

Civil Law and Jewish Halakhah: Problems of Coexistence in the Late Russian Empire*

Russia was, and still is, known for a lack of respect for written law. However, as in every modern European state, the rule of law in the Russian Empire was considered obligatory for everyone, at least in theory. On the other hand, the Jewish subjects of the empire, faithful to their religion, had their own law, *Halakhah*, which they regarded as of divine origin. In some cases, as also happens in every modern state – including the State of Israel – civil and religious laws contradicted each other.¹ The aim of this article is to explore how both law systems interacted and coexisted in late imperial Russia, and to examine particular issues and general approaches which defined this coexistence. I look at the interaction of both bodies of law as reflected in the memoranda produced by hundreds of rabbis and the evaluation of those memoranda by local governors, written in 1908, during preparations to the Rabbinic Commission of 1910. This unique corpus of documents presents an integral and perhaps the fullest possible picture of relationships between state law and Halakhah, as it was practiced in the last decade of the Russian Empire. As I intend to argue, the rabbis' memoranda clearly showed that the Russian Empire was a relatively hospitable place for Jews observing religious laws and traditions, and the problems – rather marginal – were caused by the inconsistency of Russian legislation, as will be demonstrated below.

An institution known as the *Rabbinic Commission* was established within the Ministry of the Interior in 1848 in order to serve as a kind of central consistory that would be able to provide the government with information concerning the Jewish religion and to decide on halakhic issues. The seven members of the

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1 For overview of contradictions between the modern state law and Halakhah, see chapter 9 in Leo Landman, *Jewish Law in the Diaspora: Confrontation and Accommodation* (Philadelphia, PA: The Dropsie College for Hebrew and Cognate Learning, 1968), 135–148 and Gil Graff, *Separation of Church and State: Dina de-Malkhuta Dina in Jewish Law, 1750–1848* (Tuscaloosa, AL: University of Alabama Press, 1985).

Commission were nominated by the minister from a list of candidates elected by Jewish communities. However, the Commission did not become a permanent body and was convened irregularly, between long intervals, while its deliberations were confined to the questions proposed by the ministry.²

In early February 1908, the Ministry of the Interior announced the convocation of the sixth Rabbinic Commission, which after several postponements met in 1910.³ In sharp contrast to previous practice, when the ministry itself formulated the questions for the Commission, this time it was interested in hearing the opinions of local rabbis. In the aftermath of the Revolution of 1905–1907, Prime Minister and Minister of the Interior Peter Stolypin adopted a new mode of governing, giving a certain weight to public opinion.⁴ The convocation of the Rabbinic Commission in 1908–1910 was apparently a first stage in Stolypin's vague plan to reorganize Jewish communal life in order to eliminate unnecessary tensions between the Jewish population and the Russian state. Therefore, the announcement of the sixth Commission in 1908 was accompanied by instructions to the officially recognized rabbis to convene meetings and formulate questions for the Commission's deliberations, without any restrictions.⁵

The issue of the official recognition of rabbis in the Russian Empire was not an easy one and differed in the two major regions where the Jewish population was concentrated: the Pale of Jewish Settlement, which consisted of the fifteen western provinces, annexed to Russia in 1772–1812, and the Kingdom of Poland, which was annexed in 1815 and governed in a manner distinctive from the rest of the empire. In the Kingdom of Poland, the only legal requirement for

- 2 For a general survey of Rabbinic Commissions, see Moisei Kreps, »Ravvinskaia komissiia,« *Evreiskaia entsiklopediia*, vol. 13, eds. A. Harkavi and L. Katsenel'son (St. Petersburg: Brockhaus-Efron, 1912), 233–238. For more details on the commissions, their elections and aspirations, see Eli Lederhendler, *The Road to Modern Jewish Politics: Political Tradition and Political Reconstruction in the Jewish Community of Tsarist Russia* (Oxford: Oxford University Press, 1989), 73–74, 150–152; ChaeRan Y. Freeze, *Jewish Marriage and Divorce in Imperial Russia* (Hanover, NH: Brandeis University Press, 2002), 84–95, 245–256.
- 3 On the Rabbinic Commission of 1910 and the preparations for it, see Vladimir Levin, *Ha-politikah ba-yehudit ba-imperiyah ha-rusit be-eydan ha-reaktsiyah, 1907–1914*, Ph.D. thesis, Hebrew University of Jerusalem, 2007, 224–272.
- 4 On Stolypin, see Peter Waldron, *Between Two Revolutions: Stolypin and the Politics of Renewal in Russia* (DeKalb: Northern Illinois University Press, 1998); Abraham Ascher, *P.A. Stolypin: The Search for Stability in Late Imperial Russia* (Stanford: Stanford University Press, 2001); A. P. Borodin, *Stolypin: reformy vo imia Rossii* (Moskva: Veche, 2004).
- 5 Russian State Historical Archives, St. Petersburg (hereafter RGIA), collection (*fond*) 821, inventory (*opis'*) 9, file (*delo*) 63, folio (*list*) 1; inv. 8, file 293, fol. 12–20.

the official recognition of rabbis was a minimal knowledge of the Russian language. This requirement allowed almost all traditional communal rabbis to be recognized by the state authorities. In the Pale of Settlement, in contrast, the state demanded that a rabbi have a secondary or higher secular education. Therefore, communities had no other choice but to hire so-called crown (*kazionnyi*) rabbis, who had the necessary educational qualifications and were recognized by the state. They performed the duties which the state demanded of rabbis, i.e. keeping population records and arranging the oaths of Jews in imperial institutions; less formally they often acted as representatives of the community before the state authorities. At the same time, communities continued, as in the past, to hire traditional rabbis to perform traditional rabbinic functions, i.e. deciding on halakhic questions, presiding over religious courts, etc. These so-called »spiritual« (*dukhovnyi*) rabbis were well versed in Talmud and rabbinic law, but rarely spoke any Russian and functioned semi-legally due to the absence of recognition by the state.

The existence of the »double rabbinate« found its reflection in the preparatory work to the Rabbinic Commission of 1910. Since the Ministry of the Interior asked for the opinions of officially recognized rabbis, the traditional rabbis of Poland could send their memoranda directly to the ministry. In the Pale of Settlement, in contrast, the »spiritual« rabbis could not voice their opinions directly, with many of them instead joining the gatherings of the crown rabbis in 1908 or influencing them in other ways. As the following discussion demonstrates, the memoranda prepared by crown rabbis in the Pale during their meetings included many views quite similar to the proposals of the Orthodox rabbis of Poland. Therefore, the matters of disagreement between the crown and »spiritual« rabbinates go beyond the scope of this article.

As a result of the governmental initiative, 125 memoranda from individual rabbis and the gatherings of rabbis in each province in the Pale of Settlement and the Kingdom of Poland were sent to the ministry in the course of 1908.⁶ In addition, two special assemblies of Orthodox rabbis convened: Polish rabbis met in Warsaw in late December 1908; and about 20 prominent »spiritual« rabbis from the Pale of Settlement met in Vilna (today Vilnius) in April 1909.⁷ Rabbis submitted the most important questions and problems that they had drawn up to the Commission and proposed desired solutions. The rabbinical memoranda were accompanied by reports of the local governors who expressed their

6 For the rabbinical proposals sent to the Ministry of the Interior see RGIA, coll. 821, inv. 9, file 51. Consulted as microfilm in the Central Archives for the History of Jewish People, Jerusalem (hereafter CAHJP), HM2/8003.1; RGIA, coll. 821, inv. 9, file 66.

7 RGIA, coll. 821, inv. 9, file 66, fol. 38–69; file 51, fol. 310–329.

opinions about the suggested measures.⁸ These documents provide insight into the interaction between Halakhah and civil law in the late Russian Empire, as seen by Orthodox rabbis – bearers of Jewish tradition, and by governors – bearers and executors of Russian imperial law.

