of *kiruvei mitah* that involved "breaking." The Or Zarua, who permitted "cutting the animal's nape," did not contravene this principle and the Shach, who permitted "hitting the animal's head," did not contravene this principle.<sup>10</sup> Horovitz goes on to say that "the best way" to do *kiruvei mitah* is to perform both the techniques advised by both authorities. Thus, in Horovitz's words, "If the two

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<sup>9</sup> Cited in full in our responsum, see also *Sefer Or Zarua*, "Law of Meat and Milk" (Zitomir, 1862-1890), §478.

<sup>10</sup> Horovitz, parenthetically, admits that "hitting" might be the same as "breaking" does not discuss this idea further.



of them [hitting/cutting the neck and the head] are performed together in a way that the animal does not feel pain [...] this is the best way.”

In voicing support for the Shach’s opinion permitting slaughterers to stun their animals after *shechitah*, Horovitz’s opinion accorded with that of his mentor Esriel Hildesheimer. The same year Horovitz composed his responsum, Hildesheimer began a debate with Samson Raphael Hirsch over the permissibility of stunning after *shechitah*. In an article in *Die Jüdische Presse*, Hildesheimer argued that Jewish law was “not opposed to such a blow being delivered after *shechitah*.” Samson Raphael Hirsch, on the other hand, had said that “such a blow was contrary to halakhah.”<sup>11</sup> Hildesheimer grounded his position in the Shach’s leniency and Hirsch in the Taz’s stringency.<sup>12</sup> Thus, Horovitz and Hildesheimer took a moderate halachic position that accorded well with the demands of secular society. As we saw in chapter two, this was characteristic of both men’s halachic worldviews.

Horovitz’s attitude of moderation is borne out in the concluding section of his responsum. Reaffirming his claim that the Shach and the Or Zarua’s lenient precedents should guide contemporary halachic authorities, Horovitz makes the following claim:

The heart of this matter is, in my humble opinion, that we are obligated to say that we do not use any device to delay the emission of blood after slaughter, since it is possible that the holy Torah’s intention was the very same as the reason that scientists (יודע דעת הטבע) that the movement outward of blood damages the meat and damages humankind.

Here, Horovitz deftly walks the fine line between reverence for tradition and accommodating societal innovation. On the one hand, writing in pious style characteristic of responsa literature, he affirms his commitment to the totality of *halachah* and the principles undergirding *shechitah*

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<sup>11</sup> Ellenson, *Hildesheimer*, 106-7.

<sup>12</sup> Ellenson, *Hildesheimer*, 186 no.11.

in particular.<sup>13</sup> The central principle of *shechitah*—that slaughterers “do not use any device to delay the emission of blood after slaughter”—must not to be compromised because, “The foundation of *shechitah* is like the foundation of all the laws and statues that YHWH our God commanded for our betterment every day.” The laws of *shechitah*, he argues, are part and parcel of a single system of religious law revealed by God to the Jewish people—to reject *shechitah* (or any particular law for that matter, as the reformers had done) was equivalent to rejecting the entire system and the Jewish people’s divine mandate.

According to Mordecai Breuer, the belief that Judaism was a system of law to be accepted by the faithful as a totality emerged first in Moses Mendelssohn’s (1729-1786) *Jerusalem* and found its foremost exponent in Samson Raphael Hirsch.<sup>14</sup> Yet, the idea found currency among more moderate rabbis like Hildesheimer and Horovitz as well. In his responsum, Horovitz sought to emphasize the leniencies within the halachic system. However, he would never allow his readers to forget that “it [was] forbidden to make changes” to the halachic system itself and that the “leniency” he advocated in this case was completely countenanced by *halachah*.

On the other hand, in exploiting the inherent leniencies in the *halachah* of *shechitah*, Horovitz sought to accentuate the fact that ultimate intentions behind the *halachah* might accord with the theriocentric and anthropocentric views of the animal protectionists, namely to prevent harm to animals and people. As we saw in chapter two, Horovitz was not hostile to secular learning or society. He pursued a doctorate himself and sent his sons to study secular subjects at the Frankfurt Gemeinde’s school. He respected Christianity as a monotheistic religion and believed that Christians could possess God’s favor. Above all, he believed in the importance of

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<sup>13</sup> This style is characteristic of the closing sections (the “eschatocals”) of most Orthodox responsa. See Ellenson, *Tradition in Transition*, 14.

