

Culpability for Curses in Jewish Law and Mystical Lore¹

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Would a court of law judging according to Jewish Law find Voldemort guilty for the murders of James and Lily Potter? Clearly Voldemort had the intention to kill. The legal question is: Would Jewish Law consider the Killing Curse to be an act of murder?

This study explores legal aspects of three magical phenomena—incantations that kill, automatic writing, and every flavor food—as they are discussed in the tomes of Jewish Law. My contention is that these discussions are indicative of the legal system, they may be key for legal history and especially for judicial biography, and they may be useful in contemporary legal education.

Jewish Law is rooted in the Bible. The texts and traditions of the Jewish legal system have been religiously studied and debated from time immemorial. Jewish Law has accompanied Jews on their wanderings across the globe. It has evolved over the ages, addressing new realities and pressing questions. Even communities that did not see Jewish Law as binding often defined themselves by their relationship to the legal system. To this day, Jewish Law remains part of the fabric of Jewish life.

Jewish esoteric lore has a rich tradition that has conventionally been the province of the mystically adept. *Inter alia*, it recognizes various magical phenomena.² Though laypeople may not have been proficient in magic, the mystical tradition was part of the vernacular: its footprints can be found in texts that were widely accessible and it impacted everyday practices. This created a well-informed laity that turned to a professional class of mystics for guidance and assistance. A by-product of this situation was that jurists—who may or may not have been mystics—considered legal implications of magic. Legal

opinions on magical phenomena can therefore be found in the treasure trove of Jewish legal literature, making this corpus fertile ground for legal analysis of magic.

This study draws on the scholarly fields of Comparative Law, Law and Literature, and Legal History, considering how a particular legal system has dealt with magical phenomena. We will trek through the swampy region of *nomos* and narrative: the area where law and lore are not clearly delineated as different literary, intellectual, and cultural enterprises (Bialik, 2000; Cover, 1983). This paper chooses a methodological approach ground in legal history: I will not consider hypothetical questions that *could* come before jurists; I will not ask: How *might* Jewish Law adjudge a particular spell? Rather, I will focus on the actual: How *did* Jewish Law jurists adjudicate specific magical phenomena?

Jewish legal literature is almost entirely in Hebrew, written for those familiar with the assumptions of the tradition and legal vernacular. It is, however, eclectic: Law is expressed in a variety of genres, and jurists are not cut of one cloth. For the sake of accessibility, I have translated and elucidated the texts presented herein; my additions within citations are indicated by brackets.

I begin with the Killing Curse, demonstrating how Jewish Law jurists analyzed lethal incantations. This exploration will indicate the common legal ground of different worlds. I will then explore legal discussions of parallels in Jewish mystical tradition to Tom Riddle's Diary and Bertie Bott's Every Flavor Beans.³ I conclude by ruminating on the broader implications of this peregrination through the bountiful expanse of law and lore.

Murder: Avada Kedavra and the Divine Name

A foundational concept in Common Law jurisdictions is that a criminal act consists of two elements: a mental element and a physical element. The mental element, known in Latin as *mens rea* (guilty mind), refers to the perpetrator's intent to commit a crime. The physical element, known in Latin as *actus reus* (guilty act), refers to the criminality of the act itself, without consideration for the perpetrator's mental state. While criminal law differs from one jurisdiction to another, for the present discussion I will borrow these Common Law terms. To be sure, Jewish Law has detailed terminology and an extensive framework for the criminal elements of homicide (Enker, 2014, p. 282; Habba, 1999), but for the present purposes the familiar terms suffice.⁴

There can be no doubt regarding the mental element in the standard Killing Curse case: there is an intention to end life. The question is whether

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a verbal incantation qualifies as the *actus reus* of murder? A guilty act may consist of a result, conduct, omission, or state of affairs. Murder, as a result crime, focuses on the death of the victim; the guilty act causes death. In result crimes, an important element that must be proved is causation. Causation means that the act was sufficiently proximate to the result, such that the perpetrator can be deemed to bear criminal responsibility.

Jewish esoteric tradition recognized the efficacy of a Killing Curse; though not with the words “Avada Kedavra.”⁵ While the precise formula is a matter of oral tradition, it is described as the annunciation of a secret name of God by the mystically adroit. This is known in Jewish literature as “killing with a Name”; that is, the Divine Name.

Since murder is a result crime, the use of a Killing Curse should constitute a guilty act. In Jewish Law, however, criminal homicide requires an act of killing, not just the resultant death (Habba, 1999, pp. 115–163). Jewish jurists intuited that a lethal incantation must be considered murder, but grappled with finding a precedent indicating that a lethal verbal attack was indeed an act of killing. Of course, a wand could be considered a weapon that causes death, and precedents for murder with a weapon abound. Jewish tradition recognizes wand-like tools such as Moses’ staff, but such vessels do not play a central role in the mystical tradition and are not mentioned in relation to lethal incantations. Hence the legal question before jurists focused on wand-less magic: Is there a precedent for considering a lethal verbal attack an unlawful act that was a significant cause of death? Since we are discussing a result crime, a second question is also pertinent: Is a verbal lethal attack sufficiently proximate to the death of the victim in order to satisfy the causation requirement?

Two Jewish jurists in different places, eras, and cultural milieux, sought a precedent for culpability for killing with a Name. Their intellectual toiling bore fruit, as they identified sources from biblical traditions and from rabbinic literature that indicated that one who caused death by words could be liable for murder.

Rabbi Yaakov Hagiz (1620–1674) was born in Fez, Morocco, lived in Italy and then Jerusalem, and died in Constantinople. In the realm of Jewish Law, Hagiz is known for his inimitable collection of pithy responsa published posthumously in 1704.

A responsum is a specific answer to a legal question posed to a jurist. Despite the adverse circumstances of the Jewish community—being scattered across the globe without a central legal authority but with a collective identity—the Jewish legal system continued to operate, evolve, and adapt. When legal questions could not be answered locally, they were sent to jurists who responded in writing. A copy of each responsum might be saved and later published. The process of copying, preserving, collating, and finally publish-

ing the collection reflects the perception that the opinions were worth bequeathing to future generations.

No formal rules governed the identity of respondents. “Election” to positions of authority was not institutionalized or subject to a predetermined process; rather, it was a popular decision. Thus, ultimate legal authority in Jewish Law was invested in the hands of the anonymous People.

Given that each responsum is embedded in a specific set of facts, responsa rulings are often limited in scope and application. The responsum may still be used by other jurists as a persuasive precedent, though Jewish Law does not have a strict principle of *stare decisis*; that is, legally binding precedent. The persuasive weight of a responsum is determined by a number of factors; principally the respondent’s stature.

Responsa literature is often seen as a unique genre of legal writing, though the term is taken from Roman Law and there have been attempts to identify comparisons in other legal systems (Ceccarelli Morolli, 2012, p. 19; Freehof, 1955, pp. 16, 18, 21–23). The genre can be traced back to the seventh century Jewish community in Babylon, and the practice continues unabated today. As such, the responsa literature is the richest repository of Jewish Law.

As opposed to codes of law, responsa are generally not presented as apodictic statements. The narrative elements of a case are splendid: backstory, realia, legal reasoning, sources considered, extenuating circumstances taken into account, etc. In the responsa literature, the law is part of a story. Alas, the responsa analyzed here are exceptions to this rule: the narrative element is absent.

