

# Jewish Law in the Beit Midrash of Hasidism

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Hasidism – the movement, its leaders and adherents, its ethos and religious message – is often cast in shades of antinomianism or anomianism, suggesting that hasidic masters and their faithful disciples either flouted Jewish law or ignored it. According to this line, the hasidic attitude towards halakhah was not improvised, temporary, or provisional; rather, the disdainful attitude was ideological and systemic. In the following, I argue for a recalibration of this dominant narrative.

My argument is rooted in the reality that – contrary to the widespread assumption – hasidic masters from the earliest days of the nascent movement were embedded in the world of halakhah and active in the legal realm. This aspect of Hasidism has yet to be fully explored. In order to banish the existing myth, I will first provide an account of the prevalent depiction: Where does it come from and how widespread is it? Unpacking this popular

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perception will then allow me to sketch an alternative image. Furthermore, the narrative I advocate suggests that the study of legal writings from the hasidic movement is a scholarly desideratum.

Part One of this study argues for a *longue durée* approach for considering legal works from the hasidic milieu. This methodological frame is linked to the notion of a *beit midrash* or multi-generational school of thought. Part Two tackles the question of why scholars of Hasidism and of Jewish Law have all but ignored this *beit midrash*, highlighting and assessing the forays into the field. Part Three offers a collage of life ensconced in law, demonstrating the involvement and interest of hasidic masters in the world of Jewish law. Part Four turns to the intersection of Hasidism and legal theory – a juncture that has benefited from scholarly attention. Part Five maps the terrain by detailing genres of Jewish legal writings and highlighting contributions to each genre from the *beit midrash* of Hasidism. Part Six concludes with remarks about the possibility that legal writings of the hasidic *beit midrash* are a vista worth exploring.

## 1. The Beit Midrash of Hasidism

The present study takes a *longue durée* perspective; a temporal frame that has re-ignited scholarly interest of late.<sup>1</sup> This methodological approach was at the root of the study of Jewish law in Israel orchestrated by Menachem Elon (1923–2013), who built on the foundation of previous scholars, in particular Chaim Tchernowitz (“Rav Tzair,” 1870–1949) and Asher Gulak (1881–1940).<sup>2</sup> The ideological impetus that drove this scholarly endeavour has faded: recent scholarship in Jewish law has largely skirted the dream of Jewish legal revival as part of Israeli law, and has seldom adopted a *longue*

- 1 Jo Guldi and David Armitage, *The History Manifesto* (Cambridge: Cambridge University Press, 2014), <http://historymanifesto.cambridge.org>, esp. ch. 1–3; David Armitage and Jo Guldi, “Le retour de la longue durée: une perspective anglo-américaine,” *Annales: Histoire, Sciences Sociales* 70 (2015): 289–318; Markus D. Dubber, “New Historical Jurisprudence: Legal History as Critical Analysis of Law,” *Critical Analysis of Law* 2 (2015): 1–18. For a critique and a response, see “AHR Exchange: On *The History Manifesto*,” *American Historical Review* 120 (2015): 527–54.
- 2 On the roots of Elon’s dogmatic-historical methodology, see Assaf Likhovski, *Law and Identity in Mandate Palestine* (Chapel Hill: University of North Carolina Press, 2006), 128–53, 161–66.

*durée* approach.<sup>3</sup> Notwithstanding, this methodological approach is most appropriate for the macro-perspective at the heart of this study because it allows us to trace historical trends over time.

The motivation of this study does not derive from a desire to transform traditional Jewish law into modern State law. Rather, the aspiration of this enterprise is to recalibrate the narrative of the relationship between Hasidism and Jewish law thereby expanding the corpus of the two disciplines. Probing this horizon will add colour to the picture of Jewish legal history, and it is also an important quest for a greater understanding of Hasidism. Legal writing from this community contains historical, social, and cultural pearls that may be unknown from other sources. Moreover, the prospective value of deconstructing any law/spirit binary is the possibility of richer, multi-faceted engagement with both realms.

Let me be clear at the outset: I am not arguing that every hasidic master was a jurist of note. Nor am I suggesting that every hasidic jurist was on par with his non-hasidic counterparts. My claims are more modest: I strive to whet the scholarly appetite, by aggregating evidence that suggests that we should re-evaluate entrenched assumptions about Jewish law and Hasidism. Furthermore, I offer an initial topography of the territory. This will then open the door for more detailed studies and subtle descriptions that will provide a more accurate picture of the complex and multifarious relationship between the two disciplines.

Thus, this study examines what we might consider a virtual *beit midrash* of Hasidism – an imaginary convocation spanning some two hundred and fifty years of learned legal scholarship from hasidic masters and from people who identified as *hasidim*. The notion of a *beit midrash* in the sense of an intellectual school is a concept familiar to scholars of Jewish law. Focusing on the image of a virtual assemblage allows us to consider the sweep of hasidic legal history. This prosopographic approach demonstrates a pattern of deep investment in Jewish law.

The *longue durée* perspective, perforce, erases gradations, shades, and tones associated with period, locale, family tradition, and personal predilection. While this is a regrettable cost of the *longue durée* outlook, the method allows us to map the field and present a counter-narrative. In turn,

3 Assaf Likhovski, "Recent Trends in the Study of the Intellectual History of Law and Jewish Law Scholarship," *Diné Israel* 32 (2018): 240\*–42\*.

this account encourages focused research into specific phenomena such as shared assumptions of hasidic jurists, as well as microhistories that can test the boundaries of the portrait I paint. These broad strokes are, therefore, necessary prerequisites for a subsequent nuanced portrayal of Hasidism as a legally heterogeneous, permeable, and processual community.<sup>4</sup>

To what extent have the legal writings from the hasidic *beit midrash* been explored by scholars? The answer to this question is painfully simple: very little. Before approaching these works, it is worth understanding the state of the field: To what extent have legal texts been sidelined by scholars of Hasidism and by scholars of Jewish law, and how should this trend be understood?

## 2. Benching the *Beit Midrash*

### The Paradox

Before the academic study of Hasidism had launched in earnest, Gershom Scholem (1887–1982) noted what he termed a “paradox” and a “miraculous thing”: a spiritualist revival that somehow retained fidelity to Jewish law. For Scholem, Hasidism was “a curious mix of conservatism and innovation,” that occupied an oxymoronic space as it preached a “tradition of breaking away from tradition.”<sup>5</sup> Hasidism’s orthodoxy puzzled Scholem. Scholem was not the first scholar to identify this puzzle, though he was the most influential.

Erich Fromm (1900–80), in his 1922 doctoral dissertation, discussed the role of Jewish law in the cohesion of three communities: Reform Judaism, Karaism, and Hasidism. Fromm singled out **Rabbi Shneur Zalman of Liady** (ca.1745–1812) as “Der Versuch einer Synthese von Chassidismus und Rabbinismus” (the attempt at a synthesis of Hasidism and Rabbinism).<sup>6</sup> In the very

4 William W. Fisher III, “Texts and Contexts: The Application to American Legal History of the Methodologies of Intellectual History,” *Stanford Law Review* 49 (1997): 1065–1110 at 1070–72, 1084–86.

5 Gershom G. Scholem, *Major Trends in Jewish Mysticism* (Jerusalem: Schocken Books, 1941), 345–48.

6 Erich Fromm, “Das jüdische Gesetz: Zur Soziologie des Diaspora-Judentums” (Ph.D. diss., Universität Heidelberg, 1922). The dissertation was posthumously edited and published by Rainer Funk and Bernd Sahler under the original title (Weinheim: Beltz Verlag, 1989) and in the collected works of Erich Fromm, *Gesamtausgabe* (Stuttgart: Deutsche Verlags-Anstalt, 1980–1999), 11:19–126.

same year, Martin Buber (1878–1965) offered the same characterization of Shneur Zalman and his school.<sup>7</sup> Also in 1922, Samuel Aba Horodezky (1871–1957) expressed similar sentiments.<sup>8</sup> Indeed, Shneur Zalman’s uniqueness in the annals of nascent Hasidism became a common theme amongst scholars.

As will become clear from the ensuing discussion, this representation of Shneur Zalman as a lone exception is inaccurate. No doubt, Shneur Zalman did make a contribution that in retrospect was inimitable.<sup>9</sup> Yet Shneur Zalman was not alone in synthesising between allegiance to Jewish law and the innovative spirit of Hasidism. Indeed, such fusions were standard fare for many leaders in the nascent movement, for hasidic masters throughout the nineteenth and twentieth centuries, and for the contemporary hasidic community.<sup>10</sup>

- 7 Martin Buber, *Der grosse Maggid und seine Nachfolge* (Frankfurt am Main: Rütten & Loening, 1922), lxxv: “Die Chabadschule stellt den Versuch einer Synthese von Chassidismus und Rabbinismus dar.” This characterization also appears in idem, *Die Chassidischen Bücher* (Hellerau: J. Hegner, 1928), 387–89; idem, *Tales of the Hasidim: The Early Masters*, trans. Olga Marx (New York: Schocken Books, 1947), 28–29.
- 8 Samuel Aba Horodezky, *Ha-ḥasidut ve-ha-ḥasidim* (Jerusalem: Dvir, 1922), 4:37–53, 97–102; idem, *Hasidizm*, trans. Y. Zeligman (Berlin: Klal Verlag, 1924), 104–6; idem, *Leaders of Hassidism*, trans. Maria Horodezky-Magasanik (London: Hasefer Agency for Literature, 1928), 61; idem, *Der Chasidizm un zajne firer* (Wilno: Tomor, 1937), 155–75; idem, *Yahadut ha-seikhel ve-yahadut ha-regesh* (Tel Aviv: N. Twersky, 1947), 1:181–83.
- 9 On Shneur Zalman’s contribution, see Levi Cooper, “On Etkes’ *Ba’al Ha-Tanya*,” *Diné Israel* 29 (2013): 177\*–89\*; idem, “Towards a Judicial Biography of Rabbi Shneur Zalman of Liady,” *Journal of Law and Religion* 30 (2015): 107–35.
- 10 Regarding contemporary times, see, for example, Levi Cooper, “Bitter Herbs in Hasidic Galicia,” *Jewish Studies, an Internet Journal* 12 (2013): 30–40; idem, “The Blessing over the Sun Ceremony in Contemporary Hasidic Courts,” *Daat* 77 (2014): 183–207. In both cases, hasidic communities defined their practice in terms of Jewish law.  
In general, hasidic eating as a religious practice has captured scholars’ attention; see Louis Jacobs, “Eating as an Act of Worship in Hasidic Thought,” in *Studies in Jewish Religious and Intellectual History Presented to Alexander Altmann on the Occasion of his Seventieth Birthday*, ed. Siegfried Stein and Raphael Loewe (Alabama: University of Alabama Press, 1979), 157–66; Allan Nadler, “Holy Kugel: The Sanctification of Ashkenazic Ethnic Food in Hasidism,” in *Food & Judaism*, ed. Leonard J. Greenspoon, Ronald A. Simkins, and Gerald Shapiro (Omaha: Creighton University Press, 2005), 193–214.

To some extent, identifying the phenomenon as a “paradox” was an assimilation of the eighteenth-century critique voiced by the *Mitnaggedim* (opponents) – those who clashed with the nascent hasidic movement.<sup>11</sup> Even if hasidic practices could be justified by recourse to the Jewish bookcase, those practices were considered to be beyond the pale by dint of the fact that they were not part of regnant tradition.<sup>12</sup>

The critique of nascent Hasidism focused on select flashpoints. Some of these points of contention were of a theological nature, others had economic implications, and many concerned communal and social structures. The polemic tone of the opposition, magnified the strands of antinomianism casting them as mainstays of Hasidism. With the benefit of historical perspective, it would be more accurate to say that Jewish law was part of the movement’s flesh and blood from its earliest days, while exhibitions of antinomianism were externalities of changes wrought by Hasidism. Yet the narrative of the vociferous *Mitnaggedim* often succeeded in setting the tone. Thus, for example, in 1898, Nachum Sokolow (1859–1936) wrote that

11 See Mordecai Wilensky, *Hasidim and Mitnaggedim: A Study of the Controversy between Them in the Years 1772–1815* (Jerusalem: Bialik Institute, 1970) (Hebrew). For an overview in English, see Mordecai L. Wilensky, “The Hostile Phase,” in *Tolerance and Movements of Religious Dissent in Eastern Europe*, ed. Béla K. Király (Boulder: East European Quarterly, 1975), 89–113; reprinted as “Hasidic-Mitnaggedic Polemics in the Jewish Communities of Eastern Europe: The Hostile Phase,” in *Essential Papers on Hasidism: Origins to Present*, ed. Gershon David Hundert (New York: New York University Press, 1991), 244–71. Wilensky refers to the neglect of Torah study and disrespect for Torah scholars as “the accusation that most hurt the Lithuanian and White Russian *Mitnaggedim*” (62; for details see 105–9). See also Uriel Gellman, *Sefer ḥasidim: Ḥibbur ganuz bi-genutah shel ha-ḥasidut* (Jerusalem: Merkaz Dinur, 2007), 104–5 and n. 308; Gershon David Hundert, “The Introduction to *Divre binah* by Dov Ber of Bolechów,” *AJSR* 33 (2009): 225–69.

Maoz Kahana and Ariel Evan Mayse offered an alternative approach when they identified the spirit/law binary in the academic study of Hasidism as a product of Christian Hebraists, rather than an assimilation of anti-hasidic writings (“Hasidic Halakhah: Reappraising the Interface of Spirit and Law,” *AJSR* 41 [2017]: 375–77).

12 See, for instance, the valiant attempt by the current leader of the *Monasterishte ḥasidim* to provide sources for some of the issues that raised the ire of the *Mitnaggedim*: Gedalya Aharon Rabinowitz, “‘Al mehut ha-maḥloket bein ḥasidim u-mitnaggedim ve-ha-mista‘ef mimmenah,” *Hakirah* 5 (2007): 5–32.

“Rabin-chasyd należał do rzadkości” (the rabbi/hasid was a rarity)<sup>13</sup> – an inaccurate assertion, as we will see.

Scholem’s so-called “paradox” was predicated on the assumption that an innovative, anomian and possibly even antinomian, religious spirit could not possibly jibe with the strictures of Jewish law. This underlying assumption of a spirit/law binary was widely accepted by scholars.<sup>14</sup> Alas, the “paradox” was not probed in earnest; hence the assumption was seldom challenged and nuanced descriptions were rarely offered. The interests of Scholem, his colleagues, and their students lay elsewhere, as they devoted their energies to what would become mainstays of hasidic scholarship.

Scholars of Jewish law have also largely overlooked the legal works from the hasidic *beit midrash*. The Jewish law scholarly project has focused its efforts elsewhere in time and in subject matter. That is, scholars of Jewish law have primarily been interested in earlier periods or in the contemporary legal scene; the late modern period has attracted less attention. Moreover, scholars operating in the academic milieu of law faculties focused on legal texts that overlap with modern, secular systems of law. This is not the forum to debate this propensity; suffice it to say that many legal texts – particularly from the late modern period – have been excluded by this choice.<sup>15</sup> In addition,

13 N.S. [Nachum Sokolów], “Zanik mysnagdyzmu” (The disappearance of mitnaggedism), *Izraelita* 33, no. 43 (Nov. 11, 1898): 449; translated into English in Marcin Wodziński, *Haskalah and Hasidism in the Kingdom of Poland: A History of Conflict*, trans. Sarah Cozens (Oxford: Littman Library of Jewish Civilization, 2005), 298.

14 See, inter alia, Arthur Green, *Devotion and Commandment: The Faith of Abraham in the Hasidic Imagination* (Cincinnati: Hebrew Union College Press, 1989); idem, “Hasidism: Discovery and Retreat,” in *The Other Side of God: A Polarity in World Religions*, ed. Peter L. Berger (Garden City, NY: Anchor Press/Doubleday, 1981), 104–30; Moshe Idel, *Hasidism: Between Ecstasy and Magic* (Albany: State University of New York Press, 1991), 171–88; Joseph Weiss, “Torah Study in Early Hasidism,” in *Studies in East European Jewish Mysticism and Hasidism*, ed. David Goldstein (London: Vallentine, Mitchell, 1997), 56–68; Jacob Katz, *Divine Law in Human Hands* (Jerusalem: Magnes Press, 1998), 84–87; Rivka Schatz-Uffenheimer, *Hasidism as Mysticism: Quietistic Elements in Eighteenth Century Hasidic Thought*, trans. Jonathan Chipman (Princeton: Princeton University Press, 1993), 242–54, 310–25.

15 For the contemporary cost of this approach from jurisprudential and andragogic perspectives; see Levi Cooper, “Culpability for Curses in Jewish Law and Mystical Lore,” in *Wizards vs. Muggles: Essays on Identity and the Harry Potter Universe*, ed. Christopher E. Bell (Jefferson, NC: McFarland, 2016), 188–93.

Jewish law scholars may have followed the lead set by scholars of Hasidism and deemed the field unworthy of serious analysis.

Over the years, certain legal issues, specific figures, select works, or particular trends have been analyzed by scholars of Hasidism.<sup>16</sup> Historical episodes that generated widespread debate have attracted interest. For example, the innovation of Rabbi Gershon Ḥanokh Heinekh Leiner of Radzyń-Podlaski (1839–91) to reintroduce the *tekhelet* thread into *tsitsit* captured attention from the first volley through to contemporary scholarship.<sup>17</sup> Much of this focused scholarship gravitated towards antinomian themes, like the evergreen question of Divine intervention in judicial decisions. In the hasidic context, this question took the form of hasidic masters deciding points of Jewish law

- 16 For example: Certain legal issues – see sources cited in following notes; Cooper, “Bitter Herbs”; idem, “Blessing over the Sun”; idem, “The Formation of Hasidic Custom: Law, Mysticism, and the History of Hasidism,” *Diné Israel* 35 (2021), forthcoming (Hebrew). Specific figures – see sources cited below n. 140. Select works – see sources cited below notes 109, 110, 111. Particular trends – Benjamin Brown highlighted a hypernomian strand in Hasidism; that is, those who adopted stringencies in Jewish law as a means of divine service; see Benjamin Brown, “Haḥmarah: ḥamishah tippusim min ha-‘et ha-ḥadashah,” *Diné Israel* 20–21 (2001): 178–92; idem, “Substitutes for Mysticism: A General Model for the Theological Development of Hasidism in the Nineteenth Century,” *History of Religions* 56 (2017): 266–68; Kahana and Mayse, “Hasidic Halakhah,” 385–86.
- 17 Leiner’s *tekhelet* works: *Sefunei temunei ḥol* (Warsaw: C. Kelter, 1887); *Petil tekhelet* (Warsaw: C. Kelter, 1888); *Eyn ha-tekhelet* (Warsaw: M.Y. Halter, 1891). Real time responses to Leiner include Yosef Eliezer Buchhalter, *Bittul ha-rishon le-ma’amar* (Warsaw: Baumritter, 1888); Mordekhai Rabinowitz, “Tekhelet ve-‘argaman mei-‘iyei elishah,” *Otsar ha-safrut* 2 (1888), biqoret, 1–26; Hillel Moshe Gelbstein, *Mishkenot le-‘avir ya’aqov: Petil tekhelet* (Jerusalem: Y.D. Frumkin; et al., 1890–97). For accounts and analyses, see Yitshak Zigelman, ed., *Sefer Radzyn: Yizkor bukh* (Tel Aviv: Radzyn [Podlaski] Immigrants Association in Israel, 1957), 113–31, also available in English at <http://www.jewishgen.org/yizkor/radzyn/rad113.html>; Shaul Magid, “‘A Thread of Blue’: Rabbi Gershon Henoah Leiner of Radzyń and his Search for Continuity in Response to Modernity,” *Polin: Studies in Polish Jewry* 11 (1998): 31–52; Shimon Fogel, “Pe’iluto ha-sifrutit shel r. Gershon Ḥanokh Heinekh Leiner mei-Radzyn,” *Daat* 68–69 (2010): 149–85; Baruch Stermán with Judy Taubes Stermán, *The Rarest Blue* (Jerusalem: Gefen Publishing House, 2012), 103–16; Gadi Sagiv “Deep Blue: Notes on the Jewish Snail Fight,” *Contemporary Jewry* 35 (2015): 285–313; idem, “Mabbat ḥadash ‘al pulmus ha-tekhelet be-sof ha-mei’ah ha-tesha ‘esreh,” *Zion* 82 (2017): 59–95.

