

DIGEST

The subject of this thesis is the apostate from Judaism, defined as a Jew who renounces Judaism, willingly or under duress, and who joins another religious community. The specific problem addressed is what such an apostate must do to become a full member of the Jewish community again.

As this is an area in which the law is unclear, a number of plausible solutions to the problem have been proposed over the centuries. The focus of this study is how various poskim, codifiers and pietists have gone about finding answers that both satisfy the needs of the day and affirm the authority of the halachic system.

The main source of textual data for this study is the responsa literature. Representative *t'shuvot* have been selected spanning a time period from the Geonim to the present day. In addition, the impact of pietistic thinking on this problem is assessed. Therefore, relevant selections from the Sefer Hasidim and Sefer HaRokeah are examined in addition to responsa. Given the importance of the Shulkhan Arukh's rulings in this area, Isserles and Caro are also examined carefully.

The ultimate aim of the study is to identify the basic models of the "return process" that various authorities employ in their decision making. This is helpful in determining what interests or values a particular posek or codifier seeks to promote through his work. Further, as apostasy is very much with us, it is hoped that this method of study will be helpful in shaping an appropriate response to the returning apostates who present themselves in our synagogues and institutions today.

EVEN THOUGH HE SINS HE REMAINS A JEW:
THE REPENTANCE OF THE RETURNING APOSTATE

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Introduction

The background

The subject of this study is the apostate, defined as an individual who renounces Judaism, willingly or under duress, and who joins another religious community. Such a person is thus not the מומר or משומד discussed in the Talmud, although these names are used for the "modern" apostate. As Jakob Petuchowski noted, "it would perhaps be closer to the original meaning of the word to see in the concept of "mumar" something resembling our modern concept of alienation," as such an individual "has become alienated either from the totality of Jewish observance, or from one or more aspects thereof."¹ In most cases in the Talmud, the individual in question is a mumar only with respect some specific mitzvah, such as a mumar with respect to Sabbath observance. Even when speaking of a מומר לעבודת כוכבים (a mumar with respect to idolatry) or a מומר לכל התורה כולה (a mumar with respect to the whole Torah), it is clear the Talmud does not view such a person as having left Judaism to become part of another religious community.² The מומר or the משומד may be

¹ J. Petuchowski, "The Mumar--A Study in Rabbinic Psychology," Hebrew Union College Annual XXX (1959), p. 181.

² Ibid., p 187ff; S. Wagner. "The Meshumad and the Mumar in Talmudic Literature" Jacob Dolnitzky Memorial Volume (Jerusalem: Feldheim, 1982); p. 217. Note that Wagner contends that the Talmudic משומד differs from the mumar in that the former abandons Judaism in a time of persecution. Even so, such a person is not seen as having converted to another religion.

a dissenter or a rebel, but he is not, as far as the Talmud is concerned, an apostate in the modern sense.

Only in post-Talmudic times does apostasy take on the characteristics that make it the much more extreme separation from Judaism than the alienation Petuchowski describes. Apostasy now is understood as the attempt to become a Christian or a Muslim and the apostate thus "tears himself away from the Jewish community completely" and "cuts his connections with those of his [former] community and is absorbed into a different religious community."³ In modern parlance, the post-Talmudic apostate is a person who would be described as having left Judaism.

While this departure was of course possible in practical and sociological terms, from the point of view of the halacha, leaving is an impossibility. Poskim over the centuries have consistently maintained that the apostate cannot shed his Jewish identity but remains, in his sinful state, subject to the dictates of the halacha. This principle of the immutability of Jewish status is affirmed in the earliest responsa examined in this study⁴ and remains unquestioned in virtually all of the material studied herein. It is Rashi, however, who demonstrates that this principle in fact has a Talmudic basis.

³ (Katz) 263, (1984), ירושלים, מאגנס: "הלכה וקבלה" (מאגנס: ירושלים, 1984), 263 (Katz)

⁴ See, the discussion of the responsa of Amram and Natronai in Chapter 1.

Rashi accomplishes his task through his interpretation of this now famous dictum in Sanhedrin 44a: "אמר רבי אבא בר זבדא: אף על פי שחטא ישראל הוא" ("said Rabbi Abba son of Zavda: Even though he/it sins he/it is [called] Israel"). As Katz notes, the original context of this statement is aggadic. The dictum comes in a discussion of an episode in the book of Joshua in which Achan seizes proscribed booty, angering God and causing the Israelites to be defeated at the battle of Ai.⁵ When Joshua later inquires of God as to why this disaster occurs he is told "חטא ישראל", it is because "Israel has sinned."⁶ Abba bar Zavda's comment is intended as an explanation of this verse, in which case "Israel" refers to the nation and not to an individual (hence the translation of the dictum above).⁷ The import of the comment then is that even though the nation transgressed, it is still collectively known by the noble name of Israel.⁸ In his role as a commentator, Rashi confirms this reading, commenting that "since it does not say 'the people sinned', they still have their holy name."⁹

As Katz demonstrates, Rashi in his role as posek gives Abba bar Zavda's dictum halachic content.¹⁰ In a series of responsa Rashi uses the dictum as authority for the continued application of the halacha to apostates. Thus for

⁵ Josh. 7:1ff.

⁶ Josh. 7:11

⁷ Katz, הלכה וקבלה, p. 256.

⁸ Ibid.

⁹ Rashi on Sanhedrin 44a "חטא ישראל".

¹⁰ Katz, הלכה וקבלה, p. 255.

example, based upon his understanding of Sanhedrin 44a, Rashi rules that a woman whose brother-in-law has apostasized requires חליצה, as despite his sin, he remains a Jew.¹¹ Given the obvious hardship caused by keeping the apostasized yabam within the scope of Jewish law, Katz contention that Rashi's interpretation has a polemical motivation is difficult to dispute. It does seem to be the case that Rashi has provided a halachic basis for the permanency of Jewish identity to demonstrate that "the will of the sinner to separate himself from his Jewish status is ineffective."¹²

The problem

Whether or not explicitly based on Abba bar Zavda's dictum, the principle of the immutability of Jewish identity, while it clearly answers the question "who is a Jew,?" significantly complicates the question examined in this study: How must an apostate Jew repent? Put differently, does the fact that a Jew always remains a Jew mean that nothing may be required of an apostate when he returns to Judaism or should some form of reentry requirements be imposed?

The focus of this study is on how various poskim and codifiers have

¹¹ ישראל אלפנבין, תשובות רש"י (ירושלים, 1966), סימן קע"ג. Despite the fact that it is Rashi who is the first to apply "אף על פי שחטא" to the status of apostates, he does not directly address the question of the requisite repentance of the apostate. In Resp. # 169 he seems to intimate that a public confession is required, but beyond this no clear statement on the central question of this study could be located.

¹² Katz, הלכה וקבלה, p. 265

answered this difficult question, for which the halacha provides no definitive answer. The aim will not be to arrive at a catalog of responses, but to examine in each case how an answer is crafted that is halachic, in the sense that it is derived from within the halachic system, but that is also practical, in that it meets the perceived needs of the day.

The intent will be to employ the literary approach that has been suggested by Washofsky and to examine each responsum and codification as a "text" by viewing each document "from the inside, following the halachic authority through the act of text construction."¹³ With this in mind, in each case an effort will be made to reconstruct the "decisional environment"—the complex of forces that the posek or codifier must contend with in resolving the question. It is obviously not possible to determine all of the factors that might have influenced any particular decision. Therefore, this study will be confined to consideration of the following issues:

- 1) The needs of the community-- how does the authority's need to address the concerns of the community regarding the returning apostate affect the decision reached. The community's need for a clear line of demarcation between a bona fide Jew and an apostate might, for example, influence the decision reached.

¹³ Mark Washofsky, "Respona and Rhetoric," in Pursuing the Text: Studies in Honor of Ben Zion Wacholder, eds. John C. Reeves and John Kampen (Sheffield: Sheffield Academic Press, 1994), p. 363

2) The needs of the individual--How does the authority's assessment of the character and psychological needs of the apostate himself influence the decision. An example of such a consideration could be a posek's perception of how the individual might best purge himself of guilt.

3) Policy--What policy with respect to apostates in general does the authority seek to advance. The assumption here is that most decisors are apt to consider what effect a decision is likely to have on other apostates who are considering whether or not to return to Judaism.

4) The authority's conception of repentance--Given that the required teshuvah of the apostate is what is at issue, an authority's view of what, in the abstract, constitutes sufficient repentance is apt to be significant.

5) The authority's commitment to the halacha--As Washofsky notes "halakhists. . . must contend not only with 'the needs of the hour' but also with the demands of their legal system, its principles, precedents and traditions."¹⁴

It is hoped that this study will avoid the twin pitfalls of viewing halachic literature as either post-hoc justification of pre-determined decisions or as the products of legalists hermetically sealed away from the world. Instead the study

¹⁴ Ibid., p. 384

will focus on "the dialogical relationship between interpreter and text"¹⁵ in which life and law are drawn together by the decisor. Particular attention will also be paid to the rhetoric of these texts, by which the decisor attempts to convince his audience to accept his interpretation and application of the halacha.

Structure

This study examines representative responsa, pietistic texts and codificatory materials spanning from the time of the Geonim to the twentieth century. These materials are examined in roughly chronologically order with appropriate cross-referencing between time periods. Particular attention is devoted to the Shulkhan Arukh as Caro and Isserles establish "normative" positions that one would expect authorities that follow them would be bound to at least address. In the concluding section, I will attempt to abstract from the texts the basic approaches to the question of the returning apostate and summarize the values and interests that each model seeks to advance.

The problem of the returning apostate is not only an interesting theoretical question, but a current challenge to the Jewish community. Therefore, on the basis of this study, I will attempt to outline an appropriate approach for dealing with the repentant apostates who present themselves in our synagogues. In keeping with the spirit of this inquiry, my recommendations will take the form of

¹⁵ Ibid.

a hypothetical responsum.

Chapter 1

Geonic Period

The position taken by the Geonim on the question of the repentant apostate, characterized by rigid adherence to the immutability of Jewish status was highly influential. Both Adret and Caro, as will be seen, follow the Geonic view of the problem. Even the lenient position of the Rashbash can be traced back to the Geonic conception that a Jew in no sense can be treated as a convert. Yet even the Geonim were not entirely consistent in their application of the "once a Jew always a Jew" rule, or to be more accurate, the fact that a repentant apostate had the same status as every other Jew when it came to his return to Judaism did not necessarily mean that apostasy had no consequences in other contexts.

Two Geonic responsa will be examined in this section, one by Rav Amram Gaon and one by Rav Natronai. Of the two, the Amram responsum is the more interesting as it includes a requirement not often imposed on the repentant apostate. It is, however, the responsum of Natronai that appears to be the source of the Adret responsum discussed below.

Rav Amram

The question posed to Amram reveals that the petitioner is in need of guidance both as to the proper reentry requirements and how to determine if the penitent is in fact sincere. He asks:

משומד שאמר רוצה אני לחזור שלא באותה מדינה שפשע מנדין ליה וצריך טבילה או
דילמא מהימנינן ליה ולא צריך טבילה אינן חיישינן שלא יהא הערמה ומטמא כשרים
בהדיה באכילה ובשתיה ולא מהימן לא אכלינן בהדיה עד דמקבל מינגד על שכפר וטבילה
על שקצים ורמשים.

Concerning an apostate who says 'I want to return', but not in the same country in which he sinned: Do we flog him and require him to immerse or perhaps do we trust him and do not require him to immerse, or alternatively do we have reason to fear that there may be deception and that he [might] contaminate fit [Jews] through eating and drinking [with him] and so not trust him and not eat with him until he accepts flogging, as he denied [God] and immersion for forbidden foods?"¹⁶

The questioner assumes that separate repentance is required for the apostasy itself and for the eating of forbidden foods, a sin the apostate is assumed to have committed. Amram prescribes one act of repentance for all the

¹⁶ ספר שערי צדק, (ירושלים: ספרים כלל ופרט, 1966) שער ג', יא

attendant sins of apostasy: "He certainly requires flogging as he violated positive and negative commandments and committed sins punishable by extinction and the judicial death penalty."¹⁷ T'vilah is not required for the simple reason דלאו גר הוא ("he is not a convert").¹⁸ In a move seen several times in later responsa, Amram drives this point home by raising the harder case of one who converted to Judaism and later recanted. If he returns to Judaism once again, he returns as a Jew and thus need not immerse himself in the mikve.

From the halachic point of view this seems to be all that needs to be said. The mumar is assumed to have committed a variety of sins, which are dealt with, as will be seen, as ordinary violations of the mitzvot by any Jew. The issue of sincerity raised by the questioner is, however, not addressed by a strictly halachic approach. Thus even Amram must depart from the immutable identity principle to meet the needs of the day. In this case Amram must respond to the communities fear of insincere or even devious "penitents". Thus, as Amram states, flogging is not the end of the matter:

ואף על פי שמקבל מלקות צריך שיעמוד בפרהסיא לפני הציבור ויתודה על מה שעשה ויתחרט על מעשים רעים שבאו לידו. וכיון שעושה כן יודעין הכל שעשה תשובה מוחלט ואין חוששין לערמה ומותר לאכול ולשתות עמו.

Even though he accepts flogging, he must stand in public before the

¹⁷ Ibid.

¹⁸ Ibid.

community and confess what he did and express remorse for his evil deeds. When he does this, all will know that he has made absolute teshuvah and there is no suspicion of deceit and it is permitted to eat and drink with him.¹⁹

Both the statement of the question and Amram's response betray a fear that one who appears to be a penitent apostate may in fact be a deceiver and intend by his "return" to lead other Jews astray. This fear seems to have been great enough for Amram to create an unusual requirement of public confession. Such confessions are certainly not unheard of as attested by the Rambam's suggestion that it is praiseworthy to confess one's sins in public.²⁰ This however is certainly not required to attain forgiveness for sin and is only suggested with respect to sins between man and man.²¹ As will be seen, daily confession is integral to the Hasidei Ashkenaz approach to apostasy, but there it is a personal penance and not intended advertise the penitent's fitness to the community.²² The requirement is further problematic in that it is as likely to humiliate true penitents as it is to weed out provocateurs. The perceived threat to the community must have been great for Amram to weigh the community interest so heavily over the danger of humiliating בעלי תשובה.

¹⁹ Ibid.

²⁰ MT Hilkhoh Teshuvah 2:5

²¹ Ibid.

²² See, discussion of Sefer HaRokeah in chapter 2.

There is in fact little sense of the penitent as an individual in this responsum. The responsum seems to be geared to meet the demands of the halacha in an abstract sense and to provide the community with a "bright line" test as to when it is safe to associate with a repentant mumar. What is lacking is any hint that the need of the individual to expiate his guilt is of any concern. This factor more than any other is what divides this responsum and those few that follow its reasoning from the remainder of the responsa examined in this study.

The fact that Amram requires repentant mumarim to submit to flogging is a consequence of his insistence that a mumar is a Jew. Flogging is the prescribed punishment for the violation of negative commandments, including those punishable by extinction (כרת) and death "by the hand of heaven" (מיתה בידים) (השמים).²³ So if one of the sins the mumar committed while among the gentiles was eating leaven on Passover, a violation of a negative commandment punishable by extinction, Amram requires nothing more of him than he would of any Jew as this is an offense punishable by מלקות.²⁴ Amram's list of sins that inevitably follow from an act of apostasy, however, includes violations of positive commandments and acts punishable by the death penalty, which are not technically punishable by judicial flogging. There are however non-punitive mechanisms for imposing physical punishments, which practically speaking are

²³ MT, Hilchot Sanhedrin 18:1.

²⁴ Ibid.

identical to מלקות. One of these is מכת מרדות, a non-punitive flogging that a court may employ to enforce adherence to positive obligations which are not technically punishable by מלקות.²⁵ In addition, a Rabbinical court has the power to have an individual beaten for any sin if the lawlessness of the times so requires.²⁶ It is likely that the "מלקות" involved here was conceived as some form of non-judicial measure rather than a legal sentence. As Rambam notes, "in the diaspora, all flogging imposed by judges is merely מכת מרדות."²⁷

Whether the legal theory behind the flogging Amram requires is retributive or coercive, the requirement sends the same message. Apostates are sinful Jews who are dealt with in the same manner as all others sinners in Israel. Thus while מלקות may seem to be an unjustifiably harsh and indeed foolish way to treat those who are returning to Judaism, it is in fact an expression of the principle that one cannot shed one's Jewishness.

Natronai Gaon

Natronai's position on the returning apostate is essentially the same as that of Amram. He too requires flogging because of the various sins committed by the apostate and at the same time asserts that t'vilah is not required as the

²⁵ MT, Hilchot Shabbat 1:2.

²⁶ HM 2:1.

²⁷ MT, Hilchot Sanhedrin 16:3.

apostate is not a convert.²⁸ Lacking from Natronai's opinion is Amram's requirement of public confession. It is this "מלקות only" formulation that is adopted by Adret and Caro.

The responsum is interesting more for its context than the specific ruling. The questioner was not concerned with the repentance of the mumar in general, but rather with the narrower question as to whether a kohain who had apostasized and returned retained his priestly rights. Natronai concludes that he does not as he had "defiled his holiness." Thus for, example, the mumar-priest may not recite the priestly blessing as "the one who spreads his hands needs to be upright in his ways and noteworthy for his way of life (i.e., morals)." Thus despite his insistence that the mumar is a Jew and in no sense akin to a proselyte, this does not mean that the fact of his apostasy has no consequences. He may be a Jew, but he is marred permanently by his sin.²⁹

Similarly, Natronai took the position that the apostate forfeited his claim to inherit from his family, seeing this as a Toraitic principle.³⁰ Katz cites this, among other decisions, as evidence that not all the Geonim "were in agreement

²⁸ ספר חמדה גנוזה ירושלים: אופסט האמנים, 1966, סיף נד.

²⁹ Note that this position was repudiated by both R. Meir Me'or ha-Golah and Rashi. According to Katz this was done to facilitate the return of apostates to Judaism. See, Yaakov Katz, Exclusiveness and Tolerance: Studies in Jewish Gentile Relations in Medieval and Modern Times (New York: Schocken, 1962), p. 69-70.

³⁰ Katz, הלכה וקבלה, p. 257.

with the principle that a mumar who sins remains a Jew."³¹ The argument could also be made that the fact that Natronai was willing to strip the repentant kohain of his priestly prerogatives also betrays a weak commitment to the immutability of Jewish status. This would require a degree of consistency that is not in keeping with the situational nature of halachic decision making. The fact that "a Jew is a Jew" with respect to determinations of how a mumar should be reintegrated into the community, does not necessarily mean that the apostate should be equal to loyal Jews in other matters, if there are valid reasons to discriminate between them. Natronai seems to have made the determination that upholding high standards of behavior for kohanim or preventing the dissipation of the Jewish community's wealth were more important values than formal logical consistency, if in fact logical consistency was a consideration in these decisions at all.