Hagiz’s collection of responsa, entitled *Halakhot Ketanot* (Short Laws), includes succinct questions and cryptically curt answers. Hagiz (1704) recorded the following question: “One who kills someone by using a Name or by magic—what is [the law]?” (p. 34b, vol. 2, para. 98). There is no indication what precipitated the question. Hagiz responded:

It is possible [that he is culpable], for since he performed an act with his speech, it is comparable to the law of commuting [one gift promised to the Temple with another], and it is like shooting an arrow to kill someone, and about such cases it says “Their tongue is a deadly arrow” [Jeremiah 9:7].

Hagiz cited two precedents: the first suggests that speech may be considered a guilty act; the second suggests that lethal words fulfill the causation requirement.

Hagiz explained that speech might be considered like a deed; hence it could be classified as a guilty act. As a precedent, Hagiz referred to the commuting prohibition; that is, substituting Temple gifts by verbally declaring that an unconsecrated animal should stand in the stead of a ritually pure consecrated animal. One who commutes is liable for the punishment of lashes.

Jewish Law does not mandate corporal punishment for crimes without action, but the crime of commuting is deemed an exception—though the crime is committed with speech, it is still subject to corporal punishment (Leviticus 27:9–10; *Babylonian Talmud, Makkot*, 16a; Maimonides, *Laws of Substituted Offerings*, 1:1; 2:1). Hagiz highlighted that in this case speech sufficed as a guilty act; thus there is a precedent for speech as *actus reus* in Jewish Law.

In result crimes, causation must be established. Though speech might be considered the *actus reus* of murder, there is still a question of linking the perpetrator's speech to the victim's death. Regarding this element, Hagiz offered his second comparison, likening a verbal attack to shooting an arrow—it flies through the air and eventually hits its target, all from the power of the one who released it. The person who fired the volley—whether it is an incantation or an arrow—has caused the victim's death.

My contention here is not to rank different legal systems according to parameters such as originality, effectiveness, morality, utilitarianism, etc. Nor do I seek to score points for one legal system over another. It is nonetheless worth noting that the Killing Curse was not declared “unforgiveable” by the Ministry of Magic until 1717 (Rowling, 2008). It seems that Hagiz had already recognized it as a criminal offence in the previous century, though his legal writing only became widely available upon publication in 1704.

Hagiz was not the only Jewish Law jurist who considered the criminality of a Killing Curse. A similar question arose in an entirely different setting. Rabbi Asher Anshil Yehuda Miller (1880–1959) served as rabbi in Petroșani, Romania for some fifty years. At the end of his life he moved to Israel where he spent his final two years. (P. Miller, 1984). Miller's responsa were published posthumously.

In early 1909 Transylvania, Miller (1991) wrote to his brother-in-law “regarding the analysis of one who kills a person by means of a Name—is he liable for this murder?” (p. 186, para. 164). Once again the backstory is missing, though it appears that the correspondents had previously discussed the matter. Miller was quick to state that the perpetrator was culpable. Miller, however, saw the challenge as identifying a precedent in Jewish legal literature. He began with the talmudic account of a dream interpreter known as Bar Hedyā (*Babylonian Talmud, Berakhot* 56a).

Bar Hedyā's escapades are recounted in the context of the maxim that the outcome of a dream depends upon the interpretation it is accorded (*ibid.*, 55a). This rule is derived from the biblical story of Joseph, where the chief cupbearer reported to Pharaoh how adept Joseph was at interpreting dreams: “And as he interpreted for us, so it came to pass” (Genesis 41:13)—that is, it came to pass *as per* the interpretation Joseph provided.

Bar Hedyā was aware of this maxim, and the Talmud relates that he utilized the rule for his financial benefit. When someone would come to him

with a dream, Bar Hedyā would tailor the interpretation according to the remuneration he received. If he was paid for his services, Bar Hedyā would offer an auspicious interpretation; if he was not paid, he would portend calamity. This was a nasty business plan, since his clientele were apparently unaware of his policy.

The Talmud recounts that two fourth century Babylonian sages—Abbaye and Rava—each dreamed the same dream and they approached Bar Hedyā separately. Abbaye paid Bar Hedyā for his services and consequently received a promising interpretation. Rava did not pay Bar Hedyā, and the interpretation he received was inauspicious. Thus the two sages both dreamed that a particular biblical verse was read to them: “Your ox will be slaughtered before your eyes but you will not eat from it” (Deuteronomy 28:31). For Rava, Bar Hedyā interpreted: “Your business will fail and on account of your heart’s sorrow, you will have no interest in eating.” For his paying customer who had the same dream, Bar Hedyā interpreted: “Your business will profit and on account of your heart’s joy, you will have no interest in eating.” As per the maxim, the fortunes of the two dreamers followed Bar Hedyā’s interpretation.

The Talmud relates that this charade continued—Abbaye’s dreams were interpreted as auguring fortune, while Rava’s identical dreams were interpreted as ominous harbingers. Financially ruined by Bar Hedyā’s adverse dream interpretations, Rava still brought his dreams to the interpreter unsuspecting that his ill-fortune was a result of Bar Hedyā’s financially-driven yardstick of dream interpretation:

- “I saw that the outer door [of my house] has fallen,” recounted Rava.
- “Your wife will die,” interpreted Bar Hedyā.
- “I saw that my molars and front teeth have fallen out.”
- “Your sons and daughters will die.”

Given that the outcome of a dream is contingent on its interpretation, Rava sadly lost his wife and children. The Talmud recounts that later Rava started paying Bar Hedyā for his services and consequently received auspicious interpretations. But Rava would not cotton on to Bar Hedyā’s method until they were once traveling in a boat together. As Bar Hedyā disembarked, he dropped a book. Rava found it and saw what was written in the book: “All dreams follow the mouth,” meaning that the outcome of a dream is dependent on its interpretation.

Rava understood what had happened and was enraged: “Wicked person! Because of you it happened and you caused me so much pain!” Despite the failure of Rava’s business ventures and despite his financial losses, he only harbored a grudge for the deaths of his loved ones. For these calamities, Rava cursed his adversary: “May it be the will [of God] that this man,”—

referring to Bar Hedyā—“Be handed over to a regime that will have no pity on him.”

Bar Hedyā’s response to Rava’s curse is germane to the question of speech as *actus reus*: “What shall I do? We have a tradition that the damning pronouncement of a sage, even one without cause, will be fulfilled. And certainly Rava—for he has justly cursed.” Bar Hedyā acknowledged that his own speech had killed Rava’s wife and children, and for this he was culpable. The Talmud uses a word indicating that Bar Hedyā felt that his responsibility was not just a moral accountability, but that Rava’s condemnation was legally justified: Rava had cursed “*be-dina*,” translatable as “according to law.”

Returning to culpability for a Killing Curse: Miller reasoned that if Bar Hedyā was culpable for his lethal dream interpretations, then other lethal uses of speech are also legally culpable. Presumably, this would include using a Divine Name to kill.

Despite the creative suggestion to see Bar Hedyā as a precedent, Miller himself raised an objection. Perhaps Rava was only responding in kind—a verbal curse as retribution for lethal verbal dream interpretations—and Bar Hedyā was acknowledging this symmetry rather than commenting on speech as *actus reus* of murder. I might add that the merit of comparing a Divine Name curse to negative dream interpretations is debatable. While both use speech, presumably they require different skills to bring about their desired outcome.