On June 20, 2017, a one-page letter regarding *tekhelet* penned by Leiner in 1890 was sold at auction for \$63,440 (Winner’s Auctions Ltd., auction no. 100, lot 70, <https://winners-auctions.com/he/node/77135>).



with the assistance of *ruah ha-qodesh*. Similarly, the legal philosophy of Izbica Hasidism and its descendants is a significant exception to the trend I have described; though with good reason. The antinomian expressions found in this school excited scholarly interest. This body of research, therefore, fits the paradigm of Hasidism as antinomianism. It should be noted that even this famous brand of Hasidism may have only been theoretically antinomian – a tentative conclusion that could be confirmed by examining law-on-the-books and law-in-action in Izbica circles.

If law in the hasidic realm was not deemed sensationally newsworthy – that is, it did not flirt with antinomianism, nor did it spark polemic exchanges – scholars did not probe its nature.

### Exceptions

There were notable exceptions to the prevalent trend, and these efforts deserve to be acknowledged and assessed. In 1940 – at around the same time as Scholem described the “paradox” – Aaron Wertheim (1902–88) submitted his doctoral dissertation, entitled *The Halakah in the Hasidic Literature*, to The Dropsie College for Hebrew and Cognate Learning, Philadelphia.<sup>18</sup>

Wertheim had served in the rabbinate in Bessarabia, before immigrating to America where he continued in the rabbinate in Massachusetts and then in New York. From 1932 until 1985, he was rabbi of Congregation B’nai Israel of Linden Heights, Brooklyn. Wertheim was member of Mizrachi Organization of America, Rabbinical Council of America, and Union of Orthodox of Rabbis. He donated to the establishment of the Mesivta Tiferes Yisroel, Jerusalem, whose foundations were laid in 1953 by Rabbi Mordekhai Shelomoh Friedman of Boyan-New York (1891–1971), and inaugurated in 1957 by hasidic masters who descended from Rabbi Yisrael of Ružyn (1796–1850). This building continues to function as a yeshiva and synagogue, and serves as headquarters of Boyan Hasidism. Following his retirement, Wertheim continuing as rabbi emeritus in Brooklyn until his death in 1988.<sup>19</sup>

18 I have been unsuccessful in locating a copy of Wertheim’s dissertation, though it is listed as being conferred in 1940; see *The Dropsie College for Hebrew and Cognate Learning: Register 1940-1941* (Philadelphia: n.p., 1940), 40.

19 For brief biographic sketches of Wertheim, see Itzhak J. Carmin, ed., *World Jewish Register* (New York: Monde Publishers, 1955), 703; G. Kressel, *Cyclopedia of Modern Hebrew Literature* (Merhavia: Sifriat Poalim, et al., 1965–67), 1:706 (Hebrew); Yitzhak Raphael, ed., and Geulah bath Yehudah, ass. ed., *Encyclopedia of Religious Zionism*

Wertheim's 1940 dissertation was unknown until 1960 when he published his research in Hebrew under the title *Halakhot va-halikhhot ba-ḥasidut* (Laws and Practices in Hasidism).<sup>20</sup> That year – two centuries since the demise of the Besht (Rabbi Yisrael Baal Shem Tov, ca.1700–60) – was a heady year for hasidic scholarship. Yet in the preface to his Hebrew book, Wertheim bemoaned the fact that the legal literature of the ḥasidim still lay untouched. Wertheim noted how absurd it was that the very system of law that had served as the glue for Jewish communities was being ignored by those who were researching the coalescence of a new form of Jewish community.<sup>21</sup> Just before *Shavuot* of that year – the eve of the anniversary of the Besht's death – in a succinct review in the Hebrew press, Abraham Meir Habermann (1901–80) noted that Wertheim “has illuminated Hasidism in an interesting light, that has not yet served as material for extensive and comprehensive research.”<sup>22</sup> Another review in the Hebrew press by Moshe Ungerfeld (1898–1983) was less sympathetic, questioning whether Hasidism did indeed change accepted Jewish law or whether it merely added a new dimension of meaning to existing law.<sup>23</sup>

In academic circles, Wertheim's volume received a cool reception. Avraham Rubinstein (1912–93) wrote a scathing critique where he highlighted three problems with Wertheim's scholarship. First, Wertheim treated Hasidism as a phenomenon without roots in traditional Jewish mysticism. This resulted in Wertheim mistakenly identifying innovations, where careful reading would have highlighted inflections from existing mystical practice. Second, Rubinstein charged Wertheim with a fanciful image of unified religious observance amongst Polish Jewry. Third, Rubinstein derided Wertheim's

(Jerusalem: Rav Kook Institute, 1958–2000), 6:386–87 (Hebrew); Aaron Pichenik, “The Author and his Book,” in Aaron Wertheim, *Law and Custom in Hasidism*, trans. Shmuel Himelstein (Hoboken: Ktav, 1992), 1–5; Tzvi M. Rabinowicz, *The Encyclopedia of Hasidism* (Northvale: J. Aronson, 1996), 536; Aaron Wertheim, *Halakhot va-halikhhot ba-ḥasidut* (3rd printing, Jerusalem: Mosad Harav Kook, 2003), 3–6.

20 Wertheim, *Halakhot va-halikhhot ba-ḥasidut*.

21 Ibid., 10–11.

22 Abraham Meir Habermann, “Hashpa‘at ha-ḥasidut ‘al ha-minhag,” *Haaretz*, May 31, 1960, 10.

23 M. Ungerfeld, “‘Halakhot va-halikhhot ba-ḥasidut’ lo. Wertheim,” *Hatzofe*, May 6, 1960, 5. For Wertheim's response and Ungerfeld's rejoinder, see Aaron Wertheim, “Biqoret le-biqoret,” *Hatzofe*, June 10, 1960, 5; M. Ungerfeld, “Teshuvah le-biqoret,” *Hatzofe*, June 10, 1960, 5.

simplistic presentation that did not take stock of different hasidic masters, schools, regions, or periods. Rubinstein concluded that “the book in general is disappointing.”<sup>24</sup>

Rubinstein’s critique is well-founded, though I believe he adjudged Wertheim hastily. The maladies that Rubinstein pointed out are indeed methodologically problematic; particularly the lack of comparative yardsticks. I would amplify that point by suggesting that research on hasidic legal texts must take stock of other legal texts, both within the hasidic milieu and beyond, in order to identify points of inflection.<sup>25</sup> I might also add that Wertheim’s citations and footnotes are sorely lacking. Nonetheless, Wertheim should be appreciated for recognising the field and for his initial *longue durée* foray.

Wertheim’s volume continues to be popular in non-academic circles – it has been reprinted several times, as well as translated into English.<sup>26</sup> Even in academia – despite Rubinstein’s critique – scholars who approach a topic in the field of law and Hasidism are likely to consult and reference Wertheim as a starting point. Indeed, two chapters from Wertheim’s book were translated for a 1991 academic publication. The editor of that volume, historian Gershon David Hundert, noted that “for all of its tendentiousness and eclecticism, Aaron Wertheim’s chapter is, to my knowledge, the only presentation of the behavior of a Hasid during the week and on the Sabbath.”<sup>27</sup> The most recent assessment – the monumental 2018 history of Hasidism – offered a similar sentiment in its annotated bibliography: “On Hasidic law and customs,

24 Avraham Rubinstein, “Wertheim, A. Halakhot va-halikhhot ba-ḥasidut,” *Kirjath Sepher* 36 (1960–61): 280–86; citation at 281. See also Zeev Gries, *Sifrut ha-hanhagot* (Jerusalem: Bialik Institute, 1989), 107 n. 14; Shaul Stampfer, “The Dispute over Polished Knives and Hasidic Shechita,” *Jerusalem Studies in Jewish Thought* 15 (1999): 202–3 (Hebrew).

25 For examples of what such comparative analysis might look like: Regarding dancing on Sabbath and Festivals – Levi Cooper, “The *Admor* of Munkács Rabbi Chaim Elazar Shapira: The Hasidic *Poseq* – Image and Approach” (Ph.D. diss., Bar-Ilan University, 2011), 280–99 (Hebrew). Regarding hasidic headwear – Cooper, “Halakhah,” 47–54.

26 Wertheim, *Halakhot va-halikhhot ba-ḥasidut*; idem, *Law and Custom in Hasidism*, trans. Shmuel Himelstein (Hoboken: Ktav, 1992).

27 Aaron Wertheim, “Traditions and Customs in Hasidism,” trans. Eli Lederhendler, in *Essential Papers on Hasidism*, 363–98. Hundert’s comment appears on p. 4.

although originally published more than fifty years ago and often uncritical in its approach, the most comprehensive study is still Aaron Wertheim.<sup>28</sup>

Wertheim was not entirely alone in his efforts. From the late 1950s through the beginning of the 1970s, Yitshaq Alfasi (b.1929) authored a number of studies where he discussed sources in Jewish law for hasidic practice.<sup>29</sup> Alfasi's primary contribution to hasidic scholarship has been in the form of biographical sketches of hasidic masters that are enjoyed by a wide readership.<sup>30</sup> His work on Jewish law and Hasidism has not been subject to scholarly review – perhaps an indication of the prevailing belief that this field of research is unlikely to produce significant fruit. In my estimation, Rubinstein's critique of Wertheim applies equally to Alfasi.

Wertheim and Alfasi declared similar aims, employed similar methods, and even dealt with some of the same issues. Surprisingly, they did not relate to each other's work. Both scholars began with the assumption that Jewish law was the lynchpin of Jewish life. They then highlighted hasidic conduct that appeared to contradict codified Jewish law, and identified possible sources in order to correct the misconception that Hasidism was antinomian.

For all the justified critique of their work it should be said that both scholars correctly identified a lacuna in scholarship. Their virgin efforts were overgeneralized and not sufficiently thorough or nuanced. Their research was bereft of temporal or geographic context. They lacked convincing comparative analysis. But for all their faults, Wertheim and Alfasi recognized that Jewish law has been part of the fabric of hasidic life and should not be shunted aside.

28 David Biale, et al., *Hasidism: A New History* (Princeton: Princeton University Press, 2018), 823.

29 Alfasi's articles were republished in collections of his writings: *Ha-hasidut: Pirqei toldah u-mehqar* (Tel Aviv: Zion, 1969), 85–93, 94–99, 155–62, 184–91, 198–204; *Mehqerei hasidut* (Tel Aviv: Bnei Brith, 1975), 38–53, 72–91; *Bi-sedei ha-hasidut: Mehqarim, pirqei toldah, havay u-mesoret* (Tel Aviv: Ariel, 1987), 44–59, 81–100, 173–81, 182–87, 236–43, 335–43, 349–55, 506–12.

30 Yitshaq Alfasi, *Sefer ha-'admorim: Shoshalot ha-'admorim ve-toldoteihem hei'el mei-ha-besht ve-'ad yameinu* (Tel Aviv: Ariel, 1961); idem, *Ha-hasidut* (Tel Aviv: Sifriyat Maariv, 1974; 2nd ed., Tel Aviv: Sifriyat Maariv, 1977); idem, *Entsiqlopediya la-hasidut: Ishim* (Jerusalem: Mosad Harav Kook, 1986–2004), 3 vols.; idem, *Ha-hasidut: mi-dor dor* (Jerusalem: Machon Daat Yosef, 1995–98), 2 vols.; idem, *Torat ha-hasidut: Toledot, divrei torah ve-hagut shel elef va-shesh mei'ot ishei ha-hasidut* (Jerusalem: Mosad Harav Kook, 2006–12), 4 vols. These pan-hasidic works are in addition to volumes that deal with specific hasidic dynasties.

## Impact

Wertheim's 1960 volume could be read as an expression of hope that intersections between Hasidism and Jewish law would be seriously plumbed. Alas, the call largely went unanswered. Soon after the appearance of Wertheim's volume, Isaac Zeeb Kahana (1904–63) – a professor at Bar-Ilan University – penned a short article mentioning innovative aspects of hasidic life that cropped up in Jewish legal writing in general, and in the responsa literature in particular. The fascinating issues that Kahana highlighted received no further attention.<sup>31</sup>

Subsequent printings and translation of Wertheim's volume included blurbs by Yitzhak Raphael (1914–99), Norman Lamm (1927–2020), and the noted academic and hasidic master Isadore Twersky (1930–97). These short appraisals emphasized that the field was still neglected. Raphael, the manager of the printing press that published Wertheim's dissertation, wrote: "Before us is a very important work, whose influence on the study of Hasidism will continue in the coming years."<sup>32</sup> Important though Wertheim's work may have been, it did not impact the scholarly study of Hasidism.

As part of his work on the literature of Hungarian and Transylvanian rabbis, Yitzchok Yosef Cohen (1923–96) of the Jewish National and University Library (now known as the National Library of Israel), noted cases where hasidic issues were discussed in the responsa literature. Cohen's writings on Hasidism and Jewish law were incidental to his larger project, and they – like those of the scholars who preceded him – went unnoticed.<sup>33</sup>

Further evidence of this neglect can be culled from "the first major international conference dedicated specifically to the study of Hasidism,"

31 Isaac Zeeb Kahana, "Ba'ayot halakhah be-'iqvot ha-'hasidut'," *Sinai* 47 (1960): 244–56; reprinted in *Sefer ha-besht*, ed. Y. L. Hakohen Maimon (Jerusalem: Mosad Harav Kook, 1960), 55–69; reprinted in Isaac Zeeb Kahana, *Mehqarim be-sifrut ha-teshuvot* (Jerusalem: Mosad Harav Kook, 1973), 408–20. Kahana mentions Wertheim's 1960 volume in note 1.

32 Yitzhak Raphael, "The Author and his Book," in Wertheim, *Law and Custom in Hasidism*, 5; published beforehand in the 1989 second Hebrew printing.

33 Yitzchok Yosef Cohen, *Sages of Transylvania, 1630–1944* (Jerusalem: Machon Yerushalayim, 1989), 207–10, 259–63 (Hebrew); idem, " 'Inyanei hasidut be-sifrei ha-she[ 'elot] u-te[shuvot] shel rabbanei Hungaryah," *Nachlas Zvi* 8 (Feb. 1993): 45–63. This article was published in a hasidic journal, and was not included in the author's posthumously published tome: *Sages of Hungary, 1421–1944* (Jerusalem: Machon Yerushalayim, 1997) (Hebrew).

convened in 1988 in memory of the scholar of Jewish Mysticism and Hasidism, Joseph G. Weiss (1918–69). The conference led to a significant volume on Hasidism published in 1996 under the title *Hasidism Reappraised*. The conference's scope was broad; indeed, the organising committee "proceeded to invite to London virtually every scholar known to us to be actively engaged in research and writing on hasidism." Hasidic legal literature was not included on the programme.<sup>34</sup> In his contribution to the conference volume, Zeev Gries specifically noted the neglect of "the large volume of halakhic writings produced mainly by nineteenth-century Polish hasidism."<sup>35</sup>

It would be some time before the interface of Hasidism and Jewish Law would pique academic interest. Recently scholars have begun to sift through hasidic homilies for conceptual statements about jurisprudence, and it could be argued that the strict spirit/law binary narrative is fading.<sup>36</sup> Scholars are recognising that hasidic writings may contain pearls that enhance our understandings of Jewish law. This interest, however, is not necessarily linked to the work of previous scholars, and has focused on statements about law in non-legal hasidic texts. Legal texts penned by hasidic masters and their followers remain largely explored.

Notwithstanding the inroads made, much uncharted territory remains and the common narrative remains prevalent in scholarly circles such that

34 Ada Rapoport-Albert, ed., *Hasidism Reappraised* (London: Vallentine, Mitchell, 1996); citations from the editor's preface, p. v. See also the retrospective on the conference in Arthur Green, "Hasidism and Its Response to Change," *Jewish History* 27 (2013): 319–25.

35 Zeev Gries, "The Hasidic Managing Editor," in *Hasidism Reappraised*, 145.

36 Green, "Hasidism and Its Response," 328–34; Ariel Drescher Mayse, "Beyond the Letters: The Question of Language in the Teachings of Rabbi Dov Baer of Mezritch" (Ph.D. diss., Harvard University, 2015), 421–45; idem, "The Ever-Changing Path: Visions of Legal Diversity in Hasidic Literature," *Conversations: The Journal of the Institute for Jewish Ideas and Ideals* 23 (2015): 84–115; Kahana and Mayse, "Hasidic Halakhah," 397–407; Ariel Evan Mayse, "Tree of Life, Tree of Knowledge: Halakhah and Theology in *Ma'or va-Shamesh*," *Tradition* 51, no. 1 (2019): 3–26; expanded in Hebrew in *Maor VaShamesh: History, Philosophy, Lore, and Legacy*, ed. Levi Cooper, Ariel Evan Mayse, and Zvi Mark, forthcoming (Hebrew); Menachem Lorberbaum, "Rethinking Halakhah in Modern Eastern Europe: Mysticism, Antinomianism, Positivism," in *The Cambridge Companion to Judaism and Law*, ed. Christine Hayes (New York: Cambridge University Press, 2017), 232–59, at 235–44. Benjamin Brown noted: "As a rule, Hasidism was not an antinomistic movement" ("Substitutes for Mysticism," 254).

Scholem's "paradox" continues to reverberate.<sup>37</sup> This dichotomous approach continues to find expression in the widespread neglect of legal writings.<sup>38</sup> In some cases, scholars forthrightly acknowledge that legal writings are beyond the purview of their analysis.<sup>39</sup> For the narrative to evolve, the binary perspective must be jettisoned in favour of a more elastic and fluid image of Hasidism that baulks at monolithic characterizations. But this is not all that is needed: Thorough engagement with legal texts from the *beit midrash* of Hasidism is necessary. A step in this direction might be recognition of the rich and varied hasidic encounters with Jewish law. It is to such a collage that I now turn.

- 37 Moshe Rosman, "Pesaq dinah shel ha-historiography ha-yisra'elit shel ha-hasidut," *Zion* 74 (2009): 166, 174.
- 38 As Mayse observed, "the academic study of the relationship between Hasidic devotional piety and *halakhah* has only just begun" ("Beyond the Letters," 426). See also Uriel Gellman, *The Emergence of Hasidism in Poland* (Jerusalem: The Zalman Shazar Center, 2018), 163–64 (Hebrew); Biale, *Hasidism*, 170–72; Avisar Har-Shefi, ed., *Ha-ḥasidut ve- 'arakheha*, forthcoming – while the anthology contains a detailed entry by Amira Liwer on Torah study (235–66), there is no entry on Jewish law. Marcin Wodziński, in the introduction to his *Historical Atlas of Hasidism*, detailed five aspects of Hasidism that have been neglected in research; he did not mention legal writings. Elsewhere, Wodziński examines thirteen classes of sources for the study of Hasidism, and there he included a chapter on Jewish legal writings. See Marcin Wodziński, cartography by Waldemar Spallek, *Historical Atlas of Hasidism* (Princeton: Princeton University Press, 2018), 4–5; Wodziński, *Studying Hasidism*, 10–11, 36–59.
- 39 Immanuel Etkes, *Ba'al Ha-Tanya: Rabbi Shneur Zalman of Liady and the Origins of Habad Hasidism* (Jerusalem: The Zalman Shazar Center for Jewish History, 2011), 20–21 (Hebrew); see Cooper, "On Etkes' *Ba'al Ha-Tanya*," 184\*–85\*. Menachem Lorberbaum mentioned "important halakhic works of central Hasidic figures from the third generation following the Besht" as an aspect not included in his analysis that "would clearly color a fuller development" of the themes he outlines ("Rethinking *Halakhah*," 235 n. 14). In a recent study, Marcin Wodziński and Wojciech Tworek noted: "While we have striven to examine as wide a source basis as possible, we have decided to exclude from this study the Hasidic halakhic literature. Although containing numerous references to the non-Jewish world, Hasidic halakhic works have not yet been sufficiently studied to allow for a broader picture" ("Hasidic Attitudes Towards the Non-Jewish World," *Jewish Social Studies* 25, no. 3 [2020]: 59 n. 4).