The aims of the rabbis: harmonizing civil law with Halakhah

When the Ministry of the Interior announced the conventions of rabbis as a preparatory step leading to the Rabbinic Commission, the joy of the Orthodox activists was almost boundless. »I have read the news item – wrote an Orthodox publicist in Warsaw – once, twice, three times, and my eyes could not have their fill of looking at those letters, printed black on white.« The reason for his joy was obvious: »Those who know how to read between the lines, understand that this time the Minister of the Interior is almost begging the rabbis to meet and to unite for the sake of strengthening Judaism [*hizuk ha-yahadut*].«⁹

Rabbis interpreted the ministry's invitation to express their opinions as the readiness of Stolypin's government to make a kind of alliance with Jewish Orthodoxy, which presented itself as a loyal ally of the tsarist administration in its struggle with revolutionary-minded Jewish youth. In their communications with the government, Orthodox rabbis constantly stressed that they were willing »to impel the backward, lost young Jews to return to the true path of religion, and [...] to tear them from various anti-governmental associations, into which godless and adroit agitators had drawn them.«¹⁰ Orthodox rabbis needed governmental support to perform this task, for example to strengthen their position in the communities and remove the obstacles to the complete observance of religious commandments. According to Orthodox rhetoric, strict adherence to Jewish religious observance led Jews to be loyal subjects of the Tsar, while secularization made Jews receptive to revolutionary ideologies. Therefore, it was in the interest of the Russian government to eliminate obstacles to the full-scale observance of all halakhic norms. If state law did not contradict Halakhah, Jews would find it easier to observe religious rules. Convenient conditions for strict observance would prevent secularization, and Jews would remain religious and loyal.¹¹ Orthodox rabbis thus made maximal demands; and by meeting

8 RGIA, coll. 821, inv. 9, file 63.

9 Ari Sho'eg [Yehuda Leib Volnerman], »Ha-hashgahah ha-ne'elamah,« *Ha-Kol*, no. 9, February 28, 1908, 65.

10 RGIA, coll. 821, inv. 8, file 293, fol. 51.

11 For the relationship between Orthodoxy and the government after the 1905 Revolution, see Vladimir Levin, »Orthodox Jewry and the Russian Government:

them the state could produce an ideal situation for the strict observance of Halakhah.

Not all of the issues raised by the rabbis were halakhic ones. Their most essential demand was official recognition of »spiritual« rabbis and even providing them with significant power over the community, ranging from the supervision of traditional private teachers (*melamdim*) and ritual slaughter to the rabbinic censorship of all Hebrew and Yiddish books.¹² However, these demands had nothing to do with Halakhah: there is no halakhic prohibition of a general secular education, which the state demanded in order to recognize a person as a crown rabbi. Indeed, the early 20th century saw an increasing number of »spiritual« rabbis in the Pale who acquired the necessary educational qualifications and became state-recognized rabbis. Therefore, the issue of the double rabbinate will be left aside, as it does not concern Halakhah, and the article will exclusively discuss the proposals concerning the reconciliation of state and religious laws. The collection of those proposals presents a full range of frictions between the civil and religious systems of law and articulates the most acute problems of Jewish law in Russian imperial reality, as seen by the Jewish religious authorities.

The first field in which the rabbis asked for change was the conditions in military service and prisons. Both soldiers and prisoners in Russia found themselves in frameworks which made it difficult to observe Halakhah. Moreover, disconnection from the observant Jewish community for several years of military service or detention was a significant factor in the process of secularization.¹³ Russian law recognized the basic religious needs of Jewish soldiers. It ordered commanders to provide them with rooms for prayer,¹⁴ to free them from labor on Saturdays and holidays, and to allow leaves of absence on some Jewish holidays.¹⁵ However, unsurprisingly, those provisions bore a character

An Attempt at Rapprochement, 1907–1914,» *East European Jewish Affairs* 39 (2009): 187–204.

- 12 See, for example, Aharon Surasky and Avraham Mordechai Segal, *Rosh golat ariel: toldot hayav u-foalo shel [...] rabi Avraham Mordekhai Alter [...] mi-gur*, vol. 2 (Jerusalem: Machon Amudei Ha-or – Maasehen shel tsadikim, 1995), 472.
- 13 Yohanan Petrovsky-Shtern, *Jews in the Russian Army, 1827–1917: Drafted into Modernity* (Cambridge: Cambridge University Press, 2009), 9–17.
- 14 In the majority of the cities outside the Pale of Settlement the first synagogues were opened in local military barracks. For example, see the history of synagogues in St. Petersburg, Vladimir Levin, »Istoriia dorevoliutsionnykh evreiskikh molitvennykh uchrezhdenii Peterburga,« *Ami – Narod Moi* 55, no. 2 (1993), 2–3. See also Petrovsky-Shtern, *Jews in the Russian Army*, 69–73.
- 15 For the text of the law see *Zakony o evreiaikh*, eds. Ia. I. Gimpelson and L. M. Bramson (Petrograd: Iurisprudentsiia, 1914–1915), 711. For discussion see Petrovsky-Shtern, *Jews in the Russian Army*, 64–66.

more suitable to Christianity, not to traditional Judaism, since the main emphasis was put on prayer and not on observing everyday religious commandments and complicated dietary laws. Nuances were completely omitted: for example, while the Ministry of War published an annual calendar of Jewish holidays, it consistently failed to mention that they begin at sunset the previous day. As a result, many commanders, being faithful to orders, were not ready to release their Jewish soldiers on the eve of a holiday. Therefore, many rabbis asked for legislation allowing Jewish soldiers to take leave from the very beginning of a holiday.¹⁶

Orthodox rabbis were especially interested in creating conditions in which Jewish soldiers would be able to continue an observant way of life.¹⁷ The assembly of Polish Orthodox rabbis in Warsaw proposed, for example, releasing Jewish soldiers from any work on Saturdays, maintaining kosher kitchens,¹⁸ permitting the wearing of *tsitsit* (fringed undergarments) under the uniform, and keeping *tfillin* (phylacteries) and *talit* (prayer shawls) in military kit-bags. Moreover, they proposed, that military uniforms would not contain *sha'atnez* – a mixture of wool and linen prohibited by Halakhah.¹⁹

- 16 RGIA, coll. 821, inv. 9, file 51, fol. 1 (meeting of rabbis in Nikolaev in 1904), 255 (rabbis of Minsk province), 264 (rabbis of Ekaterinoslav province), 269 (rabbis of Grodno province), 328 (the assembly in Vilna); file 66, fol. 9–11 (rabbis of Kielce province), 18–20 (rabbis of Płock province), 21–22 (rabbis of Suwałki province), 26–27 (the rabbi of Mariampol in Suwałki province), 55 (the assembly in Warsaw). Petrovsky-Shtern also states that the military legislation was inconsistent, but he entirely overlooked the issue of the beginning of holidays, which turned out to be so important for both traditional and crown rabbis in 1908. See Petrovsky-Shtern, *Jews in the Russian Army*, 65.
- 17 In this context it should be mentioned that although all males were obliged to serve in the military from 1874, only a small percentage of them, selected by lot, was actually drafted. For example, in the town of Korets, Volyn' province, 501 young men were called to appear in the conscription department (of them 122 Jews) in 1887, but only 149 (38 Jews) were actually drafted – *Ha-Melits* 278, December 29, 1887 (January 10, 1888), 2957. Cf. tables 7–10 in Petrovsky-Shtern, *Jews in the Russian Army*, 139–141, which show that only 10–20 % of Jews registered for the draft were actually called for service.
- 18 Having separate eating arrangements for Jewish soldiers was explicitly prohibited in 1887–1888. Petrovsky-Shtern, *Jews in the Russian Army*, 195.
- 19 RGIA, coll. 821, inv. 9, file 66, fol. 39v, 55–56v. Cf. Surasky and Segal, *Rosh golat ariel*, vol. 2, 472 (rabbi Avraham Bornstein of Sochaczew); RGIA, coll. 821, inv. 9, file 51, fol. 104 (»spiritual« and »crown« rabbi Yehuda Leib Tsirelson of Priluki in Poltava province and »spiritual« rabbi Shmariyahu Noah Schneersohn from Bobruisk); file 66, fol. 9–11 (rabbis of Kielce province), 18–20 (rabbis of Płock province), 28–33 (rabbis of Łomża, Kolno, Szczuczyn, and Mazowieck districts in Łomża province).