Although the solution of the problem of the returning apostate arrived at by most authorities after the Geonim depart significantly from their "halachic" position, most of the poskim examined here share this same situational thinking. This allows them to simultaneously assert that the mumar is a Jew in every respect and yet still impose reentry requirements.

³¹ Ibid.

Chapter 2

Late 12th-14th Century

The repentant mumar in Hasidut Ashkenaz

In his book Piety and Society, Ivan Marcus contends that while חסידות אשכנז in the narrow sense was "short lived. . . it was nonetheless a dynamic religious revival movement which was almost immediately accommodated into the mainstream of Jewish piety and society, which it permanently transformed."³² With respect to the narrow question addressed by this study Marcus' contention is certainly valid. A number of the figures examined here, specifically Isserlein, Isserles, and Sasportas can be seen as responding to a pietistic view of the repentant mumar that has its origin in the literary works of Hasidei Ashkenaz. For this reason it is worthwhile to examine those sections of Sefer Hasidim of Judah HeHasid and Sefer HaRokeah of Eleazar of Worms that address the issue of the repentant apostate.

Sefer Hasidim

Sefer Hasidim contains a number of passages dealing with mumarim, but

³² Ivan Marcus, Piety and Society: The Jewish Pietists of Medieval Germany (Leiden: J. Brill, 1981), pp IX-X.

only a few of these deal with the specific question of the process of repentance. The passage most directly on point is as follows:

In the case of one who apostasized and then returns to be a Jew and who has agreed to make teshuvah as the sages instruct him, then from the moment that he so accepts it is permissible to drink wine with him and to pray with him, even if he completes the minyan, on the condition that he behaves like the rest of the Jews [like any other Jew], for note: on festivals even Amei Ha'artez are considered trustworthy concerning the purity of holy things [or in holy matters].³³

On the surface this appears to be a very lenient position. The penitent is immediately reincorporated into the community as soon as he makes his intentions to repent clear. As Yosef Dan notes, author does not accept the concept of a demi-Jew, that is one who is no longer considered a meshumad, but who lacks the rights of a Jew to participate fully in worship.³⁴ This does not mean, however, that the atonement that comes after reincorporation into the community is an easy task.

Modern readers are apt to understand the phrase "to make teshuvah" as

³³ (Sefer Hasidim). * 203, ירושלים: מוסד הרב קוק, ספר חסידים

³⁴ יוסף דן, חסידות אשכנז בתולדות המחשבה היהודית רמת אביב האוניברסיטה הפתוחה 1990, 97.

(Yosef Dan)

indicating an act of mental resolve, but this is most likely not the sense in which the phrase is meant here. As Marcus notes, "in talmudic-midrashic literature, teshuvah is restricted to the process of inward 'return' or repentance which may be expressed in a change of outward behavior. In the German pietist authors' writings, this word can refer not only to repentance, the first stage of atonement, but also the later stages which involve penances."³⁵ Given the theory of atonement that undergirds Sefer Hasidim, these penances were liable to have been severe.

While it would remain for Eleazar of Worms to firmly systematize the terminology, Judah the Hasid is credited with creation of the penitential system of Hasidei Ashkenaz.³⁶ A prominent feature of this system is the calibration of penalties to counterbalance and expiate specific aspects of the sin. Thus there is a "penance of suffering equal to the pleasure experienced several times" that is meant to counterbalance the enjoyment one gained from the sin and "the punishment of the Torah" that is meant to be the equivalent of what would have been the applicable Biblical punishment.³⁷ These kind of surrogate punishments are likely to have been the "teshuvah" instructed by the sages in the paragraph quoted above.

³⁵ Marcus, Piety and Society, p. 48.

³⁶ Ibid., quoting from Sefer Hasidim (Parma recension) #37.

³⁷ Ibid.

In addition to the individual apostate, Sefer Hasidim deals with the special case of a Jew who leads others to follow him into apostasy. In this case there is a pre-condition that must be satisfied before the apostate can be allowed to return. The repentant meshumad is required to bring those he led to apostasy back to Judaism before he will be accepted into the community and given the required penances (אז) יקבלוהו ויורוהו איך לעשות הדין).³⁸ Again the actual penances are not specified, but the existence of expiatory punishments is implied by the language and context.

Sefer Hasidim provides a glimpse at the character of the meshumad in the strange story of an apostate who seeks to return to Judaism, but because he is poor, wants to rob the gentiles first.³⁹ Three different sages then offer their view as to what the larcenous meshumad should do. The most interesting response for our purposes is the sage who suggests that he proceed with his plan. He explains "that since he only apostasized so that he would not have longings [for forbidden things], it is better that he take from the gentiles and escape, and so not eat treif or desecrate the Sabbath, then if they catch him and kill him, his death will be atonement for all his sins."⁴⁰ The connection of apostasy with "enjoyment" is significant. Given that a major rubric of repentance is that for illicit enjoyment, it seems that a basic assumption of Sefer Hasidim is that pleasure is an important

³⁸ Dan, חסידיות אשכנז, quoting Sefer Hasidim (Parma recension # 108).

³⁹ Ibid., # 200

⁴⁰ Ibid.

motivation of sin, including the sin of apostasy. This understanding recurs in a responsum of Isserlein.⁴¹

The basic approach adopted by Sefer Hasidim toward the repentant apostate seems to be driven both by a concern for the community and for the needs of the individual. For the community, Sefer Hasidim provides a bright line between "meshumad" and "Jew in good standing". Once the repentant apostate makes his intention to return clear, he must be treated as Jew in all respects.⁴² The penances, given the emphasis in Hasidei Ashkenaz on personal atonement, are most likely not primarily meant as an expression of community anger, but instead focus on the individual's need for expiation of guilt. In an atmosphere where asceticism and penitence are prized, it is probable that the individual would feel that only harsh physical penances are sufficient to wipe out his sin.⁴³ That the community would expect that such penances be imposed would seem to be of secondary concern to Sefer Hasidim.

Sefer HaRokeah

Both the general penitential system and the specific treatment of

⁴¹ ספר תרומת הדשן (ירושלים: שמואל אביטן, 1990), חלק א, סימן קצ"ח (Isserlein)

⁴² Yosef Dan, חסידות אשכנז, p. 97

⁴³ See, Baer's discussion of the "extreme self-affliction and self-abasement" of the hasid in Sefer Hasidim. He notes the similarity between Hasidei Ashkenaz pietism and Christian monastic practice. Yitzhak Baer, "The Socioreligious Orientation of Sefer Hasidim," in Bina: Studies in Jewish Thought, vol. II, ed. Yosef Dan (New York: Praeger, 1989), p.64.

mumarim found in Sefer HaRokeah seem to have influenced the thinking of several of the authorities considered in this study. This being the case, it is necessary to give a synopsis of the penitential system of Eleazar of Worms before moving on to an examination of his prescriptions for repentant apostates.

As Marcus notes, Eleazar presents his four-fold classification of repentance as an interpretation of a passage from Yoma 86a. The passage presents a fourfold classification of sins and the atonement available for each. Thus "ordinary" repentance suffices for a positive commandment, Yom Kippur atones for the violation of a negative commandment, suffering atones for a capital offense or a caret offense, and only death atones for a desecration of God's name.⁴⁴ From this basis Eleazar develops four general categories of repentance: גדר, באה, כתוב, and משקל.

באה penance, "penance that comes involuntarily", seems to be resistance when confronted with another opportunity to commit the same sin. A גדר penance would consist of preventive measures designed to prevent the repetition of a sin. Both of these concepts have precedents in Rabbinic literature. משקל and כתוב penances are, by contrast, inventions of Hasidei Ashkenaz. The משקל penance is intended to be calibrated to the degree of pleasure derived from the sin. The כתוב penance takes the place of the biblical penalty which

⁴⁴ B. Yoma 86a

would have been imposed upon the penitent.⁴⁵ Eleazar presents these new concepts of atonement as if they are a well established tradition. As Marcus states "any suspicions that a new theory of sin and atonement might underlie *mišqal* and *katur* penances are allayed by the emphasis on explicit theoretical reasoning about the new modes. They are illustrated, not justified, and this matter of factness reinforces one's impression that they were traditional and not new."⁴⁶

Fortunately, one of these "illustrations" happens to be the case of the repentant apostate. The application of Eleazar's penitential ideas to the apostate is found in the section of הלכות תשובה that consists of penitential programs for a number of different types of sinners. The *mumar* merits his own, rather lengthy entry:

The Meshumad who denies God [lit. the "essence"; עקר] and apostasized—he violates all of the Torah. He must take off his finery and his testimony is unacceptable and he mourns, weeps and afflicts himself for several years, each and every day and humbles himself and confesses three times a day. He does not eat meat or drink wine and does not wash, except a little for erev shabbat and erev yom tov. He does not wash his hair except for once or twice a month. He does not go to amusements or weddings,

⁴⁵ For an outline of the penitential system of Sefer HaRokeah see, Marcus, Piety and Society, p.42. Sefer HaRokeah, Hilkhos Teshuvah, 18b,19a.

⁴⁶ Marcus, Piety and Society, pp.42-43.

except for the blessing [the 7 wedding blessings] and he does not associate/sit with monks nor priests nor [visit] a place where they speak of avodah zara and he keeps distant from all such abominations and does not enjoy anything that they have and keeps distant from their doorways and the courtyard of their abominations [churches]. As soon as he feels remorse and immerses in the mikve he is considered an Israelite. He turns from all those things/matters through which he sinned and returns to his creator. He repents commensurate with his enjoyment, for he was joyous on their feast day and desecrated the Sabbath and denied God and accepted the god of avoda zara and worshiped it and had sexual relations with a gentile woman. He [transgressed commandments punishable by] karet and the death penalty. Therefore, he turns from his sins and serves his creator with all his soul, heart and might and lies upon the ground and endures many afflictions. If one calls him "an evil mumar" he should be silent and all his thoughts should be of goodness [pure].⁴⁷

As can be seen from the above quotation, Eleazar does not identify the classification of each of the many penances he imposes on the repentant apostate. Nevertheless, some classification is possible. The measures designed to keep the repentant apostate away from Christians and Christian places of worship, are

⁴⁷ Sefer HaRokeah, Hilkhos Teshuvah #24.

plainly *gader* penances designed to prevent the penitent from being ensnared again. This seems to reflect a view of the character of the apostate as being particularly weak. Determining which of the remaining penances belong to the *katuv* or the *mishqal* classifications is more difficult. In Eleazar's introduction to his הלכות תשובה, where he provides various illustrations of the four types of penance, particular prohibitions span both categories. The requirement that the penitent sleep on the ground, for example, is mentioned as a *katuv* penance in the case of sexual relations with an affianced (but not betrothed) woman and as a *mishqal* penance for sexual relations with a woman in who is *nidah*.⁴⁸ Similarly, fasting can serve as either type of penance.⁴⁹ The prohibitions against common pleasures (drinking wine, eating meat, washing etc.), however, are imposed as *mishqal* penances in both of these contexts.⁵⁰ It is safe to assume then that the prohibitions against drinking wine, eating meat, and washing in the passage in question are specifically intended to counterbalance the forbidden pleasures enjoyed by the apostate when he lived as a gentile.

As severe as the penances imposed on the returning apostate appear to be, this passage does not contain the full penitential program. The passage is in fact open-ended, leaving much room for expansion. After stressing that the sin of apostasy involves illicit enjoyment which must be "paid for" (thus meriting

⁴⁸ *Sefer HaRokeah HaGadol* (Jerusalem, 1959), p. 26

⁴⁹ *Ibid.*, p. 26-27

⁵⁰ *Ibid.*, p. 26

mishqal penances) and noting that apostasy involves sins punishable by premature death and the judicial death penalty (thus meriting *katuv* penances), Eleazar states that the repentant mumar must "bear many afflictions."⁵¹ It must be assumed that afflictions in addition to those already specified are intended here. Other passages from הלכות תשובה provide insight into what these might be. It would not be surprising if lengthy fasts, lying on ice or snow, or exposure to insects were part of the penitential program.⁵²

One particular requirement merits special attention here. Like Judah HeHasid, Eleazar provides for the immediate reincorporation of the penitent apostate. In Eleazar's scheme, however, this reincorporation follows immersion of the penitent in the mikve. The language מיד כשמתחרט וטובל במקוה דינו כישראל indicates that immersion is the bright line between the status of "apostate" and that of "Jew". Fine halachic distinctions between the apostate and the proselyte do not appear to be of any concern. The language used is far too loose for this to be the case. This is not to say that the mumar is considered to be a gentile, but that the fear of blurring categories, so pronounced in other materials under examination, does not appear to be a factor here. Further, this tie between immersion and readmission is significant as it demonstrates that the use of this potent religious symbol as a key component of the readmission of apostates has a very long lineage.

⁵¹ Sefer HaRokeah, Hilkhos Teshuvah, #.24

⁵² See *katuv* penances for adulterous sexual relations. Sefer HaRokeah HaGadol, p. 27

The rehabilitation process Eleazar proposes for the repentant apostate seems unduly harsh to modern eyes. We are thus apt to jump to the conclusion that such measures must have been imposed to satisfy some need of the community to punish its disloyal members. An examination of the process from the point of view of an "insider" who accepts or has been influenced by the pietistic ideas of Hasidei Ashkenaz, yields a different conclusion. For one for whom "atonement requires not only contrite repentance and confession, but in addition demands that the sinner impose penances on himself which are designed to rebalance the divine scales which sinning has tipped toward punishment", mere "psychic" repentance is apt to be woefully inadequate.⁵³

From this perspective, the approach of Sefer HaRokeah can be appreciated as one sensitive to the needs of the individual penitent, aimed at expunging the guilt of apostasy by means of concrete acts of purification. This conception of the readmission of the repentant apostate was to prove much longer lived than the Hasidei Ashkenaz movement that gave birth to it.

Rashba and the Rosh

It is instructive at this point to examine the opinions of Solomon ben Abraham Adret (Rashba) and Asher ben Yehiel (the Rosh) on the question of the repentant apostate. These figures were contemporaries and acquainted with one

⁵³ Marcus, Piety and Society, p. 13

another, but their approaches are markedly different. As will be seen, Adret follows the "hardheaded" halachic approach of the Geonim. In contrast, the Rosh's opinion seems to be colored by contact with Hasidut Ashkenaz.

The specific question posed to Adret was a straightforward one: Does an apostate to avoda zāra require t'vilah?⁵⁴ Adret responds that the repentant mumar "requires flogging as he transgressed a number of positive and negative commandments and commandments punishable by extinction and the judicial death penalty."⁵⁵ Having imposed this requirement, Adret then rules that the repentant apostate does not require immersion as he is not a convert. The difference between proselyte and apostate is that the convert is "raised out of" his gentile status through immersion in the mikve, whereas the apostate "whose conception and birth were in holiness" needs no such elevation.⁵⁶ Even a proselyte, Adret asserts, "who returns to his gentile religion and then returns to be a Jew" does not require immersion. With this statement Adret concludes this extremely terse responsum.

It will be noted that this responsum is very similar to the previously examined responsum of Natronai Gaon. This similarity leads Norman Roth to assert that "either the responsum does not belong in Ibn Adret's collection at all

⁵⁴ ספר שאלות ותשובות הרשב"א (ירושלים: פיעטרקוב 1960), חלק ד', סו.

⁵⁵ Ibid.

⁵⁶ Ibid.

since it is apparently by Natronai, or else we may assume that Ibn Adret was asked a similar question and merely copied an earlier opinion of the gaon (unlikely).⁵⁷ That the "Adret" responsum may originate with Natronai Gaon is possible, although the language, is not identical. It seems, however, not at all unlikely that the same question could be posed to both Natronai and Adret. In fact the same question "does the repentant apostate require t'vilah?" is asked many times in the responsa literature. This being the case it is not farfetched to believe that faced with a similar problem, Adret approved of and adapted Natronai's solution.

Ultimately, authorship is not a significant issue here, as Roth admits. This approach to the problem of the repentant apostate was known and approved of in the 14th century, as attested to by the endorsement of the "flogging, but not immersion" rule in the Tur.⁵⁸ What is interesting is how easily Natronai's (and in fact Amram's) ruling was transferred from a Muslim to a Christian context. The responsum is evidence that Islam and Christianity are functionally identical when the question at hand is what do with a Jew who apostasizes.

Katz has noted that Rashi's halachic interpretation of אף על פי שחטא נאך על פי שחטא penetrated Sephardic Jewry very slowly. This responsum

⁵⁷ Norman Roth, Conversos, Inquisition and the Expulsion of the Jews from Spain (Madison: University of Wisconsin, 1995), p. 24.

⁵⁸ Ibid. Tur YD 267:20

demonstrates that the idea of the absolute permanence of "Jewishness" was present before Rashi's choice of *asmachta* became current. Adret rigidly adheres to this principle. An apostate Jew is not a convert. Mikve is a ceremony reserved for converts. Therefore, the apostate Jew does not require *t'vilah*. Certainly to apostasize to *avoda zara* is sinful, but it is a Jew's sin, punishable by the same penalty that would be imposed upon an otherwise faithful Jew who violated a negative commandment.⁵⁹

In sum, Adret's approach is logical and upholds the principle of the immutability of Jewish identity.⁶⁰ What is missing is the sense that Adret is responding to the needs of the individual penitent or in fact to any consideration other than halachic consistency. As will be seen, this "hardheaded" approach, is the one chosen by Caro in the *Shulchan Arukh*. Rashbashi too partially follows this line, although in his case, drawing a clear distinction between convert and apostate is part of his broader view of the problem.

The question posed in the Asher ben Yehiel responsum is more general than that directed to Adret. In fact there is no question at all; rather a descriptive statement: "Concerning the [i.e. certain] women who lacked the strength to remain in the palace of the King during a time of oppression [שעת השמד] who apostasized out of fear of death, after a miracle occurred and they escaped and

⁵⁹ MT Hilchot Sanhedrin 18:1

⁶⁰ It should be noted that the principle of the permanency of Jewish identity does not drive Adret's response to all questions involving apostates. In denying an apostate the right to inherit from his father Adret asserts: "משומד יצא מאומה לאומה" Adret, part 7, Rsp. # 292.

returned to their religion."⁶¹ What follows is a discussion of several questions about the status of the women upon their return. Before the Rosh deals with the questions of whether the women are permitted to their husbands and whether their apostasy invalidates their ketubot, he briefly discusses the issue of repentance.

The Rosh asserts that the women's sin is in fact worse than that of those who apostasize other than during a time of oppression.⁶² This is because of the public nature of the שמד and the Rabbinic dicta that one "not even change a shoelace" in the face of such oppression.⁶³ This being the case, the women require "חרטה, תשובה וקבלת יסורין יותר מהממירין שלא בשעת השמד".⁶⁴ The Rosh illustrates this point with a משל of a King who's servants abandon him at a time when he is not in need of their support. This time he graciously accepts them when they return to him ashamed. Later he is attacked by a powerful enemy and he calls on his servants to aid him. Some rally to him, but some abandon him. After the struggle, those who abandoned him return and seek to make amends on the same gracious terms that the King granted to those who had abandoned him before the struggle. The King however is unwilling to accept them, except in

⁶¹ אשר בן יחיאל, שאלות ותשובות לרבינו אשר בן יחיאל, ירושלים: סכון ירושלים, כלל שלשים, ח (Asher ben Yehiel).

