



Halakhah

Levi Cooper

Scholars often cast the Hasidic movement, its ethos, and its religious message in antinomian or anomian hues, suggesting that Hasidim either flouted halakhah (Jewish law) or ignored it. Yet, contrary to this image, Hasidic masters from the earliest days of the nascent movement have been active and interested in the world of Jewish law. The scholarly promise of this aspect of Hasidism has yet to be fully realized. This chapter demonstrates some of the fruitful potential of this academic frontier.

A MEDLEY OF HASIDIC LAW

Hasidic masters who served in official rabbinic capacities were central to the communal administration of Jewish law. Thus, for instance, R. Levi Yitzḥak of Berdichev (Berdyčów) (1740–1809)—author of the seminal Hasidic work *Kedushat Levi* and a beloved master in Hasidic lore—served as the rabbi of important cities: Ryczywół, Żelechów, Pinsk, and Berdyčów. In this role, R. Levi Yitzḥak was responsible for the day-to-day administration of Jewish law. Indeed, surviving documents attest to his juridical role in civil disputes.¹

Hasidic masters and scholars who identified as Hasidim have also composed works of Jewish law. For example, R. Uziel Meisels (1744–1785), a colleague of R. Levi Yitzḥak, also served in the rabbinate of a number of towns: Ostrowiec, Ryczywół, and Nowe Miasto Korczyn. R. Meisels's work, *Tiferet 'uziel*, preserves early Hasidic teachings. He also wrote commentaries on portions of the Talmud, as well as *Menorah ha-tehora*—a commentary on the laws of Shabbat. This work was reportedly written at the behest of the second-most important figure in Hasidic collective memory, R. Dov Ber (d. 1772), the Maggid of Mezrich (Międzyrzecz).²

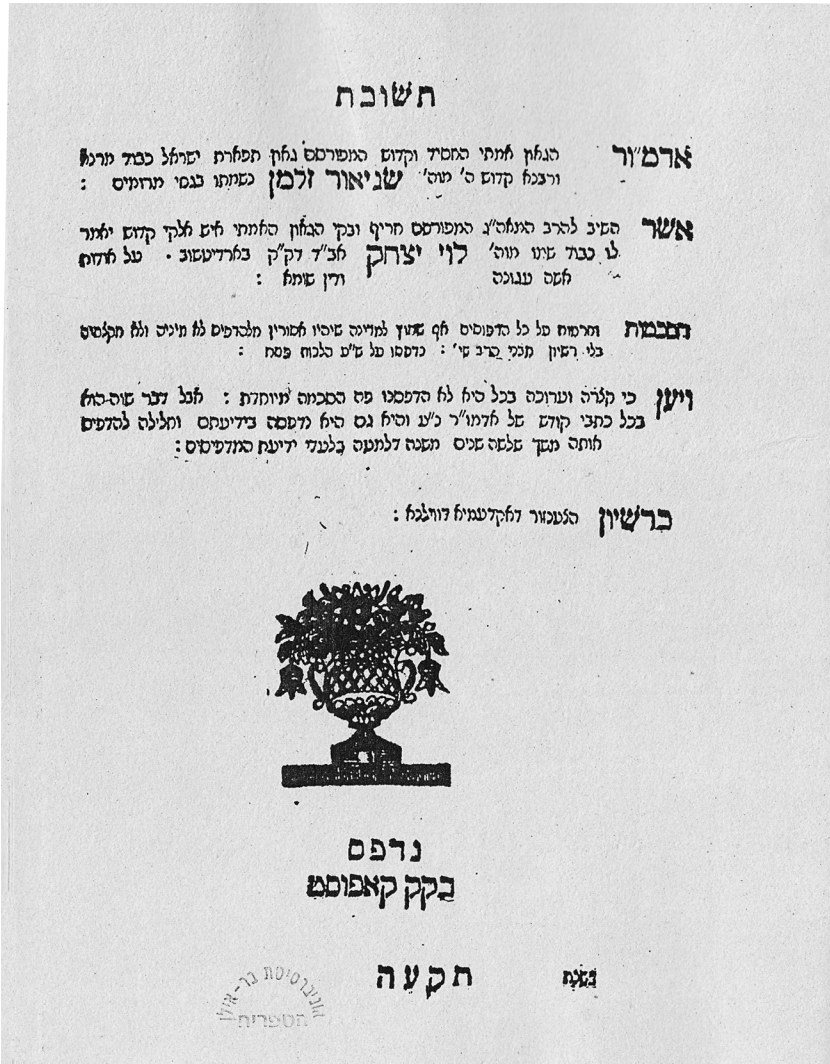


Figure 2.1. Title page of responsum penned by R. Shneur Zalman of Lady to R. Levi Yitzhak of Berdyczów, printed in 1815 in Kopyś, Russian Empire. Source: Bar-Ilan University Library.

Hasidic involvement in the development of Jewish law extended to printing ventures that included the publication of classic tomes of Jewish law. While R. Shneur Zalman of Lady (c. 1745–1812) is famous as a Hasidic thinker, he was also an eminent author of legal texts whose writings were almost entirely published posthumously (see figure 2.1). In addition, R. Shneur Zalman served as

an arbitrator in civil disputes, though we know little about his activity in this area. Moreover, R. 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 leading fourteenth-century consolidation of Jewish law.³ Publishing ventures, especially those involving multivolume 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 the books. Such approbations generally included a ban for a given period against publication of the work by another party, thereby assisting investors in recovering their costs and turning a profit. We have a solitary approbation from the Maggid of Mezrich, and this letter was given for a legal work.⁴ R. Avraham Yehoshua Heshel (c. 1747–1825) is known for his posthumously published Hasidic work, entitled *Ohev yisra'el*. He did not bequeath legal writing, but served in the rabbinate in Kolbuszowa, Opatów, and Iași before retiring from the official rabbinate and moving to Międzybóž—the city famous as the hometown of the Besht (c. 1700–1760). We would be hard pressed to find a Hasidic master who matched R. Avraham Yehoshua Heshel for the sheer number of approbations he wrote, many of them for the publication of works in Jewish law.

The enduring interest in the legal sphere was also reflected in curricula that included the study of Jewish law. Thus, for example, when R. Levi Yitzhak of Berdichev (Berdyczów) first published his *Kedushat levi* in 1798, he included selections from two of his children and from his father. One of his sons, R. Meir of Husaków (1760–1806), opened his contribution with a vignette about his father. R. Meir described how many people came to his father for inspiration in the service of God *and* in order to study Jewish law.⁵ R. Meir had inherited the Husaków rabbinate from his paternal grandfather, and his two-volume work included Talmudic novellae and responses to those who disagreed with the rulings of the great twelfth-century codifier Maimonides.⁶ In the first volume, R. Meir once again related to the curriculum of those who were under his father's tutelage, highlighting the prominence of Talmud and Jewish law.⁷

Even in their homilies, Hasidic masters—some who served in juridical roles and others who were not known as legal practitioners—theorized about Jewish law. For example, R. Shlomo of Łuck (c.1740–1813) recorded that his teacher the Maggid of Mezrich expounded a famous Talmudic maxim: “These and those”—referring to contradictory legal opinions—“are the words of the living God.” The Maggid's homilies on this dictum present what could be understood as a consideration of legal pluralism in Jewish law from a mystical perspective.⁸ While the extant materials do not allow us to paint a complete portrait of the Maggid's approach, the fact that he chose to expound on the multiplicity of opinions in Jewish law indicates that he was not disengaged from the legal realm.

This collage need not surprise us. From time immemorial, halakhah has guided and governed traditional Jewish life. Yet much of Hasidic scholarship has yet to mine the treasure trove of Jewish legal writing from the school of Hasidism. What might such a mining venture uncover? Before demonstrating such an undertaking, let us begin by fossicking: surveying the terrain of literary sources of Jewish law.

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, and to a lesser extent legislation. The *bet midrash* (study hall) of Hasidism—that is, an imaginary convocation spanning 250 years of learned scholarship from Hasidic masters and from people who identified as Hasidim—has contributed works to each of these genres of legal writing. I will briefly describe the principal genres and survey some of the Hasidic contributions to each of these. I will also indicate examples of what the student of Hasidism might gain from exploring these legal sources. At the outset, let me note that each writer I will discuss also made a contribution to Hasidic literature and served as the head of a Hasidic community; their Hasidic credentials, therefore, are unimpeachable.