### 3. Ensclosed in Law: A Collage

#### Rabbinat

**Rabbi Levi Yitshaq of Berdyczów** (1740–1809) was the author of *Qedushat levi* – a seminal hasidic volume, published by a hasidic leader in his own lifetime, under his own name, in two editions.<sup>40</sup> In collective memory Levi Yitshaq is remembered as a beloved master. Yiddish songs, Hebrew poetry, and even Israeli numismatics have celebrated his unique dialogue with God. Levi Yitshaq also served as the official rabbi of Ryczywół, Żelechów, Pinsk, and Berdyczów.<sup>41</sup> The communal rabbinat was a position that entailed responsibility for the administration of Jewish law. Moreover, surviving documents attest to Levi Yitshaq's juridical role in civil disputes.<sup>42</sup>

40 Levi Yitshaq of Berdyczów, *Qedushat levi* (Sławuta: n.p., 1798; Żółkiew: A.Y.L.M. Hoffer, 1806). Works published before *Qedushat levi* include: *Toledot ya'aqov yosef* (Korzec: Tsvi Hirsh ben Arye Leib and Shmuel ben Yisakhar Ber, 1780), *Ben porat yosef* (Korzec: Tsvi Hirsh ben Arye Leib and Shmuel ben Yisakhar Ber, 1781), and *Tsofnat panei 'ah* (Korzec: Tsvi Hirsh Margoliot ve-ḥatano, 1782) by Rabbi Ya'aqov Yosef of Połonne (d.1799), prepared for publication to some extent by the author, but published posthumously; *Maggid devarav le-ya'aqov* (Korzec: Tsevi Hirsh ben Arye Leib and Shmuel ben Yisakhar Ber, 1781), collected teachings of the Maggid of Mezritch Rabbi Dov Ber (d.1772); *No'am elimelekh* (Lwów: Yehuda Shlomo ben Naftali Hirtz Rapoport, 1787) by Rabbi Elimelekh of Lezajsk (1717–87), published posthumously; *Keter shem tov* (Żółkiew: Y.L.M. Hoffer and Mordekhai Rabin Stein, 1794–95) by Rabbi Aaron Hakohen of Opatów (d.1803); *Darkhei tsedek* (Lwów: Yehudit eshet r. Tsvi Hirsh [Rosannes], 1796) by Rabbi Zekharyah Mendel of Jarosław (ca.1720–95), published posthumously in two editions in the same year; *Liqqutei amarim* (Sławuta: [M. Shapira], 1796) by Rabbi Shneur Zalman of Liady (ca.1745–1812), published anonymously; more commonly known as *Tanya* – the first word of the work and the title of subsequent editions published in the author's lifetime (Żółkiew: Mordekhai Rabin Stein, 1799; Żółkiew: A.Y.L.M. Hoffer, 1805); the Szklów 1806 edition, also published in the author's lifetime, used the original title.

41 On the importance of Levi Yitshaq's Berdyczów rabbinat, see Yohanan Petrovsky-Shtern, "The Drama of Berdichev: Levi Yitshak and his Town," *Polin: Studies in Polish Jewry* 17 (2004): 83-95; idem, "Ha-drama shel Berdichev: R. Levi Yitshaq ve-'iro," *Rabbi Levi Yitzhak of Berdichev: History, Thought, Literature and Melody*, ed. Zvi Mark and Roee Horen (Tel Aviv: Mishkal, 2017), 15-44.

42 Levi Cooper, "Rabbanut, halakhah, lamdanut: Hebeitim 'alumim be-toledot ha-rav Levi Yitshaq mi-Berdichev," in *Rabbi Levi Yitzhak of Berdichev*, 62–130.



Indeed, many hasidic masters served in official communal positions with varying levels of involvement in the local administration of Jewish law. While additional examples of this phenomenon will be mentioned below, a comprehensive catalogue of the vocations of hasidic masters – before they assumed the role of hasidic leadership and while they functioned in this capacity – is yet to be compiled.<sup>43</sup>

Geographic and demographic aspects of Hasidism have attracted scholarly attention, offering visual images that illustrate trends in the dispersion and growth of Hasidism.<sup>44</sup> Mapping locales where hasidic masters (and their adherents) held official rabbinic positions, and overlaying such information with demographic data would provide an additional perspective on the relationship between hasidic leadership and the institutional rabbinate.

### Authorship

**Rabbi Uziel Meisels** (1744–85), a colleague of Levi Yitshaq, also served in the rabbinate of a number of towns: Ostrowiec, Ryczywół, and Nowy Korczyn. Meisels' hasidic work, *Tiferet 'uziel*, preserves early hasidic teachings. Meisels also wrote commentaries on portions of the Talmud, as well as a work in Jewish law: *Menorah ha-tehorah* – a gloss on the laws of Sabbath.<sup>45</sup>

43 For students of the Hozeh of Lublin who served in official rabbinic roles, see Gellman, *Emergence of Hasidism*, 256 n. 50.

44 For initial forays, see Adam Teller, "Hasidism and the Challenge of Geography: The Polish Background to the Spread of the Hasidic Movement," *AJSR* 30 (2006): 1–29; Samuel C. Heilman, "What's in a Name? The Dilemma of Title and Geography for Contemporary Hasidism," *Jewish History* 27 (2013): 221–40. For in-depth analysis, see Marcin Wodziński and Uriel Gellman, "Towards a New Geography of Hasidism," *Jewish History* 26 (2013): 171–99; Glenn Dynner, "Hasidism and Habitat: Managing the Jewish-Christian Encounter in the Kingdom of Poland," in *Holy Dissent: Jewish and Christian Mystics in Eastern Europe*, ed. Glenn Dynner (Detroit: Wayne State University Press, 2011), 104–30; Marcin Wodziński, "Space and Spirit: On Boundaries, Hierarchies and Leadership in Hasidism," *Journal of Historical Geography* 53 (2016): 63–74; Zef Segal and Menahem Blondheim, "America on the Responsa Map: Hasidim, Mitnagdim, and the Trans-Atlantic Social Network of Religious Authority," *American Jewish History* 102 (2018): 133–53. The most important stride in this field is Wodziński and Spallek, *Historical Atlas*. The project entitled "HaMapah: Quantitative Analysis of Rabbinic Literature" run by Elli Fischer and Moshe Schorr underscores the potential of this type of analysis, see <https://blog.hamapah.org>.

45 Meisels' works: *Tif'eret ha-tsevi* (Żółkiew: G. Letteris, 1803) on the first chapter of *Babylonian Talmud*, tractate *beitsah*; *Kerem shelomoh* (printed with *Tif'eret*

In the front matter of *Menorah ha-tehorah*, Meisels' descendant noted family traditions regarding the work. Inter alia, he recorded that his forebears had seen an approbation for the work penned by **Rabbi Elimelekh of Leżajsk** (1717–87). The descendant was unable to report the exact language of the approbation, but he recalled that Elimelekh had declared that the work needed no formal commendation “because it was written in holiness and purity, at the instruction of ... Dov Ber of Mezritch ... and he said about the present work that it is true Torah as it was given at Sinai.”<sup>46</sup> Thus this legal work was reportedly written at the behest of the second most important figure in hasidic collective memory: **Rabbi Dov Ber** (d.1772), the *maggid* (preacher) of Mezritch (Polish: Międzyrzec Korecki).

As I will detail below when discussing contributions to various literary genres of Jewish legal writing: Hasidic masters were impressively active in authoring texts of Jewish law. Meisels' *Menorah ha-tehorah*, like many such works from the hasidic *beit midrash*, have yet to be analyzed for hasidic footprints. Moreover, Meisels' three works offer a composite portrait of this hasidic persona, though it is questionable whether there is any crossover from his hasidic ideas to his legal writing. For instance, in his hasidic work Meisels refers to the possibility of legal rulings being linked to the decisor's soul root.<sup>47</sup> I have yet to find evidence of this idea in his legal writing.

## Publishing: Involvement and Encouragement

Hasidic involvement in the development of Jewish law extended to printing ventures that included the publication of classic tomes of Jewish law.<sup>48</sup> While

*ha-tsevi*) including talmudic and legal miscellany; *Ets ha-da'at tov* (Warsaw: N. Schriftgisser, 1863) on *Babylonian Talmud*, tractate *ketubbot*; *Tif'eret 'uziel* (Warsaw: N. Schriftgisser, 1863) hasidic homilies, including citations from Besht and Maggid; *Menorah ha-tehorah* (Lemberg: U.W. Salat, 1883–84) commentary on the laws of Sabbath as codified in *Shulhan 'arukh*, oraḥ hayyim, sec. 242–343; *Ets ha-da'at tov* (Lemberg: U.W. Salat, 1886) on *Babylonian Talmud*, tractate *shabbat*. More of Meisels' hasidic homilies were included in his nephew's work: Tsevi Menaḥem Meisels, *Zikhron tsevi menaḥem* (Przemyśl: A. Żupnik & Knoller, 1873), 78b–83a. On Meisels see A. Y. Bromberg, “Rabbi ‘Uzi’el Meisels Rozenwasser,” *Sinai* 64 (1969): 199–201.

46 Meisels, *Menorah ha-tehorah*, [5].

47 Meisels, *Tif'eret 'uziel*, fol. 44c.

48 On hasidic printing in general, see Zeev Gries, *Sefer sofer ve-sippur be-reishit ha-ḥasidut* (Tel Aviv: Hakibbutz Hameuhad, 1992), 47–62; Haim Liberman,

the aforementioned **Rabbi Shneur Zalman of Liady** is famous as a hasidic thinker and activist, he was also an eminent author of legal texts whose writings in the field of Jewish law were mostly published after his demise.<sup>49</sup> In addition, Shneur Zalman served as an arbitrator in civil disputes, though we know little about his activity in this arena.<sup>50</sup> It is less well-known that Shneur Zalman was active in bringing classic works of Jewish law to the printing press. He was responsible for the publication of an edition of the Babylonian Talmud and an edition of *Arba 'ah turim*, a fourteenth-century consolidation of Jewish law.<sup>51</sup> These volumes were published in Ślawuta – a printing press that was also responsible for the publication of important hasidic works. Publishing ventures, particularly when they involved reissuing multi-volume works, entailed significant financial investment and risk.

Hasidic masters also had a hand in publishing enterprises by writing approbations that encouraged the public to purchase newly printed books. Such approbations generally included a ban for a given period, that prohibited the publication of the work by another party, thereby assisted investors in recovering their costs and turning a profit. We have a solitary approbation from the Maggid of Mezritch, and this letter was given for a little-known legal work: *Halakhah pesuqah* by Rabbi Todros ben Tsevi Hirsh of Równe – a commentary on 122 sections of *Shulḥan 'arukh* dealing with ritual slaughter and other aspects of dietary laws. The Maggid's approbation is the ninth and last approbation on the page. The Maggid declared that he normally avoided giving approbations, yet this innovative work justified an exception.<sup>52</sup>

“Bedayah ve-’emet bi-dvar batei ha-dfus ha-ḥasidiyim,” *Ohel rahel* (New York: H. Liberman, 1980–84), 3:14–103.

49 For a bibliography of his legal writings, see Yehoshua Mondshine, *Sifrei ha-halakhah shel admor ha-zaqen* (Kefar Chabad: Kehot, 1984).

50 See Etkes, *Ba'al Ha-Tanya*, 97–98, 265–66, 268, 271, 294, 302–3.

51 *Talmud bavli* (Ślawuta: Dov Ber ben Israel and Dov Ber ben Pesah, 1801–6); *Arba 'ah turim* (Ślawuta: Dov Ber ben Israel and Dov Ber ben Pesah, 1801–2). Shneur Zalman subsequently sold the publishing rights; see *Talmud bavli: Berakhot* (Ślawuta: Dov Ber ben Israel and Dov Ber ben Pesah, 1808); *Arba 'ah turim* (Ślawuta: M. Shapira, 1815); *Talmud bavli: Berakhot* (Ślawuta: M. Shapira, 1816); Shneur Zalman of Liady, *Iggerot qodesh* (Brooklyn: Kehot, 2012), 351–57.

52 Todros ben Tsevi Hirsh of Równe, *Halakhah pesuqah* (Turka: Yehoshua Heshel ben Tsevi Hirsh and Shlomo ben Meir, 1765), on *Shulḥan 'arukh*, yoreh de'ah, sec. 1–122; approbations printed on the title verso page. No subsequent editions were published until a 1991 Brooklyn reprinting. The author Todros is virtually

Other hasidic masters were far more liberal in penning approbations. **Rabbi Avraham Yehoshua Heshel** (ca.1747–1825) is known for his posthumously published hasidic work, entitled *Ohev yisra'el*. He did not bequeath legal writings, but he served as rabbi in Kolbuszowa, Opatów, and Iași the capital of Moldavia, before retiring from the official rabbinate and moving to Międzybóž – the city famous as the Besht's residence and resting place. We would be hard pressed to find a hasidic master who matched Avraham Yehoshua Heshel for the sheer number of approbations he wrote, many of them for the publication of works in Jewish law.<sup>53</sup>

### Studying Law: Vice and Value

Enduring interest in Jewish law was also reflected in homilies extolling the study of law, while warning of the pitfalls of the discipline. Thus, for example, in collections of the Maggid's teachings the work of the Evil Inclination is described thus:

Certainly the Evil Inclination does not tempt the person not to study at all, because he knows that the person will not heed him in this matter. Because if the person does not study at all, he will not be considered in the eyes of people, and he will not be called a scholar.

According to the Maggid, the Evil Inclination is far more cunning:

Rather, the Evil Inclination tempts the person not to study whatever it is that brings the person fear of Heaven, such as books of ethics or *Sh[ullḥan] 'a[rukh]* to know the law clearly.

unknown; see Aryeh Avatichi, ed., *Rowno: Sefer zikkaron* (Tel Aviv: Hotsa'at yalkut Vohlin - irgun yots'ei Rovne be-Yisra'el, 1956), 419.

53 Avraham Yehoshua Heshel of Opatów, *Ohev yisra'el* (Żytomierz: H.L. and Y.H. Shapira, 1863). See Horodetsky, *Ha-ḥasidut ve-ha-ḥasidim*, 2:177–89; Matityahu Yehezkel Guttman, *Mi-gibborei ha-ḥasidut*, part 1, booklet 1 (Warsaw: Yeshurun, 1926); Abraham J. Heschel, "Unknown Documents on the History of Hassidism," *Yivo Bleter* 36 (1952): 119–21 (Yiddish); Meir Wunder, *Me'orei Galitsya* (Jerusalem: Ha-makhon le-hantsaḥat yahadut Galitsya, 1978–2005), 2:724–30; *Iggerot ha-'ohev yisra'el* (2nd ed., Jerusalem: Makhon siftei tsaddiqim, 2000), 193–240.

Levi Yitshaq of Berdyczów also wrote numerous approbations. At the present time there is no complete list; for now see Cooper, "Rabbanut, halakhah, lamdanut," 73–74.

Rather, he tempts the person to constantly delve into Talmud with all the commentators.<sup>54</sup>

The homily is fascinating: First, contrary to accusations levelled at nascent Hasidism – scholarship is lauded; the battlefield for striving against the Evil Inclination is Torah study. Second, the Evil Inclination tries valiantly to stop the person from studying what is most beneficial to a person’s spiritual growth: ethical literature and – perhaps surprisingly – Jewish law.

A parallel source that records this homily does not single out the Talmud as the Evil Inclination’s objective, rather it describes a particular type of Talmud study that leads nowhere: *pilpul*, that is hair-splitting casuistry “that is not along the path of truth.”<sup>55</sup> Other statements attributed to the Maggid, do not cast the Talmud in a negative light. For instance, **Rabbi Zekharyah Mendel of Jarosław** (ca.1720–95) recorded that according to the Maggid, novellae in Talmud study “purify the mind for the service of God.”<sup>56</sup> One of the prime students of the Maggid, the aforementioned Elimelekh of Leżajsk, reportedly said that studying Talmud was a prerequisite for spiritual greatness.<sup>57</sup>

To be sure, there were discussions regarding the goals of such study. For example, according to **Rabbi Menaḥem Naḥum of Chernobyl** (1730–97) the objective of study is not to amass knowledge. Rather, the goal of learning Torah is to go beyond the letters and perceive hidden, divine light.<sup>58</sup> Similarly, there were questions of how best to allocate time for spiritual pursuits:

54 Yeshayahu of Dunayevtsy, *Or torah... Dov Ber...* (Korzec: Avraham [ben Yitshaq Eiziq], 1804), [92a]; Levi Yitshaq of Berdyczów, *Or ha-’emet... Dov Ber... ha-maggid mi-Mezritch...* (Żytomierz: Yosef Kesselman, 1900), 126; *Tsava’at mei-rivash ve-hanhagot yesharot* (Żółkiew?: n.p., 1794), [34].

55 *Liqqutim yeqarim* (Lemberg: Yehuda Shlomo Yaris Rapoport, 1792), 18a–b; regarding the author of this work, see J. G. Weiss, “The Kavvanoth of Prayer in Early Hasidism,” *JJS* 9 (1958): 186–87 n. 47. Critique of *pilpul* style study appears elsewhere in early hasidic writings like *Toledot ya’aqov yosef*.

56 *Darkhei tsedeq*, [41], citing “rabbo shel moreinu,” the teacher of our master – Zekharyah Mendel was a student of Elimelekh of Leżajsk, who was a student of the Maggid.

57 As recorded by Elimelekh’s son, Elazar (ca.1742–1806), in a letter first printed ca.1785 and reprinted in *No’am elimelekh* (Lwów: Yehuda Shlomo ben Naftali Hirtz Rapoport, 1787), 111c.

58 Menaḥem Naḥum of Chernobyl, *Me’or ‘einayim* (Sławuta: n.p., 1798), 8c–d, bereshit, s.v. bereshit; 72b–d, tsav, s.v. ve-ha-’esh; 87d–88b, ḥuqqat, s.v. vaydabber;

The soul declared to the Rabbi [Besht] ... that the reason that he merited that supernal matters were revealed to him was not because he had studied many tractates and decisors, rather it was because of prayer. For he always prayed with great concentration, and for that he merited an elevated state.<sup>59</sup>

While prayer is prioritized over study in this passage, it is nonetheless evident that according to this source, the Besht designated time for study of Talmud and Jewish law. Indeed, another passages makes it clear that the Besht's spiritual regimen included Torah study which served as inspiration for him throughout that day.<sup>60</sup>

Whether or not we view such sources as historical accounts of the Besht's life, it is apparent that hasidic collective memory preserved study of Jewish law as a value. There may have been concern with the motivation for study, rather than with the subject matter. This approach is voiced by an early master, **Rabbi Meshullam Feivish Heller of Zbaraz** (ca.1740–94):

For if a person studies with truth and with fear of sin, and as long as he studies more, [the Evil Inclination] will be more subjugated. ... But if he studies in order to be a scholar and witty and expert in law to adjudicate and to instruct – as much as “he adds knowledge” [Eccl 1:18] with some casuistry or argument, “he will add pain” [ibid] as his heart gets haughtier.<sup>61</sup>

In a similar vein, **Rabbi Ya‘aqov Yosef of Połonne** (d.1799) warned that studying Jewish law could lead to haughtiness:

And when a person studies one law he is a little boastful, and when he studies more [law] he is more boastful, and when he

idem, *Yesamah lev* (Sławuta: n.p., 1798), 7d–8a, shabbat, s.v. mippenei ma; 13a–b, pesaḥim, s.v. vehinneḥ.

59 *Liqqutim yeqarim*, 1c; *Tsava'at mei-rivash ve-hanhagot yesharot*, [10]; *Keter shem tov* (1794–95), 22a; *Keter shem tov* (Brooklyn: Kehot, 2004), 111, sec. 197. Alternative translation in Louis Jacobs, *Hasidic Prayer* (New York: Jewish Publication Society of America, 1972), 17. According to Jacobs the dialogue was between the Besht and his own soul.

60 *Liqqutim yeqarim*, 1b; *Tsava'at mei-rivash ve-hanhagot yesharot*, [8–9]; *Keter shem tov* (1794–95), 22a; *Keter shem tov* (2004), 110–11, sec. 196.