Whatever the strength of the Bar Hedyā analogy, Miller sought a source that more clearly identified use of a Divine Name as an act of killing. To this end, he turned to rabbinic readings of the biblical encounter between Moses and the Egyptian (Exodus 2:11–12). When Moses went out of the Egyptian palace to his kinsfolk and witnessed their suffering, he encountered an Egyptian beating a Hebrew. Moses looked around and seeing no one about, he struck the Egyptian and hid the body in the sand.

No weapon is mentioned in the Bible, and the rabbis considered how Moses killed the Egyptian. According to one account, Moses took a trowel of clay that probably was available at the building site where the Hebrew slaves were working, and smashed the Egyptian’s skull. According to an alternative account, Moses used his own fist. A third possibility relates to our discussion: Moses invoked the Divine Name and slayed the Egyptian. This approach is buttressed by the continuation of the biblical account. The next day, Moses encountered two Hebrews fighting. Moses chastised one of them saying, “Why do you strike your fellow?” The assailant retorted: “Who made you chief and ruler over us? Do you *say* to kill me, as you killed the Egyptian?” (Exodus 2:13–14). The rabbis noted the strange use of the word *say*; the assailant should have asked: “Do you *mean* to kill me?” The rabbi explained: the assailant was asking whether Moses would kill him by speech; namely,

with the Divine Name (*Midrash Rabba*, 1512, Exodus, para. 1:29; *Midrash Tanhuma*, 1522, Exodus, para. 9–10⁶).

If a verbal attack can be considered murder, why did Moses kill the Egyptian? In fact, one rabbinic source has God chastising Moses: “Did I ever say to you to kill the Egyptian: wouldn’t he be liable for murder?” (Jellinek, 1938, p. 119). Miller pointed to a passage in the Talmud that justified the death penalty for a Gentile who caused even minor harm to a Jew (*Babylonian Talmud*, *Avoda Zara*, 71b–72a). But such a position should be understood as an explanation born of the casuistic and theoretical nature of the talmudic discussion. It should not be read as a ruling in an actual courtroom, nor as a legislative guideline.

It is possible to parse Moses’ action in terms of the self-defense justification that is recognized in Criminal Law. This justification extends to prevention of injury to others, and means that the action is not considered a crime. Miller did not discuss why Moses fled Egypt after his exchange with the assailant. If Moses was acting under the justification of self-defense, why did he need to flee? Perhaps Moses feared that the self-defense justification may not hold up in Pharaoh’s court of law. It not difficult to imagine that Pharaoh might deem killing with a Divine Name disproportionate and unreasonable force when used against an overseer assaulting a slave; particularly if the assault was considered part of his government sanctioned job. The question of reasonable force in self-defense was discussed in a famous Australian case on appeal to the Privy Council (*Palmer v. The Queen*, 1971). Certainly a British court might be less sympathetic than an American court to Moses’ use of lethal methods for self-defense (*R v. Lindsay*, 2005; cf. *Runyan v. State*, 1877). Moses presumably did not want to be the test case for Pharaoh’s court.⁷

Whatever Moses’ considerations were, for Miller this source indicated that under normal circumstances—that is, had Moses not had the benefit of a justification—lethal use of a Divine Name is to be considered murder.

Still bereft of a clear precedent for murder charges brought for a lethal verbal attack, Miller cited a third case. At the behest of Balak king of Moab, the non-Jewish diviner Balaam, sought to curse the Israelites. When his repeated attempts were unsuccessful, Balak and Balaam parted ways. The following episode in the narrative describes how the Israelites were led astray by whoring Moabite women. This depraved conduct precipitated a plague that killed twenty-four thousand Israelites. Later Balaam is killed during the war against Midian, and the Bible suggests that Balaam bears responsibility for the Moabite women. That is, when Balaam’s curse attempts did not succeed, he hatched an alternative plan to bring about Israel’s downfall (Numbers 22–24; 25:1–9; 31:8, 16).

Miller picked up on this and noted that Balaam had committed two speech crimes. The first crime was when he attempted to curse the Israelites;

the second was when he suggested that Moabite women lead the Israelites astray with licentious behavior—a crime which resulted in numerous deaths. Balaam was held accountable for those deaths; an indication that causing death through speech—in this case wicked counsel—may be considered a guilty act.

Again the applicability of the Balaam precedent to killing with a Divine Name is debatable. Certainly the element of causation needs to be examined when discussing counsel to a king—to send women—to lead men astray—to precipitate a divine plague.

The weakness of the precedents did not cloud Miller's contention: when homicide is committed by using a Divine Name, the perpetrator is guilty. Before discussing Balaam, Miller stated unequivocally:

To kill using a Name is certainly culpable like any other murder, because what is it to me if he killed him by his hand or by his mouth? At the end of the day the one who was killed, died and lost his life because of [the perpetrator]. Did not the holy Bible simply write "Do not murder" [Exodus 10:12; Deuteronomy 5:16], without making a distinction between hand and mouth!

Miller focused on the result-oriented nature of murder; as such he considered the weapon of secondary importance. Miller noted that according to Jewish Law, the murder weapon must be capable of inflicting death (*Babylonian Talmud*, *Bava Kama* 91a; Maimonides, *Laws of Murder and Preservation of Life*, 3:1–3). A Divine Name, in the mouth of someone proficient in its use, is such a weapon and the perpetrator is culpable.

It is worthwhile considering the sum of Miller's attempts. As opposed to the sources martialed by Hagiz, the sources that Miller pressed into service are not *prima facie* legal texts. Miller's sources belong to the genre of *aggada*—a term that is difficult to translate, but is best captured by the notion of narrative as opposed to *nomos*. *Aggada* is the flip side of law in that it does not require specific performance. Jewish legal writing beginning with the Bible is multi-layered, melding *nomos* and narrative, law and *aggada*. This spotlights an aspect of Jewish Law that is the source of much legal creativity. Law and *aggada* are inseparable siblings: they are independent entities, though systemically they work in tandem (Cooper, 2012, pp. 107–111). As Miller searched for a precedent, he had no hesitation in drawing from the corpus of *aggada* to answer the legal question.

Miller added a postscript to his analysis, indicating that he was aware that his discussion had veered from the distinct categories of law and narrative:

And note that all this I have written by way of spicy study ["*pilpul*"] and sharpening [the mind] and by way of [intellectual] give and take, for the Holy One, blessed be He, enjoys spicy study. And in particular our Sages of blessed memory said that all idle chatter is bad, except for idle chatter of Torah for it is good [*Jerusalem Talmud*, *Berakhot* 9:5].

The distinction between *nomos* and narrative is blurred; narrative is conscripted in the service of law.

Lest the Killing Curse be seen as an idiosyncratic case of a foray by Jewish Law jurists into the world of magic: Two further examples will serve to further demonstrate Jewish Law's interest in the legal implications of magic.

Writing on Sabbath: Tom Riddle's Diary and Enchanted Quills

The magic writing in T. M. Riddle's Diary has an interesting, albeit tenuous, parallel in Jewish mystical tradition: the magical procedure termed *hashba'at kulmus*—"swearing in a quill" to write automatically without need of a human hand. One source attests to a Hebrew oath formula written in rhyming couplets:

I swear in, by the name ___ and by the name ___, that this here quill will proceed with politeness, the ink will not end, and the nib will not become blunt; let it write with ease, cursive⁸ letters. And while on my bed, my work will continue, it will write on its own, with no person with it. It will taste from its food and it will spew out slowly. I sleep and my pen is awake.⁹ Let it write with hast without the candle, and at the time that I will wake, I will take the poetry. Etc. [Bar-Ilan, 2010¹⁰].