Codes

In legal parlance, the term *code* has not been used consistently, and typologies for distinguishing between collections, compilations, consolidations, and codifications have been suggested. The unique circumstances of Jewish law in the late modern period—including a lack of defined jurisdictional boundaries and inconsistent instituted 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 a particular genre of 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. Admittedly, comprehensiveness and exclusivity are often more aspirations than achievements.

Important codifications of Jewish law include *Mishneh torah*, by Maimonides (1138–1204), the aforementioned *Arba'ah turim*, by R. Ya'akov ben Asher (c. 1269–1343), and *Shulhan 'arukh*, by R. Yosef Karo (1488–1575). The most important Hasidic contribution to this genre of legal writing is the work known as *Shulhan 'arukh ha-rav*, by R. Shneur Zalman of Lady. The popularity of this code went beyond the confines of the Hasidic community: it has been published more than

fifty times, translated into English, and extensively annotated.⁹ To this day, *Shulḥan 'arukh ha-rav* is avidly studied and regularly consulted by practitioners of Jewish law.

While scholars of Hasidic thought and scholars of Hasidic history have invested much effort in exploring R. Shneur Zalman's seminal contributions to Hasidism, his compilation of Jewish law and his other legal writing have gone virtually untouched.¹⁰ One reason for the neglect is that the work does not demonstrate Hasidism in any apparent manner. This itself is striking: a leader of the nascent movement who produced a groundbreaking work in Hasidic thought also authored a legal tome bereft of overt Hasidic influence.¹¹ This may also partly explain how the work achieved popularity beyond Hasidic circles.

R. Yitzḥak Aizik Yehudah Yeḥiel Safrin of Komarno (1806–1874) also produced a code of Jewish law, entitled *Shulḥan ha-tahor*.¹² In contrast to R. Shneur Zalman's code, R. Safrin's code is barely known and seldom cited, despite its lucid style. This was because the work remained in manuscript until 1963–1965, when it was first published in Tel Aviv.¹³ 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, R. Safrin discusses the order of precedence between *seliḥot* and *tikkun ḥatsot*—that is, penitentiary prayers in the lead up to the High Holy Days and the midnight rite of mourning for the exile.¹⁴ While the question is no doubt legitimate, it is only the mystically committed who engage in *tikkun ḥatsot* and might be faced with such a dilemma. R. Safrin also discusses wearing white clothes on Shabbat, a mystical practice adopted by Hasidic leaders in the formative years of the movement that survived until the twentieth century but has since faded.¹⁵ R. Safrin's commitment to Kabbalah is so pronounced that dictates based on Jewish mysticism are given greater weight than classic sources of Jewish law. Thus the work pushes the boundaries of legal discourse in the Jewish tradition.¹⁶ This fascinating work suggests one particular permutation of how the gnostic world of Jewish mysticism was incorporated into daily Jewish practice by Hasidic masters.

Shulḥan ha-tahor might also be read on the backdrop of kabbalistic literature that translated the mystical *kavanot* (meditations) of R. Yitzḥak Luria (*Ari*, 1534–1572) into practical instructions that could be followed by all, especially people who were not adept in Lurianic mysticism. This reminds us that Hasidism should be seen—at least to some extent—as a continuation or development of the Jewish mystical tradition, rather than an entirely new phenomenon.

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. Perhaps the most important legal gloss was written by the Kraków rabbi Moshe Isserles (*Remu*, c. 1530–1572), on Karo's *Shulḥan 'arukh*. *Remu*'s gloss ensured that the composite work could be used by Jews from various diasporas, resulting in a work that remains a benchmark in Jewish law to this day.

Hasidism also contributed to this genre of legal writing. I already mentioned the commentary on the laws of Shabbat penned by R. Uziel Meisels; let me add three further examples. R. Avraham David Wahrman of Buczacz (1771–1840) wrote a commentary on each of the four sections of the *Shulḥan 'arukh*.¹⁷ R. Tsevi Hirsh Shapira of Munkács (1850–1913) wrote *Darkhei teshuvah* on the laws of slaughter and suitability of various foods.¹⁸ R. Tsevi Hirsh did not finish the work; that task fell to his only son and successor, R. Ḥayim Elazar Shapira (1871–1937), who completed the volume that his father had begun to prepare on laws of menstruation and added a further volume to the series on the laws of ritual baths.¹⁹ R. Ḥayim Elazar—in addition to completing his father's work—published his own commentary on the first section of *Shulḥan 'arukh*, dealing with daily rituals (see figure 2.2), as well as a volume on the laws of tefillin and the laws of circumcision.²⁰

Glosses are not all cut of one cloth, and a book's reception history is the result of various factors. R. Ḥayim Elazar's commentaries were part of his gallant attempt to explain Hasidic practice along legal lines.²¹ Yet for practical law, existing works of Jewish law held sway. Moreover, his legal writings were eclipsed by his own passionate political activism.

R. Tsevi Hirsh's *Darkhei teshuva* was an attempt to summarize the many rulings that had appeared in the responsa literature. This was a recognized and popular genre, though R. Tsevi Hirsh's effort surpassed those of his predecessors.²² Indeed, *Darkhei teshuva* was a popular work that was used extensively by rabbis who were charged with overseeing local Jewish law.

R. Wahrman's commentaries sought to understand the base text in light of other legal material, but the author also freely shared his personal experiences and adventures. Thus his discussions are interlaced with irreplaceable pearls about Hasidic life. R. Wahrman was a disciple of the aforementioned R. Levi



Figure 2.2. Title page of R. Hayim Elazar Shapira's *Nimukei orah hayim*, commentary on *Shulhan 'arukh*, orah hayim, sections 1–697, printed in 1930 in Turňa nad Bodvou, Czechoslovakia. Source: National Library of Israel.

Yitzhak of Berdichev and of R. Moshe Leib of Sasów (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 in 1840. R. Wahrman's legal commentaries are printed in standard editions of the *Shulhan 'arukh*, though until recently they were not presented in user-friendly typeface.

In his discussion of the Four Species taken on the festival of Sukkot, R. Wahrman related that he specifically sought an *etrog* (citron) from Corfu. At the time, the question of the suitability of Corfu citrons raged. R. Wahrman explained his choice by stating that he was merely following the practice of his teachers, including R. Levi Yitzhak.²³ This is particularly important testimony, given the forged letter from the Kherson Geniza in which R. Shneur Zalman of Lady allegedly wrote to R. Levi Yitzhak complaining that his colleague had not sent him one of two citrons that he received from the Land of Israel, as he had done in past years.²⁴

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 a 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 generally took stock of relevant responsa literature when rendering decisions, writing 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 by Hasidic masters include *Divrei Yehezkel*, by the chief rabbi of Transylvania, R. Yehezkel Panet (1783–1845), *Tsemah tse-dek*, by R. Menaḥem Mendel Schneersohn of Lubavitch (Lubawicze) (1789–1866), *Divrei hayim*, by R. Hayim Halberstam of Sanz (Nowy Sącz) (1797–1876), *Avnei nezer*, by R. Avraham Bornstein of Sochaczew (1838–1910), *Minhat El'azar*, by the aforementioned R. Hayim Elazar Shapira of Munkács, *Divrei yatsiv*, by R. Yekutiel Yehudah Halberstam of Klausenberg (Kolosvár/Cluj) (1905–1994), and many more. The nature of the genre is such that it often gives voice to realia, as respondents recapitulated detailed scenarios and the practical questions that were posed to them. This style makes the responsa literature an abundant and irreplaceable repository not just of law but also of history, ethnography, culture, and social dynamics.

R. Panet's collection of responsa includes a nonlegal text of extreme import for the history of Hasidism: a letter to the author's father describing his encounter with R. Menaḥem Mendel Turm of Rymanów (1745–1815). This is a rare account of a person who did not grow up in the Hasidic milieu and decided to join the ranks of Hasidism. R. Panet describes the emotional and religious experience of spending time under the tutelage of R. Menaḥem Mendel of Rymanów, recording noteworthy eyewitness testimony.²⁵

R. Panet's account is an exception; most of the invaluable historical and cultural material that is preserved in the responsa literature is intertwined with legal discussions. Thus, for instance, R. Panet's collection preserves a legal exchange with R. Tsevi Elimelekh Shapira of Dynów (1783–1841), who was serving at the time in the Munkács rabbinate. The correspondence concerned a bill of divorce executed in Karlsburg (Gyulafehérvár/Alba Iulia) for a Munkács couple. The specifics of the case are not necessary for the present context, but R. Panet's responsum also includes words of sympathy for his beleaguered colleague who was encountering local opposition.²⁶ This incidental remark—in legal parlance, an *obiter dictum*—may help us understand why R. 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.