Similar issues were raised concerning Jews in prisons. Many rabbis asked for the assignment of special rooms for prayer and for the provision of kosher food,²⁰ while one memorandum mentioned that, until 1889, kosher food had been delivered for Jewish prison inmates in Kovno province.²¹ The general assembly in Warsaw, however, did not ask for prayer rooms but stressed the release of Jewish prisoners from work on Saturdays, kosher kitchens, permission for the use of *tfillin* and *tsitsit*, as well as the supply of books of »religious-moral content.«²²

The second field in which the rabbis asked for change was that of marital laws.²³ Here a difference existed between the Kingdom of Poland and the rest of the empire. While in Poland marriages were registered by civil officials after the performance of religious ceremonies and divorce was the prerogative of civil courts, in the Pale of Settlement (and the rest of the empire) the performance of both those rituals and their registration were delegated to the crown rabbis, who were required to act according to Jewish law. However, difficulties in both regions were similar.

One problem was the validity of marriages conducted according to Halakhah but not registered by the civil authorities in Poland or by the crown rabbis in the rest of the empire. While such a marriage was binding from the halakhic point of view, the civil law did not recognize unregistered marriages and considered them null and void. The problem, however, arose mostly not from a contradiction between the state and Jewish systems of law, but from the widespread

20 RGIA, coll. 821, inv. 9, file 51, fol. 257v (rabbis of Minsk province), 279 (rabbis of Kovno/Kaunas, Rossieny/Raseiniai, and Shavli/Šiauliai districts in Kovno province); file 66, fol. 9–11 (rabbis of Kielce province), 12–17 (rabbis of Siedlce province), 18–20 (rabbis of Płock province). It is needless to mention that only a very limited number of Jews were actually imprisoned.

21 RGIA, coll. 821, inv. 9, file 51, fol. 279 (rabbis of Kovno, Rossieny, and Shavli districts in Kovno province).

22 RGIA, coll. 821, inv. 9, file 66, fol. 56v. The logic behind not asking for prayer rooms presumably followed the relative importance of commandments from the halakhic point of view: Sabbath, *kasbrut*, *tfillin*, and *tsitsit* are more important than praying in an especially designated room. It could also be supposed that the rabbis were not fond of keeping Torah scrolls in Russian prisons or saw the establishment of prayer rooms there as too similar to Christian practice and to the practice of Reform communities in Germany.

23 For the laws concerning Jewish marriage and divorce see the last guidebook to legislation affecting Jews to be published in the Russian Empire: *Zakony o evreiakh*, eds. Gimpelson and Bramson, 622–680. For various practices and problems see Freeze, *Jewish Marriage and Divorce*. For a general overview of Russian marital laws and attempts to change them see William G. Wagner, *Marriage, Property, and Law in Late Imperial Russia* (Oxford: Clarendon Press, 1994), 61–223.

reluctance of Jews to register their vital events.²⁴ Another issue was connected to divorce and the possibility of remarriage. This problem usually affected women, since Halakhah prohibited them from remarrying without receiving a divorce letter (*get*) from their husbands. Although Halakhah principally prohibited polygamy for Ashkenazi Jews, wedding a second wife without divorcing the first one was nonetheless valid *post factum* and could not be simply annulled, as state law demanded. In such a case, a halakhic divorce was no less obligatory. The striking feature of the halakhically valid *get* is that a husband must consent to grant his wife a divorce of his own free will. In contrast to Christian or civic laws, where the church or the court could annul the marriage, there is no Jewish authority which could annul a marriage that had been conducted in accordance with Jewish law. The same free will is demanded for the *ḥalitsab* – a ceremony by which a brother of the deceased husband releases his childless sister-in-law from the Biblical obligation to marry him (levirate marriage). Only the performance of the *ḥalitsab* in the presence of a Jewish religious court allows such a widow to remarry.

Rabbinical proposals all featured the desire to give priority to halakhic norms over civic ones in every detail. This approach was consistent with imperial law, which sought to deal with marital issues according to religious laws. In the Pale of Settlement, the rabbis' memoranda stressed the need to legitimize unregistered marriages as well as to resolve the relatively minor issues which sometimes caused crown rabbi legal problems. For example, many rabbinical meetings asked for the legal recognition of the halakhic procedure of divorce from a mentally ill wife, which contradicted the civil approach, since in such a case the wife's consent to receive the *get* was overruled by the opinion of 100 rabbis, recognizing her mental illness (without any medical examination).²⁵ They also asked for the legal recognition of divorce by messenger – a situation in which the husband does not deliver the *get* personally but via a proxy.²⁶ The failure of the

24 On the registration of Jewish vital statistics see Eugene M. Avrutin, »The Power of Documentation: Vital Statistics and Jewish Accommodation in Tsarist Russia,« *Ab Imperio* 2003, no. 4: 271–300; idem, »The Politics of Jewish Legibility: Documentation Practices and Reform During the Reign of Nicholas I,« *Jewish Social Studies* 11 (2005): 136–169; idem, *Jews and the Imperial State: Identification Politics in Tsarist Russia* (Ithaca, NY: Cornell University Press, 2010).

25 RGIA, coll. 821, inv. 9, file 51, fol. 88 (rabbis of Chernigov province), 104 (rabbis Tsirelson and Shmariyahu Noah Schneersohn), 255 (rabbis of Minsk province), 301 (the rabbi of Lida in Vilna province). Cf. RGIA, coll. 821, inv. 9, file 66, fol. 73 (rabbis of Płońsk district in Warsaw province). On divorce on grounds of insanity see Freeze, *Jewish Marriage and Divorce*, 185–188.

26 RGIA, coll. 821, inv. 9, file 51, fol. 70 (the rabbi of Mozyr' in Minsk province), 88 (rabbis of Chernigov province), 138 (rabbis of Kiev province), 297 (rabbis of Oshmiany district in Vilna province), 328 (the assembly in Vilna).

state authorities to recognize such divorces, conducted in the absence of the husband, had become a pressing problem. The mass emigration of Jews overseas led to situations in which husbands in America sent halakhically valid writs of divorce to their wives remaining in the Russian Empire, but those were not officially recognized. The rabbis also looked for civil support in pressuring brothers-in-law to perform the *ḥalitsab* ceremony. They proposed that state law could oblige such a person to support his sister-in-law financially throughout the entire time he refuses to perform the *ḥalitsab* »of his own free will.«²⁷

The proposals of the Polish rabbis were similar, involving official recognition of halakhically binding marriages and divorces²⁸ and state pressure to perform *ḥalitsab*.²⁹ One gathering of rabbis simply asked for »governmental support in cases of resistance to the laws of the *Shulḥan arukh*³⁰ concerning marriage, divorce, and *ḥalitsab*.«³¹ The assembly in Warsaw, not going as far, wished to reduce the involvement of civil authorities in Jewish matrimonial matters and proposed doing away with civil court divorce trials in cases in which the involved spouses had no contradictory claims to each other.³² By contrast, another meeting of Polish rabbis followed a minimalistic approach and proposed changing only the existing law prohibiting women from remarrying for ten months after their divorce, since it contradicted the Talmudic rule allowing marriage after three months.³³ In other words, the rabbis asked for consistency