The idea of writing with an enchanted quill appears in Jewish literature in three senses. First, the notion has been used metaphorically to describe impressive literary output or a writer's talent to freely put pen to paper and write without pause. This capacity does not draw on magic. Second, the notion has been used to describe writing while in a mystically inspired state.¹¹ Third, the bewitched quill can be said to write on its own, dancing across the paper and leaving words of wisdom in its wake. As might be expected, the public might perceive writing prowess as an enchanted quill (Brodt, 2010, pp. 67–69; Brodt, 2014; Zevin, 1957, para. 209). An anonymous 15th century mystical work written in Spain distinguished between two types of magical writing: The lower level is when an angel dictates to the mystic, who transcribes the revelation. The higher level is when the angel transcribes the text without a human medium (Benayahu, 1959, pp. 291–292; Scholem, 1978, pp. 82–93; Tishby, 1985, 55–56 n. 160). It is this lofty level which is relevant to the present discussion.

The legal issue of the enchanted quill arises on Sabbath, when Jewish Law forbids writing (*Mishna, Shabbat* 7:2). We are not interested in theoretically exploring the question of culpability for bewitched quills that write on Sabbath; this study focuses on jurists who actually related to the case. Indeed, one of the most influential jurists of the early 19th century, Rabbi Moshe

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Sofer (1762–1839), cited the notion of an enchanted quill in the context of a perplexing Jewish tradition.

Sofer's multi-volume responsa includes an 1830 letter, written to a student by the name of Noah Gavriel. Not much is known about Noah Gavriel, though he had corresponded with Sofer fifteen years earlier. By 1830, Noah Gavriel was described as a "dispenser of justice to his community," indicating that he filled an official rabbinic position. Noah Gavriel's original letter has not survived, but from Sofer's words we can reconstruct the correspondence (Kinstlikher, 1993, p. 310; Sofer, 1841, vol. 4, para. 155; vol. 6, para. 29).

Noah Gavriel referred to two rabbinic traditions regarding the day Moses died. When read together, these two narratives present a perplexing legal scenario. The first narrative relates to the day of the week that Moses died, the second to Moses' deeds on that day.

The Bible does not mention on which day of the week Moses passed away.¹² According to one tradition, Moses died on Sabbath afternoon. The seminal Jewish mystical text, *Zohar*, states this clearly: "Moses departed from the world at the time of the afternoon prayer on Sabbath" (*Zohar*, 2:156a). This statement concurs with ninth century texts from Jewish jurists in Babylon, such as Amram bar Sheshna (ca.810–ca.875). In response to an enquiry from Spain, Amram authored a prayer book with legal annotations. The influence of Amram's treatise cannot be overstated: his work shaped Jewish prayer books through to contemporary times. Amram recounted three customs that developed from the tradition that Moses died on Sabbath afternoon (Amram bar Sheshna, 1971, pp. 79–80).

First, a short prayer comprising three verses was added to the Sabbath afternoon service.¹³ The verses recall divine justice, and the prayer was instituted in commemoration of the death of Moses, and perhaps of other biblical characters who passed away at the same time of the week.

Second, Amram mentioned a custom to sit silently and cease study of Jewish texts for a short interval each week. This was done in commemoration of Moses' death and was therefore instituted at the time he died; namely, late on Sabbath between the afternoon prayer and the evening prayer. Jewish Law mandates a one-time suspension of study upon the death of a *nasi*—literally a prince, but referring to any supreme leader (*Babylonian Talmud*, *Moed Katan* 22b; Maimonides, *Laws of Mourning*, 9:16). The weekly reenactment of mourning over Moses' death is an expansion of this custom, in consideration of the paragon of Jewish leadership.

Study is a central Jewish value, and cancelling learning is an unusual move. Instituting a weekly cessation of study has no parallel in Jewish tradition. On this backdrop, Amram reported that his predecessor Sar Shalom had explicitly stated that Talmud may be studied on Sabbath afternoon. Moreover, Sar Shalom reported a practice—and this is the third custom Amram

recorded—whereby the community would study the tractate known as “Ethics of the Fathers” on Sabbath afternoon. Later medieval sources noted that this tractate opens with the words: “Moses received the Torah at Sinai,” therefore studying this text was particularly appropriate as a weekly commemoration of Moses’ demise (Ehrenreich, 1924, pp. 313–314; Yehuda ben Barzilai of Barcelona, 1903, p. 290)

Unrelated to this tradition and its attendant practices, another rabbinic source described Moses’ conduct on the last day of his life. According to this source, Moses spent his final day writing Torah scrolls in a bid to stay his death. On that very day Moses transcribed thirteen scrolls: one scroll for each of the twelve tribes, and one scroll to be archived in the Tabernacle as the authoritative text (*Midrash Rabba*, 1512, Deuteronomy, para. 9:9).

Reading the two narratives together presents a legal problem: Moses wrote Torah scrolls on Sabbath. Could it be that Moses transgressed the injunction against writing on Sabbath?!

The conundrum presented by the juxtaposition of these two narratives was already noted by medieval jurists (*Rosh*, *Pesahim* 10:13). They solved the puzzle by simply preferring an alternative tradition according to which Moses died on Friday. Scrolls written on Moses’ final day, therefore, were written on Friday, not Sabbath.

For readers it may have been difficult to embrace the dismissal of earlier sources of high repute that were unswerving in their assertion that Moses died on Sabbath. Moreover, those sources recorded customs commemorating the event; at least two of which—the three verse prayer and studying Ethics of the Fathers—continued to be practiced in traditional Jewish circles. Such discomfort may have been what drove Noah Gavriel in his desire to extricate Moses from the legally problematic position at the confluence of the two narratives.

Noah Gavriel wrote to Sofer, suggesting that Moses had employed an enchanted quill to do his bidding and write thirteen Torah scrolls. A bewitched quill—opined Noah Gavriel—would not constitute a transgression of the injunction against writing on Sabbath.

It is worth pausing to contrast killing with a Divine Name and writing with a bewitched quill on Sabbath. In both cases there can be no question of *mens rea*: Moses intended to kill the Egyptian with the Divine Name and he intended to write on Sabbath when he cast a spell on his quill. In both cases, the *actus reus* involves speech, and causation is comparable. Why then is swearing in a quill to write on Sabbath permitted?

It appears that the distinction between the cases is best explained by reference to an issue known in Hebrew parlance as *shevitat keilim*, meaning the requirement of vessels to rest on Sabbath. The Bible sets aside Sabbath as a day of rest, though the parameters of this directive are not fully explicated

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(Genesis 2:2–3; Exodus 20:8–11). In the first century BCE, Jerusalem rabbis disagreed regarding the application of this directive to a person's property. The legal question is: Does the Sabbath rest requirement include a requirement that a person's property also does no work? (*Mishna, Shabbat* 1:5; *Babylonian Talmud, Shabbat* 18a). Jewish Law adopted the position that the obligation to rest is incumbent on Jews, non-Jewish employees of Jews, and animals owned by Jews. Other property owned by Jews was not subject to the Sabbath rest requirement (Maimonides, *Laws of Sabbath*, 6:16).¹⁴ An enchanted quill writing on Sabbath is, therefore, not a guilty act.

Noah Gavriel was not satisfied with his creative suggestion. In the ancient dispute regarding Sabbath rest for property, one opinion held that property must rest. How would that opinion explain Moses' enchanted quill that wrote scrolls on Sabbath? This was the question that Noah Gavriel asked Sofer.