It is not just *obiter dicta* that provide valuable information; some cases are themselves of interest to scholars of Hasidism. Thus, for instance, from R. Ḥayim Halberstam's responsa we refine our understanding of the development of dynastic succession—a key feature of Hasidism from the nineteenth century through to this day. R. Halberstam was asked whether leadership of a Hasidic community was to be bequeathed to heirs. He suggested that Hasidic leadership was qualitatively different from rabbinic leadership in that it required divinely conferred grace, not just legal proficiency. R. Halberstam therefore ruled that the norms governing inheriting positions of power did not apply to Hasidic leadership.²⁷

Despite the wealth and promise of the responsa literature, most collections produced by Hasidic masters are yet to be subject to scholarly analysis.²⁸

Legislation: Takkanot and Gezerot

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 life and contemporary reality. In the Jewish legal system, legislation—*takkanot* and *gezerot*—has essentially disappeared as an effective legal instrument. Notwithstanding the decline, Hasidic masters have made contributions to this field of legal writing.

Some legislation by Hasidic masters addressed the Hasidic community and is more reflective of spiritual leadership than of legal authority. Examples include *Takkanot de-Lozni*, issued by R. Shneur Zalman of Lady around the 1790s in a bid to regulate visits by Hasidim, and rules instituted for Ger Hasidim in the second half of the twentieth century, such as the unwritten guidelines—colloquially known as *Takkunes*—of R. Israel Alter (1895–1977) and his successors regarding sexual conduct.²⁹

From a legal perspective, regulations whose impact goes beyond the circle of Hasidic adherents are 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, *Takkanot tamkhin de-'orayta* was enacted by R. Tsevi Elimelekh Shapira of Dynów in 1827 or 1828, during his brief stint as rabbi of Munkács. This legislative act strove to provide religious education for all Jewish males in Munkács. To this end the legislation established a society responsible for the execution 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 program. The regulations also distinctly sought to socialize both students and teachers. Thus the issues emphasized in the ordinances—such as wearing *tsitsit* (fringed garments)—provide a window into the socioreligious challenges that troubled R. Tsevi Elimelekh in the 1820s. Yet *tsitsit* appear in the Bible and in the rabbinic corpus of Jewish law, so “enacting” such a requirement is undoubtedly strange. R. Tsevi Elimelekh was aware that readers might find it absurd that he was “legislating” existing laws. He explained his predicament, pointing out that there were many people who wantonly transgressed, so he felt that he had no choice but to reiterate existing laws.³⁰ Thus *Takkanot tamkhin de-'orayta* provides a perspective into religious observance in Munkács, Hungary, in the 1820s.³¹

STATE OF RESEARCH

Having surveyed the terrain, it is now time to consider what exploration has already been conducted in the field. The answer to this question is painfully simple: very little. This of course begets another question: why have legal texts been ignored by scholars of Hasidism?

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 nonetheless retained fidelity to Jewish law—that is, “a curious mix of conservatism and innovation.”³² Scholem was not the first scholar to identify this as a puzzle, though he was the most influential. Erich Fromm (1900–1980), 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 R. Shneur Zalman of Lady as “Der Versuch einer Synthese von Chassidismus und Rabbinismus” (the attempt at a synthesis of Hasidism and Rabbinism).³³ Indeed, R. Shneur Zalman’s uniqueness in the annals of nascent Hasidism was a common theme among scholars of Hasidism.³⁴ From the discussion thus far, it is apparent that the portrayal of R. Shneur Zalman as a lone exception is patently inaccurate; synthesizing between allegiance to Jewish law and the innovative spirit of Hasidism was part of everyday life for many Hasidic leaders, from the early days of the nascent movement right down to contemporary times.³⁵

To some extent, identifying the phenomenon as a “paradox” was an assimilation of the eighteenth-century mitnagedic critique of Hasidism.³⁶ Even if

Hasidic practices could be justified by recourse to the Jewish bookcase, those practices were beyond the pale by dint of the fact that they were not part of regnant tradition. The “paradox,” therefore, was predicated on the assumption that an innovative, anomian, and possibly even antinomian religious spirit could not possibly jibe with the strictures of law. This underlying assumption of a spirit/law binary was widely accepted. Alas, the “paradox” was not probed in earnest, and hence the assumption was seldom challenged. The interests of Scholem, his colleagues, and his students lay elsewhere, as they devoted their energies to what would become mainstays of Hasidic scholarship.

In 1940—at around the same time that Scholem described this “paradox”—Aaron Wertheim (1902–1988) submitted his doctoral dissertation, titled “The Halakah in the Hasidic Literature,” to the Dropsie College for Hebrew and Cognate Learning, in Philadelphia. Wertheim’s dissertation was unknown until 1960, when he published his research in Hebrew. The year 1960—commemorating two centuries since the demise of the Besht—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 Hasidim was still lying untouched, noting 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. On the eve of the festival of Shavuot—the eve of the anniversary of the Besht’s death—in a succinct review in the Hebrew press, Abraham Meir Habermann (1901–1980) noted that Wertheim “has illuminated Hasidism in an interesting light, that has not yet served as material for extensive and comprehensive research.”³⁷

Alas, Wertheim’s volume received a cool reception in academic circles. Avraham Rubinstein (1912–1993) wrote a scathing critique in which he highlighted three problems with Wertheim’s approach. First, Wertheim treated Hasidism as a phenomenon without roots in traditional Jewish mysticism. This resulted in Wertheim mistakenly identifying “innovations,” when a nuanced approach would have identified the inflection from existing mystical practice. Second, Rubinstein charged Wertheim with a fanciful image of unified religious observance among Polish Jewry. Third, Rubinstein derided Wertheim’s simplistic presentation that did not take stock of different Hasidic masters, schools, regions, or periods. Rubinstein concluded that “the book in general is disappointing.”³⁸

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. Nonetheless, Wertheim must be appreciated for recognizing the field and for his initial foray. Wertheim’s volume continues to be popular in nonacademic circles—it has been reprinted several times, as well as translated into English.³⁹ Even in academia—despite

Rubinstein's critique—scholars who approach a topic in the field of law and Hasidism are likely to consult Wertheim as a starting point.⁴⁰

Wertheim was not entirely alone. From the late 1950s through the beginning of the 1970s, Yitzhak Alfasi (b. 1929) wrote a number of studies in which he discussed sources in Jewish law for Hasidic practice.⁴¹ 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, though not without critique. 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. It can be said that 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.

This is not to say that the field has been neglected entirely. Particular legal issues, specific figures, and select works have been analyzed by scholars. Thus, for instance, the innovation of R. Gershon Hanokh Leiner of Radzyń (1839–1891) to reintroduce the blue thread (*tekhelet*) into *tsitsit* has captured attention. In addition, scholars have recently begun to sift through Hasidic homilies for conceptual statements about jurisprudence.⁴² Notwithstanding these inroads, much uncharted territory remains. In light of this situation, it is unsurprising that in 2009, historian Moshe Rosman noted that Scholem's "paradox" continued to reverberate.⁴³

Thus fuller use of the legal material from the *bet midrash* of Hasidism remains a scholarly desideratum. What might such a mining venture in this unmapped territory look like? The following case study demonstrates one possible vector.

HASIDIC HEADWEAR

Distinct garb is one of the most visible ethnographic markers of contemporary Hasidism. The Austro-Hungarian Jewish painter Isidor Kaufmann (1853–1921) famously painted Jews of Eastern Europe in their Shabbat finery. Hasidim continue to be depicted wearing distinctive garments, in particular fur headwear:

shtraymel, *spodek*, and *kolpik*. Yet according to Jewish law there is one Shabbat a year when finery is prohibited. Did Hasidim respect this law and refrain from wearing distinctive fur headdress on that Shabbat?⁴⁴

According to Jewish tradition, there is an annual three-week mourning period commemorating the sweep of tragedies that befell Jews throughout history. This period is divided into stages with progressively increasing mourning strictures. The period culminates with the fast of Tisha be-'av. In general, mourning practices—even during this three-week period—are not observed publicly on Shabbat. What about mourning practices on Shabbat *ḥazon*, the Shabbat immediately before Tisha be-'av? Following earlier authorities, Remu, in his annotations to *Shulḥan 'arukh*, ruled, “Even on Shabbat *ḥazon*, one does not change [clothes] to wear Shabbat attire, except for the shirt alone.”⁴⁵ No other Shabbat finery was to be worn on Shabbat *ḥazon*. Did Hasidim keep this law and avoid donning *shtraymlekh* on Shabbat *ḥazon*?