- 27 RGIA, coll. 821, inv. 9, file 51, fol. 50 (rabbi of Simferopol in Taurida province), 75 (rabbis of Poltava province), 125 (rabbis of Vitebsk province), 128 (Rabbi Maze of Moscow), 130 (Barats, the »learned Jew« in Kiev), 255 (rabbis of Minsk province), 300 (rabbi of Lida in Vilna province). A similar decision was accepted by the Rabbinical Commission of 1893–1894, see *Zakony o evreiakh*, eds. Gimpelson and Bramson, 674. Cf. Freeze, *Jewish Marriage and Divorce*, 238–239.
- 28 RGIA, coll. 821, inv. 9, file 66, fol. 9–11 (rabbis of Kielce province), 18–20 (rabbis of Płock province), 21–22 (rabbis of Suwałki province), 28–33 (rabbis of Łomża, Kolno, Szczuczyn, and Mazowieck districts in Łomża province), 66 (the assembly in Warsaw), 73 (rabbis of Płoński district in Warsaw province).
- 29 RGIA, coll. 821, inv. 9, file 66, fol. 18–20 (rabbis of Płock province), 68–68v (the assembly in Warsaw), 70–72 (rabbis of Lublin province).
- 30 The *Shulḥan arukh* is a codification of Halakhah in brief and authoritative form, completed in 1563 by Rabbi Yosef Caro. Its combination with Rabbi Moshe Isserles' gloss »Ha-Mapah,« representing the Ashkenazi tradition, constituted in practice a binding code of halakhic law. See Elimelech Westreich, »Shulḥan 'arukh,« in *The YIVO Encyclopedia of Jews in Eastern Europe*, ed. Gershon David Hundert (New Haven and London: Yale University Press, 2008), 1742.
- 31 RGIA, coll. 821, inv. 9, file 66, fol. 74–75 (rabbis of Nieszawa district in Warsaw province).
- 32 RGIA, coll. 821, inv. 9, file 66, fol. 66.
- 33 RGIA, coll. 821, inv. 9, file 66, fol. 28–33 (rabbis of Łomża, Kolno, Szczuczyn, and Mazowieck districts in Łomża province).

in applying the existing legislative principle that marital issues were to be decided by religious functionaries according to religious laws.

Rabbis paid special attention to cases in which a husband had converted to Christianity, while his wife remained Jewish. In such a situation the wife had difficulties in getting a halakhic divorce from her baptized husband, thus becoming an *agunah* – a wife who could not remarry (an apostate is considered by Halakhah a sinner but nonetheless a Jew).³⁴ The imperial law stated that if the spouse remaining Jewish did not want to convert and refused to continue living with the convert, the marriage was dissolved. However, in the second half of the 19th century some Russian Orthodox bishops and some governors insisted on the dissolution of the Jewish marriages of converts according to Jewish law, while others allowed them to remarry without a Jewish divorce. An end was put to this ambivalence in 1892, when the Holy Synod, the governing body of the Russian Orthodox Church, unequivocally decided that a baptized Jew could receive permission to remarry without any divorce procedure with the spouse who remained Jewish.³⁵ Other Christian Churches also took a stricter position toward the performance of Jewish religious rituals by a convert, when the baptized husband was ready to grant the *get* to his Jewish wife.³⁶ This approach caused, of course, irresolvable problems for the deserted wives, who found themselves in a situation where they could never marry again. Therefore, many rabbis asked the government to prohibit the baptism of Jews before arranging a Jewish divorce, or to force the future convert to grant a Jewish divorce before the baptism ceremony.³⁷

34 See Ellie R. Schainker, *Imperial Hybrids: Russian-Jewish Converts in the Nineteenth Century*, Ph.D. thesis, University of Pennsylvania, 2010, 81–100; Freeze, *Jewish Marriage and Divorce*, 188–190. Various attempts to estimate the number of Jewish converts to Christianity show that the majority of converts were unmarried women, and that the percentage of married men was not high. See Michael Stanislawski, »Jewish Apostasy in Russia: A Tentative Typology,« in *Jewish Apostasy in the Modern World*, ed. Todd M. Endelman (New York: Holmes & Meier, 1987), 189–205, here 200; Schainker, »Imperial Hybrids,« 63.

35 Schainker, »Imperial Hybrids,« 97–99; *Zakony o evreiaikh*, eds. Gimpelson and Bramson, 673.

36 See, for example, the complaint of the Evangelical Lutheran consistory against the rabbi of Kiev, who arranged the divorce of a couple, one of whom converted to Lutheranism, without the consistory's agreement, *Rassvet*, no. 46, November 24, 1907, 20; or the court prosecution of a rabbi for divorcing a husband who converted to Lutheranism from his Jewish wife, *Vestnik evreiskoi obshchiny*, no. 1, January 1914, 57–58.

37 RGIA, coll. 821, inv. 9, file 51, fol. 75 (rabbis of Poltava province), 125 (rabbis of Vitebsk province), 138 (rabbis of Kiev province), 149 (the rabbi of Kamenets-Podolsk in Podolia province), 153 (the rabbi of Novo-Ushitsa in Podolia province), 172 (the rabbi of Khmel'nik in Podolia province), 255 (rabbis of

The third field of the rabbis' concern was the Sabbath. The prohibition of various kinds of work on the Sabbath is one of the main elements of Jewish law and as it was put by a Polish rabbi in 1908, »the weakening of the Jewish faith begins with breaking the Sabbath [laws].«³⁸ The rabbis' memoranda touched upon issues both small and large, and their goal was, as phrased by the assembly in Warsaw, »to grant Jews such conditions that they would not be compelled to break Sabbath rules.«³⁹

Some rabbis called for a policy of not summoning Jews to courts of law on Saturdays, because court procedures often involve writing, and especially because Halakhah prohibits swearing oaths on the Sabbath.⁴⁰ Russian imperial law also prohibited taking oaths in synagogues on Saturdays, and the oaths during court trials had to be arranged by rabbis according to the same rules. However, a judge could administer the oath of Jewish witnesses when no rabbi was present in the building of the court of justice, i.e. taking the oath administered by a judge became a widespread practice. In such cases, the oath could be taken legally on a Saturday if the Jewish witness had no objections.⁴¹ While there are no known statistics on the matter, one could suppose that many Jews agreed to take this oath. The rabbis believed that the inclusion of a prohibition to swear an oath on a Saturday in civil law would prevent a situation in which it is easier to break Halakhah than to keep it, thus strengthening religious observance.

Another request involved the Sabbath law that prohibits carrying objects from household to household and from homes to the street. In order to overcome this prohibition, Halakhah provides for the symbolic linking of all households with a cord that surrounds a town or a neighborhood, called an *eruv*, thus allowing for objects to be moved within those boundaries. The *eruv* was explicitly prohibited in the Kingdom of Poland in the 1860s⁴² and therefore requests to permit the installation of an *eruv* took a prominent place in the

Minsk province); file 66, fol. 18–20 (rabbis of Płock province), 68 (the assembly in Warsaw). Cf. Freeze, *Jewish Marriage and Divorce*, 267.

38 RGIA, coll. 821, inv. 9, file 66, fol. 43 (Rabbi Ber Graubart of Będzin in Piotrków province).

39 RGIA, coll. 821, inv. 9, file 66, fol. 52.

40 RGIA, coll. 821, inv. 9, file 66, fol. 7–8 (rabbis of Piotrków province), 9–11 (rabbis of Kielce province), 18–20 (rabbis of Płock province), 34–35 (rabbis of Łomża province), 54 (the assembly in Warsaw); file 51, fol. 75 (rabbis of Poltava province).

41 *Zakony o evreiakh*, eds. Gimpelson and Bramson, 699.

42 François Guesnet, *Polnische Juden im 19. Jahrhundert: Lebensbedingungen, Rechtsnormen und Organisation im Wandel* (Köln et al.: Böhlau, 1998), 260–262.

memoranda of many Polish rabbis.⁴³ Others, such as Rabbi Shalom Dov Ber Schneersohn of Lubavitch and his representatives at the Warsaw assembly, considered the *eruv* problem unimportant. The Lubavitcher *Rebbe* pointed out that one should not »connect the serious with the simple, so that only the simple might be granted,« fearing that the authorities would permit the *eruv*, as a simple measure, thus showing their acceptance of rabbis' wishes, but at the same time would reject rabbinic requests about a much more serious problem – Sunday trade.⁴⁴

Indeed, the most serious matter in the field of Sabbath observance was the issue of trade on Sundays. During the 19th century it was customary that Jewish shops in the Pale of Settlement were closed only on Saturdays, while they opened after the end of church service on Sundays and major Christian holidays.