⁶² Ibid.

⁶³ The dictum is found in Sanhedrin 74a-b.

⁶⁴ Asher ben Yehiel, Resp. #32:8.

exchange for a "תקון רב".⁶⁵ In the נמשל the Rosh applies this parable to the King of the Universe, "who is glorified through Israel when they deliver themselves up for his holiness."⁶⁶ The point seems to be that the women turned traitor precisely at the time they were needed by their King, to sanctify his name in the world by their martyrdom. Therefore, their repentance should be a more arduous process than that required of those who apostasize in the absence of a שמד.

In comparing this responsum with that of Adret, it would be an oversimplification to attribute the significant differences between them to the fact that in this case the women are *anusot* and in the former it is apparently a willing apostate under discussion. Adret's imposition of flogging is not conclusive evidence that the individual before him was a willing apostate or that he did not intend the ruling to be applied to all apostates. It is true that, technically speaking, the halacha excuses one who sins under compulsion from judicial punishment.⁶⁷ This does not preclude the possibility, however, that in the Adret responsum a judicial punishment has been transformed into a penitential practice. The fact that after the expulsion from Spain, flogging was imposed upon or voluntarily undertaken by anusim and that part of the ordination controversy centered around the need for proper courts for this administration

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ MT, Hilchot Yesodei HaTorah, Ch. 5:4

of מלקות⁶⁸ makes this view of the Adret responsum tenable.

The key difference between these responsa is that in contrast to Adret's "halachic" approach, the Rosh is influenced by the pietistic approach of Hasidei Ashkenaz. It is known that Asher's father was part of the circle of Judah HeHasid⁶⁹ and thus it is not surprising that the penitential language Asher employs, betrays this pietistic *yichus*. Significant is the usage of the word חרטה, which in the penitential lexicon of the Sefer Hasidim is a highly marked term for "sincere repentance or contrition."⁷⁰ Such contrition must precede the assignment of penances⁷¹, and thus it is likely that Asher is presenting a penitential process. The יסורים then must refer to the last stage of the process, in which the penitent endures physical penances to cancel out the pleasure of the sin and to serve as surrogate biblical punishment.

Asher's insistence that the women should have accepted martyrdom also suggests the influence of Hasidei Ashkenaz, specifically the Sefer Hasidim, in which "the author devotes particular attention to the laws of Kiddush HaShem."⁷² The unusual use of a משל to make the case for Kiddush HaShem

⁶⁸ Yosef Hayim Yerushalmi, The Re-education of the Marranos in the Seventeenth Century, Rabbi Louis Feinberg Memorial Lecture in Judaic Studies, March 26, 1980 University of Cincinnati.

⁶⁹ EJ, s.v. "Asher b. Jehiel"

⁷⁰ Marcus, Piety and Society, p.144.

⁷¹ Ibid. p. 40

⁷² Baer, "Sefer Hasidim," p. 68

also points to the influence of Sefer Hasidim. While none of these elements is determinative in itself, taken together and coupled with the known connection between Asher and Hasidei Ashkenaz, the assertion that this opinion is colored by Hasidut Ashkenaz becomes plausible. Such influence explains the imposition of יסורים on individuals who were plainly unwilling converts. If these sufferings are not imposed to rid these apostates of feelings of guilt and to atone for sins in this world so as not to suffer in the next, then these measures would have to be seen as cruel and vindictive punishment. Given Asher's concern to restore these women to a normal life and to protect their rights under their ketubot, such a motivation seems extremely unlikely.

Chapter 3

15th Century

In this section responsa of two major figures of the 15th century will be examined, Israel b. Pethahiah Isserlein and Solomon ben Simon Duran (Rashbash). It is indeed fortunate that both of these men issued responsa directly addressing the question of the returning apostate as there are similarities between the two figures that make comparison fruitful. Both were communal leaders, Rashbash in Algiers and Isserlein in Weiner-Neustadt.⁷³ The responsa collections of both Rabbis are considered among the most important of the 15th century.⁷⁴ Lastly the responsa are somewhat similar in type. It has been noted that many of the "responsa" in Isserlein's *Terumat HaDeshen* are in fact hypothetical questions posed by Isserlein himself.⁷⁵ In the particular Rashbash responsum examined here, while the question is not hypothetical in the sense that it is addressed to a pressing need, Rashbash did not wait to be asked about the repentance of the anusim. He in effect issued a declaratory judgment designed to settle the question in advance. Despite these similarities, the

⁷³ Ben Zion Netanyahu, *The Marranos of Spain* (New York: American Academy for Jewish Research: New York, 1966), p. 44; Salo Baron, *A Social and Religious History of the Jews* New York: Columbia, 1965, pp. 107-198.

⁷⁴ Menahem Elon, *Jewish Law* (Philadelphia: Jewish Publication Society, 1994.) pp. 1996-7. For Isserles' reliance on *Terumat HaDesehn*, see Chapter 5.

⁷⁵ *Ibid.*, p. 1516.

approaches adopted by these two figures are widely divergent, although apparently not on the basis of the willingness or unwillingness of the apostates in question.

Isserlein

The first of the two Isserlein responsa to be examined deals with the following question:

מומר שיצא מן הכלל וחזר לדת האמת, צריך להתכפר בסגופים גדולים כפי מה
שעבר על כל מצות שבתורה או לא צריך כולי האי?

Does a repentant apostate need to atone by means of 'great afflictions' as applies to one who transgresses any [other] commandment in the Torah?⁷⁶

Isserlein's initial response is that one should not impose such suffering upon him because of the extraordinary baseness of the apostate. The returning apostate is "accustomed [to living] among the gentiles" and therefore, "there is reason to be concerned that he might spurn his repentance" if he must suffer too much to return to Judaism.⁷⁷ In addition, Isserlein asserts that one is justified in being lenient in such situations as the mere separation from the gentiles entails

⁷⁶ ספר תרומת הדשן (שמואל אביטן: ירושלים, 1990), חלק א, סימן קצ"ח (Isserlein)

⁷⁷ Ibid.

suffering⁷⁸.

"...לפי שאין סגופים גדולים ורעים מאשר סובל בכל יום שמסתלק מכל הטובות

וההנאות שהנכרים שרוים בהן.

For there is no suffering greater or more terrible than that which he bears every day that he is away from all the good things and enjoyment which are permitted to the gentiles.⁷⁹

In addition, the repentant mumar suffers dangers as a Jew which he was sheltered from when he lived among the gentiles. Upon his return he again becomes a target of the animus of the gentiles, a fate that no other sinner faces, not even the murderer.⁸⁰

Given that Isserlein can be considered an heir of the Hasidei Ashkenaz tradition, this responsum is somewhat unusual. The manner in which the question is posed seems to indicate a recognition that at least for sins other than apostasy יסורין are appropriate. Nevertheless, the imposition of such penances is deemed inadvisable, even though deserved, out of the fear that the return of apostates to Judaism may be impeded. Something has changed since the time of

⁷⁸ Ibid. Isserlein states that he found this argument in the Zurich edition of the ספר מצות הקטן.

⁷⁹ Ibid.

⁸⁰ Ibid.

Judah and Eleazar. Isserlein does not seem to share the assumption of the Sefer Hasidim and Sefer HaRokeah that the penitent apostate will be compliant and in fact desires the required penances. What for the Hasidei Ashkenaz would be considered a privilege to be earned through proper contrition⁸¹, is viewed by Isserlein as a possible barrier to repentance. This being the case, Isserlein's approach becomes pragmatic. Severe penances must be rejected to facilitate the return of apostates to Judaism.

This would seem to be a sufficient reason to opt out of the pietistic penitential system, and yet Isserlein cites another justification for not imposing סגופים: The returning mumar just by reason of his return suffers the most severe afflictions possible. The pain of being separated from his former hedonistic life-style apparently is sufficient suffering to neutralize the sin of apostasy, thus no further suffering is needed. By stressing this loss of enjoyment, Isserlein appears to be arguing that there is in fact a penance in this case precisely commensurate with the pleasure of the sin. The pain of return itself constitutes a משקל penance. This clever argument ensures that a penance is endured, but it is a penance that cannot possibly lead a penitent mumar to give up the process of teshuvah.

⁸¹ See, Sefer Hasidim (Parma recension) #208 where hasidim are instructed to withhold penances from an apostate who led others into apostasy. The tone of the section indicates that control over the imposition of penances is a form of leverage over the returning apostate. (Passage anthologized in Dan, חסידות אשכנז, p. 92.

The argument is well made, but it raises a question as to why it is necessary to create what is essentially a fictive penance. Isserlein tries to anticipate an expectation that the teshuvah of a mumar includes harsh penances, but whose expectation is it? Isserlein may be attempting to reconcile what he feels must be done as a matter of policy and what his own Hasidei Ashkenaz background tells him is appropriate. Isserlein expressed elsewhere in his writings, however, that he did not regularly impose משקל penances.⁸² Given Isserlein's grim assessment of the repentant mumar, it is doubtful that it is consideration for the expectations of the mumar himself that drives this argument. The argument then must be addressed to the community which has absorbed some of the penitential ideas of Hasidei Ashkenaz and thus expects that the mumar's teshuvah will involve suffering. The second section of the responsum then is intended to preempt objections raised by the community to Isserlein's leniency. If the community feels that the apostate must suffer, Isserlein will demonstrate that he has suffered. Popular sentiment and pragmatism are thus both served.

The fact that Isserlein pursued a policy of leniency with respect to penances does not mean that he was unwilling to require that the repentant mumar go through a rite of return. In another responsum in Terumat HaDeshen, Isserlein addresses two acts that the mumar must perform to return to Judaism—shaving and immersion.

⁸² ספר תרומת הדשן, חלק ב', פסקים וכתבים, סימן ס"ב (Isserlein)

Isserlein's discussion of these elements arises in the context of a seemingly technical question regarding an exception to the prohibition of shaving during Chol HaMoed. He asks: "Concerning one who apostasized and comes to be purified (ליטהר) during Moed—is it permitted to shave him in order to immerse him and bring him into (להכניסו) the true religion."⁸³ From the manner in which the question is framed, one would expect that Isserlein would move immediately to the permissibility of shaving during Moed. He does not. Instead he begins with a justification of the practice of shaving repentant mumarim in general.

Isserlein begins his responsum with a statement of "We are accustomed to shaving penitents such as these."⁸⁴ According to Isserlein this practice follows the "ruling" of Moshe HaDarshan which is cited in Rashi's commentary on Numbers 8:7 ("העבירו תער"). Isserlein's paraphrase of Rashi's comment is as follows:

[היו] כפרה ע"י בכורי ישראל שחטאו בע"ז. וע"ז קרוי מת ומת איתקש למצורע
והמצורע טעון תגלחת.

They were atonement [substitutes for] the first-born who sinned through avoda zara. Avoda zara is called death (or the dead) and death (or the

⁸³ Ibid.

⁸⁴ Ibid.

dead) is equated to the leper and the leper requires shaving.⁸⁵

It is left to the reader to discern how this exegesis supports the practice of shaving mumarim. Apparently some form of kal v'chomer is intended: If the Levites must be shaved in vicarious atonement for other Israelites' sins of avoda zara, how much the more so should the mumar be shaved in atonement for his own. Only at this point does Isserlein move on to the narrow question of shaving the mumar during Moed. Isserlein's justification of this practice builds on Rashi's exegesis of Numbers 8:7.

Rashi's commentary provides a *hekesheh* between avoda zara (hence apostates) and the leper. The connection established, Isserlein then is able to make an analogy between the cleansing of a leper and the return of an apostate. The analogy is based upon the discussion in Moed Katan of shaving lepers and nazirites during Moed:

ותנאיא עלה בגמרה: דנזיר ומצורע אפילו היה להן פנאי לגלח קודם המועד מותרין

לגלח במועד, כדי שלא ישהו קרבניהם

And it is taught in the Gemara that even if they had an opportunity to shave before Moed, they may shave during Moed in order not to delay their sacrifices.⁸⁶

⁸⁵ Ibid.

⁸⁶ Ibid. ; Moed Katan 17b. Note that Isserlein has paraphrased this passage. The original

Since the mumar is analogous to the leper, this exception to the prohibition of shaving during Moed applies to the mumar as well. The mumar must be able to shave during Moed as otherwise he will be prevented from performing mitzvot for "one does not include him in any holy matter (i.e. one does not allow the mumar to participate in religious activities) until he shaves and immerses. [emphasis added]." ⁸⁷

The analysis is problematic for several reasons. The analogy between the mumar and the leper (and nazirite, given the structure of the Moed passage) is somewhat flawed. The shaving in the cleansing process of the leper⁸⁸ is a Toraitic requirement, as is the shaving associated with the completion of the nazirite vow⁸⁹, while the shaving of the repentant mumar is minhag, as Isserlein notes at the beginning of the responsum. This being the case, the sacrifices of the leper and nazir are prevented *d'oraita* by the failure to adhere to the shaving requirement, whereas here it is adherence to custom that makes the mumar unable to participate in religious life. The sacrifices of the leper and nazir are thus not analogous to the missed mitzvot of the mumar. The fact that in the case of the leper and nazir, a Toraitic requirement overrides a Rabbinic prohibition does reads: נזיר ומצורע, אף על פי שהיה להם פנאי-מותרים, שלא ישהו קרבנותיהן.

⁸⁷ Ibid.

⁸⁸ Lev. 14:9

⁸⁹ Num. 6:18

not support the contention that the Rabbinic prohibition can be superseded by custom.

More problematic is the resurfacing of the issue of mikve in this portion of the responsum. In contrast to the care with which Isserlein finds Toraitic support for the custom of shaving mumarim, Isserlein makes no effort to justify the requirement of immersion. This omission is troubling as Isserlein plainly asserts that the repentant mumar is not a full member of the community until both requirements are satisfied: "In spite of the fact that it [the lack of shaving and immersion] does not delay [the performance of mitzvot--as the requirements are not Toraitic], the custom of our ancestors is Torah."⁹⁰ The question then arises, why the need for an elaborate justification of shaving when mikve is merely assumed to be applicable?

The question cannot be answered with any certainty, but it seems logical that Isserlein would feel the need to defend a custom that was controversial or not yet well established and similarly feel no need to defend a requirement assumed to be applicable. There is some evidence to suggest that shaving was not a universally practiced custom even after Isserlein's time: Isserles' discussion of the requirement as applies specifically to mumarim is quite tentative. He states that if it is customary (presumably in a particular community) to shave repentant

⁹⁰ Ibid.

apostates, then they may shave during Moed.⁹¹ The Maharshal (Shlomo ben Yehiel Luria 1510-1574) attests to the custom in such a way that raises questions as to how widespread the practice was. In his commentary to the Tur, Luria states: "The custom now is to immerse apostates and to shave off all their hair before hand. So I have found and seen that it is taught as a matter of practical halacha (הלכה למעשה)."⁹² The tone of this brief passage is more in the form of a report than an endorsement, presumably with the aim to convince the reader that the practice is indeed followed. Marcus Horowitz, in his comprehensive responsum on the question of the returning mumar suggests that the phrase "מצאתי וראיתי מורין הלכה למעשה" indicates that "he still needed to substantiate the custom by means of his testimony and perhaps in Luria's country the custom was not so widespread."⁹³ While Horowitz's argument was aimed at attacking the theoretical foundations of the requirement of mikve (and is thus a dubious argument as will be discussed below), his logic seems sound with respect the shaving requirement. Thus the uncertainty about the custom reflected in the writing of Isserles and the Maharshal suggests that in Isserles's time the custom was also not well established. In this light, the carefully developed justification of the practice in this responsum is understandable.

⁹¹ OH 531:7

⁹² Maharshal on the Tur, cited in בית חדש, YD 267: 7.

⁹³ מרדכי הלוי הובוויץ, מטה לוי (ורנקנורת: קייפמאן, 1932), סימן ה'.
(Marcus Horowitz)

Following the same line of argument, it seems safe to assume that mikve, at least in Isserlein's mind, was not a controversial issue and unlikely to be challenged. In part this may be due to the fact that t'vilah, with its association with both conversion and purification is a logical choice for a reentry requirement and one in line with popular sentiment. Whatever the technical halacha may say, it is and most likely was difficult not to think of an apostate as one who is no longer a Jew or who at the very least has defiled himself. Isserlein himself describes the penitent apostate as coming to "be purified" (ליטור)⁹⁴ and as noted above, stresses an analogy between the apostate and the leper. Further, the responsum is not free from "conversionary" language as Isserlein describes the purpose of shaving and immersion of the mumar as "bringing him into the true religion (להכניסו לדת אמת)."⁹⁵ Isserlein may also have felt that immersion was well established as it is one of the requirements imposed on the repentant apostate by Eleazar of Worms. Eleazar utilizes mikve as the dividing line between Jew and apostate: "כשמתחרט וטובל במקוה דינו כישראל".⁹⁶ The endorsement of mikve by this well respected work must have also contributed to the matter-of-fact assertion of the requirement of immersion and Isserlein's understanding of shaving and immersion as the gateway between apostasy and full reintegration into religious life.

⁹⁴ Isserlein, part 2, Resp. #162.

⁹⁵ Ibid.

⁹⁶ Sefer HaRokeah, Hilkhhot Teshuva, #24.

In sum, Isserlein affirms some elements of the Hasidei Ashkenaz view of apostates and limits the effects of others. For Isserlein, as well as for Eleazar of Worms, mikve is required. Whereas for Eleazar immersion is an early step in the process, allowing the mumar to live as a Jew while "working off" the sin through penances, for Isserlein it is an ultimate step. Repentance is apparently complete as soon as the mumar comes out of the mikve. Isserlein, by equating the pain of separation from the gentiles with expiatory suffering, effectively eliminates penances from the return process. This move allows Isserlein to follow a pragmatic approach aimed at smoothing the reintegration of those who have left Judaism.

How the requirement of shaving fits into Isserlein's overall scheme is somewhat unclear. It is most likely does not fulfill the merely mechanical function of preventing חציצה. If this were its function, one would expect that Isserlein would have said so and would not have required the elaborate justification he presents. Following the logic of Rashi's comment that the Levites shaved as כפרה for the sins, specifically for the sin of avoda zara, of the first born Israelites, shaving would have to be considered an independent act of repentance, perhaps even a penance. The analogy made between the apostate and the leper adds a different shading to the practice, giving it the sense also of an act of purification. There is thus symmetry between shaving and immersion as both are simultaneously penitential and purifying acts.

As will be seen in the discussion of the Shulkhan Arukh, Isserlein's conception of the process of return was highly influential on the later development of the halacha in this area, particularly with respect to the requirement that the penitent shave and the limitation on imposing harsh penances.