Sofer responded that the *actus reus* of Sabbath transgressions is defined by the standard method of committing the crime. Apparent Sabbath transgressors are not culpable for crimes committed in unusual ways. As a proof text, Sofer noted that a right handed person who writes with the left hand would not be considered culpable for writing on Sabbath (*Babylonian Talmud, Shabbat* 103a). Similarly, spinning thread is forbidden on Sabbath, but if one spins directly from a woolen fleece without first shearing the sheep there is no culpability (*Babylonian Talmud, Shabbat* 74b). Sofer cited this unusual case because according to rabbinic tradition, skillful women did just that during the Tabernacle's construction (*Rashi, Exodus* 35:26). Sofer explained that this textile art required rare wisdom and dexterity; it was certainly not standard spinning procedure. Hence such spinning would be permitted on Sabbath. Returning to the enchanted quill: there is nothing standard about bewitched writing implements. Thus, even according to the opinion that property must rest, a mystic would not be culpable for enchanting a quill to write on Sabbath.¹⁵

Regarding Noah Gavriel's creative suggestion that begot his query—Moses wrote on Sabbath with an enchanted quill—Sofer informed his student that the suggestion had already appeared in a well-known earlier work by Rabbi Yeshaya Horowitz (1558–1630). Horowitz's work was audaciously entitled *Shenei Luhot Ha-Berit*, "The Two Tablets of the Covenant," and published in Amsterdam in 1648–1649. Extant editions of Horowitz's work do not contain this passage, so we are fortunate that Sofer took the trouble to preserve his correspondence; without it, we may not have been privy to Noah Gavriel's suggestion. Whatever the source, Sofer accepted the position that writing with an enchanted quill is not considered a Sabbath transgression.

In this case, the magical narrative served the jurist in his attempt to save the lawgiver who had been complicated by rabbinic narratives. In other words:

the bewitched quill explained Moses' conduct that in light of two different accounts of his final day suddenly appeared precariously antinomian. Narratives created a legal problem that was magically solved.

Theft: Bertie Bott's Beans and Biblical Manna

The biblical manna that the Israelites ate while wandering in the desert is comparable to Bertie Bott's Every Flavor Beans. When the manna is first mentioned, its taste is described as "*tsapihit* in honey" (Exodus 16:31). Alas the word "*tsapihit*"—often translated as "wafer"—is a *hapax legomenon*; it appears once in the Bible and its meaning is a mystery. The Bible later describes manna, its appearance, and its preparation for consumption:

Now the manna was like coriander seed, and in color it was like bdellium. The people would go about and gather, grind it between millstones or pound it in a mortar, boil it in a pot, make it into cakes. It tasted like cream of oil. And when the dew fell on the camp at night, the manna would fall upon it [Numbers 11:7–8].

The hazy description makes identification of this source of sustenance a mission impossible.¹⁶ *Wisdom of Solomon*—a work not included in the Hebrew Bible, but probably written by a Jew during the second or first century BCE—described manna in the following terms: "Instead of these things Thou didst give Thy people food of angels, and without their toil Thou didst supply them from heaven with bread ready to eat, providing every pleasure and suited to every taste" (Wis. 16:20). Perhaps unwilling to identify the manna as a particular food that could be found in nature, perhaps unable to do so—the rabbis ascribed magical properties to this source of sustenance, echoing the notion that manna was adept at "providing every pleasure and suited to every taste."

In the verses that immediately precede the description of manna, the Israelites complained:

If only we had meat to eat! We remember the fish that we used to eat free in Egypt; the cucumbers, the melons, the leeks, the onions, and the garlic. Now our gullets are shriveled. There is nothing at all! Nothing but this manna to look to! [Numbers, 11:4–6].

The rabbis wondered why these five vegetables were specifically mentioned. Two explanations were offered, both of them highlighting the magic of manna. According to the first explanation, manna could taste like any flavor except for these five items. According to the second explanation, not only could the manna taste like any substance, but it also had the texture of the desired food; that is, except for the five listed items—their flavor could be tasted, but their texture could not be sensed (*Babylonian Talmud, Yoma, 75a*).

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For the rabbis, the magical properties of manna could not be denied; though there was a debate as to the extent of the magic. Jewish tradition remembers the manna as having an unlimited spectrum of tastes; truly “every flavor,” including chocolate, peppermint, marmalade, spinach, liver, tripe, and presumably even earwax. While there may have been five items that the manna could not replicate, this divinely provided food had one clear advantage over Bertie Bott’s Every Flavor Beans: the taste was selected by the person eating it. People who ate bogey-flavored or vomit-flavored manna only had themselves to blame!

The existence of every flavor manna raised a legal question: What is the appropriate benediction that should be recited over this magical food? It should be emphasized that as a pre-modern legal system, Jewish Law viewed the recital of a ritual benedictions before eating as a legal obligation. Such obligations were part of the same legal system that included civil obligations, the very obligations recognized by modern legal systems. This is apparent in the rabbis’ exhortations to recite blessings: “It is forbidden for a person to derive benefit from this world without [first reciting] a benediction; and whoever derives benefit from this world without [first reciting] a benediction has committed an act of *me’ilah*,” that is, unauthorized use of consecrated Temple property (*Babylonian Talmud, Berakhot* 35a–b). Since the world and all that is in it belongs to the Almighty (Psalms 24:1), eating food that is God’s property without a blessing is akin to embezzlement.

Significantly, the rabbis compare one who eats without reciting a benediction to theft. To be sure, there are differences between theft and eating without a blessing: transfer of property requires the agreement of the previous owner, while partaking of food perceived as belonging to God requires a benediction. Moreover, the sanctions for the two criminal tortfeasors are dissimilar. Nonetheless, in the eyes of Jewish Law the crimes are comparable to an extent: property is taken without first gaining the requisite license.

Returning to the legal question: What benediction is to be recited before consuming manna? Five possibilities have been suggested. The earliest recorded answer appears in a text from medieval Germany. The matter was then addressed in early 17th century Italy. From there we can trace the question to late 18th century Galicia. Then in the 20th century the question was addressed in Baghdad and in Poland.

The first recorded suggestion appears in an early 14th century German manuscript of *Sefer Hasidim* (Book of the Pious). *Sefer Hasidim* was largely written by Yehuda of Regensburg (ca.1146–1217), and is linked to the Jewish pietists who flourished in Germany in the twelfth and thirteenth centuries. It is a work that is notoriously difficult to describe historically and categorize literarily. The different recensions, manuscripts, and printings have made authentication, dating, and attribution the subject of much scholarly discus-

sion.¹⁷ The goal and audience of the work is also questionable, and jurists have debated its standing as a legal text. Notwithstanding, *Sefer Hasidim* has generated norms. One manuscript includes the following: “On manna they would pronounce the benediction ‘[Blessed are You, O Lord, king of the universe] who gives bread from the heaven” (MS Parma H 3280; Wistinetzki, 1891, para. 1640).

Benedictions before eating follow a standard formula. They open with the words “Blessed are You, O Lord, king of the universe,” and continue with a reference to the type of food about to be ingested. Thus, if the food is bread then the blessing ends “who brings forth bread from the earth”; or fruit: “who creates the fruit of the tree”; or vegetables: “who creates the fruit of the soil.” For food that is not grown and hence is not covered by the delineated categories, the blessing ends: “that everything came into being through His word” (*Mishna, Berakhot* 6:1, 3). The second phrase of the blessing is generally borrowed from the Bible (Genesis 4:3; Deuteronomy 26:2; Psalms 104:14). Following this format the blessing over manna begins with the standard opening, and then refers to manna by its biblical moniker—“bread from heaven” (Exodus 16:4; see also Psalms 78:24; 105:40; Nehemiah 9:15).