The Hasidic master and legal authority R. Ḥayim Elazar Shapira of Munkács—in his commentary to *Shulḥan 'arukh* and to Remu's annotations (see figure 2.2)—answered this question, telling readers that Hasidim did indeed wear *shtraymlekh* on Shabbat *ḥazon*:⁴⁶

[Citation from Remu] Even on *Shabbat ḥazon*, one does not change [clothes] to wear Shabbat attire etc.

[Gloss] And it is questionable because it is like public mourning which is forbidden on Shabbat. And behold see *Bekhor shor* (at the end of *Tevu'ot shor*) to Tractate *Ta'anit* (at s.v. *le-'o[rah] ḥ[ayim]*, *siman* 552), regarding what he wrote about the position of the *Magen avraham* (section 552, no. 14), who wrote that if the 9th of *Av* falls on Shabbat or on Sunday a person should not sit at the Third Meal in the company of friends. And the *Tevu'ot shor* questioned this, because if a person is accustomed to this (to sit at the Third Meal with company) it is like public mourning [not to do so], and hence forbidden to exclude the company of friends; see there. If so, how much more so, with regards to Shabbat clothing (*shtraymel*) for someone who is accustomed to [wearing] it on Shabbat and does not remove it on the holy Shabbat and even on Shabbat in the days of his mourning—it should not befall us—everyone is accustomed to go wearing it, because if he will not wear it then it is like making his Shabbat mundane with public mourning. How much more so he should not remove it on *Shabbat ḥazon* (which is far more lenient, because it is mourning over the distant past).

Therefore, the custom of our teachers and our ancestors before us—may their memory be a blessing—and in our generations the Hasidic masters [*tsadikim*] and the Hasidim who have been accustomed to go on *Shabbat ḥazon* with a *shtraymel* like on other holy Shabbats—is good and proper.

And [regarding] that which the medieval authorities—may their memory be a blessing—wrote, as cited by Remu, not to change [to] Shabbat clothes: We must say regarding their custom in their lands, and [regarding] their source from *Or zaru'a* and from *Maharil*, the ancient land of *Ashkenaz*, that they went with a hat (*kapelush*) even on Shabbat. But on Shabbat they just wore the nicer and newer [hat]. And the difference between the clothing of the weekdays and that of Shabbat is not apparent to everyone, at all; just that this one [for Shabbat] is nicer and newer. Therefore, it is not public mourning [to retain the weekday *kapelush*] since it is not so apparent to all. Not so with the *shtraymel*, as mentioned (and see our words above, section 530, no. 3, regarding *ḥol ha-mo'ed*).

And behold I found that which my soul treasures already in the early [authorities]—the brilliant *Radbaz* in [his] responsa (volume 2, section 693): that he protested against this custom that they do not change their clothes on *Shabbat ḥazon* and they wear weekday clothes and it is like public mourning and they make the sacred—mundane. And he wrote that we must say that even the intent of *Or zaru'a* (who the Remu also cited in this matter) was not indicative of the way German Jews acted; these are his cherished words, see there.

And similarly regarding the practices of the Gaon [R. Eliyahu of Vilna, as recorded] in the book *Sha'arei raḥamim* (laws of Shabbat, section 73), that even if 9th of *Av* falls on Shabbat one should not change at all from [wearing] Shabbat clothes; see there, and in *Bi'ur ha-Gra* on [*Shulḥan 'arukh*], o[*raḥh*] ḥ[*ayim*] on this matter (sub-section 3). And behold we have a further proof from prayer books of the *Ari*, of blessed memory, where they wrote with protest regarding mourners—may the merciful one save us—who do not change their clothing on Shabbat. And how much more so, according to this, on *Shabbat ḥazon* that is mourning for the distant past—certainly one should change [clothing] and wear Shabbat clothing.

We have no comparable visual evidence. Hasidim avoided having their picture taken on Shabbat in general, and it is unlikely that an artist would choose to depict Hasidic subjects specifically on Shabbat ḥazon. To be sure, surviving visual evidence demonstrates that in the late nineteenth and early twentieth centuries such headwear was standard rabbinic attire. At some time in the early twentieth century, *shtraymlekh* and the like became characteristic of Hasidic affiliation, though rabbinic figures and others continued to don furs. It was only at that time that the question became an issue of particularly Hasidic interest. Thus in his legal writing R. Ḥayim Elazar Shapira provides irrefutable evidence of Hasidic practice that is virtually unknown from other sources.⁴⁷

Yet R. Ḥayim Elazar was not interested in recording ethnographic data; he was driven by an entirely different motive. As a Hasidic jurist, he was troubled

by the apparent lack of respect for Jewish law by his saintly Hasidic predecessors and by his own Hasidic community. He was interested in explaining how his own interpretive community squared their conduct with codified Jewish law. Indeed, across his writings R. Ḥayim Elazar consistently and creatively sought to demonstrate that Hasidic practice was not brazenly antinomian.⁴⁸ The issue was not just a theoretical legal conundrum; it was a matter of personal interest. The matter touched R. Ḥayim Elazar's personal identity. Indeed, one of his disciples recorded that his teacher wore regular Shabbat attire on Shabbat ḥazon without changing one whit.⁴⁹

R. Ḥayim Elazar employed four tools of legal reasoning to make his point: analogy, *argumentum a fortiori*, distinction, and precedent. Understanding R. Ḥayim Elazar's strategy—not just the bottom line—sheds further light on Hasidic history and culture. Let us, therefore, examine the four arguments.

Analogy

R. Ḥayim Elazar argued that the issue at hand was comparable to holding a Shabbat afternoon festive gathering with friends on Shabbat ḥazon, when Tisha be-'av was to be commemorated on Sunday.⁵⁰ While some authorities ruled that it was inappropriate, other authorities pointed out that if such a social gathering was a regular Shabbat occurrence, cancelling the gathering on Shabbat ḥazon would constitute forbidden public mourning.⁵¹ R. Ḥayim Elazar extrapolated: a *shtraymel* is worn on each Shabbat; removing it on Shabbat ḥazon would therefore constitute forbidden public mourning.

Argumentum a fortiori

R. Ḥayim Elazar pointed out that people who mourn relatives don Shabbat finery even during the initial seven-day mourning period. According to Jewish law mourning practices recede with time, consequently mourning on Shabbat ḥazon could not be as stringent as mourning the recent death of a close relative, since the tragedies being commemorated occurred way in the past. If full Shabbat attire was worn during the initial seven-day mourning period that commemorates a recent loss, *a fortiori* full Shabbat attire should be worn on Shabbat ḥazon, which commemorates a distant loss.⁵² This would include wearing *shtraymlekh*.

Distinction

Two legal arguments were insufficient to trump Remu, whose ruling against changing clothes on Shabbat ḥazon doubtless considered the analogous case and the *argumentum a fortiori*. R. Ḥayim Elazar therefore proceeded to argue that Hasidic headdress was distinguishable from other traditional Jewish headwear.

According to R. Ḥayim Elazar, in medieval Germany and in sixteenth-century Poland, the difference between weekday and Shabbat headwear was barely noticeable. Hence wearing a weekday head covering on Shabbat ḥazon would not be

considered public mourning. Thus Remu's ruling against changing headwear would not constitute public mourning. Not so with Hasidim: not wearing *shtraymlekh* would be noticeable and hence tantamount to forbidden public mourning. Remu's ruling, therefore, did not apply to Hasidic *shtraymlekh*.

In addition to distinguishing Hasidic *shtraymlekh* from Remu's *kapelush*, R. Ḥayim Elazar offered a significant implicit argument. Instead of regarding the Hasidic practice as legally questionable, he argued that wearing *shtraymlekh* on Shabbat ḥazon was a display of fidelity to Jewish law, since the practice demonstrated an understanding of the law's rationale.

Precedent

In what appears to be an addendum inserted later, R. Ḥayim Elazar presented a fourth argument, which he opened with a celebratory line: "And behold I found that which my soul treasures"—earlier authorities who stated that on Shabbat ḥazon regular Shabbat finery should be worn. The process of selecting precedents (or using any legal reasoning, for that matter) is subject to judicial discretion, and the present case is a fascinating example of considered selection—and perhaps conscious omission. Thus R. Ḥayim Elazar cited three authorities of different stripes, none of whom was aligned with Hasidism.