Rashbash

Unlike the responsa of Isserlein, it is possible to place Rashbash's (R. Shlomo ben Shimon Duran) classic responsum on the status of anusim in its historical context. The decision was written as a response to the aftermath of the Spanish conversionary riots of 1391.⁹⁷ North Africa was a natural refuge for conversos fleeing Spain, and thus for Rashbash their status was a compelling practical question.⁹⁸ According to Netanyahu, the conversos who presented themselves to the Rashbash were the third generation following the riots and thus had grown up in a thoroughly Christianized environment.⁹⁹ Naturally, the popular view of such individuals was that they were in fact Christians who required conversion to return to Judaism.¹⁰⁰ This responsum represents

⁹⁷ Netanyahu, The Marranos of Spain, pp. 44-45.

⁹⁸ Ibid., pp. 22-23.

⁹⁹ Ibid., pp. 44-45.

¹⁰⁰ Ibid., p. 45.

Rashbash's effort to counter a popular trend that he viewed as both incorrect from a halachic point of view and harmful from a practical point of view.

Rashbash himself describes the apostates discussed in his responsum as the בני אנוסים. It is necessary, he says, to clarify the status of "the uncircumcised anusim when they return in t'shuvah. . . [with respect to] their teshuvah, their milah and their t'vilah."¹⁰¹ He then asserts the basic principle by which all of these questions will be decided: "It is a fundamental law that an apostate Jew (ישראל משומד) even though he sins is [still] a Jew."¹⁰² As one of the cited sources of this ruling is Sanhedrin 44a, it seems clear that Rashbash has accepted Rashi's interpretation of אף על פי שחטא ישראל הוא. Rashbash adheres to the principle of the immutability rigidly, stressing that it not only applies to the child of two anusim, but to a convert who backslides, or to a child whose mother is a faithful Jew or an apostate, but whose father is a gentile.¹⁰³ As long as there is maternal Jewish heritage "even many generations, until the end of the world, he is considered a Jew."¹⁰⁴

Having made his point that apostates are not converts, Rashbash then demonstrates that this fact makes any conversion-like treatment of the

¹⁰¹ ספר רשב"ש (ירושלים: קרית-טאר, 1967), סימן פ"ט

¹⁰² Ibid.,

¹⁰³ Ibid.

¹⁰⁴ Ibid.

readmission of apostates inadmissible. Thus despite that fact that he is dealing with individuals who have never lived as Jews, Rashbash states that one may not begin to instruct the repentant apostates in the mitzvot as one would do with prospective converts:

... אין להודיעם קצת מצות קלות וחמורות ועונשן והדבר מוכרע מעצמו הוא שאם תאמר שהוא אינו רוצה לקבלם א"כ נפטור אותו מכם כגוי חלילה חס שלא עלתה על דעת לפי שהוא מחייב בהם כמונו"

One does not instruct them in the less and more important commandments and their punishments, for the matter is self evident that if you say that since he does not want to accept them, then we exempt him from them as a gentile. God forbid that such a thought comes to mind, for he is obligated [to perform] them as we are.¹⁰⁵

This rather extreme stance is merely a logical extension from the principle of the immutability of Jewish identity. There, however, seems to be more to this than halachic consistency. The curb on the natural desire to educate Jewishly ignorant anusim serves a practical purpose. Rashbash is concerned that such instruction may frighten away potential penitents. The instruction would thus be self defeating as it would push away those "sworn from Sinai" who are already subject to the rewards and punishments of the mitzvot.

¹⁰⁵ Ibid.

Through insistence on a clear distinction between converts and returning apostates, Rashbash effectively disposes of any reentry requirements. He puts his conclusion simply: "since he [the returning apostate] is a Jew, he requires neither immersion nor קבלה."¹⁰⁶ Since Rashbash has already discussed instruction, it seems that by קבלה he intends something akin to the "קבלת חברות" required by the Nimukei Yosef and the Ritba. In fact, it is possible that the Rashbash is responding directly to this line of thinking, as he specifically prohibits the two basic requirements of this approach.

What then if anything does Rashbash require of the repentant apostate? It will be recalled in the statement of the question that one of things concerning the status of the children of the anusim that must be settled is the issue of their circumcision. Rashbash insists that those whose parents did not have them circumcised as children must see to it themselves now.¹⁰⁷ In doing this however, Rashbash is not breaking with his guiding principle. The circumcision must be done in conformity with a general principle, that if one's father fails to see that the circumcision of his son is performed, then the mitzvah becomes incumbent on the son himself.¹⁰⁸ Thus Rashbash merely requires the sons of the anusim to perform the mitzvah of brit milah as all Jews are expected to do.

¹⁰⁶Ibid.

¹⁰⁷Ibid.

¹⁰⁸MT, Hilkhoh Milah 1:2.

Thus Rashbash does clarify the teshuvah of the descendants of the anusim as promised. No ceremonial act is required, save that which is required of every male Jew when they are initiated into the Covenant of Abraham. The "teshuvah" of the Rashbash thus conforms with more modern conceptions that see it as an inner process rather than a series of penitential exercises. Apparently the apostate need only resolve to repent and return to the Jewish community. This seems to be the import of Rashbash's statement that one should draw the anusim in with kindness, rather than potentially repelling them with religious instruction.¹⁰⁹

Despite his insistence, however, that the returning apostate cannot be treated in any way akin to a convert, Rashbash at the conclusion of the responsum appears to recognize that the return of the apostate requires some form of liturgical acknowledgment. This he supplies in the form of a blessing, apparently intended for the brit milah of the uncircumcised *anus*:

אלהינו ואלהי אבותינו הצלח נא לעבד הנקרא שמו כך ומשוך אליו חסדך וכשם שהטית
 לבו לשוב בתשובה שלימה לפניך כן תטע בלבו אהבתך ויראתך ותפתח לבו בתורתך
 ותדריכהו בנתיב מצותי למען ימצא חן בעיניך וכן יהי רצון ונאמר אמן.

Our God and God of our Fathers, cause [your] servant, whose name is
[now] X to succeed and draw him in with your lovingkindness and just

¹⁰⁹ Rashbash, Resp # 89.

as you inclined his heart to return in full repentance, so plant within in him the love and reverence for you and open his heart to your Torah, and lead him down the paths of your commandments, in order that he might find favor in your eyes. May this be your will and we say: amen.¹¹⁰

This prayer appears without comment and as a non sequitur to the discussion of the care of the wound of a circumcised adult. One must then speculate as to why the prayer was included in the responsum at all. It is possible that the prayer is intended to alert the penitent apostate that he indeed does have much to learn to be a true member of the community, however rapidly he may technically become part of it again. More likely, although inconsistent with the thrust of the rest of the responsum, is that Rashbash perceived a need for a liturgical marker for the apostate's return to Judaism. In effect, if this prayer is indeed intended to be used at the circumcision of the anus, the brit milah is transformed into a readmission rite. The fact that an uncircumcised adult has the responsibility of seeing to it himself that he undergo circumcision, apostasy or no, provides theoretical "cover" for this transformation.

Comparison

What is striking about these responsa which differ so markedly in approach and outcome, is the fact that there are similar motives behind them.

¹¹⁰ Ibid.

Both Isserlein and the Rashbash attempt to treat penitent apostates leniently. For Isserlein this tendency toward leniency is seen in his effort to neutralize the penances one would expect the apostate to undergo in an environment steeped in the penitential ideas of Hasidei Ashkenaz. Given the influence of the Sefer Hasidim and Sefer HaRokeah this cannot be accomplished through an explicit rejection of the penitential system as it applies to mumarim. Instead Isserlein must finesse the issue by defining separation from the gentiles as an expiatory penance in itself.

In his effort to treat the descendants of the anusim leniently, the Rashbash has a well established halachic principle on his side. He need only adhere to the principle of the immutability of Jewish status as an absolute to be able to reject any reentry requirement that even remotely resembles a conversion.

In both cases leniency is in pursuit of the policy of facilitating or at least not impeding the return of apostates to Judaism. Isserlein is explicit that the imposition of סגופים is apt to lead the apostate to reconsider his repentance. Rashbash in his insistence that the anusim should be accepted with love and not frightened by too much emphasis on the mitzvot they have violated or ignored seems to be saying the very same thing. Both poskim appear to have a good sense of the character of the apostates they are dealing with and make their decisions based upon what they feel their penitents can bear.

Perhaps it is the difference between the apostates each posek is dealing with that in part accounts for their differing approaches to ceremonial reentry. It is extremely unlikely that Isserlein was faced with or envisioned individuals as far removed from Judaism as the Christianized descendants of the anusim. Thus, while pursuing a policy of leniency toward repentant apostates, Isserlein need not overturn more or less well established customs marking the apostate's return. For assimilated anusim, to be instructed in and required to formally accept unfamiliar religious practices and then proceed to the mikve, which in the absolute sense are not onerous requirements, may have been a significant obstacle. To encourage the return of such individuals Rashbash then needed to argue that *אף על פי שחטא ישראל הוא* implies that mikve and kabbalah are unnecessary. The argument is not self evident. There is nothing to suggest that Isserlein did not accept the general principle that "a Jew is always a Jew," and yet he was able to require that the repentant apostate shave and be immersed.

It is far more likely that it is differing assumptions concerning the psychology of the apostate rather than the fact that the *בני אנוסים* are technically forced converts that account for the differences between the views of these two poskim. Although Isserlein uses the term "*מומר*" there is nothing in his responsa to suggest that he is particularly considering the status of willing converts. Further, although Rashbash is dealing specifically with anusim, the logic of his responsum, based as it is on the immutability of Jewish identity, can apply equally to voluntary and involuntary converts. While other poskim will attempt

to make such distinctions in the decisions of their predecessors, it seems prudent not to assume that any particular posek is doing so without explicit evidence to the contrary.

Chapter 4

Caro on Apostates

Caro's approach to the problem of the returning apostate cannot be called innovative and his treatment of the subject in the Shulkhan Arukh is extremely brief. He is, however, the only figure analysed in this study for whom it is possible to determine which of the multiple solutions to the problem were considered. This fact makes it possible to attempt to reconstruct Caro's rationale for placing his imprimatur on one particular solution by including it in the Shulkhan Arukh.

This window into Caro's thinking on the subject of apostasy is provided by the Bet.Yosef, which Caro intended as a collection of all halachic opinions regarding matters decided by the Tur and an investigation of Rabeinu Asher's choices among them.¹¹¹ The Tur addresses the issue of the repentant apostate in Hilkhhot Avadim as an aside in the discussion of the status of a slave, who is circumcised by his Jewish master, but "backslides" and then sold to a gentile and then later repurchased by a Jew. The Tur rules, on the basis of "a Geonic responsum" that such an individual is "like an apostate (ישראל מומר) who does not require immersion, but rather flogging (מלקות)"¹¹² It is however at the end

¹¹¹ Elon, Jewish Law, pp. 1312ff.

¹¹² Tur, YD 267:8

of the next section, Hilchot Gerim, that Caro examines the halachic sources concerning the returning mumar. Here he notes that the Nimukei Yosef, following the Ritba, requires the repentant apostate to undergo immersion and to accept "haveirut."¹¹³ He then notes, apparently with approval, that Rabeinu Asher, in the name of "a Gaon", states that t'vilah is not required, but that flogging is.¹¹⁴

In, Bedek Ha-Bayit, his notes to the Beit Yosef, Caro also quotes extensively from Rashbash's famous responsum on the descendants of the anusim. The cited passage stresses the immutability of Jewish status and the admonition not to frighten penitent apostates by instructing them in the Mitzvot as would be done with a convert.¹¹⁵ It appears then that Caro was aware of a third option, in which neither t'vilah nor malkut is required.

It is the "Gaonic" option that is in fact chosen by Caro for conclusion in the Shulkah Arukh. Just as in the Tur, the ruling on the status of the returning apostate is incidental to the disposition of the case of the sold and repurchased slave:

¹¹³ Beit Yosef, YD 268:12

¹¹⁴ Ibid. The Statement of the Rosh that Caro refers to is apparently YD 267:8. For a discussion of the theoretical justification for "flogging" in this context see Chapter 1.

¹¹⁵ Bedek HaBayit to Beit Yosef 268:12

עבד עובדכוכבים שמלו רבו וחזר לגיותו ומכרו לעובד כוכבים וחזר ישראל וקנאו

ממנו הרי הוא כישראל מומר ואינו צריך טבילה אלא מלקות.

[In the case of] a slave who is circumcised by his master, then returns to his gentile status (i.e. backslides) and is sold to a gentile and then is purchased again by a Jew, he is like an apostate Jew who does not require immersion, but rather flogging.¹¹⁶

Thus we can say that Caro was aware of Nimukei Yosef/Ritba approach and of the lenient view of the Rashbash and rejected both in favor of the opinion of the Tur. This is not surprising in the light of the fact that Caro's "first tier" of halachic authorities included Rabeinu Asher.¹¹⁷ Further, the מלקות only approach may have appealed to Caro, and indeed to Asheri, because of its Geonic provenance. It is very likely that Caro would consider the Geonic view of the problem more authoritative than a position based on a mere *hiddush*. The approach of the Geonim is also the most "halachic" approach to the problem in the sense that it unambiguously confirms that the apostate is a Jew and only requires the repentance that would be required of a loyal, but sinful Jew.

The anonymity of the "Gaon" mentioned by the Tur and the Beit Yosef is intriguing. Certainly the ruling and the language in which it is couched is consistent with the Geonic materials examined here. It is tempting then to

¹¹⁶ YD 267:8.

¹¹⁷ Elon, Jewish Law, p.1318.

attempt to identify a specific figure as the source of the Tur's ruling, and hence that of the ruling of the Shulkhan Arukh as well. Roth suggests that the Gaon in question is in fact Natronai.¹¹⁸ While this is certainly a plausible identification, Roth presents no evidence that would confirm it.

However venerable and logical the approach adopted by Caro might have been, it was clearly unsatisfactory to many. Thus for reasons that will be discussed below, Isserles chooses one of the options specifically rejected by Caro. Sasportas' responsum demonstrates also that a purely "halachic" resolution of the problem is unworkable for one with a musar or pietistic view of repentance for apostasy.

¹¹⁸ Roth, Conversos, p.24.

Chapter 5

Isserles on the Returning Apostate

Moshe Isserles' treatment of the returning apostate in his Mappah is of key importance for two reasons. First, and most obviously, later generations of Poskim must confront his views. As will be seen, Rama's rulings do not necessarily limit later decisors. Rama's strictures are clearly evaded in several responsa discussed here.¹¹⁹ The burden of proof is, however, on the dissenting decisors to demonstrate that Isserles' rulings are inapplicable or incorrect. Second, Isserles strikes out in a new direction with his formulation. While his rulings are based on his reading of the sources, his selection is one not seen before in codificatory literature or in responsa. It is this particular solution to the repentant mumar problem and the competing theoretical and social concerns that seem to be behind it that will be examined here.

The glosses that touch on the subject of the repentant apostate clearly reflect the basic program of the Mappah to "supplement the law presented in the Shulchan Arukh with conclusions derived from the views of the authorities whom Caro did not take account. . . ." and to reflect "customs followed by Ashkenazic Jewry."¹²⁰ As noted above, Caro simply and unceremoniously deals with the sin of the mumar. This approach is contradicted by Isserles, thus creating an internal *machloket* that has continued in the responsa literature until the present day.

Isserles' fullest statement on the repentant apostate problem is found in

¹¹⁹ See infra the discussion of Responsa of Feinstein and Horowitz.

¹²⁰ Elon, Jewish Law, p. 1361.

his gloss to YD 268:12 in הלכות גרים. The "hook" for the gloss is an indirect reference to mumarim. Caro states that a convert "even if recants and reverts to his former religion (lit. reverted to and worshiped an idol) is like an Israelite apostate, whose betrothal is effective."¹²¹ The point is that once the convert becomes a Jew, "reconversion" is not a possibility. Isserles gloss immediately follows this statement, expanding the discussion from the backsliding convert, who is like a mumar, to repentant mumarim in general.

ישראל מומר שעשה תשובה א"צ לטבול רק דרבנן יש לו לטבול ולקבל עליו דברי חכמות בפני ג'.

The apostate who repents need not immerse. Only as a "rabbinical ordinance" is he required to immerse and to accept "rules/words of membership/attachment" before a court of three.¹²²

The translation offered here of "דרבנן" and of "דברי חכמות" are set in quotation marks as their precise significance in this context is unclear. These terms will be discussed more fully below, once we have examined all of Isserles' statements concerning the repentant apostate. For present purposes it is sufficient to note that Isserles requirement of *t'vilah* is certainly not "Rabbinic" in the sense of being pursuant to a recognized *takanah* or *gezairah*.¹²³ On what basis then does Isserles claim that the requirement of mikva as part a ritual of return is "דרבנן"?

The requirement "קבלת דברי חכמות" is no less problematic. Isserles does

¹²¹ YD 268:12

¹²² Ibid.

¹²³ Elon, *Jewish Law*, pp. 491-492. Following Elon's classification of Rabbinic legislation, a Rabbinic requirement that repentant mumarim immerse would be a *takana*, as these ordinances generally involve a positive duty in the interest of the public, whereas a *gezairah* is a restriction designed to prevent a violation of the law.

not supply the content of these "words" or "rules", nor is it readily apparent how the entrance requirement of a pharisaic guild is applicable ¹²⁴ to a mumar.

Isserles also addresses the repentant apostate in a gloss to הלכות עבדים. Again Caro only raises the issue of Jewish apostasy in the context of the backsliding convert; in this case a slave, who having been circumcised by his Jewish master, reverts to his former religion, is sold to a gentile, and then repurchased by a Jew.¹²⁵ Caro rules that such a slave is "like a Jewish apostate and thus does not require t'vilah, but rather flogging."¹²⁶ Isserles adds the following gloss:

ויש אומרים שמכל מקום לכתחלה חוזרין ומטבילין אותו למעלה בעלמא

There are those who say that in any case "before the fact" one again immerses him just as a stringency.¹²⁷

Given that Caro equates the backsliding slave and the ordinary Jewish apostate and Isserles comment is to this passage as a whole, it can be safely assumed that Isserles intends this gloss to apply to the ישראל מומר as well as the עבד. Such an assumption is certainly consistent with Isserles' gloss to YD 268:12. This being the case the expression "לכתחלה" is problematic. If immersion is only required "before the fact", are there circumstances under which the mumar could return to Jewish life and exempt himself from this requirement? The language seems to provide an "escape hatch" which one modern authority discussed herein uses to avoid imposing Isserles' requirement.¹²⁸

¹²⁴ M. Demai 2:3

¹²⁵ YD 267:8

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ See, discussion of responsum of Marcus Horowitz in Chapter 7.

Both of the glosses discussed above derive from the same source, Joseph Ibn Habiba's commentary to the Alfasi, נמוקי יוסף. Habiba brings his hiddush in the context of the Alfasi's discussion of the recanting convert "who is like an apostate Israelite"¹²⁹ He states:

וישראל שחטא ועשה תשובה דכ"ע שורת הדין אינו צריך טבילה אלא
קבלת חברות בפני ב"ד לכתחלה ואף על פי כן טובל הוא מדרבנן משום
מעלה דומיא דטבילת עבד משוחרר שאין טבילתו אלא מדרבנן וכן כתבו
בתוספות אחרונות.