61 Meshullam Feivish Heller, *Derekh ha-'emet*, printed in Zekharyah Mendel of Jarosław, *Darkhei tsedeq* [Lwów: n.p., 1830], second pagination, [3].

studies the decisors or Kabbalah he is even more conceited and distances himself from God.<sup>62</sup>

Despite the traps, simple study of the law is lauded, as a directive attributed to the Besht confirms:

And he warned seriously to study the words of *Shulḥan 'arukh* without any commentary, and to learn [the laws] with the youth, and how much more so with adults. For by stopping this study, Torah is forgotten from Israel.<sup>63</sup>

Study of “*Shulḥan 'arukh* without any commentary” would not provide sufficient expertise for judicial ruling, thus the counsel continues: “Anyone who wants to rule on a legal matter, then he should delve well into the commentators.”

Indeed, from the earliest days of the nascent movement, *Shulḥan 'arukh* study was encouraged. In an undated letter penned by **Rabbi Aharon Perlow of Karlin** (the first, 1736–72), the writer chastised his correspondent for excessive fasting and ritual immersions. Aharon of Karlin then advised a daily study regimen of the first section of *Shulḥan 'arukh*.<sup>64</sup>

The theme of studying codes was picked up by **Rabbi Yehezqel Panet** (1783–1845) – a hasidic master who served as rabbi in Ustrzyki Dolne (Yiddish: Iстриk) from 1807 until 1813, when he moved to Hungary to serve as rabbi of Tarcal. In 1823 he was appointed to the prestigious position of rabbi of Alba Iulia (Yiddish: Karlsburg; Hungarian: Gyulafehérvár; today in Romania), the seat of the Transylvanian rabbinate. In a lengthy sermon, Panet demanded that even those engaged in business during the day need to set aside time for Torah study, encouraging them to steal an hour or two from the workday in order to learn. Regarding the curriculum of study, Panet was critical of those who study basic texts that are not intellectually challenging. Panet continued:

Moreover, it is a greater religious ideal [*mitsvah*] to study *Shulḥan 'arukh* in order to know the laws, how to act in each matter.<sup>65</sup>

62 *Toledot ya 'aqov yosef*, vayḥi, 34c (sec. 2 in later editions).

63 *Keter shem tov* (1794–95), [59b]; *Keter shem tov* (2004), 263, sec. 423b.

64 Aharon ben Asher of Karlin, *Beit aharon* (Brody: Moshe Leib Harmelin, 1875), 295, undated letter by the author's grandfather appended to the grandson's collected teachings.

65 Yehezqel Panet, *Mar'eh yehezqel* (Dés: Rivka Bernat, 1893), she'erit tsiyon, 12b.

Advocating study of codes, did not necessarily mean forsaking other primary texts of Jewish law. Shneur Zalman of Liady explained that while study that leads to action is advised, learning sections of Jewish law that no longer have practical application – like the laws of sacrifices – is also a worthy pursuit. Shneur Zalman explained:

Especially nowadays, there is a summary of law in the *Shulḥan ‘arukh* which is also the revelation of the One on High concerning practice, nevertheless one must study Talmud, because the point [of study] is not – so that it should be concerning practice; rather, in order that a person should express words of Torah with the mouth.<sup>66</sup>

In his epistles, Shneur Zalman encouraged his followers to include relevant law in their daily programmes of study.<sup>67</sup>

While there may have been reservations about motives and methods, and there certainly were discussions about priorities, there is no doubt that learning Jewish law was lauded.<sup>68</sup>

## Curriculum

Praising the study of Jewish law was not reserved for homilies. The prominence of the discipline is also apparent from incidental reminiscences about learning with hasidic masters, and in curricula overseen or designed by hasidic masters.

**Rabbi Meir of Husaków** (1760–1806) – son of Levi Yitṣḥaq of Berdyczów – inherited the Husaków rabbinate from his paternal grandfather. Meir’s book, *Keter torah*, included talmudic novellae, and responses to those who disagreed with the rulings of the great twelfth-century codifier Maimonides.<sup>69</sup>

66 Shneur Zalman of Liady, *Liqqutei torah* (Żytomierz: H.L., A.L., and Y.H. Shapira, 1848), devarim, 84b.

67 Shneur Zalman of Liady, [*Tanya*] (Szkłów: [Ezriel Zelig ben Ya‘aqov, 1814], *iggeret ha-qodesh*, ch. 1 and ch. 23; reprinted in idem, *Iggeret qodesh*, 8–12, 320–23.

68 For hasidic statements on Torah study, see Amira Liwer’s forthcoming entry “Limmud torah ha-ḥasidut,” in *Ha-ḥasidut ve-‘arakheha*, 235–66. Written for a wide readership, Liwer did not include references to scholarly work, though she presents an impressive collection of primary sources and offers a map of the issues.

69 Meir of Husaków, *Keter torah*, vol. 1 (Mezyrów: Yeḥezqel ben Shevaḥ, 1803); vol. 2 (Żytomierz: n.p., 1806).



When Levi Yitshaq first published his *Qedushat levi* in 1798, he included selections from two of his children and from his father. Meir's contribution opens with a vignette about his father:

And thousands of Jews who heard the words of his holy spirit, their hearts and souls were inspired for the service of God. And forever until this very day his tent is a tent of Torah, to study with students legal novellae and to innovate new understandings in Torah.<sup>70</sup>

Some five years later, Meir published his own work and once again he related to his father's curriculum of study:

And this is known to the entire world, that he – the honourable, my master, my father, my teacher, may he live – raised a few thousands of students; that he taught them novellae in Talmud, the commentary of *Rashi* and *Tosafot*, and the legal decisors.<sup>71</sup>

Even if Meir exaggerated the number of students who studied with his father, both recollections – published during his father's lifetime – point to a curriculum that gave prominence to the study of Jewish law.

Over a decade later, in 1816, **Rabbi Dov Ber Shneuri of Lubavitch** (1773–1827) – son of Shneur Zalman of Liady and one of his successors – also promoted study of Jewish law. Dov Ber devised a tiered study programme that included his father's code of law. In the introduction to the fourth volume of the code, Dov Ber turned to communities that heeded his directives:

I command them, that they should make a fixed practice in each prayer quorum, to study and to delve into these laws in this entire book.<sup>72</sup>

Dov Ber went further calling on disciples to divide the most relevant section of the code among community members, such that the community would collectively study and complete the entire work once or twice a year. Dov Ber may have been using the curriculum to promote his father's work that

70 Levi Yitshaq of Berdyczów, *Qedushat levi* (Sławuta: n.p., 1798), 25b.

71 *Keter torah*, vol. 1, author's introduction.

72 Shneur Zalman of Liady, *Shulhan 'arukh [ha-rav]: Oraḥ ḥayyim* [vol. 4] (Kopyś: Ha'ahim Yehudah ve-Yisrael benei U[ri] Sh[raga] Feivish Yoffe, 1816), introduction, pp. 1b–2a. See also Levi Cooper, "Divide and Learn," *Jewish Educational Leadership* 12 (2013): 59–63.

he and his brothers had just published. Notwithstanding, the emphasis on study of Jewish law is undeniable.

## Disposition

In his 1796 work, the aforementioned Zekharyah Mendel of Jarosław recorded a tension that is liable to rear its head during rigorous study of law. A person who seriously invests in Talmud study may discover new readings or applications. These novellae will undoubtedly make the student overjoyed. But is this happiness warranted or encouraged? Perhaps the joy reflects haughtiness and is merely self-serving; perhaps study is loftier when it undertaken without any personal benefits?

According to Zekharyah Mendel, this question was posed to the Besht, who answered: “What can be done? [The verse says:] ‘The precepts of the Lord are just; they gladden the heart’ [Ps 19:10] – they themselves gladden the heart!”<sup>73</sup> Thus studying the “precepts of the Lord” was cast – perforce! – as a joyful experience.

It must be said that the issue was not a solely a matter that captivated the attention of hasidic masters. Thus, for instance, Rabbi Ḥayyim of Wołożyn (1749–1821) – a spokesperson for the anti-hasidic camp – offered a position that was strikingly similar to Zekharyah Mendel’s report of the Besht’s position: “If a person studies *lishmah* [for its own sake] in order to act” – meaning, not for the sake of fame, fortune, or intellectual simulation – “and in the course of his studies he enjoys its wisdom – this will not be considered a sin for him, since his study is primarily for the sake of action.”<sup>74</sup> Like the Besht, Ḥayyim of Wołożyn recognized that joy in study was a possible by-product of the endeavor.

In a passage attributed to the Maggid, enjoyment while studying Jewish law was not just perceived as an incidental side-effect. According to the teaching, learners were encouraged to actively contemplate God’s presence in Jewish law – a notion that would precipitate joy, awe, and love.<sup>75</sup>

73 *Darkhei tsedeq*, [41]; also cited in Tsevi Elimelekh Shapira, *Agra de-kala* (Lemberg: M. F. Poremba, 1868), 101c–102a, ḥayyei sarah, s.v. be-midrash be-parashah zo kad.

74 Ḥayyim of Wołożyn, *Ruah ḥayyim* (Vilna: Y.R. Romm, 1858), 3:9.

75 *Or ha-’emet*, 28.

The very discussion of the most appropriate mood for Torah study, further indicates that learning was part of hasidic life.<sup>76</sup>

#### 4. Jurisprudence

Scholars of Hasidism will not be surprised by the sources I have cited, though they may be uncomfortable with how I have cited them. The snippets are part of complex discourses that need to be considered in their broader contexts, and it is almost a travesty to cite them piecemeal. My point is that scholars – of law and of Hasidism – have only begun to examine these sources for their social significance and for their jurisprudential depth. Let me, therefore, pause to consider discussions of theoretical aspects of law. This section can be divided into two categories: hasidic homilies that discuss legal theory, and works that use Jewish law as scaffolding for discussion of hasidic ideas. Many of the texts that follow have been highlighted by scholars, and I am indebted to their work. These discussions can be complemented by a consideration of hasidic tales from a Law and Literature angle; a largely untapped perspective.

##### Legal Theory

Hasidic masters expounded on jurisprudential issues in their homilies, offering conceptual formulations grounded in Jewish mystical tradition for notable features of the Jewish legal system. For example, **Rabbi Levi Yitshaq of Berdyczów** related to the division in Jewish tradition between Written Law and Oral Law. He explained that Written Law is fixed, whereas Oral Law is malleable; sages of each generation are charged with the task of molding law. This endeavor includes “to explain and to interpret the Written Law as per their wish and their opinion, even though in Heaven the intent is not so.” Levi Yitshaq continued, investing the hasidic masters of his own generation – and perhaps himself – with this very licence. Moreover, he opined that when this licence is put in play – that is, when law is changed, abrogated, or innovated – “even though in Heaven it is not so, they change Will On High – if it were possible – to their will and their explanation of the

76 See also Levi Cooper, “Enjoy Torah study?” *Jerusalem Post*, October 28, 2011, magazine, p. 43, also available at <https://www.jpost.com/Magazine/Judaism/The-Tisch-Enjoy-Torah-study>.

Torah.”<sup>77</sup> As mentioned, Levi Yitshaq served extensively in judicial roles, though I have yet to find an actual case where this conceptual formulation was invoked. This is a significant caveat that needs to be recalled whenever discussing the theoretical jurisprudence of hasidic masters.

It was not just unique features of Jewish law that captured the attention of hasidic masters; in their homilies they related to issues that are pertinent to any legal system, such as the ethics of judges, judicial error, and *stare decisis*. For example, **Rabbi Tsevi Elimelekh Shapira of Dynów** (1783–1841) served in official rabbinic posts and reportedly wrote responsa, though it appears that they have not been preserved.<sup>78</sup> His other writings, include much legal material and suggest his involvement in contemporary issues of Jewish law. Tsevi Elimelekh’s fame rest primarily on *Benei yisaskhar* – his posthumously published hasidic work. On a number of occasions in this work, Tsevi Elimelekh considered the mystical joists of judicial decision-making.

In several passages, Tsevi Elimelekh related to the phenomenon of decisors making obvious errors in judgement. He explained that to see the truth a judge must be free of sin; in particular, free of sexual misconduct. In Tsevi Elimelekh’s assessment, judicial error was not to be chalked up to a flawed judicial process; rather, a judge’s success was dependant on a sin-free life.<sup>79</sup>

Regarding studying law and suggesting innovative readings of classic texts, Tsevi Elimelekh acknowledged a latent ability in each person: “Every soul is able to bring forth a new Torah from the old, at every time and era.”<sup>80</sup>

77 Levi Yitshaq of Berdyczów, *Qedushat levi: ‘Al ha-torah* (Berdyczów: Shmuel ben Yisakhar Ber, 1811), 154d–155b, liqutum, s.v. shanu hakhamim. For other passages from the homilies of Levi Yitshaq, see Green, “Hasidism and Its Response,” 332–34; Mayse, “Ever-Changing Path,” 86–87, 98–101; Biale, *Hasidism*, 108–10, 170–71.

78 Three responsa have been published; see Tsevi Elimelekh Shapira, *Ve-heyeh berakhah* (Przemyśl: Żupnik, Knoller & Hammerschmidt, 1888), 45c–[47b]; Moshe Hayyim Efrayim Bloch, *Qovets mikhtavim mekoriyim* (Wien: Menorah, 1923), 64. Bloch detailed the provenance of the letter he published, and the letter has been reprinted by bearers of Tsevi Elimelekh’s legacy; see *Devarim nehmadim* (Brooklyn: Makhon sifrei mahartsa, 2004), 171. Alas, Bloch is an unreliable source, and subsequent reprints do not prove authenticity.

79 Tsevi Elimelekh Shapira, *Benei yisaskhar* (Żółkiew: Saul Meyerhoffer, 1850), tishrei, sec. 4:10:29. See also, idem, *Agra de-kala*, mishpatim, s.v. ve-’eileh; shoftim, s.v. ki yippale.

80 Shapira, *Benei yisaskhar*, shabbatot, sec. 5:1.

While this new law was to be “from the old” – that is, tethered to tradition and moored to Jewish heritage – the notion pushed the boundaries of fidelity to existing law and weakened the weight of precedent. Here too, there is room to ponder the relationship between Tsevi Elimelekh’s stated position and actual decision making.

It was not only hasidic masters serving as legal practitioners who theorized about Jewish law: **Rabbi Shelomoh of Łuck** (ca.1740–1813) recorded that his teacher the Maggid of Mezritch expounded a famous talmudic maxim: “These and those,” – referring to contradictory legal opinions – “are the words of the living God.”<sup>81</sup> The Maggid’s homilies on this dictum present a consideration of legal pluralism in Jewish law.

Using language and concepts from the world of Jewish mysticism, the Maggid first explained that when decisors use judicial discretion they draw on different divine attributes. Consider a case of food that may be forbidden – a decisor who draws on the mystical attribute of Love (*ahavah*) will find a way to permit the food, while a decisor who draws on the mystical attribute of Awe (*yir’ah*) will rule that the food is forbidden. Both mystical attributes are of divine origin, hence both rulings – contradictory though they may be – are “the words of the living God.” Furthermore, in order to change a ruling, a judge may actively choose to draw on an alternative mystical attribute as a guide. This mystical account of judicial discretion is described as a conscious and rational process.

In an alternate explanation of the famous “these and those” dictum, the Maggid characterized the Oral Law as *qishutei kallah*, adornments for a regal bride – a concept that describes the work of the mystically adept.<sup>82</sup> Earlier sources from the corpus of Jewish mysticism had already transplanted the term into the legal world, and the Maggid followed this lead, by describing

81 *B. Gitt.* 6b; *Eruv.* 13b. *Maggid devarav le-ya’aqov*, 12a; *Maggid devarav le-ya’aqov*, ed. Rivka Schatz-Uffenheimer (Jerusalem: Magnes Press, 1976; 2nd ed., Jerusalem: Magnes Press, 1990), 86–87, sec. 58. For a reading of these homilies with a different emphasis, see Mayse, “Beyond the Letters,” 431–45; idem, “Ever-Changing Path,” 92–94; Kahana and Mayse, “Hasidic Halakhah,” 398–400.

82 *Qishutei kallah* describes “gifts” bestowed given by the righteous to the “Bride” (the Holy Presence, or female aspect of the Godhead) in preparation for her union with the “King” (God, or the male aspect of the Godhead).

competing legal opinions as *qishutei kallah*.<sup>83</sup> Such trinkets – explained the Maggid – are a matter of taste, and two people can easily disagree over which frills better suit a bride. As people fuss over the trimmings of the bride, the groom-king looks upon the scene and derives pleasure from the concern shown over how to bedeck the bride in his honor. The Maggid interpreted the talmudic passage as privileging the journey over the destination. While decisors may arrive at contradictory conclusions, they all seek to adorn the bride and therefore their words are “the words of the living God.” The learning experience, the judicial process, the effort expended in discussing the finer points of law, even the multiplicity of opinions – in the King’s eyes these are more significant than the specific decision.

In both explanations, the Maggid acknowledged the talmudic endorsement of legal pluralism; an approach not taken by all commentators on this passage. The two explanations, however, offer different versions of legal pluralism. In the first explanation, the Maggid suggested that both possible outcomes are authentic manifestations of the Divine and hence reflect an ultimate truth. This is a profession of theoretical legal pluralism. In his second explanation, the Maggid characterized the outcomes as mere trimmings, denying the notion of an ultimate judicial truth. This reflects an approach associated with practical legal pluralism.<sup>84</sup>

In another passage in the same collection of homilies, the Maggid moved towards monism when relating to rabbinic traditions that compare the legal acumen of King David and King Saul – and the fact that David’s rulings became law, while Saul’s rulings were not accepted.<sup>85</sup> The Maggid

83 *Darkhei tsedeg*, [41]. Zekharyah Mendel – a student of Elimelekh of Leżajsk who regularly cited early hasidic traditions – described studying Jewish law as *qishutin*. For earlier sources, see Ḥayyim Vital, *Kol kitvei ha-’ari* (Jerusalem: n.p., 1988), vol. 8: Sha’ar ha-mitsvot, 81, va-’ethanan; *Shulḥan arukh ha-’ari* ([Krakow?: n.p., ca.1660]), kavannat talmud torah, sec. 2. The Maggid was not alone in expounding on the legal use of the *qishutei kallah* frame; see also *Toledot ya’aqov yosef*, shelah, 131a–c, 132b (sec. 4 and 6 in later editions); Mosheh Ḥayyim Efrayim of Sudyłkow, *Degel maḥaneh efrayim* (Korzec: n.p., 1810), 61c, shemini, s.v. ve-’et se’ir ha-hattat; Kalonymus Kalman Halevi Epstein of Kraków, *Ma’or va-shamesh* ([Breslau: Hirsh Zaltzbach, 1842]), qorah, s.v. ‘od ba-pasuk.

84 Hanina Ben-Menahem, “Is There Always One Uniquely Correct Answer to a Legal Question in the Talmud?” *Jewish Law Annual* 6 (1987): 164–75.

85 The particular rabbinic formulation that is cited does not appear in the Talmud; see, however, *b. Eruv*. 53a–b: “David revealed (*galei*) the tractate; Saul did not reveal the tractate. Regarding David who revealed the tractate, it is written:

reaffirmed the theoretical pluralism expressed in the “these and those” maxim, but added: “Yet every person was speaking and decided the law according to his spiritual level and the root of his soul.” David’s soul root emanated from an inclusive spiritual attribute known as Kingdom (*malkhut*), hence he was able to muster a majority and determine law in accordance with his opinion. Saul’s opinion emanated from a different spiritual attribute, “and even though the opposite attributes are also the words of the living God, nonetheless they are nullified by the majority.” While this sounds like a practical monism – multiple divine truths, but one practical rule – at the end of the passage the Maggid gives a nod in the direction of theoretical monism, by describing David’s rulings as “the truth,” and contrasting it with Saul’s rulings:

Whereas Saul – whose spiritual level was not from this attribute [i.e. not from *malkhut*], even though he spoke from his soul root the words of the living God, nonetheless he was unable to target the truth, how the matter would be resolved according to the majority.<sup>86</sup>

The extant materials from the Maggid do not allow us to paint a complete portrait of his vision of legal pluralism, and one may doubt whether he had a coherent understanding. However, the fact that the Maggid expounded on the multiplicity of opinions in Jewish law, indicates that he deliberated over a central feature of the Jewish legal system: the preservation and sanctification of a multiplicity of opinions. These homilies complement the scant – and at times, historically circumspect – surviving material regarding the Maggid’s involvement in the legal world.<sup>87</sup>

‘Those who revere You shall see me [that is, David] and rejoice’ (Ps 119:74); regarding Saul who did not reveal the tractate, it is written: ‘Wherever he [that is, Saul] would turn, he would do wrong’ (1 Sam 14:47).” See also *b. Sanh.* 93b where David is described as having the law accord with his opinion in every instance, as opposed to Saul. David as a legal authority whose rulings are accepted (without reference to Saul) also appears elsewhere in the Talmud; see *b. Ber.* 3b–4a; *b. Mo’ed Qat.* 16a.