First, he cited R. David ibn Zimra (*Radbaz*, c. 1480–1572), a prolific author of responsa, who hailed from Spain and served in the Egyptian rabbinate. Radbaz had been asked why Ashkenazi Jews wore weekday clothes on Shabbat ḥazon. Radbaz was dismissive of the practice, denying that it was widespread and arguing that it was mistaken "because it is against the dignity of the Shabbat, and makes the sacred—mundane."⁵³

Second, R. Ḥayim Elazar mentioned R. Eliyahu of Vilna (1720–1797), an unimpeachable authority who had been the figurehead of the opposition to Hasidism. His weekly pre-Shabbat routine included changing all his clothes, and Shabbat ḥazon was reportedly no exception.⁵⁴

Third, he referred to unspecified mystical prayer books, affiliated with the legacy of the great kabbalist R. Yitzḥak Luria (*Ari*), that were highly critical of mourners who did not wear Shabbat finery. This brought R. Ḥayim Elazar back to his *argumentum a fortiori*: if Shabbat attire is appropriate for a mourner who has just suffered a loss, it is certainly appropriate for Shabbat ḥazon, which commemorates ancient loss.

The choice of sources is significant: a medieval jurist, an anti-Hasidic authority, and Jewish mystical tradition. With this battery, R. Ḥayim Elazar argued that there was valid precedent for not removing *shtraymlekh* on Shabbat ḥazon.

Yet it was not just the sources that he chose to cite that are significant. We should also consider the sources he omitted. Four respected jurists who did not identify with Hasidism dealt with the issue of Shabbat finery on Shabbat ḥazon, and R. Ḥayim Elazar did not cite them, perhaps for good reason. Admittedly,

we cannot say for certain why R. Ḥayim Elazar chose not to cite these precedents, and an *argumentum ex silentio* is generally a weak claim. Nonetheless, it is worthwhile considering these sources and hypothesizing why R. Ḥayim Elazar did not mention them.

R. Moshe Sofer (*Ḥatam sofer*, 1762–1839), the famed rabbinic figure who inspired Hungarian Orthodoxy, argued against wearing Shabbat attire on Shabbat ḥazon, pointing out that this was exactly how to empathize with the historic tragedies. R. Sofer explained that the Ari’s practice of wearing Shabbat finery on Shabbat ḥazon was reserved for people of the Ari’s stature who were constantly mourning and therefore did not need to denigrate Shabbat with weekday clothes. Regular people—and R. Sofer included himself in this category—were to properly observe the mourning requirements and wear weekday clothes on Shabbat ḥazon.⁵⁵ While R. Sofer was a highly respected figure, R. Ḥayim Elazar could hardly use this precedent, for it undermined his case.

R. Yeḥiel Mikhl ha-levi Epstein (*‘Arukh ha-Shulḥan*, 1829–1908) was a rabbi in Nowogródek who authored an impressively comprehensive code of Jewish law. R. Epstein noted that for two or three generations the custom of wearing weekday clothes on Shabbat ḥazon had lapsed, apparently because public mourning was disallowed on Shabbat. Yet R. Epstein understood that this was an insufficient explanation, for Remu had known about the prohibition against public mourning and still ruled against Shabbat attire on Shabbat ḥazon. How then should common practice be understood? Similar to the distinction suggested by R. Ḥayim Elazar, R. Epstein argued that in days of old the poor would wear cheap clothing on Shabbat *and* during the week, while the wealthy would wear expensive clothing during the week *and* on Shabbat. The minor differences between weekday and Shabbat attire led to the norm of avoiding Shabbat clothes on Shabbat ḥazon. In recent times, argued R. Epstein, clothing norms had changed: Shabbat finery was visibly different from weekday clothing, as both the poor and the wealthy wore hats and garments made from noticeably different materials for Shabbat.

R. Epstein, it appears, could have served as a valuable source for R. Ḥayim Elazar. Yet at this point R. Epstein’s argument took a turn, as he called for a return to the original law due to current circumstances: “For in this our time, according to the command of the sovereign we have already changed the appearance of our clothing, and Shabbat and weekday both have one appearance, the only difference being between cheap and expensive—certainly it is appropriate to uphold the custom of our forbearers.”⁵⁶ Once again, this precedent hardly helped R. Ḥayim Elazar’s case.

As we recall, R. Ḥayim Elazar cited the testimony regarding R. Eliyahu of Vilna’s practice of changing his clothes on Shabbat ḥazon just as on every other week. R. Avraham Danzig (*Ḥayei adam*, 1748–1820), who lived in Vilna and was related to R. Eliyahu, provided further valuable testimony in his compendium

of Jewish law. According to R. Danzig, R. Eliyahu's approach was common practice in Vilna: regular Shabbat attire was worn on Shabbat ḥazon, though some people avoided changing one garment presumably in deference to Remu's ruling.⁵⁷ Perhaps R. Ḥayim Elazar did not cite this source because Hasidic practice did not insist on preserving a vestige of Remu's ruling.

The omission of R. Ya'akov Israel Emden (1698–1776) from R. Ḥayim Elazar's opinion is perhaps the most fascinating. R. Emden was a fiery rabbinic character and an independent thinker. With a printing press in his own home in Altona, Germany, R. Emden had free rein to publish as he pleased. Inter alia, he printed a prayer book replete with extra information. Regarding Shabbat ḥazon, R. Emden used an *argumentum a fortiori* to state that Shabbat attire should be worn, concluding, "Therefore, there is much to say against the custom of the Ashkenazim who do not change their weekday clothes on Shabbat ḥazon." Furthermore, R. Emden testified that his esteemed father, R. Tsevi Hirsh Ashkenazi (*Ḥakham Tsevi*, d. 1747), had worn Shabbat finery on Shabbat ḥazon. R. Emden added that he, too, followed his father's practice.⁵⁸

Why did R. Ḥayim Elazar not add R. Emden to the battery of sources he presented? The question can be sharpened when we consider that an older contemporary of R. Ḥayim Elazar who had much in common with his counterpart in Subcarpathian Rus' did indeed cite R. Emden. R. Israel Ḥayim Friedmann (1852–1922) served as rabbi of Rahó, Hungary (later Rachov, Czechoslovakia), was affiliated with Hasidism, and wrote on Jewish law. The third volume of Friedmann's work was published in 1911, and regarding Shabbat ḥazon and the Remu's ruling he noted, "Alas, it has become commonplace in our countries, by many who act according to the ways of piety [*be-darkhei ha-ḥasidut*], to wear Shabbat clothes like on other Shabbats."⁵⁹ To explain the phenomenon R. Friedmann cited R. Emden (and referred to R. Danzig), thus offering a blanket justification for regular Shabbat attire on Shabbat ḥazon.

R. Friedmann was aware of the argument that not wearing a *shtraymel* constituted public mourning, a claim that had been published in R. Epstein's *Arukh ha-Shulḥan* and that would be used by R. Ḥayim Elazar. Yet R. Friedmann critiqued this approach, arguing that the public-mourning argument only provided a permit for the most visible items of clothing: a long silk jacket and a *shtraymel*; other garments were not included in the license. R. Emden, however, had provided a solution that went further, dismissing the prohibition against Shabbat clothes in Shabbat ḥazon and granting a comprehensive license. Why did R. Ḥayim Elazar not cite R. Emden?

Let me suggest that citing R. Emden would only have partially served R. Ḥayim Elazar. He would have a source for Hasidic conduct, but the source came at a cost. R. Emden, in his inimitably bold manner, had dismissed Ashkenazi tradition, which included Remu's ruling. Citing R. Emden, therefore, bespoke an audacious approach to Jewish legal tradition. R. Ḥayim Elazar would have

won the skirmish but lost the battle: wearing *shtraymlekh* on Shabbat ḥazon would have been justified, but at the cost of taking an impudent approach toward the Remu, one of the pillars of Jewish law.⁶⁰

It may be tempting to dismiss R. Ḥayim Elazar's four-pronged legal analysis as contrived justification for the fact that the Hasidic community spurned Jewish law. Before passing such judgment we would do well to recall that analogy, *argumentum a fortiori*, distinguishing cases, and citing precedents are standard legal fare. Moreover, in Roman law there is a principle that custom is the best interpreter of the law: *optima est legis interpretatio consuetudo*. This suggests that not only was R. Ḥayim Elazar faithful to his Hasidic heritage, but he was also a *bona fide* jurist.

R. Ḥayim Elazar's *shtraymel* discussion demonstrates how Hasidic masters who were also legal authorities sought to balance traditional Hasidic practice and the dictates of Jewish law. As rabbi of Munkács, he was vested with communal authority and responsibility for the maintenance of Jewish law. At the same time, he was also the bearer of Hasidic tradition. In the *shtraymel* case, the Hasidic practice appeared to break the law. The rabbi/rebbe of Munkács walked a fine line in a valiant attempt to retain fidelity to both Jewish law and Hasidic tradition. In the process, he provided valuable testimony about Hasidic practice in the early twentieth century.