[Regarding] an Israelite who sins and [seeks to] repent: All agree that according to the strict sense of the law he does not require immersion, rather the acceptance of "membership/attachment" in the presence of the bet din before the fact. In spite of this he immerses as a Rabbinic requirement for it is a stringency similar to the immersion of the manumitted slave, whose immersion is only Rabbinic, and so wrote the later Tosaphists.¹³⁰

While not attributed in the standard edition of the Alfasi, this passage in fact is a nearly direct quotation from the Ritba (Yom Tov b. Abraham Ishbili, 1250-1330). The Ritba is apparently the first to formulate the two part re-entry scheme of 1) דברי חברות and 2) טבילה. His hiddush, however is not taken up by other authorities before Isserles as a solution to the problem of the repentant mumar. Isserles, however, does not in either of the glosses discussed thus far, cite the passage in its entirety. The comparison of the repentant Jew and the manumitted slave is omitted. In so doing Isserles severs his ruling from the theoretical basis of the t'vilah requirement for the repentant mumar suggested by the Ritba's analogy. In the case of the freed slave, there is a transition of status

¹²⁹ Alfasi, Yebamot 16b

¹³⁰ Nimukei Yosef, loc. cit.

from bondage to freedom. The immersion could be seen as ceremonial marker of the change in status, not strictly speaking required but useful for this purpose. The immersion of the repentant mumar is thus analogous, marking the transition from the shame of apostasy to reintegration as a faithful Jew.¹³¹ The significance of this omission with respect to Isserles' view of the status of the mumar will be discussed below.

Isserles also comments on the returning mumar in הלכות חול המועד.¹³² The precise location of the gloss is an unlikely one. The gloss immediately follows a ruling creating a narrow exception allowing a mourner to cut his hair during חול המועד.¹³³ Isserles seizes on the issue of haircutting and addresses the permissibility of the repentant mumar to cut his hair during the intermediate days of a festival:

מי שהמיר דתו וחזר בתשובה ודרכו לגלח מותר לגלח במועד

[Concerning] one who apostasized and returns in repentance. Where it is the custom (lit. if they are accustomed) to shave [apostates] it is permissible to shave [him] during the intermediate days of a festival.¹³⁴

The source of this ruling is the Isserlein "shaving" responsum discussed above. As in that responsum, the narrow legal issue allows Isserles to assert the broader minhag: repentant mumarim are shaved. Unlike Isserlein, Isserles has other opportunities to assert the requirement of t'vilah and no mention of the requirement of t'vilah need be made here. Similarly the Taz and the Magen

¹³¹ Note that the convert and the manumitted slave are also considered to be analogous. Thus a condition that would cause an unpermitted interposition during the immersion of a convert also constitutes חציצה with respect to a freed slave. Yebamot 47b.

¹³² OH 531:7

¹³³ Ibid.

¹³⁴ Rama, loc. cit.

Avraham do not mention t'vilah here. Instead both confine themselves to explicating the justification of the shaving requirement, citing the exegesis found in the relevant Isserlein responsum.¹³⁵ Neither commentator makes the effort to prove up t'vilah on the questionable foundation employed in Terumat HaDeshen.

While the above gloss is silent on the subject of t'vilah, Isserles' gloss on Caro's rulings regarding the immersion of the proselyte indicates a connection between the shaving and the immersion of the mumar. Caro stresses that the immersion must be "proper, without interposition."¹³⁶ To this Isserles adds the comment "there are those who say that he shaves his hair and cuts his nails before immersion." The comment is ambiguous as Isserles does not state the reason for the custom. It could merely be preventative, aimed at eliminating potential sources of interposition. Just as easily, the comment could be taken to mean that shaving is a separate requirement customarily imposed on potential converts. The Sifte Cohen takes the comment in the latter sense saying "even if there is no interposition. . . he shaves all his hair because he is entering the Jewish community (lit. the category or community of Judaism--כלל יהדות)."¹³⁷ He then adds, citing the BaCh that "thus is the custom with regard to mumarim who return to the religion of Israel."¹³⁸

Assuming that the Sifte Cohen is correct that Isserles' gloss is not directed to the problem of חציצה, then it would appear that he has made explicit what is implicit in the two glosses regarding shaving when they are read together. There is a minhag, widespread enough to merit inclusion in the Mappah, that repentant

¹³⁵ Taz; Magen Avraham, loc. cit.

¹³⁶ YD 268:2

¹³⁷ Sifte Cohen, loc. cit.

¹³⁸ Ibid.

mumarim are shaved prior to immersion in the mikve. Further, this minhag does not exist as a means to prevent חציצה, but rather is a separate requirement intended to mark the repentant apostate's reintegration into the Jewish people, much like the shaving of the proselyte marks his entry into Jewish community.

This conclusion is supported by the fact that the source of Isserles' gloss to OH 531:7 (permissibility of shaving the penitent on yom tov) is Terumat HaDeshen, where the custom of shaving is justified by means of an exegesis which is in fact silent on the issue of immersion. In YD 268:2, Isserles follows the Tur, which also states the requirement of shaving and nail clipping without specifying that it is for reasons of חציצה.¹³⁹ It is true, as the BaCh notes, that interposition may indeed be the reason for the Tur's requirement. He also states that as to shaving, it is possible that the source of the requirement is the same opinion of Moses the Preacher, which through Rashi, is utilized by Isserles in his "shaving" responsum. If so, then repentance from or abandonment of avodah zara is the theoretical underpinning of this shaving requirement, not חציצה.

One last gloss remains to be examined before it is possible to move to a synthesis of Isserles' view of the repentant mumar. This gloss is found, appropriately enough, in הלכות עבודת כוכבים.¹⁴⁰ Caro's subject here is not the repentant apostate, but the punishment which *apikorsim* and *cophrim* deserve. Isserles begins by stating that those "who apostasize to idol worship and contaminate themselves among idol worshipers by worshipping as they do are מומרים להכעיס" and thus fall in the category of מורידין ולא מעלין.¹⁴¹ He then moves to the question of how such sinful Jews should be treated if they return to Judaism:

¹³⁹ Tur, Hilchot Geirim, YD 268:2.

¹⁴⁰ YD 158:5.

¹⁴¹ Ibid.

ומכ"מ אם בא לשוב לא החמירו עליו שקשה לפרוש מהם וחיישינן שלא יחזור לסורו

In any case, if he comes to repent, one should not be harsh with him, since it is difficult to separate from them [the gentiles] and we are concerned lest he return to his evil ways.¹⁴²

The source for this ruling is also Terumat HaDeshen, specifically Isserlein's responsum which disapproves of the imposition of "סגופים" on the repentant apostate.¹⁴³ That Isserles issues this call for moderation seems to indicate that the idea that the repentant mumar should be subjected to harsh penances was still current in Isserles' day and had to be addressed. Isserles thus provides a "brake" to restrain the natural desire of the community to deal harshly with apostates. Missing from this gloss is an explicit statement that separation from the gentiles in fact constitutes "סגופים" equal to the sin of apostasy. Given the source of the statement however, it is possible that Isserles' statement that it is "hard to separate from them" is intended to signal this equivalency. If so this might indicate that idea that there was a need for *mishqal* type penance in cases of apostasy persisted and had to continue to be resisted well after Isserlein's time.

Based on the above glosses, the return of the repentant mumar consists of three elements: 1) The acceptance of דברי חבירות before a court of three members ; 2) shaving of the hair and 3) immersion in the mikve. The first and the third elements are derived from the Ritba via the Nimukei Yosef. The second appears to have been a widely practiced minhag, the legal source of which appears to be responsum # 62 by Isserlein. A tentative reconstruction of Isserles' view of what in fact occurs when a repentant apostate returns to Judaism requires a careful examination of the theoretical basis of each element.

¹⁴² Ibid.

¹⁴³ Isserlein, part 2, Resp. #62.

In the more restricted Talmudic sense of the term a חבר is a Jew who has undertaken to be more punctilious with respect to certain observances than is required by the law or is generally practice by an ordinary Jew (an Am Ha'artez).¹⁴⁴ In Tosefta Demai the membership qualifications are that the individual pledge "not to give terumah and tithes to a priest or levite who is an Am Ha'aretz, not to prepare food requiring ritual purity for (or in the presence of) an am ha'artez and to eat non-sacrificial/unconsecrated food in a state of ritual purity."¹⁴⁵ Similarly it is stated in Mishna Demai 2:3:

One who undertakes to be a חבר may not sell to an עם הארץ, either wet or dry produce, and may not buy from him wet produce, and may not stay as a guest with an עם הארץ, and may not have him as guest in his garments. R. Judah says, He may also not rear small cattle, must not be prompt to make many vows and jests, and must not become defiled with the dead, and should assist in the House of Study. They said to him, These do not come under the general principle.¹⁴⁶

The prospective חבר must formalize this additional level of observance to become one of the חברים. The method of acceptance of "דברי חברות" is found in a baraita cited in Bekorot 30b:

תנו רבנן: הבא לקבל דברי חברות צריך לקבל בפני ג' חברים, ואפילו תלמיד חכם צריך לקבל בפני שלשה חברים.

This pledge then marks the transition between the categories of חבר and עם הארץ. From this point on, the requisite additional scrupulousness is

¹⁴⁴ Encyclopedia Talmudit (Jerusalem, 1967), s.v. "חבר"; Philip Blackman, Mishnayot: Order Zeraim, vol. I, (New York: Judaica Press, 1964), pp. 137-8—Intro to Demai.

¹⁴⁵ Tosefta Demai 2:2; The Tosefta: Zeraim, eds. Jacob Neusner and Richard Sarason (Hoboken: Ktav, 1986), Demai 2:2.

¹⁴⁶ Mishna Demai 2:3.

assumed by the other members of the fellowship.

At first glance, קבלת חברות seems a strange model to apply to the repentant apostate. The עם הארץ may be lax or ill informed with respect to certain narrow religious duties, but there is no implication that he is not a perfectly respectable Jew. The acceptance of חברות thus elevates one from the status of an ordinarily observant Jew to the level of an extraordinarily observant Jew. The חבר becomes a member of an elite. By contrast the repentant mumar makes a transition from sinful Jew to observant Jew. It is a move from rebellion or rejection to ordinary obedience. The two processes do not seem analogous.

If one is concerned, however, to find a means to mark the readmission of the apostate, without admitting that conversion out of Judaism is possible, then דברי חברות provides a serviceable model. In its broadest outlines, the transition the pledge marks is internal, from one type of Jew to another—a move along a Jewish spectrum. To apply the model to the transition from unfaithful to faithful Jew then is to simply to move further down the Jewish scale. The change marked is a change in degree, and thus the readmission of the mumar is distanced from the process of conversion, a change in kind.

The element of immersion overlaid on the requirement of קבלת חברות however, confuses the symbolism of the readmission process. Whereas the latter process indicates a change in quality, טבילה, seems to point to a change of kind. It is difficult to avoid the association of immersion with the process of conversion. Further, the introduction of the element of immersion colors the element of חברות. Isserles does not specify the content of the pledge involved in this process, but one can assume that it must consist of some kind of pledge of fidelity to Judaism. When such a pledge is coupled with immersion, it begins to appear very much like a conversion process. The acceptance of דברי חברות by the mumar seems to be very much akin to the acceptance of the potential proselyte

after being instructed in the rewards and punishments entailed by acceptance of the mitzvot.¹⁴⁷

The picture is further complicated by the requirement that the mumar be shaved. As discussed above, this requirement does not appear to be tied to the problem of חציצה, but is an independent component of the readmission process. It is also in Isserles' view, a custom that should be followed as part of the process of conversion. Isserles' citation to Terumat HaDeshen with respect to mumarim thus makes the readmission of the repentant apostate parallel to conversion. Both the proselyte and the mumar are shaved, immersed and are required to verbalize a commitment to conduct themselves as observant Jews.

It is difficult to escape the conclusion that Isserles, while he surely would not assert that the mumar is the equivalent of a potential proselyte, nevertheless has attempted to construct a conversion-like process for the readmission of apostates. He is thus able to walk a fine line between the technicalities of the halacha and the likely sentiments of the community. He is able to treat the mumar as a semi-gentile without in fact labelling him as such. The appearance of the ceremony that results satisfies the "gut reaction" of the community that one who acts like a gentile is in fact a gentile, whatever the halacha might in fact say.

Yet in one sense Isserles is willing to resist the likely popular sentiment. It would be clearly improper in Isserles' view to impose harsh penances on the repentant mumar. The suffering of the penitent when he is separated from all the pleasures he once enjoyed should be enough. Here it would seem Isserles' focus is not on the feelings of the community, but on the potential impact of his ruling on mumarim considering to return to their ancestral faith. He is aware that he is dealing with individuals whose attachment to Judaism is weak and to ask too much of them, as much as that might accurately express the anger of the

¹⁴⁷ YD 268:2

community, would be counterproductive.

As a whole then Isserles can be seen to have been engaged in a careful balancing process designed to both develop a process of readmission that the community can accept, while at the same time seeking to facilitate the reintegration of apostates within the Jewish community.

Chapter 6

17th Century Ya'akov Sasportas

The responsum of Yaakov Sasportas (1610-1698) to be examined in this chapter is of interest for two reasons. First, Sasportas' approach is a novel one. He successfully blends Rambam's halachic reasoning and a pietistic view of repentance. Second, although this responsum comes from the era in which the Shulkhan Arukh can be said to have become the authoritative statement of the halacha¹⁴⁸, it is neither explicitly mentioned in this responsum, nor is its influence discernible. Given that Sasportas was a Sephardic authority, it is perhaps understandable that Isserles' view of the returning apostate was not accepted. It is more difficult to understand why Sasportas felt no need to address Caro's position. The possibility exists that Sasportas did not view the Shulkhan Arukh as authoritative or that, for some reason, the text was unknown to him. Equally possible is that Sasportas felt that the approach of the Shulkhan Arukh to this particular problem was inadequate. If so then this responsum could be the beginning of a trend, discernible in the responsa of Moshe Feinstein and Marcus Horowitz, to attempt to evade the requirements the Shulkhan Arukh imposes on penitent mumarim.

¹⁴⁸ Elon, Jewish Law, p. 1419ff.

The factual background of this responsum is particularly horrific.

Avraham Bueno and his uncle, Ya'akov are captured by "Edomites" (Christians) who attempt to force Avraham to Christianity. He is tortured for three years but does not submit. The captors then turn to the uncle and begin to torture him because of his nephew's refusal. Ultimately they poison the uncle to death, at which point Avraham's resistance collapses and he submits to conversion. His conversion is however, insincere. He [Bueno] says that "he is an Edomite, but in his heart it was not so."¹⁴⁹ Bueno remains among the Christians for another three years, until an opportunity to escape presents itself. Escape is afforded by a passing ship of Jewish merchants which he risks his life to reach. According to Sasportas "his actions at the end, prove his thought at the beginning. He was compelled in the matter and his intention was to be able to recant."¹⁵⁰

Even before he states the facts of the case, Sasportas indicates the halachic principles that will determine at least a portion of the ruling. His analysis begins with an examination of the halacha of קדוש השם, specifically, Rambam's discussion of the status of one who was obligated to accept martyrdom, but failed to do so. In the cited passage, Rambam states:

וכל מי שנאמר בו יהרג ולא יעבור ועבר ולא נהרג הרי זה מחלל את השם. ואם היה בעשרה מישראל, הרי זה מחלל את השם ברבים, וביטל מצות עשה שהיא קדוש השם, ועבר על מצות לא תעשה שהיא חלול השם. ואף על פי כן, מפני שעבר באונס אין מלקין וממיתין

¹⁴⁹ (Sasportas, Resp. #3) סימן ג' ספר אהל יעקוב, שו"ת יעקוב ששפורתש, אמשטרדם, סימן ג'

¹⁵⁰ Ibid.

Concerning anyone of whom it is said that he should [allow himself to] be killed and not transgress, but who transgresses and is not killed, this person desecrates the Name. If there were ten Jews present, then this person desecrates the Name in public and thereby fails to perform a positive commandment, that being the sanctification of the Name, and transgresses a negative commandment, that being the desecration of the Name. Even so, if he transgressed under duress, he is not flogged or executed, rather [the one who is thus punished is] one who wilfully transgresses before witness and with prior warning.¹⁵¹

There is thus a sound halachic basis for exempting an אנוס from *judicial* punishment. This is not, however, the main reason Sasportas cites the Rambam. Sasportas' argument is that the fact that there was compulsion at all substitutes the sin of חלול השם for the sin of עבודה זרה. Part of the basis of this claim seems to be Rambam's use of idol worship as the basis of a kal v'omer argument that duress negates culpability for sin. He states that "just as in the case of idol worship, which is the most serious of all [transgressions], one who commits this sin under duress is not subject to extinction, and, one does not need to say, not subject to the death penalty, how much the more so is this the case with respect

¹⁵¹ MT, Hilchot Yesodei HaTorah 5:5.

to the rest of the commandments stated in the Torah."¹⁵² In its original context, this is a rhetorical argument meant to demonstrate that there is no judicial culpability for even the most heinous sin if committed under duress. Rambam does not say that the sin of avoda zara does not exist, merely that it is not a punishable offense.

Sasportas, however, reads these passages more broadly. In his view "we have no complaint against an anus who transgressed and was not killed, except for the desecration of the Name".¹⁵³ This being the case, the teshuvah that is required here is not for the conversion to Christianity itself, as "teshuvah requires contrition/remorse (חרטה) and remorse/contrition only applies to an act done intentionally."¹⁵⁴ At this point Sasportas' argument becomes somewhat contradictory for he does require repentance for the desecration of the Name and the failure to fulfill the duty to die קדוש השם, saying that for these the penitent is "חייב מלקות כאשר כתב הרמב"ם".¹⁵⁵ This statement is problematic given the exemption from punishment Rambam grants to those who sin under duress. What Sasportas seems to be referring to here is not flogging administered as a judicial punishment, but as a penitential matter, as will be seen below.

¹⁵² Ibid.

¹⁵³ Sasportas, Resp. #3

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

The desecration of the Name, in Sasportas' view is not the only sin that results from the *anus'* forced participation in *avoda zara*. Sasportas asserts that Bueno ate forbidden foods, sometimes under duress, sometimes willingly. Thus Bueno should "also [in addition to his penance for desecrating the name] be flogged because of these [sins] and afflict himself and accept expiatory penances/suffering (יסורין הממרקין)..."¹⁵⁶ This same reasonable assumption that living among the gentiles as one of their number necessarily entails violations of commandments beyond the prohibition against idol worship itself is mentioned by the Geonim as the justification for flogging the returning *mumar*.¹⁵⁷ In that context however, flogging seems to be imposed as a quasi-judicial punishment. It is required because commandments have been violated. Here מלקות seems to be part of a penitential program designed to "erase" the sin.