86 *Maggid devarav le-ya’aqov*, 52b; Schatz-Uffenheimer edition, 291–92, sec. 189. On David’s soul emanating from *malkhut*, see *Zohar* 3:21a.

87 See the sources collected in Shalom Dovber Levine, *Toledot ḥabbad be-Rusyah ha-tsa’arit* (Brooklyn: Kehot, 2010), 13–16; Yitshaq Shimon Hakohen Schwadron, “Pesaq hora’ah shel ha-ga’on ha-maharsham zatsal,” *Kovetz Beis Aron V’Yisroel* 25, no. 4 (2010): 21.

Hasidic masters also considered aspects of Jewish law without recourse to the mystical tradition. For example, **Rabbi Kalonymus Kalman Halevi Epstein of Kraków** (1751–1823) meditated on the prevalence of *mahloqet*, dispute in Jewish law. *Mahloqet* can be seen as one of the prominent features in the Jewish legal system. Indeed, in the writings of the rabbis, there may be more reflective passages about the phenomenon of *mahloqet* than about any other single feature of Jewish law.<sup>88</sup> In his hasidic work, *Ma'or va-shamesh*, Kalonymus Kalman takes the position that *mahloqet* is a negative facet of Jewish law. Ideally, the legal system would not be riddled with disputes. Kalonymus Kalman considers what is the root of the phenomenon, and twice in his writings he explains that this is an ethical shortcoming, rather than a problem inherent in the law or the legal system.<sup>89</sup> Kalonymus Kalman's position is not unique, though it further demonstrates how hasidic thinkers pondered aspects of Jewish law.

One might question the value of theoretical statements that do not present a comprehensive and coherent legal philosophy, that never undergo field-testing, and that are never challenged by the steely reality of litigants in a court room. It would seem that the potency of such teachings outstrips their practical application. Indeed, I think it is challenging to suggest even tentative jurisprudential conclusions on the basis on such homilies.

Let me illustrate this point by turning to a radical legal rubric that has received scholarly attention: the paradoxical notion of *'aveirah lishmah* – literally a sin for its own sake, but understood to mean holy sin, righteous transgression, a sin for the sake of heaven, or a sin for the sake of God. This concept predates Hasidism, but its iterations in hasidic thought have been analyzed by scholars.<sup>90</sup>

88 Hanina Ben-Menahem, Neil Hecht, and Shai Wosner, *Controversy and Dialogue in Halakhic Sources* (Jerusalem: The Institute of Jewish Law, Boston University School of Law, 1991–2002), 3:17–63 (Hebrew).

89 *Ma'or va-shamesh*, qorah, s.v. 'od ba-pasuq; huqqat, s.v. 'al ken.

90 See, for example, Yehoshua Mondshine, "The Fluidity of Categories in Hasidism: *Avera lishmah* in the Teachings of Rabbi Zevi Elimelech of Dynów," in *Hasidism Reappraised*, 301–20; Zvi Haber, "Aveira leshem shamayim," *Mei-aliyot* 21 (1999): 205–28, also available at <http://www.daat.ac.il/daat/kitveyet/maaliyot/avera-2.htm>, <http://www.daat.ac.il/daat/kitveyet/maaliyot/avera1-2.htm>; Benjamin Brown, "The Two Faces of Religious Radicalism: Orthodox Zealotry and 'Holy Sinning' in Nineteenth-Century Hasidism in Hungary and Galicia," *Journal of Religion* 93 (2013): 341–74.



The precarious allure of this concept is patent: a legal category that may be acknowledging an ethic outside Jewish law.<sup>91</sup>

Notwithstanding the radical nature of the legal idiom, it remains to be demonstrated whether *'aveira lishmah* was anything more than homiletic clay in the hands of the hasidic preacher, a hermeneutic device for explaining difficult biblical passages, or perhaps even a subversive myth. To what extent did hasidic jurists evoke the notion of holy sin as an operative legal mechanism?<sup>92</sup> Was the hasidic use of this radical legal category significantly different to its use outside the *beit midrash* of Hasidism? Preliminary research has yet to uncover expansive use or manifest differences, raising the possibility that for all the excitement, the notion of holy sin primarily remained a theoretical construct.<sup>93</sup>

Having acknowledged the limitations of homiletic declarations about law, allow me to backtrack: There is inherent jurisprudential value to conceptual formulations about law. Moreover, such statements that meld the spirit and the law, and that employ a mystical outlook to explain legal phenomena can serve as a point of departure for examining the theoretical underpinnings of legal writings of hasidic masters. Perhaps most importantly in the present

91 Cf. Aaron Lichtenstein, "Does Jewish Tradition Recognize an Ethic Independent of Halacha?," in *Modern Jewish Ethics: Theory and Practice*, ed. Marvin Fox (Columbus: Ohio State University Press, 1975), 62–88; reprinted in *Contemporary Jewish Ethics*, ed. Menachem Marc Kellner (New York: Sanhedrin Press, 1979), 102–23.

92 For now, see Avraham David Wahrman, *Eshel avraham*, mahadurah tinyana, sec. 670:2 (while this is a bona fide legal work, as I will explain below, the particular passage addresses biblical and extra-biblical events, with no normative impact); Yekutiel Yehudah Halberstam of Klausenberg, *She'elot u-teshuvot divrei yatsiv* (Netanya: Makhon Shefa Hayyim, 1996–2004), vol. 6: ḥoshen mishpat, no. 81 (serving in the armed forces and risking life in order to save others). Cf. Aaron Lichtenstein, "Aveira Lishmah – Hirhurim be-halakhah u-ve-maḥshavah," in *Ha-'aḥer: Bein adam le-'atsmo u-le-zulato*, ed. Haim Deutsch and Menachem Ben-Sasson (Tel Aviv: Mishkal, 2001), 99–125, 481–84; Jeremy Kalmanofsky, "Sins for the Sake of God," *Conservative Judaism* 54, no. 2 (2002): 3–24. Both writers identify responsa that recall the notion of holy sin; none of the responsa come from hasidic jurists.

93 Levi Cooper, "Sins for the Sake of Heaven: Vigilante Heroes in Law and Lore," in *Human Dignity: Approaches at the Threshold*, ed. Stephanie Arel, Levi Cooper, and Vanessa Hellmann (Heidelberg: Springer, forthcoming).

context, these homilies reflect an abiding interest in law and legal theory: hardly reflective of a full-blown antinomian or anomian ethos.

### Theory as Law

We would be remiss if we did not mention *Liqqutei halakhot*, a commentary on the seminal compendium of Jewish law – *Shulḥan ‘arukh* by Rabbi Yosef Qaro (1488–1575) – produced in the *beit midrash* of Hasidism. The commentary was written by **Rabbi Natan Sternhartz of Nemirov** (1780–1844) at the behest of his teacher **Rabbi Naḥman of Braclaw** (1772–1810). The content of the commentary is gleaned from Naḥman’s writings, in particular *Liqqutei moharan*, though the work is truly unique.<sup>94</sup> Sternhartz’s task was to distill Naḥman’s teachings with their associative discourse and mystical nomenclature, into accessible teachings. Jewish law is used as a springboard or platform for disseminating Naḥman’s mystical teachings. Thus *Liqqutei halakhot* moves in the opposite direction to the homilies discussed in the previous section: Instead of using mystical ideas to explain law, *Liqqutei halakhot* uses law to elaborate mystical ideas. The subtext of the work suggests a unification of the religious experience (as taught by Naḥman of Braclaw) and the normative world of Jewish law. It is important to point out that *Liqqutei halakhot* is not limited to ritual sections of Jewish law; law that governs civil interaction is also covered.

*Liqqutei halakhot* has caught the attention of scholars, with the work done thus far suggesting that this trove should be mined further.<sup>95</sup> In the present

- 94 Naḥman of Braclaw, *Liqqutei moharan*, vol. 1 (Ostróg: Shmuel ben Yisakhar Ber, 1808); vol. 2 (Mohylów Podolski: [Tsvi Zev ben David Rabin Stein, 1811]; Natan Sternhartz, *Liqqutei halakhot* ([Iași], Lemberg, and Żólkiew: Saul Meyerhoffer; M. Wolf; D.H. Schrenzel, [1843]–61), 7 vols.
- 95 Izhak Englard, “Mistiqaḥ u-mishpat: Hirhurim ‘al ‘Liqqutei halakhot’ mi-beit midrasho shel rav Naḥman mi-Breslov,” *Shenaton ha-mishpat ha-‘ivri* 6–7 (1979–80): 29–43; Ron Margolin, “Ha-’emunah ve-ha-kefirah be-torato shel ḥasidut breslov: ‘A[!] pi Liqqutei halakhot le-r. Natan Sternhartz” (master’s thesis, Haifa University, 1991); Alon Goshen-Gottstein, “Ha-halakhah be-re’i ha-ḥayyim ha-ruḥaniyim: Liqqutei halakhot le-r. Natan me-Nemirov,” in *Masa el ha-halakhah: ‘Iyyunim bein-teḥumiyim ba-‘olam ha-ḥoq ha-yehudi*, ed. Amichai Berholz (Tel Aviv: Mishkal, 2003), 257–84; Mendel Piekarz, “The Lessons of the Composition *Liqqutei Halakhot* by R. Nathan of Nemirov,” *Zion* 69 (2004): 203–40 (Hebrew); Roe Horen, “Judaism as Viewed through the Prism of Faith in the Righteous – A Study of the Works of R. Nathan of Nemirov,” *Kabbalah* 24 (2011): 263–304.

context *Liqqutei halakhot* is significant because regardless of the exegetical direction, it is clear that pinning Naḥman's teachings to a mainstay of Jewish law indicates that law was part of the conversation. Indeed, *Liqqutei halakhot* assumes that the reader is familiar with Jewish law – its premises, rules, and even intricacies. This means that *Liqqutei halakhot* addresses students of Jewish law who are equipped to understand and appreciate the hasidic explanations.

### Law and Literature

Hasidism is famous for its use of storytelling and its repository of tales. In a much-publicized debate, Scholem and Buber argued where the essence of Hasidism was to be found, and hence where scholarly energy should be directed. According to Scholem, hasidic homilies best reflected the movement's philosophy. Buber countered that hasidic tales was the true expression of the ethos of Hasidism.<sup>96</sup> In the present context we need not take a stance on this dispute, particularly since I am arguing for a third genre – legal literature – to be taken into consideration.

Much scholarly work has been done on hasidic tales, yet the Law and Literature angle has yet to be probed.<sup>97</sup> The insistence of storytellers to cast hasidic masters as legal authorities may be of interest when considering the narrative of the movement and its place in Jewish tradition. For example, a 1948 memorial book mentions legal correspondence of the aforementioned hasidic master, Rabbi Kalonymus Kalman Halevi Epstein of Kraków (1751–1823).<sup>98</sup> To the best of my knowledge, there is no surviving evidence of such correspondence, nor is Kalonymus Kalman remembered as a great legal mind. It would appear, therefore, that the mention tells us about the romantic image of Hasidism in collective memory.

96 Joseph Dan and Isaiah Tishby, "Hasidut," in *Encyclopaedia Hebraica*, ed. Joseph Klausner, et al. (Jerusalem: Encyclopaedia Publishing Company, 1949–1995), 17:816–20 (Hebrew).

97 For the state of the field of scholarship on hasidic tales, see Uriel Gellman, "Stories," in *Studying Hasidism*, 60–74.

98 Mordechai Bochner, *Sefer Khzshanov: Leben un umkum fun a Yidish shtetl* (Regensburg: n.p., 1948), 29–30; idem, *Chrzanów: The Life and Destruction of a Jewish Shtetl*, trans. Jonathan Boyarin (Roslyn Harbor, NY: S. Gross, 1989), 19–20 (the English translation does not refer to the correspondence as responsa).

Undoubtedly there is room to explore how rich hasidic tales depict masters who served as jurists or who interacted with local legal authorities.<sup>99</sup> The tales may engage the law in scenarios that toss up moral dilemmas, subversively offering an alternative to the legal regime. In such cases, the hasidic story plays a destabilising role, while at the same time avoiding a frontal assault on traditional law which may serve as the glue of the community.

To cite but one illustrative example from the corpus of tales associated with **Rabbi Yisrael of Ružyn** (1796–1850) – a hasidic master who did not serve in an official rabbinic position, nor did he bequeath legal writings.

According to the detailed and colourful account, a young man swore an oath to his father-in-law not to travel to the Maggid of Mezritch. After making such a journey, the father-in-law demanded that the young man grant a bill of divorce to his wife. The local rabbi sided with the father-in-law, since the young man had indeed broken his promise. After the divorce was executed, the young man was bereft and soon died.

Yisrael of Ružyn continued by depicted an imaginary court case in the future, presided over by Messiah. At the hearing, the young man would summon his father-in-law and charge him with shortening his life:

His father-in-law will justify himself: Because thus ruled the town rabbi.

They will summons the town rabbi and he will bring with him the *Shulḥan 'arukh* and point with his finger at the ruling of the Shakh who ruled thus.

Then our righteous Messiah will ask the young man why did you transgress the handshake that sealed the agreement?

And he will answer: Alas, I really wanted to travel to the master.

Then our righteous Messiah will say to the father-in-law: You relied on the ruling of the town rabbi – you are justified (*gerekht*). And you, the town rabbi, relied on the ruling of the Shakh – you are justified (*gerekht*). But I have come for those who are wronged (*um gerekhten*).<sup>100</sup>

99 For example: Regarding Rabbi Levi Yitshaq of Berdyczów, see Cooper, “Rabbanut, halakhah, lamdanut,” 98–104; regarding Rabbi Kalonymus Kalman Halevi Epstein of Kraków, see idem, “Hasidic Tales as Legal Narrative: The Battle over Prayer Rites in Poland and in Hungary,” in *Maor VaShamesh* (Hebrew).

100 Shlomo Telingator, *Tif'eret yisra'el* (Jerusalem: Kinneret, 1945), 35–38. The tale is recorded in Hebrew, except for the young man’s response and Messiah’s final

Messiah will come even for those who have been mistreated, even if they have acted unjustly. A parallel version of this tale includes a creative literary turn: with a slight change the key word can mean unexpectedly (*um gerikht*): Messiah will come unexpectedly and the messianic era will defy expectation.<sup>101</sup>

In this tale, Yisrael of Ruzyn critiques the ruling – and by implication the legal system – not because it is wrong; indeed, the story suggests that the ruling is right.<sup>102</sup> The critique focuses on an aspect that goes beyond the letter of law: the ruling lacks a compassionate human element. Consideration of such an element may have resulted in a different outcome. Thus the hasidic tale highlights the limitations of the legal system, and subtly undermines the rule of law.<sup>103</sup>

In addition to the Law-*in*-Literature perspective, other Law/Literature relationships – including complementary, supplementary, and independent models – remain untapped. The purview could also be broadened to include law and the art of storytelling, which could jibe with burgeoning Law and Arts scholarship.<sup>104</sup> To be sure, no one would argue that hasidic storytelling should be considered a fine art and it would be bizarre to categorize hasidic tales as

words which are in Yiddish.

- 101 Hayyim Yosef Arye Preger, *Kitvei r. Yoshe sho[het] u-bo[deq]* (Jerusalem: n.p., [1980]), 59-60. This version then goes on to quote the rabbinic adage that Messiah will come after a diversion of the mind; see *b. Sanh.* 97a.
- 102 Admittedly, the legal basis of the ruling is unclear. Shakh's gloss does not extend to the laws of divorce. The storyteller may be referring to where Shakh rules that a handshake agreement is enforceable like a verbal oath, and there is no possibility of *asmakhta* – a claim that the commitment was made without intention to fulfill it (see Shabtai Kohen, *Siftei kohen*, ḥoshen mishpat 87, sub-section 80). But what did the young man agree to? If he swore not to travel, then breaking the oath does not necessarily require divorce. If he swore not to travel and agreed to a penalty of divorce, then the oath would have to be annulled before a divorce could be executed, as per *Shulḥan 'arukh*, even ha-‘ezer 134:4. Of course, the storyteller was uninterested in investigating the legal underpinnings.
- 103 The story was noted by Yehoshua Mondshine in the context of “[t]he concept of ‘sin for the sake of Heaven’ and the facility for departing from the strict rule of halakhah in order to comply with the divine will which is not fixed but must be sought out in every changing circumstance of time and place” (“Fluidity of Categories,” 316–17). Since the storyteller never mentions divine will, I offer a different reading.
- 104 See, for example, Levi Cooper, “Jewish Law, Hasidic Lore, and Hollywood Legend: The Cantor, the Mystic, and the Jurist,” *Critical Analysis of Law* 2 (2015): 467–83.

great works of literature. Notwithstanding, the tales were an essential part of hasidic life, and as such their interface with law may kindle scholarly interest.

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Returning to the collage: hasidic masters (as well as rabbis who identified as ḥasidim) have served in official communal positions with responsibility for the administration of local Jewish law; authored important works of Jewish law; acted as arbitrators in civil disputes; promoted printing works of Jewish law by investing in publishing ventures and by penning approbations; considered jurisprudential features of the Jewish legal system; generally encouraged the study of Jewish law; and debated the appropriate disposition for the pursuit of Torah study.

This collage need not surprise us: From time immemorial, halakhah has guided and governed traditional Jewish life. Even movements that have not seen themselves as bound by mainstream or traditional Jewish law, often define themselves or are defined by their relationship to halakhah. Despite the centrality of halakhah, much of hasidic scholarship has yet to mine Jewish legal writing from the school of Hasidism. This project is a massive undertaking and clearly beyond the scope of the present forum. In this context, however, we are able to fossick – surveying the terrain of literary sources of Jewish law and assessing what such a mining venture might uncover.

## 5. Literary Sources of Jewish Law

Jewish law from the late modern period can be found in an array of literary sources, including codes of law, glosses and commentaries, responsa, legal monographs, and to a lesser extent judicial decisions and legislation.<sup>105</sup> The *beit midrash* of Hasidism has contributed works to each of these genres of legal writing. I will briefly describe the principal genres and survey a few of the hasidic contributions, indicating examples of what might be garnered from these sources.

105 The use of the frame *literary sources of law* follows John W. Salmond, *Jurisprudence, or the Theory of the Law* (London: Stevens & Haynes, 1902), 112 n. 1. For its application to Jewish law, see Menachem Elon, *Jewish Law: History, Sources, Principles*, trans. Bernard Auerbach and Melvin J. Sykes (Philadelphia: Jewish Publication Society, 1994), 1:228–39; Joel Roth, *The Halakhic Process: A Systemic Analysis* (New York: Jewish Theological Seminary of America, 1986), 5–12.

The names of the works detailed in this section (barring a few exceptions) will be familiar to scholars of Jewish law: the works are studied and discussed as bona fide works of Jewish law. Decisors – past and present, hasidic and non-hasidic – do not hesitate in citing and relying on these sources when issuing rulings. Indeed, most of the works detailed here can be found on the shelves of any reputable Jewish law library. In some cases, the hasidic affiliation of the author has been so well camouflaged, that the student of Jewish law might recognize the title but be surprised to learn of the hasidic identity of the author.

The list of contributors I present is far from exhaustive; the sample selection will only include writers who also made a contribution to hasidic literature *and* served as heads of hasidic communities. This methodological path guarantees that the jurists' hasidic credentials are impeccable. Subsequent research will be tasked with producing a complete register of legal works authored by hasidic masters, and then complementing this list with legal works by scholars who identified as ḥasidim but were not heads of hasidic communities.<sup>106</sup> Also absent from this overview is works that would be classified as *lomdus* – discussions of Jewish law that do not purport in any way to rule on legal matters. The *beit midrash* of Hasidism contributed to this genre as well, though the library of theoretical legal discourse is a landscape to be explored separately.<sup>107</sup> Notwithstanding the incomplete nature of the catalogue, it is sufficiently robust such that any depiction of a systemic polarity between Hasidism and Jewish law must be dismissed as a fallacy.