R. Ḥayim Elazar's discussion indicates the value of legal texts from the Hasidic milieu for students of law and for students of Hasidic history and culture. Indeed, legal writing from the *bet midrash* of Hasidism may be the next scholarly frontier.

SUGGESTED READING

For initial forays, see Aaron Wertheim, *Law and Custom in Hasidism*, trans. S. Himelstein (Hoboken, NJ: Ktav, 1992); Yitzḥak Alfasi, *Ha-ḥasidut: Pirkei tolda u-meḥkar* (Tel Aviv: Zion, 1969), 85–99, 155–162; 184–191, 198–204; Yitzḥak Alfasi, *Meḥkarei ḥasidut* (Tel Aviv: Bnei Brith, 1975), 38–53, 72–91; Yitzḥak Alfasi, *Be-sedei ha-ḥasidut: Meḥkarim, pirkei tolda, havay u-mesoret* (Tel Aviv: Ariel, 1987), 44–59, 81–100, 173–187, 236–243, 335–343, 349–355, 506–512.

For legal theory in Hasidic homilies, see Ariel Evan Mayse, “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; Maoz Kahana and Ariel Evan Mayse, “Hasidic Halakhah: Reappraising the Interface of Spirit and Law,” *AJS Review* 42 (2017), 2:375–408.

For legal writings of specific Hasidic masters see the following:

On R. Levi Yitzḥak of Berdichev [Berdyčów] (1740–1809), see Levi Cooper, “Rabbanut, halakha, lamdanut: Hebetim ‘alumim be-toledot ha-rav Levi Yitzḥak mi-Berditchev,” in *Rabbi Levi Yitzḥak mi-Berditchev: Historiya, hagut, safrut, ve-nigun*, eds. Z. Mark and R. Horen (Tel Aviv: Miskal, 2017), 62–130.

On R. Shneur Zalman of Lyady (c. 1745–1812), in particular his *Shulḥan ‘arukh ha-rav*, see Avinoam Rosenak, “Theory and Praxis in Rabbi Shneur Zalman of Lyady: The *Tanya* and *Shulḥan ‘arukh HaRav*,” *Jewish Law Association Studies* 22 (2012): 251–282; Moshe Hallamish, “*Shulḥan ‘arukh ha-rav*—bein kabbalah le-halakhah,” in *Habad: Historiya*,

- hagut ve-dimuy*, eds. J. Meir and G. Sagiv (Jerusalem: Shazar, 2016), 75–96; Levi Cooper, “Towards a Judicial Biography of Rabbi Shneur Zalman of Liady,” *Journal of Law and Religion* 30 (2015), 107–135; Levi Cooper, “Mysteries of the Paratext: Why Did Rabbi Shneur Zalman of Liady Never Publish His Code of Law?” *Diné Israel* 31 (2017), 43–84.
- On R. Naḥman of Braclaw (1772–1810), see Yitzḥak Englard, “Mistikah u-mishpat: Hirhurim ‘al ‘Likutei halakhot’ mi-beit midrasho shel rav Naḥman mi-Breslov,” *Shenaton ha-mishpat ha-ivri* 6–7 (1979–1980), 29–43; Alon Goshen-Gottstein, “Ha-halakhah be-re’i ha-ḥayim ha-ruḥaniyim: Likutei halakhot le-r. Natan me-Nemirov,” in *Masa el ha-halakhah: ‘Yunim bein-tehumiyim ba-‘olam ha-ḥok ha-yehudi*, ed. A. Berholz (Tel Aviv: Miskal, 2003), 257–284.
- On R. Tsevi Elimelekh Shapira of Dynów (1783–1841), see Levi Cooper, “Legislation for Education: Rabbi Tsevi Elimelekh of Dynów’s Regulations for the Support of Torah in Munkács,” *Polin* 30 (2017), 43–72.
- On R. Ḥayim Halberstam of Nowy Sącz (1797–1876), see Iris Brown (Hoizman), “R. Ḥayim mi-Tsanz: Darkhei pesikato ‘al reka’ ‘olamo ha-ra’ayoni ve-‘etgarei zeman” (PhD diss., Bar-Ilan University, 2004).
- On R. Ḥayim Elazar Shapira of Munkács (1871–1937), see Levi Cooper, “Ha-‘admor mi-Munkatch ha-rav Ḥayim El’azar Shapira: Ha-POSEK ha-ḤASIDI—demut ve-shitah” (PhD diss., Bar-Ilan University, 2011); Levi Cooper, “Neged zirnei ha-mayim ha-zedonim: Ha-‘admor mi-Munkatch r. Hayim El’azar Shapira,” in *Ha-gedolim*, eds. B. Brown and N. Leon (Jerusalem: Magnes Press, 2017), 259–291.
- On R. Yekutiel Yehudah Halberstam of Klausenberg (1905–1994), see Tamir Granot, “Tekumat ha-ḥasidut be-‘Erets Yisra’el aḥarei ha-sho’ah: Mishnato ha-ra’ayonit, ha-hilkhatit, ve-ha-ḥevratit shel ha-‘admor r. Yekuti’el Yehudah Halbershtam mi-Tsanz-Kloyzenburg” (PhD diss., Bar-Ilan University, 2008).

NOTES

1. Levi Cooper, “Rabbanut, halakhah, lamdanut: Hebetim ‘alumim be-toledot ha-rav Levi Yitzḥak mi-Berditchev,” in *Rabbi Levi Yitzḥak mi-Berditchev: Historiya, hagut, safrut, ve-nigun*, ed. Z. Mark and R. Horen (Tel Aviv: Miskal, 2017), 62–130.
2. R. Uziel Meisels’s works: *Tiferet ha-tsevi* (Żólkiew: G. Letteris, 1803), on the first chapter of tractate *Betsah*; *Kerem shelomoh* (printed together with *Tiferet ha-tsevi*), on Talmudic and legal miscellany; *‘Ets ha-da’at tov* (Warsaw: N. Schriftgisser, 1863), on tractate *Ketubot*; *Tiferet ‘uziel* (Warsaw: N. Schriftgisser, 1863), Hasidic homilies, including citations from the Besht and Maggid; *Menorah ha-tehora* (Lemberg: U.W. Salat, 1883–1884), commentary on the laws of Shabbat as codified by R. Yosef Karo, *Shulḥan ‘arukh*, orah ḥayim, sections 242–343; *‘Ets ha-da’at tov* (Lemberg: U.W. Salat, 1886), on tractate *Shabbat*.
3. *Talmud bavli* (Sławuta: Dov Ber ben Israel and Dov Ber ben Pesah, 1801–1806); *Arba’ah turim* (Sławuta: Dov Ber ben Israel and Dov Ber ben Pesah, 1801–1802). R. Shneur Zalman subsequently sold the publications rights; see *Talmud bavli: Berakhot* (Sławuta: Dov Ber ben Israel and Dov Ber ben Pesah, 1808); *Arba’ah turim* (Sławuta: M. Shapira, 1815); *Talmud bavli: Berakhot* (Sławuta: M. Shapira, 1816); Shneur Zalman of Lady, *Igerot kodesh* (Brooklyn, NY: Kehot, 2012), 351–357.
4. Todros ben Tsevi Hirsh of Równe, *Halakhah pesuka* (Turka: Yehoshua Heshel ben Tsevi Hirsh and Shlomo ben Meir, 1765), title verso—commentary on *Shulḥan ‘arukh*, yoreh de’ah, sections 1–122. The Maggid’s approbation is the ninth and last approbation on the page.
5. Levi Yitzḥak of Berdyczów, *Kedushat Levi* (Sławuta: n.p., 1798), 25b.
6. Meir of Husaków, *Keter torah*, vol. 1 (Meżyrów: Yeḥezkel ben Shevah, 1803); vol. 2 (Żytomierz: n.p., 1806).
7. *Keter torah*, vol. 1, author’s introduction. For another example of a Hasidic curriculum that gave prominence to the study of law, see Levi Cooper, “Divide and Learn,” *Jewish Educational Leadership* 12 (2013), 1:59–63.

8. *Talmud bavli*, *Gittin* 6b; *Eruvin* 13b. *Maggid devarav le-ya'akov* (Korzec: Tsevi Hirsh ben Arye Leib and Shmuel ben Yisakhar Ber, 1781), 12.