The next scholar who addressed this question was Rabbi Menahem Azarya da Fano (1548–1620), a prolific Italian writer and a patron of learning. Menahem Azarya made notable literary contributions in the fields of Kabbalah, theology, liturgy, and law. Many of his writings remain in manuscript, including sections of a work entitled *‘Asara Ma‘amarot* (Ten Essays). One of the essays that comprise the work was published in 1863, and includes a vivid description of the celebratory meal at the End of Days.

According to Menahem Azarya, the Leviathan and the Behemoth—the primal monsters of the sea and of the land—will be served as the main course. Angels will be on hand to wait on the righteous, repaying the kindness of Abraham who waited on them (Genesis 18:2–8). Gabriel will be the ritual slaughterer, Raphael will prepare the food, and Michael will serve as beverage butler. Wine, prepared from grapes from the Garden of Eden and aged since the beginning of time, will be served.

What about bread? Menahem Azarya felt that wheat products would not be served, since according to one opinion in the Talmud the forbidden fruit in the Garden of Eden was wheat (*Babylonian Talmud, Berakhot* 40a; *Sanhedrin* 70a): The food that brought about Adam and Eve’s downfall would not be featured at the End of Days! Menahem Azarya explained that a jar of desert manna had been preserved specifically for this festive meal (Exodus 16:33–34). Which benediction will be recited over the manna? Menahem Azarya (1863) opined: “Blessed [are You, O Lord, king of the universe] who brings forth bread from the heaven” (pp. 9–10).

Presumably, Menahem Azarya did not have access to a manuscript of

Sefer Hasidim, thus his suggestion is an independent response. He followed the classic formula, and like *Sefer Hasidim* he referred to manna as “bread from heaven.” Instead of saying “who gives,” Menahem Azarya used the language of the regular bread blessing: “who brings forth.”

The question arose again in late 18th century Galicia—the area of Poland that was annexed to the Austrian Empire. Rabbi Tsevi Elimelekh Shapira (1783–1841) began his rabbinic career as a judge in the religious court of Dynów. He then served in six other communities, before a four year sojourn as rabbi of the Hungarian town of Munkács. In 1829 he returned to serve as rabbi of Dynów. In addition to his rabbinic duties, Shapira was a leader of the hasidic movement—a religious revivalist movement that began in late 18th century Eastern Europe and flourished throughout 19th century. Shapira was a prolific writer, primarily bequeathing works in hasidic thought.

In his most famous work, Shapira recounted how during his youth, he had spent time with Rabbi Tsevi Hirsh Eichenstein of Żydaczów (1763–1831). Eichenstein was Shapira’s older contemporary, and in addition to be related by marriage, Shapira went on to write a commentary on Eichenstein’s mystical work. Shapira recounted that one day Eichenstein asked about the blessing before consuming manna. Shapira cited Menahem Azarya’s opinion and those present debated the issue. One respected figure—Yisrael Dov—suggested that no blessing was recited on manna!

Shapira referred to this character as “Yisrael Dov,” and in all likelihood this was Rabbi Yisrael Dov of Drohobycz (d. 1847), a student of Eichenstein. Yisrael Dov pointed to the verse that described manna as food of mighty heroes, meaning angel food (Psalms 78:25).¹⁸ Playing on the Hebrew word for heroes—“*abirim*”—one opinion in the Talmud suggested that the manna was totally absorbed by limbs, in Hebrew “*eivarim*.” In Hebrew *b* and *v* use the same grapheme; *v* with a diacritical mark is pronounced as *b*. Thus the two Hebrew words—*eivarim* (איברים) meaning limbs and *abirim* (אבירים) meaning heroes—have the same consonants with different vowels. Orthographically the two words appear almost identical, particularly since the Bible is traditionally written as graphemes without vowels or diacritical marks (*Babylonian Talmud*, *Yoma* 75b). One opinion in the Talmud seems to suggest that because of its divine composition, manna did not produce human waste; it left nothing to excrete for it was entirely absorbed by the body. Yisrael Dov translated this comment about digestion into a statement about mystical valence.

According to Jewish mystical tradition, every physical item has an element of the Divine. Without this divine component, the item could not exist. Alas, the divinity in physical objects is encased in shells and mixed with dross. When it comes to foodstuffs, the recital of a benediction mystically

extracts the divine from the physical item, separating it from the spiritual chaff. Manna, however, contained no spiritual dross; it was entirely divine. Consequently, manna needed no blessing! Shapira (1850) added a postscript:

And I greatly enjoyed [the suggestion], for it appears to me that the words are close to the truth. Accordingly, I was surprised at the holy m[aster] R[abbi] M[enahem] A[zarya] who wrote that in the future we will have to recite a benediction over [manna] [*ma'amarei shabbatot*, para. 3:3].

Though the suggestion that manna needed no blessing was innovative, it was nonetheless legally problematic, as pointed out in a curious collection of responsa.

The collection—entitled *She'elot U-Teshuvot Torah Lishmah*, “Responsa of Law for Its Own Sake”—is presented as being the collated responsa of an unknown scholar identified as “Yehezkel Kahali.” The collection was first published in Jerusalem in 1973, and the publisher announced that the manuscript was an autograph of the Baghdadi scholar Rabbi Yosef Hayim (1834–1909). In his introduction, the publisher—a grandson of Yosef Hayim—pointed out that the author had left a hint as to his identity in the *gematria* of the pseudo-author’s name. *Gematria* is a numerological system that assigns value to each letter, and assumes a relationship between different words with identical numerical value. The *gematria* of the Hebrew name “Yehezkel” (156) is identical to that of “Yosef” (156), and the *gematria* of the surname “Kahali” (68) is identical to “Hayim” (68). Thus, argued the publisher, Yehezkel Kahali is none other than Yosef Hayim. Three years after the initial release of the work, a second edition appeared with a note from the publisher claiming that the identification of the author was not based solely on numerology. Recently further proof has been adduced to support the claim that the responsa are indeed the work of Yosef Hayim of Baghdad (Kahali, 1973, [p. 3]; 1976, [p. 3]; 2013, pp. 9–67).

While Yosef Hayim did not hold an official rabbinic position, he was a popular preacher and a recognized authority. In his sermons, Yosef Hayim skillfully wove together law and *aggada*, and his voluminous writings reflect this integrated approach. In addition, Yosef Hayim was well versed in the Jewish mystical tradition, and his legal rulings reflect his mystical sensitivities. It remains a mystery why Yosef Hayim penned this manuscript under a pseudonym. It is also ethically disconcerting that he claimed that the responsa were from the 17th century: while Jewish Law does not have a doctrine of binding precedent, there is still a notion of persuasive precedent and a two hundred year old responsum would presumably trump a contemporary ruling.

The questioner seemed to be familiar with Shapira’s account: he opened by citing “a certain sage” who had suggested that the Israelites did not recite a blessing over manna since it was entirely divine with no spiritual dross.

The questioner noted that those present had argued with that sage. The questioner enquired: “Therefore we wanted to know—is the truth with those who say that they recited a blessing over it? Also, which blessing did they recite over it?” (Kahali, 1973, p. 59, para. 63).