## Codes

In legal parlance, the term “code” has not been used consistently, and typologies for distinguishing between collections, compilations, consolidations,

- 106 For example: David Ortenberg, *Tehillah le-david* (Berdyczów: Y. Sheftel, 1888) – glosses on the laws of Sabbath; Eliyahu Lerman, *Mikhtavei eliyahu* (Berdyczów: H.Y. Sheftel, 1893) – on the enumeration of the commandments; Yisrael Nissan Kupershtoch, *'Ani ben pagma* (Jerusalem: Zion, 1928) – responsa; Yehoshua Mondshine, “Taqnanot Be-qe[hilla]t] qo[desh] Horki be-‘inyan peritsat gidrei ha-ḥazaqot,” *Oholei shem* 3, no. 4 (1990): 13–16 – legislation.
- 107 For instance: Yitshaq Meir Alter of Góra Kalwaria, *Ḥiddushei harim* (Warsaw: N. Schriftgisser, 1870–81; Tel Aviv: Y.A.L. Alter, 1973–75), 8 vols.; Gershon Ḥanokh Heinekh Leiner of Radzyń-Podlaski, *Sidrei tahorot*, vol. 1 (Józefów: S. & B. Zetser, 1873); vol. 2 (Piotrków: S. Belkhotovsky, 1903). See also Gellman, *Emergence of Hasidism*, 250–56.

and codifications have been suggested. The unique circumstances of Jewish law in the late modern period – in particular, a lack of defined jurisdictional boundaries and handicapped enforcement mechanisms – mean that terms associated with corpora of law in national, secular legal systems should be employed with caution. Despite the fact that many key codification features are missing in Jewish law, the term “codification” has been used by scholars to describe Jewish legal writing that has the following salient features: (1) The work seeks to set out law in a defined field; (2) it presages a range of scenarios, dictating conduct for each eventuality, and; (3) it presents itself as an exclusive statement of law, precluding the need to consult earlier sources. As with all codes, comprehensiveness and exclusivity are often more aspirations than achievements.

Important codifications of Jewish law include *Mishneh torah* by Maimonides (1138–1204), *Arba ‘ah turim* by Rabbi Ya‘aqov ben Asher (ca.1269–ca.1343), and *Shulḥan ‘arukh* by Rabbi Yosef Qaro (1488–1575). The most important hasidic contribution to this genre of legal writing is the work known as *Shulḥan ‘arukh ha-rav* by the aforementioned **Rabbi Shneur Zalman of Liady**. The popularity of this code went beyond the confines of the hasidic community: it has been published over fifty times, translated into English, and extensively annotated.<sup>108</sup> To this day, *Shulḥan ‘arukh ha-rav* is avidly studied and regularly consulted by practitioners of Jewish law, regardless of affiliation.

While scholars of hasidic thought and scholars of hasidic history have invested much effort in exploring Shneur Zalman’s seminal contributions to Hasidism, his compilation of Jewish law and his other legal writing have not received comparable attention.<sup>109</sup> One reason for the neglect, is that the work does not demonstrate Hasidism in any apparent manner. This itself is

108 Shneur Zalman of Liady, *Shulḥan ‘arukh [ha-rav]* (Szkłów and Kopyś: Y. Yoffe, 1814–16), 6 vols. Annotated edition: *Shulḥan ‘arukh [ha-rav]*, ed. Shalom Dovber Levine, Avraham Alashvili, Yitzchok Wilhelm (Brooklyn: Kehot, 2001–7). Bilingual edition: *The Shulchan Aruch of Rabbi Shneur Zalman of Liadi*, trans. Eliyahu Touger and Uri Kaploun (Brooklyn: Kehot, 2002–14), 8 vols. For details of editions until 1984, see Mondshine, *Sifrei ha-halakhah*, 20–185.

109 Cooper, “On Etkes’ *Ba’al Ha-Tanya*”; idem, “Towards a Judicial Biography.” On the formation of the code, see idem, “Mysteries of the Paratext: Why did Rabbi Shneur Zalman of Liady Never Publish his Code of Law?” *Diné Israel* 31 (2017): 43\*–84\*. See also Moshe Hallamish, “*Shulḥan ‘arukh ha-rav*—bein kabbalah le-halakhah,” in *Habbad: Historiyah, hagut ve-dimuy*, ed. J. Meir and G. Sagiv (Jerusalem: The Zalman Shazar Center, 2016), 75–96.



a striking: A leader of the nascent movement who was twice incarcerated on account of his hasidic leadership and who produced a ground-breaking work in hasidic thought – that same hasidic persona also authored a legal tome bereft of overt hasidic influence.

Some scholars have burrowed deep behind the text in order to identify tracks of hasidic thought in Shneur Zalman's legal writings.<sup>110</sup> While I find these efforts unconvincing, they indicate that hasidic footprints – to the extent that they exist – are well hidden. This may partly explain how the work achieved such widespread popularity, even beyond hasidic circles.

**Rabbi Yitshaq Eizeq Yehudah Yehiel Safrin of Komarno** (1806–74) also produced a code of Jewish law, entitled *Shulḥan ha-tahor*. In contrast to Shneur Zalman's code, Safrin's code is barely known and seldom cited. This was because the work remained in manuscript until 1963–65 when it was first published in Tel Aviv.<sup>111</sup> Even once the work became available to the wider public, it has rarely been considered in legal discourse because it is chock-full of kabbalistic considerations, making it inappropriate for mass consumption.

Thus, for example, Safrin discussed the order of precedence between *seliḥot* and *tiqqun ḥatsot*; that is, between penitentiary prayers in the lead up to

110 Zipporah Maidanchik, "Shinuyim be-fiskei ha-rav mi-L'adi" (master's thesis, Bar-Ilan University, 1998); Joseph Sat, "Ha-hevdeilim bein mahadurah qamma le-vein mahadurah batra be-shulḥan 'arukh shel ba'al ha-tanya" (master's thesis, Bar-Ilan University, 2010); Avinoam Rosenak, "Theory and Praxis in Rabbi Shneur Zalman of Liady: The *Tanya* and *Shulḥan 'Arukh HaRav*," *Jewish Law Association Studies* 22 (2012): 251–82.

111 Yitshaq Eizeq Yehudah Yehiel Safrin, *Shulḥan ha-tahor* (Tel Aviv: He-'asor, 1963–65). Regarding *Shulḥan ha-tahor*, see Naftali Ben-Menahem, "'Shulḥan ha-tahor' shel r. Yitshaq Yehudah Yehiel Safrin zatsal mi-Komarno," in *Sefer ha-besht*, ed. Y. L. Hakohen Maimon (Jerusalem: Mosad Harav Kook, 1960), 222–40; Ariel Evan Mayse, "Setting the Table Anew: Law and Spirit in a Nineteenth-Century Hasidic Code," *Journal of Jewish Thought & Philosophy* 27 (2019): 210–42. For a bio-bibliography of Safrin's works from 1831 to 1853, see Yakov Meir, "'Itsuvah shel lamdanut ḥasidit'" (master's thesis, Hebrew University, 2012). Unfortunately, *Shulḥan ha-tahor* was not part of Meir's discussion, though his research deals with legal material found in Safrin's earlier writings. Regarding the provenance of the manuscript, see Avraham Aba Zis, "Mavo," in Safrin, *Shulḥan ha-tahor*, 3–4.

the High Holy Days and the midnight rite of mourning for the exile.<sup>112</sup> While the question is legitimate, it is only the mystically committed who do *tiqqun hatsot* and might be faced with such a dilemma. Safrin also discussed wearing white clothes on Sabbath, a mystical practice adopted by hasidic leaders in the formative years of the movement, that survived until the twentieth-century but has since faded.<sup>113</sup> Safrin's commitment to Kabbalah is so pronounced that dictates based on Jewish mysticism are given greater weight than classic sources of Jewish law. In this way, Safrin's volume pushes the boundaries of classic legal discourse in Jewish tradition.<sup>114</sup> This fascinating work suggests one particular permutation of how the gnostic world of Jewish mysticism was incorporated into daily Jewish practice by hasidic masters.

*Shulhan ha-tahor* might also be read on the backdrop of kabbalistic literature that translated the mystical *kavvanot* (meditations) of Rabbi Yitshaq Luria (Ari, 1534–72) into practical instructions that could be followed by all, especially people who were not adept in Lurianic mysticism.<sup>115</sup> This reminds us that Hasidism should be seen – at least to some extent – as a continuation or permutation of the Jewish mystical tradition, rather than an entirely new phenomenon.

- 112 Safrin, *Shulhan ha-tahor*, sec. 1:6 and zer zahav 10. This question was taken up later; see Hayyim Elazar Shapira, *Divrei torah*, vol. 1 (Bratislava: [S.Z. Neufeld and sons], 1922), sec. 76; idem, *Nimuqei orah hayyim* (Turňa nad Bodvou: Y.Y. Glantz, 1930), sec. 581:1.
- 113 Safrin, *Shulhan ha-tahor*, sec. 262:8. Safrin's position is attested in sources that predate the publication of *Shulhan ha-tahor*; see Yitshaq Eizeq Yehudah Yeḥiel Safrin, *Zohar hai* (Lemberg and Przemysł: J.M. Nik; Hayyim Aharon Zupnik and Hayyim Knoller, 1875–81), 1:182b; Eliezer Tsevi Safrin, "Haqdamah," in *Zohar hai*; Shapira, *Divrei torah*, vol. 1, sec. 79; Yeḥiel Mikhel Halevi Gold, *Darkhei hayyim ve-shalom* (Munkács: A. Teichman, 1940), sec. 365. For white clothes in the nascent hasidic movement, see *Degel maḥaneh efrayim*, 5b, noah, s.v. va-yeḥi; 19b, vayyishlah, s.v. hatsileini. See also Wertheim, *Halakhot va-halikhhot ba-ḥasidut*, 145–46; Alfasi, *Bi-sedei ha-ḥasidut*, 51.
- 114 See, for instance, regarding the recital of the blessing over wine at a wedding feast: Safrin, *Shulhan ha-tahor*, sec. 190, zer zahav 1; idem, *Zohar hai*, 4:86b–c; Avraham Aba Zis, *Minhagei Komarno* (Tel Aviv: Zohar, 1965), 31, sec. 125.
- 115 Regarding the link between Kabbalah and Hasidism in Safrin's work, see Avraham Segal, "'Al ha-yahas she-bein qabbalat ha-'ari ve-ha-ḥasidut be-mishnato shel r. Yitshaq Eizeq mi-Komarno," *Kabbalah: Journal for the Study of Jewish Mystical Texts* 15 (2007): 305–33. For a case study of translating Lurianic ideals into widespread customs, see Cooper, "Formation of Hasidic Custom."

## Glosses

Glosses and commentaries seek to elucidate, repudiate, or extrapolate earlier texts. Commentaries may have legal material, particularly when the base text is a legal work. This is the case, for instance, with commentaries on the Talmud. The commentator's goal is to explain the Talmud; since the Talmud includes much legal material, the commentary may be read as a legal text with normative implications. Commentaries on works of law are clearly legal works, as authors aim to rule on matters of law, using the earlier text as scaffolding. Like the manuscripts of the eleventh- and twelfth-century glossators, these works were often published as *glosa marginalis* – the base text is printed in the middle of the page and the gloss is printed in the margins. Legal glosses are a significant phenomenon in Jewish law. Writing a gloss – even when the author argued with the base text – contributed to the standing, popularity, and lasting worth of the base text. The most important legal gloss was written by Rabbi Moshe Isserles (Rema, ca.1530–72) on Qaro's *Shulḥan 'arukh*. Rema's gloss – originally designed as *glosa marginalis* but quickly reprinted as *glosa interlinearis*<sup>116</sup> – ensured that the composite work could be used by Jews from various diasporas, and resulted in a work that remains a benchmark in Jewish law to this day.

Hasidism also contributed to this genre of legal writing. I have already mentioned Rabbi Uziel Meisels and his commentary on the laws of Sabbath; let me add three further examples. **Rabbi Avraham David Wahrman of Buczacz** (1771–1840) authored a commentary on each of the four sections of *Shulḥan 'arukh*.<sup>117</sup> **Rabbi Tsevi Hirsh Shapira of Munkács** (1850–1913) authored *Darkhei teshuvah* on the laws of slaughter and suitability of various foods.<sup>118</sup> Tsevi Hirsh did not finish the work; that task fell to his only son and successor, **Rabbi Ḥayyim Elazar Shapira of Munkács** (1871–1937), who

116 Yosef Qaro “Hilkhot Niddah,” in Moshe Isserles, *Zot torat ha-ḥattat* (Kraków: Yitshak of Prostits, 1569), 85–104.

117 *Eshel avraham* on orah ḥayyim, three editions; *Da 'at qedoshim* on yoreh de'ah; *'Ezer me-quddash* on even ha-'ezer; *Kesef ha-qedoshim* on ḥoshen mishpat. Regarding Wahrman's writing habits, see Ḥayyim Elazar Shapira, *Ot ḥayyim ve-shalom* (Berehovo: S.S. Klein, 1921), sec. 31:1; 34:6; Shalom Dovber Levine, “Mavo,” *Yagdil torah* (New York) 7, no. 1 (1982): 13–22.

118 Tsevi Hirsh Shapira, *Darkhei teshuvah* (Vilna, Munkács, and Szolyva: Romm; Kahane et Fried; Gottlieb, 1892–1912), 5 parts in 4 vols., on *Shulḥan 'arukh*, yoreh de'ah, sec. 1–182.

completed the volume that his father had begun to prepare on the laws of menstruation and added a further volume to the series on the laws of *miqveh*.<sup>119</sup> Ḥayyim Elazar – in addition to completing his father’s work – published his own commentary on the section of *Shulḥan ‘arukh* that deals with daily rituals, as well as a volume containing a commentary on the laws of *tefillin* and the laws of circumcision.<sup>120</sup>

The style and impact of these three authors are dissimilar. Indeed, glosses are not all cut of one cloth, and a book’s reception history is the result of various factors. Ḥayyim Elazar’s commentaries were part of his valiant attempt to explain hasidic practice along legal lines. From the perspective of legal history of Hasidism this is an important contribution, since the work is the most comprehensive attempt by a hasidic master to record daily hasidic practice and justify its legal foundations.<sup>121</sup> Ḥayyim Elazar’s work, however, was not designed as a practical manual of Jewish law; indeed, the commentary was published without the *Shulḥan ‘arukh* base text.<sup>122</sup> Thus for practical law, existing code-like works of Jewish law held sway.<sup>123</sup> Moreover,

119 Tsevi Hirsh Shapira and Ḥayyim Elazar Shapira, *Darkhei teshuvah: Niddah* (Bratislava and Galanta: S.Z. Neufeld, 1921) on *Shulḥan ‘arukh*, yoreh de’ah, sec. 183–200. Ḥayyim Elazar Shapira, *Darkhei teshuvah: Miqva’ot* (Mukačevo: A.Y. Kalisz, 1934) on *Shulḥan ‘arukh*, yoreh de’ah, sec. 201–2.

120 Shapira, *Nimuqei oraḥ ḥayyim* on *Shulḥan ‘arukh*, oraḥ ḥayyim, sec. 1–697; idem, *Ot ḥayyim ve-shalom* on *Shulḥan ‘arukh*, oraḥ ḥayyim, sec. 25–45; yoreh de’ah, sec. 260–66.

121 See Levi Cooper and Maoz Kahana, “The Legal Pluralism of an Enclave Society: The Case of Munkatch Hasidism,” *The Journal of Legal Pluralism and Unofficial Law* 48 (2016): 80–85.

122 Following the 1930 edition, photo-offset editions appeared in Brooklyn, 1959; Bnei Brak, 1968; Brooklyn, 1972; Jerusalem, 1984; and Brooklyn, 1995. New editions (Jerusalem, 1998; Jerusalem, 2004; and Jerusalem, 2014) have included the *Shulḥan ‘arukh*, but only the passages that Ḥayyim Elazar commented on, ensuring that these editions are still unusable as practical manuals of Jewish law.

123 Including: two early nineteenth century efforts – the aforementioned *Shulḥan ‘arukh ha-ra’v* which was favored by Hasidism, and *Ḥayyei adam* and *Ḥokhmat adam* by Rabbi Avraham Danzig; the mid-nineteenth century popular *Kitsur shulḥan ‘arukh* by Rabbi Shelomoh Ganzfried; and the contemporaneous works that preceded Ḥayyim Elazar’s efforts – *Mishnah berurah* by Rabbi Yisrael Meir Hakohen and *‘Arukh ha-shulḥan* by Rabbi Yehiel Mikhl Halevi Epstein.

Ḥayyim Elazar's legal writings were eclipsed – perhaps unfairly – by his own passionate political activism.<sup>124</sup>

Tsevi Hirsh's *Darkhei teshuvah* was an attempt to collate the many rulings that had appeared in the responsa literature. This was a recognized and popular genre, though Tsevi Hirsh's contribution was so widely accepted even in the non-hasidic world, that it deserves extra attention. Tsevi Hirsh solicited an approbation from the rabbi of Lemberg, Rabbi Yitsh'aq Aharon Ettinger (1827–91), whose family was affiliated with Hasidism.<sup>125</sup> The publishing house also obtained approbations from two scholars who were unconnected to Hasidism: Rabbi Yitsh'aq Elḥanan Spektor of Kovno (1817–96) and Rabbi Shelomoh Hakohen of Vilna (1830–1905). All three approbations noted that Tsevi Hirsh's effort surpassed those of his predecessors.<sup>126</sup> When parts one and two were published in Vilna in 1892, the Romm family publishing house advertised the work in the Hebrew press, proudly declaring that *Darkhei teshuvah* included “a collection of legal novellae from a few hundred responsa and various books.”<sup>127</sup> Just over a year later, the same newspaper advertised a little known work on ritual slaughter, pointing out its pedigree by saying

- 124 Levi Cooper, “Against the Flow of the Raging Waters: The Hasidic Master of Munkács Rabbi Chaim Elazar Shapira,” in *The Gdolim: Leaders Who Shaped Israeli Haredi Jewry*, ed. Benjamin Brown and Nissim Leon (Jerusalem: Magnes Press, 2017), 259–91 (Hebrew).
- 125 Tsevi Hirsh Shapira, *Darkhei teshuvah: ... ḥeleq rishon* (Vilna: Romm, 1892), iii. Ettinger's grandfather and namesake had been a ḥasid of the Ḥozeh of Lublin. Ettinger himself responded to questions of inheritance from the hasidic masters of Sadagora. Ettinger served as rabbi of Lwów from 1888 until his death. The approbation is dated Monday, 28 Sivan [5]650 (June 16, 1890).
- 126 Ḥayyim Mordekhai Margaliyot, *Sha 'arei teshuvah*, printed in *Shulḥan 'arukh*, oraḥ ḥayyim (Dubno: H.M. Margaliyot, 1819–20); Avraham Tsevi Hirsh Eisenstadt of Białystok, *Pith'ei teshuvah*, printed in *Shulḥan 'arukh*, yoreh de'ah (Vilna: B. Rotenberg, 1836), 2 vols; *Shulḥan 'arukh*, even ha-'ezer (Johannisburg: A. Gonshorowski, 1857–[61]); *Shulḥan 'arukh*, vol. 4: ḥoshen mishpat (Vilna: Romm, 1871–74); Ya'aqov Vilenchik, *Daltei teshuvah* (Vilna: Y.L. Metz, 1890–95), 2 vols. The approbations written for Tsevi Hirsh's *Darkhei teshuvah* specifically mention Eisenstadt's *Pith'ei teshuvah*. In 1890, two of the three writers of the approbations – Spektor and Shelomoh Hakohen – gave approbations to the first volume of *Daltei teshuvah*.
- 127 *Hazefirah*, January 8, 1893, 4; *Hameliz*, January 20, 1893, 8. Regarding volume three, see *Kol Machsike Hadas*, September 2, 1904, 7; *Machsike Hadas*, September 16, 1904, 7.

that the author of *Darkhei teshuvah* mentioned this work.<sup>128</sup> Then in 1912, Rabbi Meir Simḥah Hakohen (1834–1926) – the non-hasidic rabbi of Dvinsk (since the First World War: Daugavpils) – penned a responsum to a younger colleague about which lesions on the lungs of a slaughtered kosher animal render it unfit for consumption. Meir Simḥah explained that he no longer wrote responsa on such matters, explaining:

Because I heard that there is a book *Darkhei teshuvah* – in it, on every detail, many uncountable responsa are cited for each position. And what can I add, to justify that I should respond, just so that another later scholar will be added? Therefore, I made a rule that I will not respond at all in these matters.<sup>129</sup>

It seems that Meir Simḥah, a veteran rabbi by that time, did not own a copy of Tsevi Hirsh's recently released *Darkhei teshuvah*. Nonetheless, he was aware of the comprehensive work to the extent that he felt he had nothing to add. Meir Simḥah had previously received a copy of a work that was strikingly similar in its ambitions to *Darkhei teshuvah*; apparently he did not feel the same way about that work.<sup>130</sup> When *Darkhei teshuvah* was reprinted in the 1950s in New York, the local *Hamaor* periodical repeatedly advertised it, describing the work as being “necessary for every Torah person.”<sup>131</sup> Indeed, *Darkhei teshuvah* was a popular work that was used extensively by rabbis who were charged with overseeing local Jewish law.