9. Shneur Zalman of Lady, *Shulḥan 'arukh [ha-rav]* (Szkłów and Kopyś: Y. Yoffe, 1814–1816), 6 vols. Annotated edition by Sh. D. Levin, A. Alashvili, and Y. Wilhelm (Brooklyn, NY: Kehot, 2001–2007). Bilingual edition: *The Shulchan Aruch of Rabbi Shneur Zalman of Liadi*, trans. E. Touger and U. Kaploun (Brooklyn, NY: Kehot, 2002–2014), 8 vols. For details of the editions until 1984, see Yehoshua Mondshine, *Sifrei ha-halakhah shel admor hazaken* (Kefar Chabad: Kehot, 1984), 20–185.

10. Levi Cooper, “On Etkes’ *Ba'al Ha-Tanya*,” *Diné Israel* 29 (2013), 177–189; Levi Cooper, “Towards a Judicial Biography of Rabbi Shneur Zalman of Liady,” *Journal of Law and Religion* 30 (2015), 107–135. On the formation of this work, see Levi Cooper, “Mysteries of the Paratext: Why Did Rabbi Shneur Zalman of Liady Never Publish His Code of Law?” *Diné Israel* 31 (2017), 43–84.

11. See Avinoam Rosenak, “Theory and Praxis in Rabbi Shneur Zalman of Liady: The *Tanya* and *Shulḥan 'Arukh HaRav*,” *Jewish Law Association Studies* 22 (2012), 251–282.

12. Yitzḥak Aizik Yehudah Yeḥiel Safrin, *Shulḥan ha-tahor* (Tel Aviv: He'asor, 1963–1965). For a bio-bibliography of R. Safrin's works from 1831 to 1853, see Ya'akov Meir, “Itsuvah shel lamdanut ḥasidit” (MA thesis, Hebrew University, 2012). Unfortunately, *Shulḥan ha-tahor* was not part of Meir's discussion, though his research deals with legal material found in R. Safrin's earlier writings.

13. Regarding the provenance of the manuscript, see Avraham Aba Zis, “Mavo,” in Safrin, *Shulḥan ha-tahor*, 3–4.

14. Safrin, *Shulḥan ha-tahor*, section 1:6 and zer zahav 10.

15. *Ibid.*, section 262:8.

16. See, for instance, regarding the recital of the blessing over wine at a wedding feast: *ibid.*, section 190, zer zahav 1; Yitzḥak Aizik Yehudah Yeḥiel Safrin, *Zohar hai* (Lemberg and Przemyśl: J.M. Nik; Hayim Aharon Zupnik and Hayim Knoller, 1875–1881), 4:86b–c; Avraham Aba Zis, *Minhagei Komarno* (Tel Aviv: Zohar, 1965), 31, section 125.

17. *Eshel Avraham* on orah ḥayim, three editions; *Da'at kedoshim* on yoreh de'ah; *Ezer me-kudash* on even ha-'ezer; *Kesef ha-kadoshim* on ḥoshen mishpat.

18. 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, sections 1–182.

19. Tsevi Hirsh Shapira and Ḥayim Elazar Shapira, *Darkhei teshuvah: Nida* (Bratislava-Galanta: S.Z. Neufeld, 1921) on *Shulḥan 'arukh*, yoreh de'ah, sections 183–200. Ḥayim Elazar Shapira, *Darkhei teshuvah: Mikva'ot* (Mukačevo: A.Y. Kalisz, 1934) on *Shulḥan 'arukh*, yoreh de'ah, sections 201–202.

20. Ḥayim Elazar Shapira, *Nimukei orah ḥayim* (Turňa nad Bodvou: Y.Y. Glantz, 1930), on *Shulḥan 'arukh*, orah ḥayim, sections 1–697; Ḥayim Elazar Shapira, *Ot ḥayim ve-shalom* (Berehovo: S.S. Klein, 1921), on *Shulḥan 'arukh*, orah ḥayim, sections 25–45; yoreh de'ah, sections 260–266.

21. Below, I will present a case study that will demonstrate this trend. See also, Levi Cooper and Maoz Kahana, “The Legal Pluralism of an Enclave Society: The Case of Munkatch Hasidism,” *Journal of Legal Pluralism and Unofficial Law* 48 (2016), 80–85.

22. Ḥayim Mordekhai Margaliyot, *Sha'arei teshuvah*, printed in *Shulḥan 'arukh*, orah ḥayim (Dubno: Ḥ.M. Margaliyot, 1819–1820); Avraham Tsevi Hirsh Eisenstadt of Białystok, *Pithei teshuvah*, printed in *Shulḥan 'arukh*, yoreh de'ah (Vilna: B. Rotenberg, 1836), 2 vols; *Shulḥan 'arukh*, even ha-'ezer (Johannisburg: A. Gonshorowski, [1861]); *Shulḥan 'arukh*, vol. 4: ḥoshen mishpat (Vilna: Romm, 1871); Ya'akov Vilenchik, *Daltei teshuvah* (Vilna: Y.L. Metz, 1890–1895), 2 vols. The approbations written for R. Tsevi Hirsh's *Darkhei teshuvah* specifically mention Eisenstadt's *Pithei teshuva*.

23. Avraham David Wahrman, *Eshel Avraham*, mahadura tinyana, section 648:22. For a full account of where R. Wahrman cites R. Levi Yitzhak of Berdichev, see Cooper, “Rabbanut, halakhah, lamdanut,” 86–88.

24. Shneur Zalman of Lady, *Igerot kodesh*, 472. See Shalom Dovber Schneersohn, *Igerot kodesh* (Brooklyn, NY: Kehot, 1986), 2:925–926. Regarding Corfu citrons, see Aaron Wertheim, *Law and Custom in Hasidism*, trans. S. Himelstein (Hoboken, NJ: Ktav, 1992), 275–279; Yosef Salmon, “Pulmus etrogei Corfu ve-rik’o ha-histori,” *AJS Review* 25 (2001–2002), 1–24, Hebrew section.

25. Yehezkel Panet, *She’elot u-teshuvot mar’eh Yehezkel* (M.-Sziget: Beit hadefus hame-shutefet, 1875), no. 104. Regarding this responsum, see Yosef Salmon, “Igeret ha-kodesh be-mar’eh Yehezkel, teshuva 104,” *Daat* 68–69 (2010), 277–297.

26. Panet, *Mar’eh Yehezkel*, 44c–45a, no. 79. For an analysis of this responsum, see Levi Cooper, “Polish Hasidism and Hungarian Orthodoxy in a Borderland: The Munkács Rabbinat,” *Polin* 31 (2019), 209–211.

27. Ḥayim Halberstam, *She’elot u-teshuvot divrei ḥayim* (Lwów: A.Y. Menkish, 1875), 2, ḥoshen mishpat, no. 32.

28. For research on collections of responsa by hasidic masters, see Iris Brown (Hoizman), “R. Ḥayim mi-Tsanz” (PhD diss., Bar-Ilan University, 2004); Tamir Granot, “Tekumat ha-ḥasidut be-’Erets Yisra’el aḥarei ha-sho’ah: Mishnato ha-ra’ayonit, ha-hilkhatit, ve-ha-ḥevratit shel ha-’admor r. Yekuti’el Yehudah Halberstam mi-Tsanz-Kloyzenburg” (PhD diss., Bar-Ilan University, 2008); Levi Cooper, “Ha-’admor mi-Munkatch ha-rav Ḥayim El’azar Shapira: Ha-posek ha-ḥasidi—demut ve-shitah” (PhD diss., Bar-Ilan University, 2011).

29. See Shneur Zalman of Lady, *Igerot kodesh*, 35–39, 40; Benjamin Brown, “*Kedushah*: The Sexual Abstinence of Married Men in Gur, Slonim, and Toledot Aharon,” *Jewish History* 27 (2013), 477–479, 484–488, 498–512; Nava Wasserman, *Mi-yamai lo karati le-’ishti: Zugiyut ba-ḥasidut Gur* (Sede Boker: Ben-Gurion University, 2015).

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

31. On *Takkanot tamkhin de-’orayta*, see Levi Cooper, “Legislation for Education: Rabbi Tsevi Elimelekh of Dynów’s Regulations for the Support of Torah in Munkács,” *Polin* 30 (2017), 43–72.

32. Gershom G. Scholem, *Major Trends in Jewish Mysticism* (Jerusalem: Schocken Books, 1941), 345–348.

33. Erich Fromm, “Das jüdische Gesetz: Zur Soziologie des Diaspora-Judentums” (PhD diss., Universität Heidelberg, 1922).

34. See, for instance, Samuel Abba Horodezky, *Leaders of Hassidism*, trans. M. Horodezky-Magasanik (London: Hasefer Agency for Literature, 1928), 61.