Sasportas' discussion of the sins of consumption that Bueno committed in fact serves as a bridge between what might be termed the "halachic" portion of the *responsum* and its larger "penitential" portion. Immediately following this discussion of forbidden foods, Sasportas states that Bueno requires "efficacious repentance as stated in chapter eight of *Yoma*."¹⁵⁸ Sasportas then proceeds to quote the well know passage from this tractate which classifies sins according to the atonement required for each:

¹⁵⁶ Ibid.

¹⁵⁷ ספר שערי צדק, שער ג, יא (Amram)

¹⁵⁸ Sasportas, Resp. #3

If a man failed to fulfill a positive commandment and repented, he is forgiven immediately. . . . If a man transgressed a negative commandment and repented, then repentance suspends [divine judgment] and the Day of Atonement atones. . . . If a man transgressed commandments punishable by extinction or a judicial death sentence and repented, then repentance and the Day of Atonement suspends [divine judgment] and suffering atones. . . . However, if a man has been guilty of desecration of the Name, then repentance does not suspend, the Day of Atonement does not atone, suffering does not atone. But together all these suspend and death completes atonement.¹⁵⁹

It will be recalled that this same passage serves as the introduction to Eleazar's הלכות תשובה and, according to Marcus is the proof text for Eleazar's four part penitential structure.¹⁶⁰ Sasportas evidently also gives this passage a pietistic reading as the citation is immediately followed by the assertion that "Bueno is obligated to afflict himself for the forbidden foods [the eating of which is punishable by] extinction and for the desecration of the Name and to continue in his repentance until the day of his death which atones for all."¹⁶¹ One gets the impression that Sasportas is reading the same compensatory penitential structure into this passage as does Eleazar of Worms.

¹⁵⁹ B. Yoma 86a

¹⁶⁰ Sefer HaRokeah, Hilchot Teshuvah 1; Marcus, Piety and Society, pp 40-41.

¹⁶¹ Sasportas, Resp. #3.

The penitential ideas which underlie this responsum, whatever their affinity to Sefer HaRokeah, seem to have come to Sasportas via the musar work "ראשית חכמה" by Elijah ben Moshe De Vidas (16th c.). Sasportas' first explicit reference to the book comes in a section of the responsum in which he expresses concern that Bueno may have had illicit sexual relations during his long captivity among the gentiles. Sasportas notes that this is a very serious sin which "requires great repentance" and "one should deal with him very strictly"¹⁶² To demonstrate the stringency required when dealing with such sinners, Sasportas cites a passage from De Vidas in which he catalogs the applicable penances. The required fasting, lying in ants and in icy water are familiar penances from Sefer Hasidim and Sefer HaRokeah. He then notes that adjacent to his passage De Vidas outlines the repentance process for the *mumar*:

מומר יסיר המלבושים הנאים ויתאבל ויבכה ויצטער כל ימי חייו וישפיל רוחו וגאותו ויתודה ג' פעמים בכל יום ולא יאכל בשר ושתה יין כי אם בשבתות וימים טובים ולא ירחוץ ולא יחוף ראשו כי אם פעם אחת או שנים בחדש ולא ילך לשחוק ולנשואין רק לשבע ברכות בלבד ולא ישב אצל עובדי עבודה זרה אפילו במקום שמדברים דברי תורה ומצות ויתרחק מפרנסתם ולא יהנה מהם ומיד שישוב צריך טבילה ויסבול צער ויסורין כנגד חטאיו כי כפר בעיקר וחלול שבתות ועבר כריתות ומיתות בית דין, לכך צריך יסורין גדולים.

¹⁶² Ibid.

The mumar casts off his finery and mourns, weeps and feels remorse all of his life. He humbles his spirit and pride and confesses three times every single day. He does not eat meat or drink wine except for on the Sabbath and on holidays. He does not bathe or wash his hair except for once or twice a month. He does not keep company with gentiles, even in a place in which they speak words of Torah and mitzvot, and he keeps far from their lodgings and does not enjoy anything of theirs. As soon as he returns he requires immersion and he bears pain and suffering corresponding (כעוד) to his sins, for he denied the essence (God) and desecrated the Sabbath and violated commandments punishable by extinction and the judicial death penalty, and he therefore requires great suffering.¹⁶³

Except for a few discrepancies, this passage is virtually identical to the "הלכה" of the repentance of the mumar found in Sefer HaRokeah and it is thus safe to assume that this is its ultimate source.¹⁶⁴ Two of the discrepancies between the passages seem to be more than linguistic and thus worthy of examination here. Both cases involve significant omissions from Eleazar's original text.

¹⁶³ Ibid.; פ"ז, ל"ח (1984) אור המוסר, (ירושלים: שער תשובה). Note that the quoted passage from ראשית חכמה is as cited by Sasportas. There are some discrepancies between this quotation and the printed edition of ראשית חכמה used. The only discrepancy of substance is that the printed edition has the word ויברח in place of the word ויבכה. Sasportas' version is the logical reading given the context.

¹⁶⁴ See, supra for the relevant passage from Sefer HaRokeah.

While Eleazar's prescriptions for the repentant mumar cannot all be classified according to his four part typology, the passage does specifically identify some of the penances as cancelling out the pleasures of apostasy. Thus Eleazar states "he repents commensurate with (כנגד) his enjoyment, for he was joyous on their feast day and desecrated the Sabbath and denied the essence and accepted the god of avoda zara and worshipped it and had sexual relations with a gentile woman and [transgressed commandments punishable by] extinction and the judicial death penalty."¹⁶⁵ De Vidas does not explicitly note that the sins associated with apostasy involve enjoyment that must be cancelled out through precisely calibrated penances. This may indicate that he did accept Eleazar's theory of repentance, particularly with respect to משקל penances. It should be noted, however, that although the explicit mention of enjoyment is omitted, De Vidas is still calling for penances יסורין כנגד חטאין (suffering/penance corresponding or calibrated to his sins).¹⁶⁶ This may indicate that De Vidas is operating under some form of Eleazar's penitential system. In any event, Sasportas, with his emphasis on the sexual and gustatory sins associated with apostasy, seems to be reading De Vidas as requiring atonement for illicit enjoyment.

The second significant difference between the two texts concerns the requirement of immersion for the returning mumar. Both Eleazar and De Vidas

¹⁶⁵ Sefer HaRokeah, Hilchot Teshuvah, 24.

¹⁶⁶ ראשית חכמה, פי"ז, ל"ח

require t'vilah immediately upon the mumar's return, but the significance of this act does not seem to be identical. For Eleazar, immersion is the act of re-entry into Jewish religious life. He states: ¹⁶⁷ "כשמתחרט וטובל במקוה דינו כישראל" ("as soon as he shows remorse and immerses he is treated as a Jew"). ¹⁶⁸ Thus although he has not yet completed his assigned penances, he is a full member of the community, a fact signaled by an unambiguous and presumably witnessed act. De Vidas apparently views immersion as just one of many acts the repentant mumar performs as this phrase from the original text is omitted and there is no other indication that t'vilah has this "gateway" status. However De Vidas conceived this requirement, Sasportas, as will be seen, clearly does not view mikve itself as signifying reintegration into the community. Since he relies heavily on De Vidas in his ruling, it is probable that Sasportas understood ראשית חכמה as supporting his position.

Having stated the applicable "הלכה", that being the opinions of the ראשית חכמה, Sasportas moves on to rule on the acts of repentance that Bueno will be required to perform. For the assumed illicit sexual relations, Bueno should accept the consecutive three day fast that De Vidas prescribes, unless he is unable to endure this, in which case he should undertake weekly Monday and Thursday

¹⁶⁷ As stated above the root is highly marked in pietistic writings. The term denotes "sincere contrition" which is a prerequisite for the assignment of penances. See, Marcus, Piety and Society pp. 40 and 144. The fact that De Vidas version of the text has ישוב in place of כשמתחרט may indicate that the penitential process that he envisions does not have the same formalism as the system of Eleazar of Worms.

¹⁶⁸ Sefer HaRokeah, Hilchot Teshuvah, 24.

fasts. Similarly, although he is not a "complete apostate (מומר לגמרי)" his sins make him little better than such a sinner and therefore "it would be well for him to accept upon himself all the conditions [specified in the ראשית חכמה] for the rest of his life." Again, Sasportas makes provision for the possibility that Bueno might be unable to endure such a severe penance. In this case, he should follow De Vidas' prescriptions for "at least three consecutive years". If he does so, then upon the *conclusion* of the three year period "he is considered a fit Jew with respect to all religious matters. (להחזיקו אז כישראל לכל דבר בקדושה)." ¹⁶⁹

By requiring Bueno to complete three years¹⁷⁰ of penance before he becomes כשר again, Sasportas does something that none of the other authorities examined in this study do. He in effect creates a "half-Jew"; someone who is presumably no longer an apostate, but who has not yet regained his status as full member of the community. As noted above, in part this approach is made possible by the fact that the ראשית חכמה does not make immersion a *rite de passage* as does Eleazar of Worms. Even so, Sasportas could have provided some other mechanism for immediate reintegration had he chosen to do so. The motivation behind placing Bueno in this kind of limbo is unclear. One possible explanation is that the decision stems from Sasportas' assessment of the individual before him. Given Bueno's apparently pietistic frame of mind (which we can extrapolate for his voluntary assumption of penances) it may be that he

¹⁶⁹ Sasportas, Resp. #3 (all quotations in paragraph)

¹⁷⁰ It should be noted that the minimum repentance period of three years coincides with the three years Bueno lived as an apostate. This may be evidence of compensatory view of atonement consistent with Sefer HaRokeah.

might have felt unworthy to have religious rights in the community until he had completed his repentance. Equally plausible that this "probationary period" is meant to serve the needs of the community, who may have been suspicious of returning apostates and required reassurance that their repentance was indeed genuine.

Sasportas clearly sees the three years of penance as a minimum and seems to expect that Bueno will undertake a more severe regimen on his own. This is not an unwarranted assumption since Bueno, as Sasportas notes, has already undertaken the Monday/Thursday fasts and the three years of penance for apostasy upon himself. In light of this initiative, Sasportas states that "everything depends upon whether he with his heart and soul returns to his Creator, for then he on his own will be stirred to deal with himself very stringently [for] 'the merciful one desires the heart.'"¹⁷¹ This decision, however, must be left up to the penitent for "in order not to lock the door against those who return, one should not impose a burden upon him that is heavier than he is able to bear."¹⁷²

As noted above, Sasportas' approach to the problem of the returning apostate is an interesting blend of halachic argument (based on the Mishne Torah) and pietistic thought. In a sense, Sasportas creates a space for a pietistic or musar approach to the problem by quickly disposing of the halachic problem.

¹⁷¹ Ibid.

¹⁷² Ibid.

Having made the argument that the compulsion involved in effect replaces the sin of avoda zara with an unpunishable sin of desecration of the name, a vacuum is created. Even though exempt from judicial punishment, clearly Bueno must do something to mark his return to Judaism and that something is an extra-halachic pietistic/ musar atonement for apostasy and its attendant sins.

The question then arises as to why Sasportas did not dispose of the problem definitively in the halachic phase of the argument. The next logical step from the assertion that Bueno was exempt from punishment, is after all, to assert, as Rashbash does, that he should simply be welcomed back in love. The simple explanation is that Sasportas was highly influenced by the Hasidei Ashkenaz approach to apostasy, via the ראשית חכמה and thus was disposed to require penances, making the "loving" approach of the Rashbash inconceivable. Upon deeper reflection, it is possible to see Sasportas' approach as infused with genuine concern for the psychic well-being of the returning apostate. It seems obvious that Bueno and Sasportas share a common pietistic view of repentance, as evidence by the fact that Bueno did not wait to have penances prescribed for him, but imposed them on himself. The minimum penance that Sasportas prescribes is in fact exactly that which Bueno had already willingly undertaken. While Sasportas clearly views an even more severe regimen as the ideal he will not impose it for fear of overburdening such penitents. He, however, fully expects that individuals like Bueno will have an inclination to strive toward this ideal and approves of this pietistic impulse.

Viewed in this way, Sasportas' approach is not at all harsh, but carefully calibrated to the expectations of the type of penitent before him. Sasportas then does not impose penances out of a desire to punish the penitent, but is motivated to provide the kind of penitential structure that is needed and expected. Given what we can discern of Bueno's psyche, it in fact would have been harsh to deprive him of penance by taking the course that logical consistency would seem to demand by simply welcoming him back into the community. While this might be a more logical and clearer resolution of the problem, it would leave Bueno burdened with guilt. The course in fact taken by Sasportas seems to have been dictated by the need to expiate this guilt by means that both Sasportas and Bueno would regard as efficacious.

Chapter 7
19th -Early 20th Century
Germany

The period that is the subject of this chapter marks a new phase in Jewish apostasy. In this period apostasy in Europe was a widespread phenomenon that came about not because of persecution, but as a consequence "cultural openness and political freedom."¹⁷³ Ellenson notes that apostasy in this period was not a rare event, but a phenomenon "characteristic of the nineteenth-century European World" as evidenced by the tens of thousands of Jews who converted to Christianity in Austria-Hungary and Germany.¹⁷⁴

As representative of this period, the responsa of two German authorities, Marcus Horowitz and David Hoffman, will be examined. Ellenson classifies both figures as "modernists" in the sense that while remaining committed to Orthodoxy, each "enthusiastically embraced modern culture and the benefits it offered Jews of the post-Enlightenment era."¹⁷⁵ Of the two responsa, that of

¹⁷³ David Ellenson, "The Orthodox Rabbinate and Apostasy in Nineteenth Century Germany and Hungary," in Jewish Apostasy in the Modern World, ed. Todd M. Endelman (London: Holmes and Meier, 1987), p. 166

¹⁷⁴ Ibid. Ellenson gives the number of apostates as 45,000 in Austria-Hungary and 22,500 in Germany

¹⁷⁵ Ibid., p 167

Horowitz is more exacting in its analysis and better argued. This is not surprising as Horowitz sets himself the difficult task of limiting the application of Isserles' ruling concerning the repentance of the returning apostate, while remaining within the halachic system. Hoffman, embraces Isserles' view, and in fact expands its application to an individual who is not an apostate in the classic sense. This is a much easier task and does not entail the friction between Orthodoxy and Modernity that is evident in Horowitz's work. The two responses reflect two very different approaches to the problem of apostasy in a time of weakening community solidarity, thus making comparison between them a valuable exercise.

Marcus Horowitz

The specific question posed to Horowitz is on its face a straightforward one, which could have been disposed of easily by application Isserles' ruling:

אודות [X] אשר לפני כמה שנים המיר דתו והלך בעצת רשעים ובדרך חטאים עמד ועתה שב מרשעתו והלך ושב אל אישיו הראשון ושומר מצות... אבל לא טבל ולא קבל עליו חברות ולאחר שקבלוהו ראשי העדה ויתנו לו מקום בבית כנסת ומשלם מסי הקהל ככל איש ישראל רוצה עתה גם כן לעלות לתורה בבית הכנסת וראשי הקהל שואלים אם מותר לקראו לתורה אם לא כיון שלא טבל ולא קבל עליו חברות אף שזוהר בכמה דברים שאינו אוכל טרפות ואינו מחלל שבת.

Concerning X who apostasized many years ago and 'walked in the council

of the wicked and stood in the way of sinners¹⁷⁶ but now has returned from his evil ways and 'returned to his first husband'¹⁷⁷ and keeps the commandments, but who did not immerse or accept haveirut. After he has been accepted by the community leaders and they have given a place in the synagogue and he pays his communal taxes like any other Jew, he now wants to have an aliyah to the Torah in the synagogue and the community leaders ask: Is it permitted to call him to the Torah since he has not immersed nor accepted haveirut, although he observes a number of commandments for he does not eat treif nor desecrate the Sabbath?¹⁷⁸

If one assumes that the Shulkhan Arukh is the authoritative statement of the halacha, it would seem that only one resolution of this case is possible. X should not be allowed to have an aliyah until he properly repents for his apostasy by undergoing t'vilah and accepting haveirut. Despite his orthodoxy, however, this is not the conclusion Horowitz reaches, for reasons that will be discussed below. Horowitz resists the rigid application of Isserles' ruling. He does this through a rhetorical tour de force in which he 1) attempts to undermine the basis of Isserles' ruling and 2) limits the applicability of the ruling to a very narrow range of cases and 3) argues that the application of the ruling in this case would be harmful. Each of these three phases of the argument will be examined

¹⁷⁶ cf. Psalms 1:1

¹⁷⁷ cf. Hosea 2:9

¹⁷⁸ מרדכי הלוי הורוויץ, מטה לוי (ורנקנרט: קייפמאן, 1932), סימן ה' (Marcus Horowitz)

in turn.

The first phase of Horowitz's argument takes the form of a comprehensive review of the law regarding the returning apostate. Although the discussion takes the form of a dispassionate scholarly discourse, it is in fact a rhetorical device designed to demonstrate that Isserles' requirements are not halacha nor well established minhag.

Horowitz begins with the Talmud. He notes that the Talmudic קבלת חבורות cannot be synonymous with קבלת עול מצות as the חבר is already subject to the commandments. One who accepts haveirut then "undertakes to do more than an ordinary Jew and to uphold the customs of haveirut and to be punctilious in observance of the commandments and all those practices of haveirut which the haver is accustomed to observe."¹⁷⁹ This idea that the haver is in fact an extraordinarily observant Jew is important to Horowitz's argument and he returns to this point in his conclusion. The "historical" point he wishes to make is stated very plainly: "Concerning the application of קבלת חבורות to the repentant Jewish apostate, one finds nothing in the Talmud, and further one does not find that he requires immersion..."¹⁸⁰

In his treatment of the Geonim one begins to get glimpses of the agenda

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

being advanced through his review of the law. Horowitz cites the responsa of both Amram and Natronai, stressing that they are consistent with the Talmud's silence on haveirut and mikve for the apostate. He does not however discuss the issue of מלקות, although the reader is made aware of this Geonic requirement in his citations. These responsa then are only used to demonstrate that according to these venerable authorities the repentant apostate needs neither immersion nor קבלת חברות.¹⁸¹

It cannot be disputed that the Geonim ruled that the mumar does not require immersion. Horowitz's argument that the Geonim do not require haveirut is, however, somewhat problematic. Natronai does not address the issue at all and thus with respect to his responsum, Horowitz is arguing from silence. More significant is the fact that Horowitz fails to mention the fact that Amram requires that repentant mumar confess his sins to the community. While it cannot be determined with any certainty how Isserles envisioned דברי חברות, it is safe to assume that at least an implied confession was involved. Thus it is possible to argue that Amram's responsum lends some support for the pledge of haveirut required by Rama. At the very least, the Geonim are not as unified in their approach as Horowitz represents them to be.

The next phase of the historical argument is equally problematic.

¹⁸¹ Ibid.