Wahrman's commentaries sought to understand the base text in light of other legal material, but he also freely shared his observations, personal

128 *Hameliz*, April 24, 1894, 4, referring to Yosef Ḥayyim Kera, *Tevah ve-hakheim* (2nd ed., Vilna: Romm, 1894).

129 Meir Simḥah Hakohen, *She'elot u-teshuvot or sameiah* (Jerusalem: Machon Yerushalayim, 1981), 155b, liqqutim, no. 3, dated first day of *seliḥot* [5673] (September 8, 1912). The addressee was Rabbi Yehudah Leib Don-Yahya (1869–1941) – a fascinating person who grew up in a hasidic home, studied with Rabbi Ḥayyim of Brisk, and was an active Zionist in the Mizrahi movement. Meir Simḥah's letter was penned soon after Don-Yahya was appointed to the Dryssa rabbinate.

130 Vilenchik, *Daltei teshuvah*, 2:3.

131 Tsevi Hirsh Shapira and Ḥayyim Elazar Shapira, *Darkhei teshuvah* (New York: Talpiot, 1952–59), 6 vols. For the advertisements, see *Hamaor* 5, no. 8 (Oct. 1955): 34; 6, no. 2 (Mar. 1956): 24; 6, no. 3 (Apr. 1956): 2; 6, no. 7 (Aug. 1956): 36; 6, no. 8 (Oct. 1956): 32; 7, no. 2 (Mar. 1957): 56; 8, no. 6 (Jul. 1958): 44; 8, no. 7 (Aug. 1958): 31. For other relevant advertisements, see *Hamaor* 9, no. 4 (May 1959): 42; 9, no. 6 (Aug. 1959): 22.

experiences, and adventures. Thus his discussions are interlaced with irreplaceable gems about hasidic life. Wahrman was a disciple of the Rabbi Levi Yitshaq of Berdyczów and of Rabbi Moshe Leib of Sassów (1745–1807). From 1790, he served in the Jazłowiec rabbinate, and in 1814 he was appointed rabbi of Buczacz, where he served until his death. Wahrman's legal commentaries are printed in standard editions of the *Shulhan 'arukh*; though until recently they were not presented in user-friendly typeface.<sup>132</sup>

An example of the historical significance of Wahrman's work is apparent in his discussion of the Four Species taken on *Sukkot*: Wahrman related that he specifically sought an *etrog* from Corfu. At the time, the question of the suitability of Corfu citrons raged. Wahrman explained his choice by stating that he was following the practice of his teachers, including Levi Yitshaq of Berdyczów.<sup>133</sup> This is important testimony, given the forged letter from the Kherson Geniza in which Shneur Zalman of Liady allegedly wrote to Levi Yitshaq complaining that his colleague had not send him one of two *etrogim* that he received from the Land of Israel – as he had done in past years.<sup>134</sup>

132 *Da'at qedoshim* was first printed in Lwów, 1871, as a commentary to Alexander Sender Schor, *Simlah hadashah*, sec. 1-28, 35–39 (and without a base text for the other sections). The first edition of *Eshel avraham*, as well as further sections from *Da'at qedoshim* and *'Ezer me-quddash*, were published in *Shulhan 'arukh* (Lemberg: Pessel Balaban, 1886). *Kesef ha-qedoshim* was printed in *Shulhan 'arukh: Hoshen mishpat* (Lemberg: Pessel Balaban, 1898). The second edition of *Eshel avraham* was published in Buczacz 1906. Three booklets of Wahrman's novellae as transcribed by his grandson are held in the Library of Agudas Chassidei Chabad, New York. Only selections of these manuscripts had been printed. The Machon Yerushalayim edition includes the manuscript novellae under the title *mahadurah telita 'ah*. See *Yagdil torah* (New York) 7 (1982): 23–48; Shalom Dovber Levine, *Mi-beit ha-genazim* (Brooklyn: Kehot, 2009), 236–37.

133 Wahrman, *Eshel avraham*, mahadurah tinyana, sec. 648:22. For a full account of where Wahrman cites Levi Yitshaq, see Cooper, "Rabbanut, halakhah, lamdanut," 86–88.

134 Shneur Zalman of Liady, *Iggeret qodesh*, 472. Cf. Sholom Dovber Schneersohn, *Iggeret qodesh* (Brooklyn: Kehot, 1986), 2:925–26. Regarding Corfu *etrogim*, see Wertheim, *Halakhot va-halikhhot ba-hasidut*, 182–85; Dan Porat, "Ha-pulmus 'al etrogei Erets Yisra'el ba-shanim 1875–1889: Pereq be-yahasah shel ha-'ortodoqsiya ha-mizrah-'eiropa'it le-yishuv Erets Yisra'el" (master's thesis, Hebrew University of Jerusalem, 1994); Yosef Salmon, "Pulmus etrogei Corfu ve-riq'o ha-histori," *AJSR* 25 (2001–2): 1–24, Hebrew section; idem, "Ha-pulmus 'al etrogei Corfu ve-'etrogei Erets Yisra'el, 1875–1891," *Zion* 65 (2000): 75–106.

### Responsa: *She'elot u-teshuvot*

A responsum is a specific answer to a legal question posed to a jurist. It is limited in scope and application to the particular case, though it may be used as a guiding precedent in future cases. The genre dates back to seventh-century Babylonia, and continues to thrive today. Rabbis, judges, codifiers, and other legal writers take stock of relevant responsa literature when rendering decisions, authoring legal tomes, or giving instructions to their constituents. The responsa literature is the richest source of Jewish law in the late modern period.

Significant collections of responsa authored by hasidic masters, include: *Divrei yehezqel* by the chief rabbi of Transylvania, **Rabbi Yehezqel Panet** (1783–1845), *Tsemaḥ tsedeq* by **Rabbi Menaḥem Mendel Schneersohn of Lubavitch** (1789–1866), *Divrei ḥayyim* by **Rabbi Ḥayyim Halberstam of Nowy Sącz** (1797–1876), *She'elot u-teshuvot harim* by **Rabbi Yitshaq Meir Alter of Góra Kalwaria** (1799–1866), *Avnei nezer* by **Rabbi Avraham Bornsztain of Sochaczew** (1838–1910), *Minḥat el'azar* by **Rabbi Ḥayyim Elazar Shapira of Munkács** (1871–1937), *Divrei yatsiv* by **Rabbi Yequtiel Yehudah Halberstam of Klausenberg** (1905–94), and many more.

The responsa of some prominent hasidic masters were preserved in collections of other rabbinic figures. Thus, for instance, two important responsa by the **Maggid of Kozenice, Rabbi Yisrael Hopsztain** (ca.1737–1814), were included by Rabbi Yitshaq Avraham Katz (d.1808) – rabbi of Stopnica and later of Pińczów – in his 1805 volume. Hopsztain had sent his legal analysis to Katz, who agreed with the ruling of his correspondent. The particular case dealt with an *agunah* from Staszów and generated passionate rabbinic correspondence.<sup>135</sup>

The nature of the genre is such that it often gives voice to realia, as respondents recapitulate detailed scenarios and the practical questions that were posed to them. This style makes the responsa literature an abundant

135 Yitshaq Avraham Katz, *She'elot u-teshuvot keter kehunah* ([Żółkiew]: Avraham Yehuda Leib, 1805), no. 76. Hopsztain's two responsa together with other responsa on the Staszów case were printed in *Agunat yisra'el* (Warsaw: N. Schriftgisser, 1880). Regarding Katz, see Yekutiel Yehudah Greenwald, *Zikhron la-rishonim: ... Sziġet...* (Szatmár: Zev Schwartz and Meir Klausner, 1909), 21 n. 2; Y. Yakobovitch-Ashkenazi, "Rabbanei Pinchew le-doroteihem," in *Sefer zikkaron le-qehillat Pinchew*, ed. M. Shinar (Tel Aviv: Irgun yotzei Pinchew be-Yisra'el u-va-tefutsot, 1970), 120–21.



and irreplaceable repository not just of law but also of history, culture, and social dynamics.

Prevailing printing mores provided for a relatively fluid approach to what might be included in a volume of responsa. As a result, some collections include material that would not fit a strict definition of legal responsa. For instance, Panet's collection of responsa includes a non-legal text of unparalleled import: a letter to the author's father describing his encounter with **Rabbi Menaḥem Mendel Turm of Rymanów** (1745–1815). This is a rare, first-person account of someone who did not grow up in the hasidic milieu and decided to join the ranks of Hasidism. Panet describes the emotional and religious experience of spending time under the tutelage of Menaḥem Mendel of Rymanów, offering eyewitness testimony.<sup>136</sup>

Panet's account is an exception: most of the invaluable historical and cultural material that is embedded in the responsa literature is intertwined with legal discussions. Thus, for example, Panet's collection preserves a legal exchange with the aforementioned **Rabbi Tsevi Elimelekh Shapira of Dynów**, who was serving at the time in the Munkács rabbinate. The correspondence concerned a bill of divorce executed in Alba Iulia for a Munkács couple. The specifics of the case are not necessary for the present context, though the case points to the involvement of hasidic masters in the communal administration of Jewish law. Panet's responsum also includes words of sympathy for his beleaguered colleague who was encountering local opposition.<sup>137</sup> This incidental remark – in legal parlance an *obiter dictum* – may help us understand why Tsevi Elimelekh left his Munkács rabbinate after only four years in the post. He then returned to Galicia where he achieved fame as a hasidic master.

136 Yeḥezqel Panet, *She'elot u-teshuvot mar'eh yeḥezqel* (M. Sziget: Beit hadefus ha-meshutefet, 1875), no. 104. Regarding this responsum, see Immanuel Etkes, "Iggeret mei'eit r. Yeḥezqel Panet bi-devar ma'alat ha-tsaddiqim," in *Yosef da'at*, ed. Yossi Goldstein (Beer Sheva: Ben-Gurion University of the Negev, 2010), 203–14; Yosef Salmon, "Iggeret ha-qodesh be-mar'eh yeḥezqel, teshuvah 104," *Daat* 68–69 (2010): 277–97; Gellman, *Emergence of Hasidism*, 140–43. Panet's collection of responsa includes another letter of historical import regarding the rabbinate of Linsk; see Panet, *Mar'eh yeḥezqel*, 121–25.

137 Panet, *Mar'eh yeḥezqel*, 44c–45a, no. 79. For an analysis of this responsum, see Levi Cooper, "Polish Hasidism and Hungarian Orthodoxy in a Borderland: The Munkács Rabbinate," *Polin: Studies in Polish Jewry* 31 (2019): 210–11.

It is not just *obiter dicta* that provide valuable historical tidbits; some cases are themselves of interest to scholars of Hasidism. Thus, for instance, from Ḥayyim Halberstam's responsa we refine our understanding of the development of dynastic succession in Hasidism. Halberstam was asked whether hasidic leadership – like rabbinic leadership – may be bequeathed to heirs. The question is significant on a number of fronts. First, it indicates that well into the nineteenth century, dynastic leadership was not a *fait accompli* in Hasidism. Second, the dispute was seen as a matter of law that was to be forwarded to a legal authority. Third, Halberstam was chosen as the addressee, presumably because he was a legal authority who would be sensitive to the spiritual-hasidic angle of the question.

Halberstam opined that hasidic leadership was qualitatively different from rabbinic leadership in that it required divinely conferred grace, not just legal proficiency. Halberstam therefore ruled that norms governing inheriting positions of power did not apply to hasidic leadership.<sup>138</sup> Despite Halberstam's ruling, many of his own descendants headed hasidic communities, and dynastic succession became a key feature of Hasidism through to present times.<sup>139</sup>

Despite the wealth and promise of the responsa literature, only a few such collections produced by hasidic masters have been subject to scholarly

138 Ḥayyim Halberstam, *She'elot u-teshuvot divrei ḥayyim* (Lwów: A.Y. Menkisch, 1875), vol. 2, ḥoshen mishpat, no. 32. For analysis of Halberstam's responsum, see Iris Brown (Hoizman), "Rabbi Ḥayyim Halberstam of Sanz: His Halakhic Ruling in View of his Intellectual World and the Challenges of his Time" (Ph.D. diss., Bar-Ilan University, 2004), 191–98 (Hebrew). See also Ḥayyim Elazar Shapira, *Divrei torah*, vol. 2 (Mukačevo: Grafia, 1929), sec. 108.

139 For a justification of dynastic succession on mystical grounds but rooted in the laws of levirate marriage, see Shapira, *Agra de-kala*, pinḥas, s.v. elokei. Regarding dynastic succession in Hasidism, see Mendel Piekarcz, *Ḥasidut Polin* (Jerusalem: Bialik Institute, 1990), 193–95; David Assaf, *The Regal Way: The Life and Times of R. Israel of Ruzhin* (Jerusalem: The Zalman Shazar Center for Jewish History, 1997), 100–17 (Hebrew). On the role of women in the development of dynastic succession in Hasidism, see Nehemia Polen, "Rebbetzins, Wonder-Children, and the Emergence of the Dynastic Principle in Hasidism," in *The Shtetl: New Evaluations*, ed. Steven T. Katz (New York: New York University Press, 2007), 53–84. Regarding the importance of dynastic succession to the survival of Hasidism, see Joseph Dan, "Hasidism: The Third Century," in *Hasidism Reappraised*, 415–26; reprinted in Joseph Dan, *Jewish Mysticism* (Northvale: J. Aronson, 1998–99), 3:67–85.

analysis.<sup>140</sup> Even a rudimentary catalogue of responsa penned by hasidic masters would contribute to our understanding of the extent of the phenomenon.<sup>141</sup>

### Legislation: *Taqqanot* and *Gezeirot*

Legal systems require procedures for abrogating or amending law. Such mechanisms are a necessity in order to accommodate change, transition, development, and evolution. In most legal systems, legislation is one of the prime tools for dealing with the vicissitudes of communal life and contemporary reality. In the Jewish legal system, legislation – *taqqanot* and *gezeirot* – essentially disappeared as an effective legal instrument. Notwithstanding this sharp decline, hasidic masters have made contributions to this field of legal writing.

Some legislation by hasidic masters addressed the hasidic community, and are reflective of spiritual leadership, rather than legal authority. For example, *Taqqanot de-Lozni* issued by **Rabbi Shneur Zalman of Liady** around the 1790s in a bid to regulate visits by ḥasidim.<sup>142</sup> Or rules instituted for Ger ḥasidim in the second half of the twentieth-century, such as the unwritten guidelines – colloquially known as *Taqqunes* – of **Rabbi Yisrael Alter** (1895–1977) and his successors regarding sexual conduct.<sup>143</sup> Similarly, the posthumously published compendium of directives issued by **Rabbi Menaḥem Mendel**

140 Brown, “Ḥayyim Halberstam of Sanz”; Tamir Granot, “The Revival of Hassidism in the Land of Israel after the Holocaust: The Ideological, Halachic and Social Doctrine of the Admor Rabbi Yequtiel Yehudah Halberstam of Sanz-Klausenburg” (Ph.D. diss., Bar-Ilan University, 2008) (Hebrew); Cooper, “*Admor* of Munkács.”

141 See Biale, *Hasidism*, 301 where *Tsemaḥ tsedeq* is surprisingly described as “a novelty in the Hasidic world, as it is a legal text that includes both novellae (legal innovations) and responsa (rulings on specific cases).” Without taking away from the significance of the work, it should hardly be considered a novelty. Makhon sifte tsaddiqim, which operates under the auspices of the hasidic master of Kopyczyńce in Jerusalem, is currently preparing an annotated compilation of legal responsa from early hasidic leaders. The volume, set to be entitled *She’elot u-teshuvot sifte tsaddiqim*, will include published responsa as well as responsa that have been preserved in manuscript.

142 Shneur Zalman of Liady, *Iggerot qodesh*, 35–39, 40; Etkes, *Ba’al Ha-Tanya*, 70–80.

143 Amnon Levi, *Ha-ḥareidim* (Jerusalem: Keter, 1988), 126–27; Benjamin Brown, “*Kedushah*: The Sexual Abstinence of Married Men in Gur, Slonim, and Toledot Aharon,” *Jewish History* 27 (2013): 477–79, 484–88, 498–512; Nava Wasserman, *Mi-yamai lo qarati le-’ishiti: Zugiyut ba-ḥasidut Gur* (Sedei Boker: Ben-Gurion University of the Negev, 2015).

**Schneerson of Lubavitch** (1902–94) to his adherents which appeared in 2012 under the title *Taqqanot ha-rebbi*.<sup>144</sup> In the introduction to the volume, the author argues that the directives are not just *hora 'ot* (instructions) aimed at specific people, *mi'vtsa 'im* (campaigns) aimed at the masses, or matters concerning *minhagim* (customs); rather, these *taqqanot* have special legal standing.<sup>145</sup> Most of the Lubavitch legislation demanded additional conduct; for example: the 1952 directive requiring young men to complete rabbinic ordination before marriage, or the 1986 directive requiring each individual to appoint a personal rabbinic mentor.<sup>146</sup> One regulation was termed *gezeirat ha-mashqeh*, the drinking edict, and it placed limitations on imbibing alcohol.<sup>147</sup>

Some rules were adopted by groups of ḥasidim as part of their quest for spiritual life; on occasion these rules may have been inspired or ratified by a hasidic master. Thus, for example, **Rabbi Mordekhai Shelomoh Friedman of Boyan-New York** (1890–1971) visited Israel in the winter of 1957/58, and his visit motivated a small group of ḥasidim in Jerusalem to accept upon themselves particular rules of conduct and study.<sup>148</sup>

From a legal perspective, regulations whose impact goes beyond the circle of hasidic adherents is more significant. Hasidic masters who served in official rabbinic positions, had the opportunity to exercise legal authority for the entire community under their jurisdiction. For example, in 1809, soon after taking up the post of rabbi of Iași, **Rabbi Avraham Yehoshua Heshel**

144 Elyashiv Kaploun, ed., *Taqqanot ha-rebbi: Hora 'ot ve-taqqanot ha-rebbi le-dor ha-shevi'i* (Kfar Chabad: Ledorot Publishing House, 2012); Bilingual edition: Elyashiv Kaploun, ed., *The Rebbe's Directives*, trans. Moshe Mizrahi, ed. Yehudah Altein (Kfar Chabad: Ledorot Publishing House, 2019).

145 Kaploun, *Taqqanot ha-rebbi*, 4–5. As the author indicates, the distinction between the categories is not always clear cut. The confusion is more pronounced in the edited and abbreviated introduction to the bilingual edition, which excises the legislative emphasis; see Kaploun, *The Rebbe's Directives*, 7.

146 Kaploun, *Taqqanot ha-rebbi*, 15–18, 45–50; Kaploun, *The Rebbe's Directives*, 26–33, 90–101.

147 Kaploun, *Taqqanot ha-rebbi*, 22–23; Kaploun, *The Rebbe's Directives*, 40–43. Regarding Lubavitch 'Prohibition' laws, see Levi Cooper, "Not too many 'l'haims!'" *Jerusalem Post*, August 23, 2019, magazine, p. 43, also available at <https://www.jpost.com/israel-news/not-too-many-lhaims-599318>.