The respondent opened by conceding some ground. From a mystical vantage the role of blessings is indeed to separate the holy from the unholy, and manna did not require this process. However, the recitation of a blessing is not just for mystical reasons; it is also a form of thanks for abundant goodness bestowed by God. Moreover, the Talmud says that when the manna descended, Moses instituted the first paragraph of Grace After Meals (*Babylonian Talmud, Berakhot* 48b). If Grace After Meals was said, surely a blessing before the meal was also recited! Indeed medieval sources stated that a blessing was recited over manna, though those sources did not record the wording of the benediction (*Zohar*, 2:62b).

Regarding the formulation of the blessing, the respondent referred to Menahem Azarya, but offered a slightly different wording: “Blessed are You, O Lord, king of the universe who *rains down* bread from the heaven.” Indeed, manna descended from the heaven, and in two biblical passages the verb for raining is used (Exodus 16:4; Psalms 78:24). The respondent concluded his answer with the words: “And blessed is the one who knows,” perhaps acknowledging that he had no way of proving his contention.

While Yosef Hayim was active in Baghdad, the blessing over manna was touched upon in Poland. Rabbi Meir Don Plotzki (1867–1928) was a successful rabbi, author, teacher, and political activist (*Encyclopaedia Judaica*, 2007, 16:241). Plotzki’s fame spread over Poland in 1903 when he published the first part of his *Hemdut Yisra’el* (Delight of Israel). In the second volume of this work, Plotzki stated that the blessing over manna should be the same blessing that is recited over vegetables. Plotzki noted that the Bible describes the Israelites as going out to gather manna; indeed verb forms of “gather” appear an astounding nine times in the biblical account (Exodus 16:4–5, 16–18, 21–22, 26–27). Citing earlier sources, Plotzki explained that this verb is used when there is a link to the soil: the manna must have been nourished from the ground in some way. Hence the benediction: “Blessed are You, O Lord, king of the universe, who creates the fruit of the soil” (Plotzki, 1924, sec. 14, para. 2). It must be said that Plotzki was well aware of how surprising this approach was: it went against the grain of the biblical narrative and rabbinic tradition that saw manna as a metaphysical, mystical food; not something nourished from the soil.

Looking at the sweep of writings from Jewish jurists, we see how the rabbinic manna narrative precipitated a legal discussion, which was then creatively solved by drawing from the biblical manna narrative to formulate an appropriate benediction. The various proposals are interesting on a number

of fronts. First, perhaps the most obvious answer was sidelined: That the blessing should conform to formulations canonized by the rabbis. Plotzki was a lone voice in suggesting a recognized formulation; but by his own admission his suggestion was questionable. This approach could take two forms—a staid version and a more adventurous proposition. In its staid version, this possibility might mean that the appropriate benediction was the catch-all formulation—the blessing to be recited over items that are not grown from the ground: “Blessed are You, O Lord, king of the universe, that everything came into being through His word.” A more adventurous version of this approach might suggest that the blessing should use the formulation that is appropriate to the selected taste. Neither of these possibilities were raised. Apart from Plotzki, jurists preferred a creative route when grappling with the legal question and coined a new benediction formulation.

Second, the question was addressed by a broad spectrum: jurists of unequal standing, disparate genres of norm-generating writing, different cultural milieux, across centuries and across geographic regions. Despite the distances, at least two of the jurists were in conversation with a predecessor’s proposal. This reminds us how Law in general, and Jewish Law in particular, is part of a multigenerational discourse that traverses geographic, temporal, and cultural boundaries. This is a salient point for the present study of magical phenomena in the eyes of the Law.

Third, for most of the jurists manna was a matter of past. When the Israelites reached the Promised Land they no longer enjoyed this magical food; only a solitary jar of manna was preserved for posterity (Exodus 16:33–35; Joshua 5:11–12). The jar was subsequently housed in the Ark of the Covenant which stood in the holiest precinct in the Temple. During the First Temple period, the Ark with its contents was hidden, and its whereabouts remains unknown (Maimonides, *Laws of the Temple*, 4:1). Thankfully, jurists did not discard the legal question to the dustbin of history, indicating how interest in Legal History is part of the Jewish legal tradition.

This leads to a fourth point: not only was the legal question concerning a bygone reality, it was largely anachronistic. Reciting benedictions over food was a practice instituted by the rabbis, centuries after the Israelites consumed manna. There is sound basis to simply say that no blessing was recited because blessings before food had yet to be legislated. Why were jurists concerned with an anachronistic question? Three possibilities present themselves. The jurists may not have considered the question anachronistic: There is a significant and intriguing rabbinic tradition that commandments, even patently rabbinic legislation, were observed by the forefathers long before they were legislated (see, for instance, *Mishna, Kiddushin* 4:14). If such assertions should be taken at face value, then the manna question may not be anachronistic. Alternatively—as was clear from Menahem Azarya’s opinion—this may have

been an exercise in legal imagination as jurists considered a future legal reality where manna would once again be consumed. Finally, this may have been an exercise in intellectual legal gymnastics and creativity. Much like hypothetical scenarios are standard fare in Law Schools, Jewish Law also has a penchant for analyzing liminal cases.

Taking these points together leads to a fifth aspect of note. The numerous answers to a legal question that has no immediate application indicate both uncertainty and care. It is as if the jurists were collectively saying: We may not know which blessing should be recited, but we are clear that this is a legal question that deserves consideration. The span of answers indicates that jurists were animated by the legal question, either as a question of historic Jewish Law, or as an intellectual challenge, or as a preparatory exploration for a long awaited eventuality which would entail new legal questions.

Ancient Magic, Ancient Law

Whether it is the ancient magic of love, or the love of an ancient legal system—I suggest that this study is significant for scholars of law on four interconnected levels. First, this exploration speaks to the possibility of cross-fertilization in Comparative Law. Second, the analysis presented here provides a window into the world of Jewish Law jurists. Third, the material discussed here contributes to our understanding of the reaches of the Jewish legal system. Fourth, the present discussion may be significant for the contemporary challenge of charting a course in legal education. I will conclude this essay with a few words about each of these implications.

Intellectual Cross-Fertilization

The three cases presented here demonstrate that aspects of the magical Hogwarts reality were considered by Jewish Law jurists. Thus the legal implications of Hogwarts may be of interest, *mutatis mutandis*, to scholars of Jewish Law. Conversely, legal scholars of the magical world may find fertile ground in Jewish Law for comparison and perhaps inspiration. Indeed, the enterprise of Comparative Law is inevitably enriching.

Moreover, this comparative analysis reminds us that legal opinions never really die. Even when not in use, Law merely hibernates, lying dormant, waiting for the sun to come out once again. While J. K. Rowling's achievements in depicting the world of wizardry are incontrovertible, the words of Ecclesiastes 1:9 ring true: "What has been will be again, what has been done will be done again; there is nothing new under the sun."

Judicial Biography

The cases discussed here may pique the interest of legal historians and judicial biographers who seek to unravel the complex world of the jurist.¹⁹ Are the excursions on magical phenomena intellectual exercises much like the hypotheticals favored in socratic-style classrooms? Perhaps the discussions provide us with a window into the inner world of the jurists and the cultural environs in which they operated? Which texts were included in the jurist's legal library? As Justice Felix Frankfurter wrote: "Reading maketh a man only in part—yet how illuminating it would be to have a list of the books read by the justices" (Fairman, 1949, p. 368, citing a 1948 letter by Frankfurter).

Without a doubt—each era, each culture, each jurist, will provide a different set of answers to such questions. Raising the questions and discussing the possibilities is the first step towards a thick, nuanced account.