The first restriction on Jewish trade was included in the notorious Temporary Rules of 3 May 1882, issued after the wave of anti-Jewish pogroms of 1881–1882. The rules aimed at protecting the Christian population and especially peasants from Jewish »exploitation« consisted of three articles, which prohibited Jews from newly settling in the countryside of the Pale of Settlement, acquiring land in the countryside, and »performing trade on Sundays and the Twelve Great Feasts.« However, this last article contained a provision that the closing of Jewish shops would be practiced according to the same rules that applied to Christian shops.⁴⁵ Thus, Jewish trade on Sundays was not actually eliminated and the ability to open shops on Sundays depended on each municipality and its policy concerning Christian shops. In the majority of cities and towns in the Pale, shops could be opened on Sundays for five hours in the afternoon.⁴⁶

43 Surasky and Segal, *Rosh golat ariel*, vol. 2, 472 (Rabbi Avraham Bornstein of Sochaczew); RGIA, coll. 821, inv. 9, file 66, fol. 9–11 (rabbis of Kielce province), 12–17 (rabbis of Siedlce province), 18–20 (rabbis of Płock province), 34–35 (rabbis of Łomża province), 53–54 (the assembly in Warsaw).

44 The *Rebbe* even thought that the absence of an *eruv* makes Jews more cautious about Sabbath observance. Shalom Dov Ber Schneersohn, *Igrot-kodesh [...] me-et [...] admor maharshav [...] mi-Lubavitch*, vol. 2 (Brooklyn: Kehot Publication Society, 1982), 439.

45 Cited according to Gr. Vol'tke, »Vremennye pravila 3 maia 1882 goda,« *Evreiskaia entsiklopediia*, vol. 5, eds. L. Katsenel'son and D. Gintsburg (St. Petersburg: Brockhaus-Efron, 1910), 815–822, here 816.

46 Gr. Vol'tke, »Subbotnii, prazdnichnyi otdykh (po russkomu zakonodatel'stvu),« *Ibid.*, vol. 14, ed. L. Katsenel'son (St. Petersburg: Brockhaus-Efron, 1913), 597–599, here 598. For restrictions on Muslim commerce see Robert Geraci, »Sunday Laws and Ethno-Commercial Rivalry in the Russian Empire, 1880s–1914,« National Council for Eurasian and East European Research 2006, 1–42, https://www.ucis.pitt.edu/nceer/2006_819_Geraci.pdf (accessed July 16, 2015).

The closure of all shops on Sundays was mandated by the government in November 1906 as a step towards improving the working conditions of shop assistants and other employees in the trade, by providing them with one day off every week. However, these 1906 rules also allowed local authorities to permit limited Sunday trade, depending on local conditions, i.e. the presence of a significant non-Christian population. Thus, in some cities or provinces the old order remained intact, with Jewish shops open on Sundays for five hours, while in other places different case-by-case provisions were made, while in yet other localities Sunday trade was completely prohibited.⁴⁷ The introduction of such a measure was considered by the rabbis to be a very serious threat to Jewish religious observance. The strict implementation of Sunday closures would force Jews to abstain from work for two days a week, leading to devastating economic consequences, or to open their shops on Saturday and thus break the Sabbath rest. Therefore, many rabbinic gatherings, including the major assemblies of Orthodox rabbis in Warsaw and Vilna, asked for permission for Jews to replace the mandatory Sunday closure with a Saturday closure.⁴⁸

Another issue involving Sabbath observance touched upon Jewish pupils in state schools. A provision allowing Jewish children to abstain from writing on Saturdays existed in the 1860s and 1870s, but was rescinded in 1882.⁴⁹ Several attempts to reinstall this provision in the following decades were unsuccessful.⁵⁰ This meant that the benevolent approach toward Jewish religious customs was replaced in the 1880s by an insistence on the uniform application of norms. Therefore, many rabbinic gatherings, especially those of the crown rabbis in the Pale of Settlement, asked for Jewish children to be excused from writing in state schools on Saturdays.⁵¹ The most conservative Orthodox leaders, like Rabbi

47 See, for example, the order of the governor general of the provinces of Vilna, Kovno, and Grodno allowing five hours of trade on Sundays, *Rassvet*, no. 11, March 22, 1907, 23; *Severo-zapadnyi golos*, no. 635, January 6, 1908, 2; the complete prohibition of trade on Sundays by the Bessarabian governor, *Der Fraynd*, no. 171, August 2, 1907, 3; permission for Jewish artisans to work on Sundays but without selling their products or accepting new orders in Ekaterinoslav, *Der Fraynd*, no. 168, July 30, 1907, 3. For the Zionists' and rabbis' protests over the complete closing of shops in Poland see *Rassvet*, no. 8, March 2, 1907, 25–26; *Svoboda i ravenstvo*, no. 21, April 5, 1907, 17.

48 RGIA, coll. 821, inv. 9, file 66, fol. 7–8 (rabbis of Piotrków province), 18–20 (rabbis of Płock province), 21–22 (rabbis of Suwałki province), 34–35 (rabbis of Łomża province), 52v–53 (the assembly in Warsaw); file 51, fol. 35 (rabbis of Kherson province), 320–321v (the assembly in Vilna).

49 RGIA, coll. 821, inv. 9, file 63, fol. 37.

50 Solomon Pozner, *Evrei v obshchei shkole* (St. Petersburg: Razum, 1914), 52–53.

51 RGIA, coll. 821, inv. 9, file 66, fol. 21–22 (rabbis of Suwałki province), 26–27 (the rabbi of Mariampol in Suwałki province); file 51, fol. 75 (rabbis of Poltava province), 88 (rabbis of Chernigov province), 125 (rabbis of Vitebsk province),

Shalom Dov Ber Schneersohn, thought, however, that any simple permission to abstain from writing would be inadequate since the classroom behavior of Christian pupils would influence the Jewish ones.⁵² Under Schneersohn's influence the assembly of Orthodox rabbis in Vilna decided to request the complete release of Jewish children from attending state schools on Saturdays.⁵³

In addition to those three major fields – service conditions for Jewish soldiers, marital issues, and the Sabbath rest – some rabbinic gatherings asked for further adjustments of state laws to Halakhah. By Jewish law and custom, burials were to take place on the day of death, but Russian law postponed it for three days out of a concern for the premature burial of people who were still alive. Although the medical codex containing this clause was published in 1857, the local authorities, as it would seem, only began to insist on such a delay in burial in the 1880s.⁵⁴ Nonetheless, it did not become a serious problem as only two rabbis' gatherings requested that burials be allowed on the day of death.⁵⁵

Another problem was raised by the practice of *shehitah* – Jewish ritual slaughter. According to Halakhah, ritual slaughterers have to inflate the lungs taken from the animal, in order to ensure that the lungs have no scarring that would render the animal not kosher. One gathering of rabbis requested permission to inflate the lungs by mouth, as was customary in Jewish tradition but contradictory to the medical laws of the empire.⁵⁶ It is noteworthy that not a single rabbi raised the issue of *metsitah* – oral suction of blood from the circumcision wound, which suggests that the custom was practiced without hindrance.⁵⁷

138 (rabbis of Kiev province), 279 (rabbis of Kovno, Rossieny, and Shavli districts in Kovno province). Similar demand was included into the program of the first Orthodox political organization, »Knesset Israel,« in 1907 – *Ustav obshchestva »Knesset Israel«* (Vilna, 1908), 2. On »Knesset Israel« see Vladimir Levin, »Kneset israel – ha-miflagah ha-politit ha-ortodoksit ha-rishonah ba-imperiyah ha-rusit,« *Zion* 76 (2011): 29–62.