Horowitz cites Sefer Hasidim #203¹⁸² as evidence that the requirement of t'vilah is of relatively recent origin. The argument is based on a misunderstanding of the text and of repentance in Hasidei Ashkenaz. Horowitz apparently interprets the fact that this text provides for the immediate reintegration of the mumar as an indication that mere return is sufficient repentance. Such a reading does not give sufficient weight to the fact that the text states as a condition that the penitent must "agree to do teshuvah as instructed by the sages".¹⁸³ As noted in chapter 2, the term "teshuvah", most likely refers to a constellation of penances.¹⁸⁴ One of these could certainly be immersion in the mikve.

Horowitz's claim is that the first authority after Sefer Hasidim to impose the requirement of t'vilah is the 15th century Nimukei Yosef. This contention is plainly incorrect. As discussed above, Eleazar of Worms not only requires immersion, but uses it as a *rite de passage* from apostate to fit Jew.¹⁸⁵ The penitent was accepted as a Jew immediately after the mikve and fulfilled the required penances as a functioning member of the community. Katz believes that this use of the mikve "was first mentioned in the thirteenth century but it may well have been earlier."¹⁸⁶

¹⁸² See, discussion of this passage in chapter 2 above.

¹⁸³ Sefer Hasidim, (Mossad HaRav Kook), #203

¹⁸⁴ Marcus, Piety and Society, p. 145

¹⁸⁵ Sefer HaRokeah, Hilchot Teshuvah, 24

¹⁸⁶ Katz, Exclusiveness and Tolerance, p. 73

To fully evaluate the rhetorical function of this "historical" analysis, however, Horowitz's chronology and assessment of *Sefer Hasidim* must be assumed to be correct. Thus for the sake of argument we will accept Horowitz's contention that the *Nimukei Yosef*¹⁸⁷ is the "first to have a different opinion" regarding the requirement of immersion (and דברי חכמים for that matter).

Horowitz's attack on the *Nimukei Yosef* is focused on undermining the contention that the requirement of immersion is a Rabbinic ordinance. He notes that it is contradictory to say that *t'vilah* is שורת הדין, and at the same time contend that it is דרבנן. Horowitz asks: "Who can understand this? Is not that which is Rabbinic also termed 'within the letter of the law'? Who would say that it is only Toraitic matters that are שורת הדין?"¹⁸⁸ Further, if *t'vilah* is in fact a Rabbinic ordinance, then "one would need to show its source, since the Geonim were in agreement that he [the repentant *mumar*] does not require *t'vilah*".¹⁸⁹ Horowitz concludes that since the *Nimukei Yosef* cites no support for his ruling, except for his own analogy from the case of the manumitted slave, that the immersion, despite the claims of the *Nimukei Yosef*, is not in fact required pursuant to a Rabbinic ordinance. He then is free to discuss the practice as a

¹⁸⁷ It should be noted that nowhere in this responsum does Horowitz make any statement that would indicate that he is aware that the ultimate source of the mikve/haveirut ruling is actually the *Ritva*.

¹⁸⁸ Horowitz, Resp. # 5

¹⁸⁹ Ibid.

mere minhag.

With this conception in mind, Horowitz then turns to a consideration of Terumat HaDeshen, specifically the "shaving responsum" discussed in chapter 3 above. From this "מאור עיני ישראל" Horowitz learns one leniency and one stringency. The "leniency" is "that he wrote that [it is, i.e. t'vilah] certainly not Rabbinic, but is minhag." Isserlein's ruling is, however, stringent in that he asserts that the minhag is binding (מנהג אבותינו תורה הוא). Horowitz concludes from this that requirement of t'vilah "became widespread after the time of Sefer Hasidim in later generations, prior to Terumat HaDeshen.

The third authority, in Horowitz's view, to differ with the position of the Geonim is the Maharshal. Horowitz sees in the Maharshal's reportorial statement¹⁹⁰ "so I have found and seen" evidence that as late as the 16th century the custom of immersing returning apostates had to be established by means of testimony and he suggests that "perhaps in the Maharshal's country [Poland] the custom was still not so widespread."¹⁹¹

At this point Horowitz begins the final phase of his "historical" argument, in which he attempts to undermine the basis of Isserles' ruling. He notes that

¹⁹⁰ See chapter 3, above for the text of this statement.

¹⁹¹ Horowitz, Resp. #5

there is a seeming contradiction between the glosses to YD 267:8 and 268:12¹⁹². In the first, Isserles is more tentative. He prefaces his statement with the non-committal "יש אומרים" and calls the immersion of the repentant apostate "a mere stringency". The later statement is more definitive as Isserles asserts that t'vilah is required דרבנן. Thus it seems as though in Hilchot Avadim, Isserles views t'vilah as a *humra* practiced by some (and by implication not binding on all) whereas in Hilchot Gerim, the t'vilah is halacha of Rabbinic origin. Horowitz suggests that when one reads the two passages together "it proves that Rama z"l interpreted the Nimukei Yosef as we said at the beginning of our discourse : that the t'vilah is a mere stringency and is not required by the law."¹⁹³

The next logical step to take in this carefully developed attack on Isserles would seem to be to assert that as we are dealing with a mere minhag, and one that even the Rama's words indicate was not universally practiced, it may be rejected in the instant case. Horowitz does not take this step, although the rhetoric seems to be tooled to convince the reader that it is warranted. Horowitz is Orthodox and the Shulkhan Arukh is still the Shulkhan Arukh. As Horowitz notes in another context it is "of course self evident that Rama is [a] sufficient [authority] to rely upon." Thus in the next phase of his argument, Horowitz attempts to demonstrate that Isserles' ruling with respect to t'vilah is inapplicable to the penitent before him.

¹⁹² In both cases Isserles is of course quoting from Nimukei Yosef.

¹⁹³ Horowitz, #5

Isserles himself provides the opening for Horowitz's argument. In the Hilchot Avadim gloss, he states, following the Nimukei Yosef, that "there are those who say that in any case *before the fact* (לכתחלה) one again immerses him..". As suggested in the discussion of the Mappah above, this phrasing raises the possibility that a Jew could somehow re-enter the community without t'vilah and become exempt from this requirement. This is precisely the argument Horowitz advances. He takes the expression לכתחלה to mean that t'vilah is only required at the precise moment the mumar returns to the Jewish community:

כל הכונת המנהג הקודש הזה אינה רק אם טובל מיד כשחזר בתשובה כי אז מציין על ידי הטבילה את תשובתו מה שאין כן אם כבר שב לאלקיו זה ימים רבים ושמר את השבת ולא אכל טרפות וחזר ובא בעדת ישראל והולך בבית הכנסת ונוהג עצמו ככל איש ישראל לענין אין כאן שום מקום להגיד לו שיטבול עכשיו.

The intention behind this holy custom is only is satisfied if one immerses immediately when he returns in repentance for then he marks his repentance through immersion, which is not the case here if he has already returned to his God a long time ago and has kept the Sabbath and not eaten forbidden foods and has entered the Jewish community and goes to the synagogue and conducts himself like any other Jew— according to my humble opinion there is no purpose in telling him now that he should immerse.¹⁹⁴

¹⁹⁴ Ibid.

Thus Horowitz argues that Isserles' mikve requirement has a very narrow application, as it "only applies to the very time that he returns", but at any time "after the fact, if he has already returned to his God and conducts himself as a Jew, [the requirement] is inapplicable".¹⁹⁵ There is only one other situation in which immersion may be required and that is at the time of acceptance of דברי חברות. As Horowitz next argues that "haveirut" should not be required either, the net result is that Isserles' t'vilah requirement is so severely limited that in a practical sense it can be said to have been abrogated.

Up to this point in the argument little has been said about the requirement of קבלת חברות. Having disposed of t'vilah, Horowitz now directs his attention to the second of Isserles' requirements, although here his argument is a pragmatic one. It will be recalled that in Horowitz's view, Isserles' קבלת חברות constitutes a pledge to be extraordinarily observant of the mitzvot. This being the case the requirement cannot be applied. Horowitz states:

ומאיש שהמיר דתו וחזר לדת ישראל בזמן הזה אין אנו מצפים ומחכים שיהא חסיד גמור והלואי שיהיה חיים פשוטים שלא יחלל את השבת ולא יאכל טרפות וכדומה ואם ישוב בכל לבו בקדושה ובטהרה וידקדק במצות כחבר אשרי לו אבל אם קבל בפני שלשה להיות נוהר בדברי חברות אני חושש מאוד שמביאין אותו ח"ו לידי מכשול לעבור על דבריו בכל יום ויום.

¹⁹⁵ Ibid.

Concerning one who apostasizes and then returns to the religion of Israel in this time, we cannot expect that he will be a complete Hasid. Would that he lead a simple life and not desecrate the Sabbath nor eat forbidden foods, etc. If he returns with all his heart in holiness and purity and is scrupulous as a haver, good for him, but if he accepts haveirut before a court of three to be observant of all matters of haveirut, I am very concerned that we will, God forbid, put a stumbling block before him so that he breaks his word every single day.¹⁹⁶

Horowitz finds support for this position from Isserlein's statement that one should not impose many afflictions upon the mumar, for fear that he may renege on his repentance.¹⁹⁷ While it is doubtful that a pledge of haveirut and a dip in the mikve would be considered סיגופים to Isserlein, given the Hasidei Ashkenaz background of this particular responsum, the citation seems to be on point. Isserlein's opinion was based on his assessment of how much the penitent could bear. It so happens that times have changed a great deal and the penitent mumar can, apparently, bear very little. Isserlein and Horowitz, however, share the same concern that the burden of return not be so heavy that penitents find the task beyond their abilities.

¹⁹⁶ Ibid.

¹⁹⁷ Isserlein, part 1, Resp# 198

Given his concern that Isserles' requirement of haveirut presents an insurmountable obstacle to the returning apostate, that "Caro nor the great of the Rishonim and Achronim mention anything concerning the acceptance of haveirut", and the fact that the source of Isserles' ruling is just the Nimukei Yosef, Horowitz concludes that קבלת חבורת cannot be required in this case.¹⁹⁸ The penitent should be instructed to be more scrupulous in his observance than he was before "in order that HaShem might forgive and pardon him for all his sins."¹⁹⁹ More than this cannot be expected without setting the penitent up to fail. Horowitz counsels that "it would be well to follow Rashbatz [sic. --Rashbash is intended] and not frighten them [repentant apostates] when they come to return in repentance."²⁰⁰

Thus, for policy reasons, Horowitz neutralizes the "loyalty pledge" required by Isserles. As the acceptance of haveirut is the sole reason remaining reason to require mikve, this ruling makes the immersion requirement a dead letter as well. One must then conclude that for Horowitz the repentance of the mumar consists solely of his reattachment to the Jewish community. Once the mumar begins to live as a Jew again, practically speaking, his repentance is complete.

¹⁹⁸ Horowitz, #5

¹⁹⁹ Ibid.

²⁰⁰ Ibid. Rashbash, Resp. #8. Horowitz use of the Rashbash here applies reasoning from a case involving anusim to the case of a willing convert. This demonstrates that distinctions between compelled and voluntary conversions are often not significant. In a certain sense, an apostate is an apostate.

Whatever problems there may be with the interpretation of certain authorities' opinions or the lack of attention to others, from the rhetorical point of view this responsum is a masterpiece. Horowitz begins with a review of the law that has the intended effect of weakening the foundation of Isserles' ruling. Horowitz does this, however, without ever explicitly making the claim that as merely reflecting minhag, Isserles' glosses may be ignored. Such a claim would have undoubtedly been as unpalatable to Horowitz himself as to his intended audience. The soundness of Isserles' rulings are, however, implicitly called into question and thus the reader is inclined to accept the legalist phase of the argument. Horowitz thus de facto rejects Isserles' rulings, although this is done in such a way that the authority of the Shulkhan Arukh and the integrity of the halachic system are not compromised.

David Tzvi Hoffman

Hoffman, like his friend and associate, Marcus Horowitz, is classified by Ellenson as a "modernist" Orthodox authority.²⁰¹ He, however, takes a completely opposite view of the problem of the returning apostate. Not only does he affirm Isserles' requirements for returning mumarim, but as will be seen, he expands their applicability.

²⁰¹ Ellenson, "Apostasy in Nineteenth Century Germany and Hungary," pp. 166, 182-3.

The question posed is an unusual one, reflecting German political realities of the time. The responsum revolves around a Jew who successfully petitioned the government to register him as "*kofessionslos*" (a religion-less citizen). This enabled him to secede from the Jewish community without becoming a Christian and simultaneously become exempt from taxation by the *kahal*.²⁰² Hoffman is asked to clarify the status of this person when he returns to Judaism:

דפסקין ישראל מומר שעשה תשובה דמדרבנן יש לו לטבול ולקבל עליו דברי חברות בפני ג. . . אם יש להחמיר כן גם בישראל שלא המיר דתו לדת אחרת רק כתב על הערכאות שלהם שרצונו להיות קאנפעזיאנלאז ועתה הוא רוצה לשוב בפומבי לדת יהדות. מי אמרין בהמדת הדת תליא מילתא וכיון שהוא לא המיר אין מקום אצלו להחומרא הנ"ל או דילמא כיון שמ"מ יצא מכלל ודת יהודית ועתה רוצה לשוב יש לדנו מדרבנן כמו נכרי שבא להיתגייר.

Since we hold that an apostate who makes teshuvah as a Rabbinic ordinance must immerse and accept haveirut before a court of three, should one be strict with a Jew who did not convert from his religion to another, but only wrote [i.e. had himself registered] on the citizenship registry as a "*kofessionslos*" and now seeks to return publicly to the Jewish religion? Do we say that the matter hinges on "conversion out" and since he did not convert there is no standing to be strict or perhaps since in any case he left the Jewish

²⁰² Ibid., 182-3

community and religion and now wants to return that he must be dealt with as a gentile who comes to convert?²⁰³

As Ellenson notes, Hoffman is being asked whether a Jew who becomes konfessionslos, but does not adopt another religion is a mumar and if so should the same standards apply as to typical mumarim. The alternative posed by the questioner that the individual be treated "like a gentile who comes to convert" is most likely a reference to the requirement of *t'vilah* rather than a suggestion that the he is no longer a Jew. Although Hoffman describes the penitent's actions as "leaving Judaism," there is no sense that he views him or would view a Jew who converted to another religion as gentiles as opposed to sinful Jews.

Hoffman begins his discussion by affirming that Isserles' ruling is the applicable law in the typical case. He acknowledges that the source of Isserles' ruling is Nimukei Yosef by way of the Ritba and that Caro and the Tur, following the Geonim, contend that *t'vilah* is not required. "Despite this," Hoffman asserts, "one may not deviate from Rama's *p'sak*. The question then is "whether there is reason to differentiate between a mumar who turns to another religion and a mumar who leaves the community of Israel but does not accept another religion."

²⁰³ דוד צבי האפפמאן, מלמד להועיל (פרנקפורט: חרמון, 1926) א' סימן פ"ד
(David Tzvi Hoffman)

The problem is, as Hoffman acknowledges, that there is no clear precedent for this case. Hoffman notes a Geonic responsum cited by Radbaz that deals with a group of Jews who are non-observant to the point of apostasy, but ultimately admits that the opinion does not rule on the question of t'vilah and is thus ultimately unhelpful. Some support is derived, however, from a Radbaz responsum that he finds cited in Leket HaKemah. In this responsum Radbaz rules that "a Jew is obligated to be killed rather than transgress even in the case of threatened forced conversion to Islam as when he acknowledges their religion he denies the Torah of Moses and is like a complete idol worshipper."²⁰⁴ Thus Hoffman argues that even though Muslims are not idol worshippers, as determined by Rambam²⁰⁵ in any case acceptance of Islam is apostasy. The decisive factor seems to be not the religion converted to, but the fact that Judaism is denied. Thus in this case, "because he leaves the Jewish community, even though he does not accept another religion, he in any case announces in public that he denies the Torah of Moses, and thus he is like an idol worshipper and like an apostate to another religion and thus needs to immerse in the mikve when he returns."²⁰⁶ The *kofessionslos* thus is indeed a mumar and is subject to the same requirements as he would be if he in fact adopted another religion.

²⁰⁴ Ibid.

²⁰⁵ Hoffman does not give a specific citation to any particular teshuvah or ruling of the Rambam. It is likely that the reference is to his responsa on the subject such as one of the responsum directed to Obadiah the Proselyte. See for example #369 in the Friemann collection. See also, MT Hilkhos Ma'akhalot Asurot 11:7, where Muslims are described as "gentiles who are not idolaters."

²⁰⁶ Hoffman, Resp. #84

Hoffman seems to be aware that his stringency with respect to apostates has led him to expand the scope of Isserles' ruling. He thus follows the above halachic argument with a justification for his *mahmir* approach. Hoffman says that "he knows of sinners who become *konfessionslos* to become exempt from community taxes, but who think of themselves as Jews and marry Jewish women and say that they are not apostates." The fear is that if "we are lenient with them when they desire to return and do not consider them apostates it amounts to giving aid to sinners to do their [evil] deeds." Thus "in order to build a fence, it must be said that the *konfessionslos* are like apostates in all their deeds."²⁰⁷

Comparison

Although sharing "a common theological and cultural perspective" Hoffman and Horowitz come to opposite solutions to the problem of the returning apostate.²⁰⁸ As Ellenson notes, what really drives the decision in each case is the posek's individual assessment of "what would most likely benefit the community". The reason that the conclusions as to what action is in fact needed differ so markedly is that the two posekim are trying to accomplish different goods. Specifically, Horowitz is focused on the question "what stance toward apostates will bring them back to Judaism?". In contrast Hoffman appears to be

²⁰⁷ Ibid.

²⁰⁸ Ellenson, "Apostasy in Nineteenth Century Germany and Hungary," p. 183.

much more concerned with keeping faithful Jews within Judaism.

Horowitz's leniency is thus driven by the conviction that Isserles' requirements will prove to be a barrier to return to Judaism. He seems to have a sense that he is dealing with a Jewish population very different from that which Isserles could envision. Modernity and the openness which it brought meant that apostate Jews could feel comfortable and easily remain in the gentile world. Believing that Isserles' ruling was thus harmful to the Jewish community, Horowitz put all of his rhetorical skill to work to so severely limit Isserles' ruling as to effectively abrogate it.

So too Hoffman's stringency is explained by his conviction that what the times required was rigorous application of the law. His focus was not those who had already left, but those who still remained within Judaism. Hoffman sought to forge communal discipline by sending a message to the Jewish community that the consequences of apostasy were serious, even if the "apostasy" question took the form of secession from the community solely to avoid financial responsibility.

What the two authorities share is a commitment to the halachic system. Whatever policy each chose to advance, each operated with the conviction that community needs could be and had to be addressed from within the world of halachic discourse. This of course was much easier for Hoffman than for

Horowitz as the argument of the former entailed an embrace of the traditional halachic position. Horowitz's prior commitment to the halacha meant that he was forced to develop a complicated and sometimes Byzantine argument to come to what he felt was the correct solution. Both however could be said to have succeeded in their task if their constituencies recognized their decisions as a legitimate use of the language of halacha. For those invested in the halachic system, how these authorities arrived at their decisions was at least as important as the decisions themselves.