<sup>14</sup> Breuer, 57-9 and 249-50.

engaging in (not retracting from) German civil society. Thus, over and over again in his responsum, Horovitz emphasizes that Jews are “obligated to awaken the mind of the government” to their views and that governments should “take council with the great rabbis of Israel.” Horovitz saw himself as a proud German citizen. In the wake of emancipation, liberated from confessional status, Horovitz believed Jews were now free to—in the words of the “protest declaration” from the First Zionist Congress—“support the fatherland to which they belong, with all devotion and to serve its national interests with all their heart and all their power.”<sup>15</sup> At the same time, it was incumbent on the “fatherlands” to which Jews “belonged” to consider the views of Jewish religious authorities “when a matter concerns a weighty law for all Israel.” Horovitz would not countenance abrogating *halachah* in order to satisfy the demands of the modern state, but given grounding in a careful reading of halachic precedent, he believed *halachah* could accept the demands of modern society. It all depended on how the sources were read and interpreted.

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<sup>15</sup> Zur, 128.

## **Conclusion**

During Yankoff Cohen's trial in 1855, the defense argued that no court could compel the Jewish people to change their time honored religious traditions and customs. In the words of Cohen's attorney, "They would be guilty of a great and heinous crime if they did not carry out strictly that which was enacted in the book to which they looked up not only as their directory, but as a complete and perfect revelation." Yet in making this claim, Cohen's attorney concealed a critical fact: the statutes and obligations contained in that "complete and perfect revelation" were subject to ongoing interpretation and through that process—change. Of course, this point would not have served Cohen's case at trial but it bears highlighting in any study of the history of *halachah*. In fact, the recognition that *halachah* (indeed, all of Jewish culture) has changed in response to contemporaneous concerns and challenges was perhaps the single most important

contribution of the *Wissenschaft des Judentums* (Science of Judaism) movement in nineteenth century Germany.<sup>1</sup> This claim, moreover, stands in contradistinction to that made by some Orthodox rabbis of the same period, the claim that the *halachah* had never changed since its reception at Sinai—meaning, that the totality of Jewish tradition was unaffected by the forces of history.<sup>2</sup> Yet, as our study of Marcus Horovitz’s responsum on question of stunning after *shechitah* makes clear, *halachah* has changed in response to challenges both internal and external to Jewish society.

But the question is not that simple. It would be inaccurate to claim that Marcus Horovitz sought to integrate the concerns of the animal protectionists into *halachah* or to render *halachah* palatable for the animal protectionists’ consumption. As Horovitz’s responsum makes clear, he was aware of the animal protections’ arguments against *shechitah* and their efforts to convince European governments to enact legislation regulating (and outlawing) Jewish slaughtering practices. Yet, as a proud Orthodox rabbi, we must assume his halachic opinions were undoubtedly the result first and foremost in an honest reading of the halachic sources. To what extent then was Horovitz’s reading of these sources influenced by the pressing need of Europe’s Jewish communities to respond to the animal protectionists’ efforts?

Ellenson, in a study of Horovitz’s responsa on conversion, introduces Peter Berger’s theory of “accommodation” and “resistance” as a basis for discussing Horovitz’s halachic outlook. Berger had argued that when confronted with a changing social “milieu” religions

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<sup>1</sup> The *Wissenschaft des Judentums* was the movement to understand Jewish culture and texts in their historical (“scientific”) context. It was led by scholars such as Leopold Zunz and Heinrich Graetz. On the idea of “historicizing” Jewish law and culture, see Yosef Hayim Yerushalmi, *Zachor: Jewish History and Jewish Memory* (Seattle: University of Washington Press, 1996) and Michael A. Meyer, *The Origins of the Modern Jew: Jewish Identity and European Culture in Germany, 1749-1824* (Detroit: Wayne State University Press, 1967), particularly the last chapter.