52 *Der Fraynd*, no. 96, April 29, 1909, 2. For the negative opinion of the *Rebbe* from Ger (Góra Kalwaria), Avraham Mordechai Alter, see Schneersohn, *Igrot-kodesh*, vol. 4, 307.

53 RGIA, coll. 821, inv. 9, file 51, fol. 322. Cf. also fol. 104 (Rabbis Tsielson and Shmariyahu Noah Schneersohn).

54 On the issue of burials see Dror Segev's article in this volume.

55 RGIA, coll. 821, inv. 9, file 66, fol. 9–11 (rabbis of Kielce province); file 51, fol. 88 (rabbis of Chernigov province).

56 RGIA, coll. 821, inv. 9, file 66, fol. 18 (rabbis of Płock province).

57 On the controversy over oral suction see Jacob Katz, »Pulmus ha-metzitah« in idem, *Ha-halakhah be-meytzar: Mikhsolim al derekh ha-ortodoksiyah be-bithavutah* (Jerusalem: The Magnes Press, 1992), 150–183, especially 175–176, mentioning the prohibitions of oral suction by the authorities in Hungary, Hessen-Darmstadt, Baden, and Frankfurt in 1899, and 179–180 on the practice in Lithuania without any direct contact of the *mohel's* mouth with the wound.

The last issue raised by the rabbis involved the contradiction of civil law not with Halakhah in its strict sense, but with tradition and common sense. The Imperial Law of 1835 obliged rabbis (outside of Poland) to personally perform circumcisions, marriages, divorces, and funerals, and prescribed punishment for all others who performed them. This clause was perfectly suited to the Christian clergy, who indeed performed baptisms, marriages, and funerals, but did not correspond with Jewish practices. According to Halakhah and Jewish tradition, a rabbi was not involved in any of the rites: circumcision was carried out by a specialist (*mohel*); marriage could be officiated by anyone knowledgeable in Jewish law, while crown rabbis often had no religious education at all; divorce was arranged by a Jewish court (*beit din*) of three Talmudic scholars; and burial rites were carried out by a voluntary association called *hevrah kadisha*. In reality, the crown rabbi only registered events, while the rituals were performed by others. Therefore, the majority of meetings of crown rabbis in the Pale of Settlement proposed a change in imperial law so as to enable them to legally delegate those duties to other persons.⁵⁸

As they were written in the midst of a wave of optimism concerning governmental support for Jewish Orthodoxy, we can see that the rabbis' memoranda, and the proposals therein, which were discussed collectively during the rabbis' gatherings, touched on all of the main points of contention between the state law and Halakhah in the late Russian Empire. Although the lists of desired changes were long, in reality they showed that Jewish religious laws could in fact generally be observed. This seems especially striking since Jews in Russia were often seen as a persecuted minority – a view quite widespread from the last quarter of the 19th century.

Thus, a secular Hebrew journalist could write in 1909: »[Our government] struggles only with Jews, not with the Jewish religion,«⁵⁹ and the future leader of Lubavitch Hasidism, Rabbi Yosef Yitshak Schneersohn, wrote in 1907: »Thank God, we have not yet seen that our government is against religion, God forbid.«⁶⁰

58 RGIA, coll. 821, inv. 9, file 51, fol. 9v–10 (meeting of rabbis in Nikolaev in 1904), 19v–20 (rabbi Haim Chernovits from Odessa), 44v (rabbi of Kherson province), 80v (rabbi of Poltava province), 89 (rabbi of Chernigov province), 110 (Rabbi Tsirelson of Priluki), 128v–129 (Rabbi Yakov Maze of Moscow), 142 (rabbi of Kiev province), 195–196 (rabbi of Volyn' province), 259 (rabbi of Minsk province), 266 (rabbi of Ekaterinoslav province), 269v (rabbi of Grodno province), 340–343 (rabbi of Bessarabia province).

59 Editorial in *Hed ha-zman*, no. 55, March 6 (19), 1909, 1.

60 Schneersohn, *Igrot-kodesh*, vol. 1, 34.

The aims of the imperial authorities: the supremacy of civil law

The memoranda elaborated in rabbis' gatherings and written up by individual rabbis were sent to the Ministry of the Interior via the provincial authorities, and each provincial governor added his opinion on the measures proposed by the rabbis of his province. These accompanying letters offer us a glimpse into the attitude of the governors, who were the most important officials in supervising the implementation of state law.

In general, the attitudes of provincial authorities towards Jewish traditional practices varied in accordance with the *Weltanschauung* of each governor. More liberal or pragmatic governors were inclined to permit or tolerate some practices that more centralistic or nationalistic governors would ban. This could be seen in connection with the aforementioned example of the implementation of obligatory Sunday rest. However, none of the governors expressed general support for the rabbis' memoranda on halakhical matters, although some did support a number of the more insignificant points.

Some governors discussed the proposed measures from the state's point of view. For example, the governor general in Kiev, Vladimir Sukhomlinov, a future Minister of War, after receiving the proposal to oblige those converting to Christianity to divorce their Jewish wives and to coerce the performance of *ḥalitsah*, wrote to St. Petersburg that *ḥalitsah* should be abolished altogether and that rabbis should be obliged to arrange for the divorce of baptized Jews »without hindrance.«⁶¹ In essence, he adopted a position that completely contradicted that of the rabbis. While the rabbis believed in an unchangeable Halakhah and asked for civil laws to be changed, Sukhomlinov and his office believed in superiority of imperial law and demanded changes in Halakhah to fit it. His colleagues in other provinces held similar opinions. The governor of Poltava province and the governor general in Vilna asked the ministry not to exempt Jewish children from writing on Saturday.⁶² The governor in Suwałki opposed Sunday trade,⁶³ and the governor in Łomża opposed all of the proposals except for the reduction of the period before remarriage for divorced women from ten to three months.⁶⁴

Other governors did not bother themselves with detailed discussions. For example, the governor of Kielce province wrote that »all of the projects fail to fit with existing laws and contradict the general order of the administration.«⁶⁵ His colleague from neighboring Piotrków also insisted that the majority of the

61 RGIA, coll. 821, inv. 9, file 63, fol. 7.

62 Ibid., fol. 5, 31–36.

63 Ibid., fol. 23–25.

64 Ibid., fol. 26–27.

65 Ibid., fol. 18.

rabbis' proposals contradicted the law, while the governors of Ekaterinoslav (today Dnipropetrovsk) and Siedlce provinces stressed that Jews in general evaded imperial law.⁶⁶ The governor of Bessarabia stated that all but two of the proposals submitted by the rabbis of his province were »inadmissible for discussion [in the Rabbinic Commission] since they do not concern the matters prescribed in law [about the commission] and many of them are extremely undesirable.«⁶⁷

Almost all of the governors' letters included passages that testified to their deep suspicions, if not hostility, towards Jews in general and towards what they regarded as the real intentions of the rabbis' memoranda. Some appeared to perceive traditional rabbis as »fanatics with backward views on modern culture,«⁶⁸ while others were afraid of Jews as a distinctive and hostile group and stressed the dangers of a »consolidation of Jews,« of the »traditional aspiration of Jews for isolation [and the] formation of a state within the state,« and of suspicious »motives of Jews towards other nationalities.«⁶⁹

In St. Petersburg, Alexander Kharuzin – director of the Department of Foreign Cults at the Ministry of the Interior, the highest official directly responsible for Jewish religious affairs and himself a former governor of Bessarabia – also did not welcome the rabbinic proposals. He rejected 32 issues for discussion in the Rabbinic Commission, among them the recognition of unregistered marriages, burials on the day of death, inflating the lungs by mouth, the *eruv*, writing on Saturdays, Sunday rest, and all of the proposals concerning Jewish soldiers. As a reason for his rejection, he claimed that the proposals »contradict [imperial] laws and have no relation to the Jewish faith« that the Rabbinic Commission was entitled to deal with.⁷⁰ Such a reaction indicated that the rabbis overestimated the readiness of the government to make »concessions« to Orthodox Jewry. They did not understand that the imperial officials of the early 20th century clearly distinguished between religious and civilian spheres of life, while such distinctions were alien to the Jewish Halakhah.