The Reaches of Law

What are the boundaries of Jewish Law's jurisdiction and what are the implications of those demarcations? Isaiah prophesied that the angels call to each other and declare: "Holy, holy, holy! The Lord of Hosts! His presence fills all the earth" (Isaiah 6:3). Aaron Barak, Chief Justice of the Israeli Supreme Court, ruled that everything was judicable; that is, the Supreme Court could hear and rule upon any case. This policy was summed up with a play on Isaiah's words: "*Law* fills all the earth" (Barak, 1993, pp. 485–487; Levitsky, 2001, pp. 227–243). Scholars have asked whether Jewish Law might stake a similar claim: "*Jewish Law* fills all the earth." In other words, is everything in this world judicable according to Jewish Law? This paper adds a fourth permutation to this discussion of the reach of law: Is Jewish Law also concerned with otherworldly phenomena? From the cases we have considered, it is apparent that Jewish Law does not see itself as confined to earthly matters; magical phenomena are also judicable.

The observations about intellectual cross-fertilization, the world of the jurist, and the reaches of law bring us to an additional point about jurisprudential boundaries: the nexus of *nomos* and narrative in Jewish Law. The cases discussed here reflect different interplays between the two realms. In these cases it is apparent that narrative has crossed into the realm of law, and law into the realm of narrative. While valiantly searching for a precedent for the notion that a lethal verbal attack is a guilty act, the jurist blurred the distinction between law and narrative; biblical and rabbinic narratives were conscripted to resolve a question in law. The entry of the bewitched quill into legal discourse is equally enchanting: rabbinic narratives about Moses' final day created a legal conundrum that was solved by reference to a magical

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narrative. The rabbinic manna narrative is full of flavor: the taste of manna precipitated a legal discussion, which was then resolved by returning to the biblical manna narrative or to narratives about the mystical valence of manna. Any claim for a law/narrative dichotomy is undermined by these cases. The complexity of the law and narrative relationship reminds us that the web of interfaces remains to be fully described.

Legal Education

The legal questions discussed in the parallels to Tom Riddle's Diary and Bertie Bott's Every Flavor Beans are specifically relevant to the world of Jewish law—a lawscape that prohibits writing on Sabbath and mandates blessings before eating. Modern law distinguishes between civil law and religious law; between secular interactions and religious rituals. As a legal system with ancient roots, Jewish Law predates this bifurcation. The same jurist who is called upon to adjudicate criminal culpability, might be called upon to answer questions of Sabbath observance or ritual recitation of benedictions before eating.

Alas, modern notions of law have largely removed much of Jewish law—and other legal systems defined as religious—from law schools. These rich legal systems have been consigned to history departments, religious and cultural studies, courses in literature, and the like. Law schools only entertain Jewish law when it addresses questions recognized by modern legal systems: evidence, tort, contracts, and so on. Setting aside significant swaths of Jewish law may be justified on functional or utilitarian grounds, but we would be remiss not to acknowledge the opportunity cost of such policies.

Cordoning off sections of Jewish law as *ex-territoria* impoverishes legal discourse and to an extent is mendacious. There is also an andragogical cost of lopping off sections of Jewish law; or worse yet—not considering Jewish law as a bona fide legal system because of modern demarcations of law. But let us approach the matter in positive terms: What are some of the advantages of expanding the parameters of legal education?

For the student of law, trained in addressing hypotheticals as a means of honing rigorous legal thinking, the magical world opens up new, challenging vistas. Contemporary legal education is not predicated on discussing real cases. Law professors notoriously do not allow students to dismiss hypotheticals with the argument that the scenario could never happen. The creative explorations discussed in this paper offer new ammunition for law professors.

There are also tangible benefits that should be considered: Criminal law classes will continue to teach about *mens rea* and *actus reus*. Students immersed in contemporary culture are likely to be animated by a discussion of the criminal elements of murder when they are refracted through the Hogwarts reality.

A final word: In addition to blessings before food, Jewish Law mandates the recital of blessings before the study of sacred texts; whether those texts are of a legal or a non-legal nature. While the text follows the standard benediction formulations, it includes additional wording:

Now sweeten—O Lord our God—the words of Your Torah in our mouths and in the mouths of Your nation, the House of Israel. And may we—we, our descendants, and the descendants of Your nation, the House of Israel, all of us—be amongst those who know Your name and who engage with Your Torah [*Babylonian Talmud, Berakhot, 11b*].

The language of the blessing before study is unique. No other blessing in Jewish tradition includes a request that God “sweeten” the encounter, and no other blessing refers to bequeathing the experience to future generations (Cooper, 2012, pp. 98–103). This study suggests the possibility of exploring legal worlds that are beyond the boundaries of traditional curricula, offering an enjoyable, creative, and refreshing experience without sacrificing intellectual rigor. What could be sweeter than that?

NOTES

1. This research was conducted while I had the privilege of being a post-doctoral fellow at the Buchmann Faculty of Law, Tel Aviv University. My thanks go to Mollie Feldman, Ariella Siegel, and Maya Zinkow of the Pardes Institute of Jewish Studies, Jerusalem, for their helpful comments.

2. For an overview of magic in Jewish tradition, see *Encyclopaedia Judaica*, 2007, 13:342–352.

3. For writing on Harry Potter from a Jewish perspective, see Krulwich, n.d., 2006. Krulwich’s blog has posts from December 2006 through February 2013, and includes links to other online articles. The present study adopts a different methodological approach.

4. For an overview of Jewish criminal law, see Enker, 2014.

5. For Jewish sources of the magical word “Abracadabra,” see Trachtenberg, 1939, pp. 80ff; 116ff.

6. Miller cited a later text, but this is the earlier source of the tradition.

7. On self-defense in Jewish law, see Enker, 2014, pp. 285–287.

8. The Hebrew word “*ba-rehitut*” could be translated as “with fluency,” or it could refer to cursive script which is called “*ketav rahat*.”

9. A play on the biblical verse “I sleep and my heart is awake” (Song of Songs 5:2).

10. Alas, Professor Meir Bar-Ilan who transcribed the formula could not recall its source. Underscored spaces appear in Bar-Ilan’s transcription and indicate particular esoteric names of God. For a less poetic formula that is accompanied by a ceremony, see Scholem, 1978, pp. 91–92.

11. See, for instance, the account reproduced in Benayahu, 1959, pp. 563–568.

12. Rabbinic tradition calculated the date of his death as the 7th of the Hebrew month of Adar (*Babylonian Talmud, Kiddushin 38a*).

13. The verses are Psalms 36:7, 71:19, and 119:142.

14. Later rabbis added limitations which are not germane to our discussion; for instance, property may not perform work that creates unusual noise.

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15. From Sofer's responsum it is apparent that Noah Gavriel offered an alternative explanation that used the notion of dual time—Sabbath in Heaven, Friday on Earth—to justify Moses' actions. Sofer roundly rejected this possibility. Noah Gavriel's second suggestion is unconnected to magic writing and hence beyond the current scope.

16. On manna in general, see Cheyne & Black, 1902; "Man," 1978.

17. On the different manuscripts and editions of *Sefer Hasidim*, see "Princeton University Sefer Hasidim Database (PUSHD)," n.d.

18. For more on manna as bread of heroes, see Shinan & Zakovitch, 2012, pp. 50–53.

19. On the enterprise of judicial biography, see Posner, 1995; Urofsky, 1998.

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