35. Regarding contemporary times, see, for example, Levi Cooper, “Bitter Herbs in Hasidic Galicia,” *Jewish Studies, an Internet Journal* 12 (2013), 30–40; Levi Cooper, “Ha-meḥadesh be-tuvo be-khol yom: Ma’amad birkhat ha-ḥamah be-ḥatseiroṭ ḥasidiyot,” *Daat* 77 (2014), 183–207. In both of these cases, contemporary Hasidic communities define their practice in terms of Jewish law.

36. Mordecai L. Wilensky, “The Hostile Phase,” in *Tolerance and Movements of Religious Dissent in Eastern Europe*, ed. B. K. Király (Boulder: East European Quarterly, 1975), 89–113.

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

38. Avraham Rubinstein, “Wertheim, A. Halakhot ve-halikhhot be-ḥasidut,” *Kirjath Sepher* 36 (1960–1961), 281. Gries joined Rubinstein in his critique of Wertheim’s book; see Ze’ev Gries, *Sifrut ha-hanhagot* (Jerusalem: Mosad Bialik, 1989), 107 n. 14.

39. Aaron Wertheim, *Halakhot ve-halikhhot be-ḥasidut* (Jerusalem: Mosad Harav Kook, 1960; second printing, Jerusalem: Mosad Harav Kook, 1989; additional printing, Jerusalem:

Mosad Harav Kook, 2003); Wertheim, *Law and Custom in Hasidism*, trans. S. Himelstein (Hoboken, NJ: Ktav, 1992). Introductory blurbs to the reprints and translation by Yitzhak Rafael, Norman Lamm, and Isadore Twersky—a noted academic and Hasidic master—emphasized that the field was still neglected.

40. Indeed, two chapters from Wertheim's book were translated for a collection of academic studies on Hasidism; see Aaron Wertheim, "Traditions and Customs in Hasidism," trans. E. Lederhendler, in *Essential Papers on Hasidism: Origins to Present*, ed. G. D. Hundert (New York: New York University Press, 1991), 363–398.

41. Alfasi's articles were republished in collections of his writings, see Suggested Reading.

42. Ariel Evan Mayse, "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; Maoz Kahana and Ariel Evan Mayse, "Hasidic Halakhah: Reappraising the Interface of Spirit and Law," *AJS Review* 41 (2017), 2:375–408.

43. Moshe Rosman, "Pesak dinah shel ha-historiyografyah ha-yisra'elit 'al ha-ḥasidut," *Zion* 74 (2009), 166, 174.

44. The issue was briefly touched upon by Yitzhak Alfasi, *Ha-ḥasidut: Pirkei tolda u-mehkar* (Tel Aviv: Zion, 1969), 89; Alfasi, *Be-sedei ha-ḥasidut: Mehkarim, pirkei tolda, havay u-mesoret* (Tel Aviv: Ariel, 1987), 177. See also Wertheim, *Law and Custom in Hasidism*, 216. For a broader perspective on the history of Jewish fur headwear, see Levi Cooper, 'Shtrayml: An Ethnographic Tale of Law and Ritualisation,' *Polin* 33 (2020), forthcoming.

45. Remu, *oraḥ ḥayim*, section 551:1. The shirt exception was due to the fact that it had likely become sullied with sweat. Socks may also be changed for the same reason; see Avraham Danzig, *Ḥayei adam* (Vilna: Menahem Man ben Barukh, 1809), 129:21; *Mishna berura*, 551:6.

46. Ḥayim Elazar Shapira, *Nimukei oraḥ ḥayim* (Turňa nad Bodvou: Y.Y. Glantz, 1930), section 551, no. 2. Translation from the original rabbinic Hebrew; brackets indicate my explanatory additions; parentheses appear in the original text.

47. I say "virtually" unknown because there is another contemporaneous legal source that discusses the issue; see below near note 59. There is also a source that attests to Munkács practice between 1867 and 1879, when R. Ḥayim Sofer (1821–1886) served as a rabbi. According to R. Sofer's son, Munkács residents wore regular Shabbat finery on Shabbat ḥazon (fur headwear is not specifically mentioned). The community rabbi did not publicly protest, but he wore weekday attire and did not leave his home for the duration of the Shabbat. See Ya'akov Shalom Sofer, *Torat ḥayim* (Paks: M. Rosenbaum, 1897–1911), 3:2b second pagination, section 551:4. R. Sofer's course was linked to the opinion of his teacher (but not relative), R. Moshe Sofer; see below near note 55.

48. Using the term *antinomian* with regard to an item of clothing is perhaps too harsh given the Christian and Sabbatean uses of the term; yet in a culture where law is sacred, the slightest deviation may be considered antinomian, even when it is not an attempt to undermine the foundations of the legal system. Shaul Magid termed this "soft antinomianism"; see Shaul Magid, *Hasidism on the Margin: Reconciliation, Antinomianism, and Messianism in Izbica and Radzin Hasidism* (Madison: University of Wisconsin Press, 2003), 215–216.

49. Yeḥiel Mikhl ha-levi Gold, *Darkhei ḥayim ve-shalom* (Munkács: A. Teichman, 1940), section 669.

50. *Tisha be-'av* is commemorated on Sunday if the 9th of Av date falls on Sunday or if the 9th of Av falls on Shabbat and the fast is pushed off until Sunday.

51. Avraham Abele Gombiner, *Magen Avraham*, on *Shulḥan 'arukh*, oraḥ ḥayim, section 552:1. See Alexander Sender Schor, *Bekhor shor*, taanit, commentary to fol. 30a, in idem, *Simlah ḥadashah* (Żółkiew: Aharon and Gershon bnei Ḥayim David, 1733), 116c; Efrayim Zalman Margaliyot, *Yad efrayim*, printed in *Shulḥan 'arukh*, oraḥ ḥayim (Dubno:

Ḥ.M. Margaliyot, 1819–1820), 202a–b and subsequent editions, commenting on *Magen Avraham*, section 552:14. Margaliyot was a descendant of Schor.

52. In Jewish legal parlance an *argumentum a fortiori* is termed *kal va-ḥomer*, roughly meaning “weak and strong” and referring to the two propositions in the argument. R. Ḥayim Elazar did not use the Hebrew term, but he used the term *kol she-ken* (roughly meaning “all the more so”) twice and the Aramaic word *de-kil* (for “it is weaker”)—terms that indicate an *argumentum a fortiori*.

53. David ibn Zimra, *She’elot u-teshuvot* (Venice, Fürth, Livorno: M. De Zara; et al, 1652–1818), 2:18a, no. 693.

54. Avraham Tsevi Hirsh Katzenellenbogen, *Sha’arei raḥamim* (Vilna: Avraham Yitzḥak and Shalom Yosef Dworzec, 1871), 4b–5a, section 77.

55. Ḥizkiyah Feivel Plaut, *Likutei ḥaver ben ḥayim* (Pressburg, Munkács, Paks, Sziget: P. Blayer; et al, 1878–1893), 2:34b–35a, 3:10b; Ḥayim Sofer, *Tehillim: Sha’arei ḥayim* (Munkács: Blayer & Kohn, 1892), 187b, commentary on Ps. 137:6; Zusman Eliezer Sofer, *Yalkut Eli’ezer ‘al tehillim* (Paks: M. Rosenbaum, 1890), 150b, commentary on Ps. 137; Sofer, *Torat ḥayim*, 3:2b second pagination, section 551:4.

56. Yeḥiel Mikhl ha-levi Epstein, *‘Arukh ha-shulḥan*, oraḥ ḥayim, section 551:11. In general, R. Epstein was an ardent defender of common practice, making this an exceptional case where he called for a change in practice—albeit a return to the custom of old.

57. Danzig, *Ḥayei adam*, 129:21. It is interesting that R. Eliyahu’s position jibed with normative practice in Vilna, since his legal opinions were not necessarily accepted locally.

58. Ya’akov Israel Emden [*Siddur*] (Altona: Y.I. Emden, 1745–1748), 2:68b.

59. Israel Ḥayim Friedmann, *Likutei mahariḥ* (Sziget: M. Blumenfeld and Y.M. David; et al, 1900–1911), 3:51b–52a.

60. Radbaz (above, note 53) also argued against the custom, but he predated Remu and did not belong to the Ashkenazi tradition, meaning that his position would not be considered brazen.