Even after Kharuzin's dismissal of a large number of issues, the ministry presented dozens of other questions to the Rabbinic Commission, which gathered in the spring of 1910, and to the *Conference of Jews on matters concerning their religious lives*, convened at the same time.⁷¹ Most of them, however, were

66 Ibid., fol. 16 and 18.

67 Ibid., fol. 9 and 70v.

68 Ibid., fol. 60–62.

69 Ibid., fol. 5, 9–12, 31–36.

70 RGIA, coll. 821, inv. 8, file 294, fol. 62–65.

71 The Conference of Jews on matters concerning their religious lives (S'ezd evreev po delam ikh religioznogo byta) was especially convened to discuss the questions

about communal and educational problems and only a few dealt with frictions between Halakhah and imperial law.⁷² The representatives of the ministry watched the proceedings carefully and immediately put an end to any discussion about Jews in non-Jewish institutions, like the issue of writing in the state schools on Saturdays.⁷³ In other words, the officials of the ministry, in line with Kharuzin's opinion, clearly stated that the Jewish participants of the Conference, the majority of them rabbis, were not even allowed to raise issues involving the general laws of the empire. The Commission and Conference were convened in order to provide the Ministry of the Interior with a plan for the reorganization of Jewish communities, but none of the measures proposed after long and sometimes stormy deliberations were implemented in practice and not a single step towards implementation was taken by the authorities.

The attitude of the governors and other officials in the Ministry of the Interior towards the rabbis' memoranda and their behavior during and after the convention of the Commission clearly showed that the imperial authorities of the early 20th century did not recognize the importance of the frictions between Halakhah and secular law. Their reaction demonstrates that Orthodox rabbis' rhetoric regarding the link between religious observance and political loyalty fell on deaf ears. None of the governors were ready to facilitate the observance of Halakhah and the majority showed only incomprehension as to why the state should change its laws »in favor« of the Jews. A combination of a deep-rooted suspicion of Jews and Jewish intentions with general conservatism prevented many officials from engaging in a favorable discussion of the rabbinic memoranda. Even more pragmatically inclined officials were ready to take only very minor steps toward reconciling the imperial and Jewish legal systems. The superiority of the general civil law over any particular religious law was not to be questioned.

submitted by the rabbis to the ministry, since the Rabbinic Commission of seven members could not cope with such a large number of questions. The conference was composed of 40 participants: all candidates elected to the Rabbinic Commission in the Pale of Settlement with the addition of representatives from the Kingdom of Poland, St. Petersburg, and Moscow.

- 72 For the proceedings of the Rabbinic Commission see *Sbornik reshenii Ravvinskoi Komissii sozyva 1910 goda* (St. Petersburg: Ministerstvo vnutrennikh del, 1912). On the work of the Commission and the Conference see Levin, »Ha-politikah ha-yehudit,« 267–272.
- 73 Protocol of the »Conference of Jews on matters concerning their religious lives,« April 1, 1910. Russian National Library (St. Petersburg), Manuscript Department, coll. 183, file 34, fol. 146–157.

Halakhah and Russian imperial law from a European perspective

The problems raised by Russian and Polish rabbis in their memoranda were in no way unique to the Russian Empire. Some of them existed for centuries and were never resolved, like the inability to receive a divorce or *ḥalitsah* from Jewish converts to Christianity who did not want to cooperate.⁷⁴ Other problems, like those connected with military service and civil marriages, were caused by advancing modernity.

Jewish soldiers were prevented from a complete observance of Jewish halakhic norms in all of Europe's armies. Using the Talmudic principle of *dina de-malkhuta dina* (the law of the state is the law), the rabbinic authorities released Jewish soldiers from fulfilling religious obligations incompatible with the conditions of military service. In the Russian Empire this was explicitly stated, for example, in the book *Maḥaneh Israel* published in 1881 by Rabbi Israel Meir Ha-Cohen, widely known as the Ḥafets Ḥaim.⁷⁵ Nonetheless, the main topic of *Maḥaneh Israel* was in fact the importance of observing *all* religious commandments, as long as they do not contradict military duty.⁷⁶ The proposals of the Orthodox rabbis discussed above were directed to the same purpose.

There were also precedents when it came to caring for the religious needs of imprisoned Jews. In Berlin, for example, Jewish prayer rooms existed in the Moabit and Plötzensee prisons beginning in 1852 and 1882, respectively.⁷⁷ As

- 74 On halakhic attempts to allow widows to remarry without *ḥalitsah* in the medieval period, see Simḥa Goldin, *Ha-yihud ve-ha-yahad: ḥidat hisardutan shel ha-kvutsot ha-yehudiyot be-yamei ha-beinayim* (Tel Aviv: Ha-kibbutz ha-me'uhad, 1997), 92–93. On converted Jews who did grant a *get* to wives who remained Jewish in the 12th century, see David Malkiel, *Reconstructing Ashkenaz: The Human Face of Franco-German Jewry, 1000–1250* (Stanford: Stanford University Press, 2009), 120, 138 and bibliography cited there. On the insistence of the Catholic Church that converts grant a *get* to wives who remained Jewish in 18th-century France, see Elisheva Carlebach, *Divided Souls: Converts from Judaism in Germany, 1500–1750* (New Haven–London: Yale University Press, 2011), 138–140. I am indebted to Efraim Shoham-Steiner for his help on medieval issues.
- 75 Israel Meir Ha-Cohen, *Maḥaneh israel* (Third edition, Warszawa 1881). For the attitude of rabbis in the Russian Empire to the issue of military service, see Mordechai Zalkin, »Bein ›bnei elohim‹ li-›vnei adam‹: rabanim, baḥurei yeshivot ve-ha-giyus la-tsava ha-rusi ba-meah ha-tesha-esreh,« *Shalom u-millḥamah ba-tarbut ha-yehudit*, ed. Avriel Bar-Levav (Jerusalem: Zalman Shazar Center for Jewish History, 2006), 165–222.
- 76 Ha-Cohen, *Maḥaneh Israel*, 5, 8–9. For discussion of this book in English, see Petrovsky-Shtern, *Jews in the Russian Army*, 192–194.
- 77 Hermann Simon, »Jüdische Bestätten in Berliner Gefängnissen am Beispiel von Plötzensee und Moabit,« in *Beiträge zur jüdischen Architektur in Berlin: Internationales Kolloquium am 12. Juni 2008 in Berlin*, eds. Aliza Cohen-Mushlin,

described above, some rabbis in the Russian Empire asked for the establishment of prayer rooms, while others did not consider prayer rooms important, and stressed the observance of other commandments instead.

Once the absolutist state began to impose control over marriage, Jews did find themselves in a problematic situation. Halakhically valid marriages were considered void by the state, and divorces issued by civil courts were not, in turn, halakhically valid.⁷⁸ Cases in which state law directly contradicted Halakhah began to arise in the Habsburg monarchy after the issuance of the Marriage Patent (*Ehepatent*) in 1783.⁷⁹ In the early 20th century, 20 to 50 percent of marriages in Austrian Galicia, where most Jews remained traditional and unacculturated, were still not registered officially.⁸⁰ In Great Britain, the civil registration of marriages, in addition to religious ceremonies, was instituted in 1836. While the established Anglo-Jewry accepted this rule easily, the unregistered religious marriages of Eastern European Jewish immigrants presented a major problem for the Board of Deputies and the Chief Rabbinate.⁸¹ In post-

Hermann Simon, and Harmen H. Thies (Petersberg: Michael Imhof Verlag, 2009), 19–25, here 20–21. On the duties of rabbis to care for Jewish prisoners see Max Beermann, *Die Seelsorge an jüdischen Strafgefangenen* (Berlin: Druck von Arthur Scholem, 1904). I am indebted to Katrin Keßler for help on this issue.