<sup>2</sup> This view is best embodied in Moses Sofer’s (1762-1839) oft-quoted motto, “Innovation is forbidden in the Torah in all cases,” see Breuer, 22.

generally respond with either “accommodation” or “resistance.”<sup>3</sup> But this dichotomy, Ellenson cautions, is too rigid to describe views of nineteenth century Orthodox rabbis like Horovitz whose views on important questions of religious identity were rarely unilateral and monolithic. In Ellenson’s words, “The distinctions between the stances of each of these men thus cannot be explained simply by resort to the argument that ‘modern Orthodoxy’ has one position on this issue while ‘traditional Orthodoxy’ has another, for authorities from both camps stood on both sides of this issue.”<sup>4</sup>

Similarly, it is also too simple to assume that Horovitz’s conclusions in his responsum on stunning before *shechitah* were simply a result of his more moderate religious outlook. The responsum in fact possess elements that could be described as both “accommodationist” on the one hand and “resistant” on the other. For example, Horovitz instructs the questioner that the practice in his community should follow the more lenient views of the Or Zarua and the Shach, as opposed to the Taz’s stringency. This conclusion could be understood as a gesture of accommodation to the demands of the animal protectionists. At the same time, it could just as easily be understood as the result of a dispassionate weighing of the halachic sources—a sign of his resistance to introduce any practices that might be perceived as contrary to tradition. Indeed, in the conclusion of the responsum, Horovitz counsels his readers to refrain from making these sorts of changes: “But if, however, the mind of the government is not quieted in one way or another,” Horovitz writes, “it is forbidden to make changes in a manner not justified by either the view of the Or Zarua or the view of the Shach.” How should we understand such a sentence in Berger’s terms? Is it a gesture of accommodation or resistance?

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<sup>3</sup> Ellenson, “Accommodation, Resistance, and the Halakhic Process,” 123-4. On Berger’s theory, see Peter Berger, *The Sacred Canopy: Elements of A Sociological Theory of Religion* (New York: Anchor Books, 1990), 156.

<sup>4</sup> Ellenson, “Accommodation, Resistance, and the Halakhic Process,” 138.

Another, perhaps more fruitful hermeneutic for understanding Horovitz's stance vis-à-vis the animal protectionists lies in Max Weber's *The Protestant Ethic and the Spirit of Capitalism*. In this classic of modern sociology, Weber introduces the concept of "elective affinity" as a way of describing the relationship between Calvinism and the middle-class culture. The relationship, Weber cautions, is not one of direct causal influence but rather a common historical linkage or origin.<sup>5</sup> Weber's concept of "elective affinity" helps explain—at least in a provisional way—Horovitz's responsum on stunning after *shechitah*. Horovitz's desire to preserve and protect Jewish communal life in Western Europe allowed him to produce a reading of the halachic sources that harmonized (at least partially) with the views of the animal protectionists—an "elective affinity."

A final more psychological explanation comes from scholars of medieval literature who argue that the act of reading in the medieval world was akin to "ingesting" and then "digesting" a text. Because written texts were few and far between, readers "ingested" the written world, committing it memory and then "digested" it, allowed the text to sustain and inform their behavior and character.<sup>6</sup> The metaphor of "digestion" is felicitous in this context for obvious reasons, but it also helps explain how a scholar like Horovitz might have assimilated the arguments of the animal protection movement unconsciously into his religious worldview and how those arguments subtly colored his halachic conclusion. Horovitz could not help but absorb the force of the animal protectionists' arguments—couched in the rhetoric of science and modernity—they thus informed his reading of the halachic sources.

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<sup>5</sup> Max Weber, *The Protestant Ethic and the Spirit of Capitalism*, trans. Stephen Kalberg (Los Angeles: Roxbury Publishing Company, 2002), 89.

<sup>6</sup> Mary Carruthers, *The Book of Memory: A Study of Memory in Medieval Culture* (Cambridge: Cambridge University Press, 1990), 164-6.

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