148 Dov Ber Rabinowitz, ed., *Ba-qodesh ḥazitikha* (Jerusalem: Mishkenot ha-ro'im, 2016), 3:356–57.

ratified the existing regulations of the local cobblers' association. A few years later he did the same for the local tailors' association.<sup>149</sup>

Similarly, **Rabbi Tsevi Elimelekh of Dynów** enacted *Taqqanot tamkhin de-'orayta* in 1827 or 1828 during his brief stint in the Munkács rabbinate. This legislative act was designed to provide religious education for all Jewish Munkács males. To this end the legislation established a Society responsible for the implementation of the regulations and an elaborate taxation system that was to be applied to members of the Society in order to guarantee funding for the programme. The regulations also distinctly sought to socialize both students and teachers. The issues emphasized in the ordinances – such as wearing *tsitsit* – provide a window into the socio-religious challenges and priorities that occupied Tsevi Elimelekh in the 1820s. The commandment to tie *tsitsit* to a four-cornered garment appears in the Bible and the rabbinic corpus of Jewish law, so “enacting” such a requirement is strange. Tsevi Elimelekh was well-aware that readers would find it absurd that he was “legislating” existing laws. He explained his predicament:

But what can I do? About this my heart is faint, for nowadays there are many people in this country who wantonly transgress in these matters. And it is not in our power to protest, for it has become for them like something that is permissible.<sup>150</sup>

Thus *Taqqanot tamkhin de-'orayta* provides a perspective into religious observance in Munkács, Hungary in the 1820s.<sup>151</sup>

## Enumerations of the Commandments

In the third century, Rabbi Simlai – a Babylonian sage who immigrated to the Land of Israel – offered a homily where he stated that there are 613

149 M. Schwarzfeld, “Despre mersul științific al Societății in 1888 (Momente din Istoria Evreilor in România de la început până la mijlocul acestui veac),” in *Analele Societății Istorice Iuliu Barasch* (București: Societatea Tip. E. Wiegand, 1888-1889), 3:132–34, translated into Hebrew in Eliyahu Feldman, “Ziqatan shel hevrot ba'alei-melakhah be-Moldaviya le-qehillah u-le-rabbanut,” *Sinai* 86 (1979–80): 80–81.

150 Tsevi Elimelekh Shapira, *Taqqanot tamkhin de-'orayta* (Munkács: Blayer & Kohn, 1895), 7b–8a, no. 13.

151 For an analysis of the legislation, see Levi Cooper, “Legislation for Education: Rabbi Tsevi Elimelekh of Dynów’s Regulations for the Support of Torah in Munkács,” *Polin: Studies in Polish Jewry* 30 (2018): 43–72.

commandments. Jewish tradition assimilated “613” as a typological number; indeed, countless homilies after Rabbi Simlai refer to 613. It would take some five hundred years before Rabbi Simlai’s homily would result in the creation of a unique literary genre: enumerations of the 613 commandments.

Enumerators had different purposes. For some, listing the commandments was part of a larger project, for others it was a polemic response to Karaite challenges, still others embarked upon the quest as part of an educational program, while creative writers penned poems structured around the idea of 613 commandments. For example: Maimonides (1138–1204) wrote his *Sefer ha-mitsvot* as scaffolding for his legal magnum opus *Mishneh torah*. The anonymous thirteenth-century Spanish author of *Sefer ha-ḥinnukh* explained that his enumeration was designed as a pedagogical tool to keep his son interested in Torah study. Rabbi Shabbetai Ha-Kohen (1621–1662) wrote his pithy *Po ‘el tsedeq* (Jessnitz, 1720) as an *aide-mémoire*.<sup>152</sup> The various goals gave rise to different forms and styles. Notwithstanding the disparities, enumerators needed to identify and classify the source of each law. The resultant works are seldom considered in judicial decisions, yet the enumerations may still be considered literary sources of Jewish law.

Hasidic personalities also made a modest – and at times incomplete – contribution to this genre of legal writing. This contribution has thus far gone unnoticed by scholars of Jewish law and by scholars who have discussed the enumeration genre.<sup>153</sup>

152 Regarding the aims of *Sefer ha-ḥinnukh* and of *Po ‘el tsedeq*, see Levi Cooper, “Innovative Methodologies for Disinterested Students,” *Jewish Educational Leadership* 1 (2003): 62–63; idem, “Learning the Laws by Rote,” *Jewish Educational Leadership* 3 (2004): 56–61.

153 Michael Guttman, *Behinat ha-mitsvot* (Breslau: Th. Schatzky, 1928); Simon Greenberg, “The Multiplication of the Mitzvot,” in *Mordecai M. Kaplan Jubilee Volume*, ed. Moshe Davis (New York: Jewish Theological Seminary of America, 1952), English section, 381–97; Abraham Hirsch Rabinowitz, *Taryag: A Study of the Origin and Historical Development From the Earliest Times to the Present Day, of the Tradition that the Written Torah Contains Six Hundred and Thirteen Mitzvoth* (Jerusalem: Boys Town, 1967); Ephraim E. Urbach, *The Sages; Their Concepts and Beliefs*, trans. Israel Abrahams (Jerusalem: Magnes Press, 1975), 342–65; Elon, *Jewish Law*, 3:1259–67; Roth, *Halakhic Process*, 13–24.

**Rabbi Meir Margoliot** (ca.1700–90) wrote a rhyming poem enumerating the 613 commandments.<sup>154</sup> While we can establish a connection between Margoliot and the Besht, it is difficult to identify Margoliot as a member of a movement that had yet to coalesce.<sup>155</sup> The poem might still be considered to be associated with Hasidism because it was first published in Berdyczów in 1816 – a time, city, and printing house when other hasidic works were being produced. Moreover, the poem was published with the names of a number of hasidic masters who has affixed signatures of approval on Margoliot's collection of responsa and talmudic novellae.<sup>156</sup>

Three hasidic masters that I have already mentioned also contributed to the enumeration genre: **Tsevi Elimelekh Shapira of Dynów**, **Menahem Mendel Schneersohn of Lubavitch**, and **Yitshaq Eizeq Yehudah Yehiel Safrin of Komarno**.<sup>157</sup> The three authors aimed at elucidating the commandments from a hasidic and kabbalistic perspective.

Tsevi Elimelekh treated only fifty-eight commandments and his work was published a decade after his death. In his lengthy introduction, Tsevi

154 Meir Margoliot, *Kotnot 'or – Or torah* (Berdyczów: Shmuel ben Yisakhar Ber, 1816). While the poem was only published in 1816, it was mentioned on the title page of Margoliot's earlier work: *Or 'olam* (Ostróg: n.p., 1794).

155 On the connection between Margoliot and the Besht, see Heschel, "Unknown Documents," 115; Moshe Rosman, *Founder of Hasidism: A Quest for the Historical Ba'al Shem Tov* (Berkeley: University of California Press, 1996; reprint, with new introduction, Oxford: Littman Library of Jewish Civilization, 2013), 135–36, 155–58, 178.

156 Meir Margoliot, *Me'ir netivim* (Połonne: Shmuel ben Yisakhar Ber, 1791–92), vol. 1; approbations from Levi Yitshaq of Berdyczów, Meshulam Zusha of Annapol, Avraham Yehoshua Heshel of Opatów, and others.

157 Tsevi Elimelekh Shapira, *Derekh piqqudekha* (Lemberg: Franz Galinski, 1851). Yitshaq Eizeq Yehudah Yehiel Safrin, *Otsar ha-hayyim: Heleq rishon bereishit* – introduction, list of 613 commandments, and first three commandments; printed in idem, *Netiv mitsvotekha* (Lemberg: Michael F. Poremba, 1858), second pagination. The complete work was printed in idem, *Heikhal ha-berakhah* (Lemberg: Pessel Balaban; A.J. Menkes, 1864–74), 5 vols. – Pentateuch that also includes classic biblical commentators and Safrin's commentary on the Masorah. Menahem Mendel Schneersohn, *Derekh mitsvotekha: ...Ta 'amei ha-mitsvot* (Poltava: Eliyahu Akiva Rabinowitz, 1911). Select chapters have been translated into English and published in a bilingual edition: *Derekh Mitzvoesecha: A Mystical Perspective on the Commandments*, trans. Eliyahu Touger (Brooklyn: Sichos in English, 2004–7), 2 vols. There is also a translation into Russian: Дерех мицвотеха: [путь заповедей твоих], trans. Uri Kamishov (Moscow: Книжники, 2015–16), 3 vols.

Elimelekh explained that the goal of his enumeration was to let people know where they had sinned so that they could repent. This was also a personal journey:

And that which I will see that my actions do not tally with my words – I will demand of my soul to return to God and accept a true undertaking with heart and soul to fulfil everything that is written in the book.<sup>158</sup>

Schneersohn's volume, which is also incomplete, was first published by the Kopyś branch of Chabad Hasidism – an interesting snippet of hasidic history in itself – almost half a century after the author's demise. Of the three authors, only Safrin covered all 613 commandments and published his enumeration. Safrin also wrote a lengthy introduction where he discussed the classification of certain commandments, explaining where he departed from his predecessors. Indeed, Safrin's entire enumeration project was a monumental effort that was central to his mystical outlook, life work, and self-perception.<sup>159</sup>

Despite the drawbacks – that is, the non-legal aims of the authors and the fact that two of them did not complete the undertaking – all three works are valuable sources. For instance, in a parenthetical statement Tsevi Elimelekh discussed the legal basis for the custom not to use designated witnesses at a betrothal ceremony – a practice that is unknown in contemporary Jewish law.<sup>160</sup> Elsewhere in this work, Tsevi Elimelekh opened a section with the words "I was asked" and proceeded to tackle legal questions regarding the circumcision of converts.<sup>161</sup> Moreover, Tsevi Elimelekh aimed at elucidating how each commandment could be filled in deed, speech, and thought. The author openly acknowledged that not every commandment lent itself to tripartite fulfilment. Thus he recast the notion of fulfilling by speech as a learning objective where the goal was legal novellae.

Safrin's enumeration includes a responsum of historical import, embedded in his discussion of the prohibition against creating artistic human forms. The addressee was Rabbi Shmuel Heller (ca.1803–84) – a hasidic adherent and Ashkenazi rabbi of Safed – and the responsum was written during the

158 Shapira, *Derekh piqqudekha*, 3a–b.

159 Meir, "‘‘Itsuvah shel lamdanut ḥasidit,’’ 5, 22, 25–26, 43–44, 54, 65.

160 Shapira, *Derekh piqqudekha*, 1c–d.

161 *Ibid.*, 25c–d, no. 2, ḥeleq ha-dibbur, sec. 29–30.



repair of the Ashkenazi Ari synagogue in Safed following the devastating 1837 earthquake. As part of the renovations, an unnamed artist had crafted a new wooden ark, decorating the ark with carvings of animals. In his responsum to Heller, Safrin described his daily routine and the project he was working on at the time. Regarding the legal matter at hand, Safrin rallied against the animal reliefs that adorned the new ark.<sup>162</sup> Heller's great-grandson would later recall that he remembered seeing pieces of the synagogue's ark adorned with animal forms in a back room of the synagogue. Today, the ark in the synagogue is decorated with just such animal reliefs.<sup>163</sup> Passages like these preserve important legal, historical, and cultural information.

## 6. A Scholarly Frontier

The academic study of Jewish law has focused on certain texts, in particular the Talmud and Codes. Thanks to the indefatigable efforts of Menachem Elon, the responsa literature – particularly from Jewish communities with varying degrees of autonomy – has also been brought into focus.<sup>164</sup> Beginning

162 Safrin, *Otsar ha-ḥayyim*, no. 39, in *Heikhal ha-berakhah: Shemot*, 132a–133d. Regrettably, this responsum was not included in the most recent, annotated edition of Safrin's enumeration: see *Otsar ha-ḥayyim: 'Im be'er eliyahu* (Rehovot: Or li-shmu'el, 2011–14), 1:427–31 (4 vols., covering 145 of the 613 commandments, have been published).

Heller also wrote against the animal reliefs; see Shmuel Heller, *Taharat ha-qodesh* (Safed: Dovber Kara, 1864); reprinted in idem, *She'elot u-teshuvot shem mi-shmu'el* (Jerusalem: A.Z. Heller, 1979), 14–28, sec. 3. Cf. Shalom Sabar, "Le-beḥinat ha-shoni be-yahas shel ha-sefaradim ve-shel ha-'ashkenazim le-'omanut ḥazutit be-'E[rets] Y[isra'el] be-shilhei ha-tekufah ha-'othmanit," *Pe'amim: Studies in Oriental Jewry* 56 (1993): 78–80, 89–91. The Rishon Le-tzion, Rabbi Ḥayyim David Hazan (1790–1869), supported Heller's conclusion, as did Galician rabbis; see Kahana, *Meḥqarim be-sifrut ha-teshuvot*, 364–67.

163 Avraham Zeida Heller, *Sefer ha-rav, ha-manhig, ve-ha-rofe* (Tel Aviv: Mahashevet, 1989), 180–93; Rivka Embon, "From Conservative Community to an Ultra-Orthodox Community" (master's thesis, Haifa University, 2004), 40, 110 (Hebrew); Meir, "'Itsuvah shel lamdanut ḥasidit," 17.

164 Elon's focus on communities with a measure of autonomy was largely due to his efforts to highlight Jewish public and administrative law as possible sources for Israeli law. This programmatic decision meant that the corpus focused on responsa from Europe until the second half of the eighteenth century when the Council of Four Lands was disbanded in 1764, and responsa from Sephardi communities. In the years 1965–73, Elon orchestrated the indexing of three significant collections

in the 1960s and continuing to this day, this vast and rich corpus has become accessible due to the development of pioneering data retrieval systems.<sup>165</sup> These databases continue to grow at dizzying speeds, redefining the corpus of Jewish law.<sup>166</sup> In recent years, scholars have also begun to mine *pinqasim* – communal records of decisions handed down by Jewish courts.<sup>167</sup>

Given this wealth, we would be hard-pressed to identify a community, much less a movement, that has been so neglected by scholars of Jewish law. Yet legal writing from the *beit midrash* of Hasidism has hitherto not commanded widespread interest. Despite the potential of legal texts as primary sources

of medieval responsa. Then in the years 1981–86, he produced a five-volume index of responsa literature from Spain and North Africa. Responsa from the hasidic milieu were, perforce, not of interest. Regarding the indexing project, see Elon, *Jewish Law*, 3:1523–28; idem, “Maftteihot ha-she’elot ve-ha-teshuvot u-mehqarei ha-makhon le-ḥeqer ha-mishpat ha-‘ivri,” *Divrei ha-qongress ha-‘olami ha-ḥamishi le-mada‘ei ha-yahadut* [1969], vol. 5 (Jerusalem: World Congress of Jewish Studies, 1973), 69–77.

- 165 Aviezri Fraenkel, “Ha-maḥshev ve-’ihzur meida memukhan ke-makhshirei ‘ezer be-ḥeqer ha-mishpat ha-‘ivri,” *Divrei ha-qongress ha-‘olami ha-ḥamishi le-mada‘ei ha-yahadut* [1969], vol. 5 (Jerusalem: World Congress of Jewish Studies, 1973), 79–98; idem, “Proyeqt hashut: ‘avar, hoveh – ve-gam ‘atid?” *Diné Israel* 19 (1997–98): 253–70; idem, “Hirhurim me-‘atim ‘al proyeqt hashut,” *Hatzofe*, March 30, 2007, 11, 14; Yaacov Choueka, “Against all Odds: The Amazing but Most True Story of Aviezri Fraenkel and his Special Favorite: The Responsa Project, or The Multi-Faceted Contributions of Aviezri Fraenkel to Information Retrieval and the Related Areas,” *The Electronic Journal of Combinatorics* 8, no. 2 (2001), #14.
- 166 With the launch of hebrewbooks.org in February 2001, sixty books were made available for download in pdf format. Currently, the collection includes over 58,000 books, with additional volumes added each month. The largest database is Otzar HaHochma, with with 107,233 titles (version 18, summer 2020) and the promise of adding 5,000 titles each year.
- 167 For example: Edward Fram, “A Rabbinic Precedent Not Worthy of its Name,” in *Gerald Blidstein Festschrift*, ed. Uri Ehrlich et al. (Beer Sheva: Ben-Gurion University of the Negev, 2008), 401–12 (Hebrew); idem, *A Window on Their World: The Court Diary of Rabbi Hayyim Gundersheim, Frankfurt 1773-1794* (Cincinnati: Hebrew Union College Press, 2012); idem, “The Use of Codified Law in the Rabbinic Courts of Frankfurt am Main on the Eve of the Enlightenment,” *Jewish History* 31 (2017): 129–47; Jay R. Berkovitz, *Protocols of Justice: The Pinkas of the Metz Rabbinic Court, 1771-1789*, 2 vols. (Leiden: Brill, 2014).

for theology, culture, and history, scholars of Hasidism have yet to seriously probe and analyze these writings.<sup>168</sup>

Contemporary interest in the interdisciplinary study of Law and Religion makes Hasidism an attractive scholarly landscape. This is all the more true as scholars move beyond the quest of reconciling the disciplines, and engaging in what has been termed a “legal turn in the study of religions.”<sup>169</sup>

The belief has been that hasidic personalities were not players in the field of Jewish law. The evidence I have accumulated here, together with the scholarly work that has been done to date, belies this notion. Thus, revisiting some of the assumptions that underpin scholarly understandings of the sources of Jewish law and of hasidic history, culture, and thought would open up new vistas for research in both fields: Jewish law and Hasidism. This promising treasure trove awaits discovery.

With the map I have drawn in hand, we might start this expedition by sketching ways that legal writings from this virtual *beit midrash* differ from other contemporaneous legal literature. For instance, to what extent – if any – is hasidic thought manifest in the judicial decisions of hasidic masters? This would shed further light on contemporary discourse regarding the role of judges’ beliefs and political leanings in the decision-making process. If – for argument’s sake – hasidic masters were able to set aside their hasidic allegiances when ruling, could this indicate the possibility that contemporary judges might do the same? If – again for argument’s sake – hasidic jurists made no attempt to hide their hasidic fealty when ruling, might this suggest an approach that casts doubt on the ideal of a disengaged jurist?

Another angle would be to examine how the new communal structures of hasidic life – such as the role of the hasidic master – impacted Jewish

168 A number of examples are surveyed in Louis Jacobs, *Theology in the Responsa* (London: Routledge & Kegan Paul, 1975), 177–78, 188–89, 214–15, 221–22, 236–42, 268–69, 281–82, 287, 288–92, 302, 304–5, 312, 313, 319, 323–26.

169 On Law and Religion, see Harold J. Berman, *The Interaction of Law and Religion* (London: S. C. M. Press, 1974); Howard J. Vogel, “A Survey and Commentary on the New Literature in Law and Religion,” *Journal of Law and Religion* 1 (1983): 79–169; John Witte, “The Study of Law and Religion in the United States: An Interim Report,” *Ecclesiastical Law Journal* 14 (2012): 327–54; Marie A. Failing, “Twenty-Five Years of Law and Religion Scholarship: Some Reflections,” *Touro Law Review* 30 (2014): 9–25. Regarding the turn, see Joseph E. David, “Review Essay: Divinity, Law, and the Legal Turn in the Study of Religions,” *Journal of Law and Religion* 32 (2017): 172–84.

law. Was the conduct of hasidic masters judged by the same standards as the conduct of regular people, or was it considered legitimate to measure leaders by alternative yardsticks? This line of enquiry also penetrates a key element of contemporary legal discourse, as we debate similar issues with regard to political and religious leaders who have been charged with crimes.

Looking forward we can probe which legal works by hasidic masters were accepted as part of the canon of Jewish law? We might then follow up by examining how Hasidism – as a theology, as a society, or as a cultural phenomenon – affected the reception history of these works.

The prosopographic panorama alters the light cast on a vibrant contemporary movement with a three-hundred-year-old narrative. By focusing on the past we gain insight into the current hasidic movement which often plays the role of the conservative defender of Jewish law. Perhaps even more ambitiously, we can peer into coming years: After refining our understanding of Hasidism, we might consider what the future holds for one of the fastest growing communities in the State of Israel. Thus the *longue durée* perspective raises new questions and might inform debates on contemporary issues.

The legal literature from the *beit midrash* of Hasidism may very well be one of the next scholarly frontiers.