Chapter 8

20th Century

R. Moshe Feinstein

The responsum to be analyzed in this chapter is significant for two reasons. First, it is the work of Moshe Feinstein, one of the most important modern poskim. Second, the responsum arises out of the Shoah, part of the tragedy of which, as in other great upheavals in Jewish history, was apostasy.

The case before Feinstein is that of a woman and her daughters who were hidden from the Nazis in the home of Catholic man. After a time the man presented the woman with an ultimatum: Either she and her daughters accept baptism, or he would turn all of them over to the Nazis. Feinstein states that "she was unable to withstand this great test and she agreed and they accepted the Christian religion, although without a priest, but rather he sprinkled water on them and took them to the church."²⁰⁹ When they were rescued, the woman and her daughter "publicly returned to Judaism and they are [now] observant in every particular."

²⁰⁹ אגרות משה, חלק יו"ד בי סימן קכט

Now the question is "whether they require shaving and immersion".²¹⁰

While Feinstein does not actually cite Isserles at this point, the question in fact is whether Isserles' requirements apply to this situation. Feinstein states that they do not. He derives some support for this position from a citation to the famous Rashbash responsum in the Pithei Teshuvah on YD 268:12, which he mentions without elaboration or analysis. Eisenstadt's comment touches on all the essential points of that responsum, including Rashbash's contention that the בני אנוסים do not require t'vilah and his statement that these people should be "drawn in with kindness."²¹¹

Feinstein appears to be reading the Pithei Teshuvah as an exception to Isserles ruling for cases of forced conversion. It is true that the general intent of such works as the Shaarei Teshuvah and the Pithei Teshuvah is to give decisors access to specific rulings in the responsa literature, but for the most part this function is fulfilled by digesting decisions coming after the time of the Shulchan Arukh.²¹² In this instance the opinion cited precedes the composition of the code, and it is thus not clear that Eisenstadt is suggesting that Isserles' requirements are inapplicable to an *anus*. The opinion could be cited merely for the sake of completeness.

²¹⁰ Ibid.

²¹¹ Pithei Teshuvah 10 on YD 268:12 (Isserles)

²¹² Elon, Jewish Law, 1440.

For the theoretical justification for treating anusim differently than willing apostates Feinstein turns to the Rambam. He notes that Rambam states that one who sins under threat of death is not subject to punishment.²¹³ Like Sasportas he understands Hilchot Yesodei HaTorah to say that the element of compulsion substitutes the sin of desecration of the Name for the "base" sin. Thus, not only are the woman and her daughters exempt from punishment for the sin of the desecration of the Name that occurred as a result of their apostasy, but the fact that they acted under duress means that there is no sin of avoda zara at all.²¹⁴

Feinstein argues:

"מלשון הרמב"ם משמע שאין בזה כלל אסור ע"ז דהא כתב 'וכל מי שנאמר בו יהרג ואל יעבור ועבר ולא יהרג ה"ז מחלל את השם ולא כתב שהוא עובר על אותו העבירה וגם שהוא מחלל את השם אלמא דאותו העבירה אינו עובר כלל רק זה דמחלל את השם

From the Rambam's language, learn that there is no prohibition of avodah zara [involved] for he wrote 'concerning one of whom it is said that he should be killed and not transgress, but he transgressed and is not killed, this person desecrates the Name, but he did not write that he transgresses that same sin [i.e. the sin that is the forced upon him] in addition to desecrating the Name, therefore he does not transgress that same [the

²¹³ MT, Hilchot Y'sodei HaTorah 5: 4

²¹⁴ Feinstein YDII, Resp. #129.

base] sin at all, he only desecrates the Name."²¹⁵

As in the Sasportas responsum examined above, Feinstein could conclude at this point. Again like Sasportas he does not, but rather moves into a similar "pietistic" argument. Thus, even though the three are exempt from punishment, not just by a human court, but with respect to דיני שמים as well, Feinstein presses on to discuss their "teshuvah". As for the woman, "if she is healthy it would be fitting if she fasted each and every year on the day she apostasized, if she remembers the exact day, and if not, then she should establish another day." In addition she "should seek to sanctify God as much as possible through her conduct". The daughters, who were not of age at the time of their apostasy, are not obligated to fast, but "to conduct themselves in the ways of Torah and to sanctify the Name and this shall be their atonement before the Blessed Name, who desires repentance and abundantly forgives."

As noted above, there are features of this responsum that are strikingly similar to the Sasportas responsum examined in this study. Like Sasportas, Feinstein creates a space for a pietistic approach to the problem by disposing of any question of punishment. This is accomplished with the same type of substitution argument employed by Sasportas. It is likely that this similarity in

²¹⁵ Ibid. Note that Feinstein follows the Lehem Mishne's assertion that there is only the transgression of a positive commandment involved (the commandment to die קדוש השם) in the presence of ten Jews. As this was not the situation in the instant case, Feinstein states that only the sin of חלול השם was committed.

structure betrays a similarity of motivation. The halachic phase of Feinstein's argument may be intellectually satisfying to the scholarly audience it is most likely directed. It does not help the woman forced into apostasy to rid herself of guilt. In the pietistic phase of the argument, sensitivity to the needs of the penitent dominates and thus Feinstein, contrary to logical consistency, prescribes repentance for an act which he has already argued is excusable from a halachic point of view.

The fact that the repentance of the *anusa* in this case seems extremely lenient compared to the severe penances imposed upon Bueno, should not obscure the similarities between these two responsa. The differences are of degree, not kind. In each case a sensitive posek has prescribed a regimen of repentance that will be bearable for and helpful to the individual standing before him.

Chapter 9

Conclusion

While each solution to the problem of the returning apostate examined herein is unique in that it is the product of an unrepeatable engagement of an authority with his time and tradition, it is possible to identify certain recurring themes. Thus in the conclusion to this study an attempt will be made to identify the various models of the return process that the studied decisors have employed. The aim will be to focus on how the use of a particular model enables a decisor to balance the competing forces that impinge on his decision. A theoretical understanding of the various models will also make evaluation of which model or models are appropriate to the problem of apostasy as it presents itself to the Jewish community today. This issue will be taken up in the appendix to this study.

Based on the forgoing examination of the material, it is possible to identify four distinct approaches to the penitent apostate problem. For purposes of discussion these models are designated as 1) The Ordinary Sin or "Halachic" Model; 2) The Simple Acceptance Model ; 3) The Halachic/Pietistic Model; and 4) The Pseudo-Conversion Model. Each of these approaches is discussed in turn

below.

1. The Ordinary Sin or "Halachic Model"

This is the model that most rigidly adheres to the principle of the permanency of Jewish identity. The apostate is a Jew and not at all like a gentile convert to Judaism and thus immersion is inadmissible. In the Geonic formulation of this model, the apostate must atone for the attendant sins of apostasy and is therefore subject to flogging.²¹⁶ The approach is also followed by Adret and by Caro in the Shulkhan Arukh, although in the latter case, the requirement of מלקות is stated without the qualification that it is imposed for the violations of the halacha, such as Sabbath desecration, which are associated with apostasy.²¹⁷

As stated above, the model has the virtue of being logically consistent with the immutability of Jewish status. Further, if flogging is indeed carried out, the model entails a clear demarcation between apostate and "fit" Jew, all the more so if Amram's confessional variation of the approach is employed.²¹⁸ The needs of the penitent, however, are not directly addressed. Although an individual may feel purged of guilt under this procedure, there is no sense from

²¹⁶ See, discussion Amram and Natronai in Chapter 1.

²¹⁷ YD 267:8

²¹⁸ See, Chapter 1.

the writings of any of the followers of this model that the penitent's spiritual needs are significant. It is also not possible to determine whether or not these authorities consider the impact of their decisions on apostates contemplating a return to Judaism. With respect to Rav Amram, however, there is an indication that such considerations were not significant, as he requires what could be a humiliating public confession as part of the process of teshuvah.²¹⁹ One could easily imagine that this might deter individuals from returning to the Jewish community. At the same time a harsh attitude toward apostates might deter some individuals from leaving in the first place.

2. The Simple Acceptance Model

This approach is best exemplified by the Rashbash. Marcus Horowitz can also be said to have been operating under this model, although rhetorically it is a default model that is applied after Isserles' requirements are shown to be inapplicable. As in the model outlined above, this model is premised on a stringent adherence to the "once a Jew, always a Jew" principle. Since the apostate is not a proselyte, he is not required to immerse in the mikve nor take instruction in the mitzvot. The difference is that under this model the sins committed while an apostate are effectively ignored. At the same time, no regimen of repentance is prescribed. The apostate need only repent, in the psychic sense we understand this term, and return to the community.

²¹⁹ Ibid.

Unlike the "halachic" approach, this model allows the decisor to take the psyche of the penitent into account. Both Rashbash and Horowitz seem to be aware that the apostates before them will be unable to bear or unwilling to accept an immersion/kabbalah regimen. Both authorities seem to be conscious that given their assessment of the character of the apostate, leniency will best facilitate return to Judaism.

3. Halachic/Pietistic Model

This is the only model that is logically confined to *anusim*, as compulsion is necessary for the model to operate. The approach has two phases, a halachic phase and a pietistic phase. In the halachic phase it is argued that the apostate is not culpable for the sin of *avoda zara* as he sinned under duress. This being the case, the apostate's chief sin is considered to be the desecration of the Name. The apostate, however, is exempt from any punishment for this sin, as he sinned against his will.

After disposing of the issue of halachic penalties, the approach becomes pietistic and a regimen of *teshuvah* is prescribed, despite the fact that the apostate has been exempted from punishment. Although, somewhat incoherent from a logical point of view, the approach creates a space for a pietistic impulse to be expressed for sound psychological reasons. More than any other model, the

Halachic/ Pietistic model allows the decisor to address the heavy burden of guilt the apostate carries. One could say that in the first phase of the argument the needs of the halachic system are paramount and in the second the sole consideration is the psyche of the penitent.

Sasportas and Feinstein represent two ends of the spectrum of this approach. Each carefully calibrates the pietistic response to the needs and expectations of the penitent before him. Thus for Sasportas the required teshuvah is a strict regimen of physical penances and for Feinstein it is an annual fast. At either pole, the decisor's attention is sharply focused on the individual.

This focus on individual repentance has some negative consequences. The continuing nature of the teshuvah can cause the community some confusion as it is unclear when the apostate again becomes a "fit" Jew. The approach does not necessarily include a bright line test. Sasportas in fact requires the returning apostate to wait three years before he is fully reintegrated into the community.²²⁰ Further, given that the approach is so individualized, it is difficult for the decisor to consider the effect of his ruling on other potential returnees.²²¹

4. The Pseudo-conversionary Model

²²⁰ Sasportas, #3

²²¹ Sasportas does warn that one should not burden the returnee with too onerous a penitential regimen for fear of "locking the door", but this does not appear to have been a major consideration in the decision.

As was argued in this study, it appears that Isserles, in his glosses to the Shulkhan Arukh, attempted to construct a conversion-like procedure for the readmission of apostates. The mikve/kabbalah structure is obviously analogous to the immersion and instruction required for conversion. While there is no reason to suppose that Isserles did not view apostates as Jews, this model is the least consistent with the idea that Jewish status is permanent.

Important values are, however, advanced by the approach. By activating the potent symbol of the mikve and requiring a pledge of loyalty, a clear signal is sent to the community that the apostate is now a fit Jew. With its association with purification and change of status, the same message is impressed on the apostate himself. Apparently these considerations outweighed the potential confusion between gerim and mumarim caused by the requirement of immersion and haveirut.

A Final Word

These varied responses to the problem of the returning apostate demonstrate the ability of the traditional decisor to address a significant social problem and retain his commitment to tradition. Each model then represents a "good" answer to the question and is worthy of study in considering the appropriate response to today's apostates. Given that the solution to this

problem has varied between decisors and with changing social conditions, it would be inadvisable in a liberal context to consider any of the above models as definitive. Thus in the following appendix, a contemporary approach is suggested which views all of the historical answers to the question as resources to draw upon.

Appendix

שאלה

I am in need of guidance with respect to the status of a individual who has been attending services and adult education courses at my congregation. Steve X, 37, was born Jewish, but as a young man accepted baptism into the Mormon Church. Later in his life he left Mormonism, but did not return to Judaism. Several years ago he became a member of the Church of Scientology. In discussions with Steve it has become clear to me that he wishes to return to Judaism. In fact, in his view, he has returned to Judaism and this being the case, desires to be treated as a full member of the community. Specifically, he wants to be called to the Torah and to become a member of the congregation. While I have welcomed Steve to pray with the kahal and am very willing to teach him, both in individual and group settings, I am not convinced that a mere desire to return to Judaism is sufficient teshuvah to merit full congregational participation. Further, my sense is that the congregation views this individual with some suspicion and would thus have difficulty accepting him as a Jew without some definite expression of reattachment to the Jewish people.

Should I require that Steve X participate in some formal ceremony of return to Judaism as a condition for being permitted to join the congregation

and/or to be called to the Torah? If such a ceremony should be required what shape should it take? On a more basic level, is a Jew who formally converts to another religion Jewish at all, or should such a person be considered a gentile who would require conversion to become part of the Jewish people?

שואל פלוני

תשובה

We will take up the last of your questions first as it is the most basic and is amenable to a definitive answer. Jewish tradition views Jewish status as permanent. Thus in a technical sense, "conversion out" is impossible. The halachic basis of this view is the statement in Sanhedrin 44a: אף על פי שחטא אף על פי שחטא הוא. In its original context this is an aggadic statement. Rashi, however, gave the dictum halachic import in a series of responsa in which he made it clear that apostasy did not remove the apostate from the reach of Jewish law, particularly with regard to matrimonial matters.²²²

In part the motivation behind the principle "even though he sins he is an Israelite" was to assert that Jews could not escape the halacha and to delegitimize, by declaring ineffective, the act of joining another religious

²²² Elfenbein, תשובות רשי

community. Behind these concerns, however, is the powerful idea of the permanence of the Covenant. Rashi's reworking of the Talmudic dictum gives practical effect to the claim of Parashat Nitzavim : "I make this covenant, with its sanctions, not with you alone, but both with those who are standing here with us this day, before the Lord our God, and with those who are not with us here this day."²²³

Given this conception of the permanence of Jewish status it would be improper to treat Steve X as a prospective convert to Judaism. As the Rashbash points out in his famous responsum, the apostate being already subject to the Covenant of Sinai, with all its attendant benefits and obligations, cannot have the same status as a gentile who seeks to convert to Judaism and so enter that same covenant.²²⁴ The mumar does not need to "enter" the Covenant, but to live in accordance with it. Further it would be a grievous insult to converts to Judaism to equate them with repentant apostates by treating the latter as "gerim". While apostasy can be rightly regarded as a sin, the fact that one was not born Jewish is not. When a gentile chooses Judaism, the House of Israel grows and is strengthened. When an apostate repents, a breach is repaired.

Thus as to the most basic question posed, Steve X is a Jew and need not convert to be considered such. This does not mean however that Steve's apostasy

²²³ Deut. 29: 13-14

²²⁴ Rashbash, No. 89

should be overlooked and it certainly does not mean that he automatically is deserving of the rights of a faithful Jew in your community. So now that we have determined that Steve X is a repentant apostate from Judaism, we must determine what he must do to regain his status in the community. To put the question another way, what shape must the teshuvah of the repentant apostate take so that he can be permitted to take his place as full member of the community?

According to Isserles the mumar who seeks to make teshuvah must undergo immersion in the mikve and accept "דברי חברות".²²⁵ The content of these "words of membership/belonging" is not specified, but one must assume that some form of pledge of loyalty to Judaism is expected.

There is an extensive and somewhat contradictory responsa literature on this narrow question. Many respondents declare that the repentant apostate is not immersed as the required repentance does not amount to a conversion. Thus Rashba simply states that the mumar's "conception and birth were in holiness (that is, the mumar was born Jewish)" and therefore "he does not require immersion".²²⁶ Fewer respondents speak to the question of דברי חברות. Rashbash states that no "kabbalah" is required, although it should be noted that Rashbash's intent was to settle the status of descendants of forced converts, who

²²⁵ YD 268:12.

²²⁶ Adret, Resp. #76. See also, Rashbash, no. 89.

committed no act of apostasy themselves.²²⁷ Marcus Horowitz argued that דברי חבירות constitutes a pledge to be a punctiliously observant Jew and so found the requirement impracticable, given the fragile attachment of the apostate to Judaism.²²⁸ Others explicitly require some form of public declaration of repentance.²²⁹

Despite the profusion of opinions, one clear trend does emerge. It is clear that neither Isserles nor the bulk of the poskim who engage this question find the concept of eradicable Jewish identity a sufficient basis for determining the standing of the returning apostate in the community. There is a sense that even though ineffective, the attempt to convert to another religion is a grave matter and thus teshuvah of some kind is necessary.

In cases such as the one before us, we agree with those poskim who object to the requirement of t'vilah as it is too closely associated with conversion to be an appropriate vehicle or sign of teshuvah for the repentant apostate.²³⁰ Based upon Isserles' requirement of "דברי חבירות", however, we believe that some public declaration of reattachment to Judaism is needed. Steve X's acts of apostasy at the very least carried with them an implicit public renunciation of

²²⁷ Rashbash, Resp. no. 89

²²⁸ Horowitz, Resp. #5

²²⁹ ספר שערי צדק, שער ה', יא (Amram)

²³⁰ See discussion of opinions of Natronai, Adret, Rashbash and Caro, supra.

Judaism. We believe an analogous public retraction of this renunciation is required. Such a procedure will force Steve to confront his past actions and bind him in a dramatic way to his return to Jewish life. Further a public "reentry ceremony" will clearly communicate that from this time forward, Steve must be accorded full rights within the community.

We have thus far focused solely on the legal and communal aspects of this problem. There is of course also the issue of personal repentance. Steve X may have a need to purge himself of guilt, a need not necessarily satisfied by the reentry ceremony suggested here. You might therefore suggest some form of personal "penance". Fasting might be an appropriate purification exercise.²³¹

In any case, until such time as Steve publicly solemnizes his commitment to Judaism, you should refrain from according him synagogue honors and the congregation should not grant Steve full membership rights.

The details of this reentry ritual we leave to you, as we have no clear guidance in this matter from the sources. We would suggest that you take due care not to embarrass Steve X and to bear in mind that an affirmation of Judaism might be sufficiently public if it were witnessed by selected members of the congregation. Your role of course is to facilitate Steve's teshuvah and not to inflict punishment or shame upon him. Despite the fact that you will be making

²³¹ See, Feinstein YD II, #129, where it is suggested that a repentant apostate undertake an annual fast on the anniversary of her apostasy.

demands upon Steve, we trust that you will be guided by the Rashbash and draw him back into the synagogue with the bonds of love.²³²

משיב פלוני

²³² Rashbash, No. 89

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