- 78 For an overview of practices in different countries see Avraham Haim Freiman, *Seder kidushin ve-nisu'in aharei hatimat ha-talmud: mehkar histori-dogmati be-dinei israel* (Jerusalem: Mosad Ha-Rav Kuk, 1945), 310–397. For a recent discussion of the interrelations between Jewish and civil marriages, mainly in North America, see David Novak, »Jewish Marriage and Civil Law: A Two-Way Street?« in *Tradition in the Public Square: A David Novak Reader*, eds. Randi Rashkover and Martin Kavka (Grand Rapids et al.: William B. Eerdmans Publishing Company, 2008), 304–327. Interestingly, Novak (319, note 89) cites the Ontario law stating that anyone petitioning for a civil divorce must have »removed all barriers that are within his or her control and that would prevent the other spouse's remarriage within that spouse's faith.« It seems that such a law would have been more than welcomed by the rabbis who wrote the memoranda in 1908.
- 79 Lois C. Dubin, *The Port Jews of Habsburg Trieste: Absolutist Politics and Enlightenment Culture* (Stanford: Stanford University Press, 1999), 174–197; Lois C. Dubin, »Les liaisons dangereuses: Mariage juif et état moderne à Trieste au XVIII^e siècle,« *Annales. Histoire, Sciences Sociales* 149, no. 5 (1994): 1139–1170. For the halakhic discussion of the famous Trieste case, see J. David Bleich, »A 19th-Century *Agunah* Problem and a 20th-Century Application,« *Tradition* 38, no. 2 (2004): 15–48. For the situation in Galicia, see Małgorzata Śliż, »Rytualne małżeństwa Żydów w Galicji w drugiej połowie XIX wieku,« *Studia Judaica* 4 (2001): 97–110; eadem, »Prawo małżeńskie dla galicyjskich Żydów (1848–1914),« *Żydzi i judaizm we współczesnych badaniach polskich* 3 (2003): 99–115.
- 80 Śliż, »Rytualne małżeństwa,« 100–101.
- 81 David Englander, »*Stille Huppah* (Quiet Marriage) Among Jewish Immigrants in Britain,« *Jewish Journal of Sociology* 34 (1992): 85–109.

revolutionary France, the state recognized only civil marriage ceremonies, which were required to precede any religious ceremonies. In 1833, the Central Consistory looked in vain for a halakhic solution to the problem of «illegal» marriages, and the problem only increased with the collective naturalization of Algerian Jews in 1870. After the reinstatement of civil divorces in 1884, the French rabbinate tried, also unsuccessfully, to find a halakhic solution to divorces issued by civil courts and not affirmed according to Halakhah.⁸² As all these examples show, in addition to the objective frictions between two systems of law, one major problem was the failure of a non-aculturated Jewish population to comply with the demands of non-Jewish, external authorities.

The situation in the Russian Empire was not essentially different, aside from the fact that there were no civil marriages. The state delegated responsibility for marital issues solely to religious institutions, which were obliged to act according to their own laws. Even in the Kingdom of Poland, where divorce issues were completely within the competence of civil courts, they had to discuss Jewish divorces according to the *Shulḥan arukh*; a digest of its rules was attached to the law code and relevant chapters from the *Shulḥan arukh* were fully translated into Polish.⁸³ However, the translation of Jewish religious code into a language accessible to the bureaucracy signaled a particular tendency, in which the state relied on religious law but preferred to deal with it directly, without Jewish intermediaries. A similar approach was described by Robert D. Crews in relation to the Muslim population of the empire in the mid-19th century, when »state officials intensified their search for independent sources of knowledge about Islam« as »reliable alternatives to the ›fanatical‹ and self-interested Muslim clergy,« especially in marital issues.⁸⁴

Basing marital status on religious laws, the state supervised the procedure and punished transgressors. The foremost consequence of state control was that only marriages and divorces registered by the religious authorities were considered valid, notwithstanding the complicated aspects of Halakhah.⁸⁵ In other words,

82 Zvi Jonathan Kaplan, »The Thorny Area of Marriage: Rabbinic Efforts to Harmonize Jewish and French Law in Nineteenth-Century France,« *Jewish Social Studies: History, Culture, Society* 13, no. 3 (2007): 59–72. For an overview on Jewish marriages according to French law, see Marianne Urbah, »Le mariage des Juifs devant le droit français (1896–1967). Sa célébration,« *Archives juives* 17, nos. 3–4 (1981): 50–64.

83 *Zakony o evreiakh*, eds. Gimpelson and Bramson, 674–677.

84 Robert D. Crews, *For Prophet and Tsar: Islam and Empire in Russia and Central Asia* (Cambridge, MA–London: Harvard University Press, 2006), 177–178.

85 The same thought was expressed by the Minister of the Interior S. S. Lanskoï in a memo to the Orenburg Muhammad Ecclesiastical Assembly in 1857: »the legality of Muhammadan marriage, like the marriages of other confessions, is

although the Russian state upheld the supremacy of religious norms in marital issues, it imposed religious norms through the use of secular legislative logic.⁸⁶

The expansion of the state role in the last quarter of the 19th century and the broadening of governmental control over the population made the contradiction between the civil and religious approaches more apparent. Russian Jews, like the traditional Galician and Algerian Jewries, often did not comply with state demands, and with the registration of their life events in particular, thus causing additional friction between civil and religious laws. However, these frictions could have become more serious after a reform of the imperial marital code that was prepared in the 1890s and 1900s, but never implemented. According to ChaeRan Freeze, if put into practice, it would have meant »the abolition of autonomy in Jewish marital laws.«⁸⁷

Neither was the serious problem of obligatory Sunday rest exclusive to the Russian Empire. Many European states in the late 19th and early 20th centuries prohibited any trade on Sunday. These laws pushed some Jewish shopkeepers toward breaking Halakhah and opening their shops on Saturday, while others sought out halakhic solutions, such as including a non-Jew in their business or selling it for the duration of Sabbat.⁸⁸

made conditional upon [its] registration in a parish register by an ecclesiastical representative according to the established form.« Cit. by Crews, *For Prophet and Tsar*, 184.

86 The same could be concluded, for example, about the »Anglo-Muhammedan law« in British India. As Michael R. Anderson noted, »the administration of Anglo-Muhammedan law proceeded on the basis of textual understanding [...] but it misunderstood the role of Shari'a in the life of most South Asian Muslims. The legalist ideology of colonial judges erred on the side of applying clear rules in a consistent manner, regardless of whether the people genuinely treated them as binding. When harnessed to the centralized bureaucracy of the colonial state, Shari'a principles were administered with a uniformity and rule-bound consistency that was unprecedented on the subcontinent.« Michael R. Anderson, »Legal Scholarship and the Politics of Islam in British India,« in *Perspectives on Islamic Law, Justice, and Society*, ed. R.S. Khare (Lanham, MD: Rowman and Littlefield, 1999), 65–91, here 80–81.

87 Freeze, *Jewish Marriage and Divorce*, 276–279.

88 For general questions concerning work on Saturdays, see Jacob Katz, *Goy shel shabat* (Jerusalem, 1984). For the practices of Neo-Orthodoxy in Germany, see chapter 5 in Mordechai Breuer, *Jüdische Orthodoxie im Deutschen Reich, 1871–1918: Sozialgeschichte einer religiösen Minderheit* (Frankfurt am Main: Jüdischer Verlag bei Athenäum, 1986). On Jewish workers employed on Saturdays in interwar Łódź, see Haim Shalem and Zeev H. Erlich, »Igvatam shel ḥugim ortodoksiyim be-Polin le-ḥok menuḥat yom rishon,« *Gal-ed* 20 (2006): 135–143.

In the Russian Empire, shops had to be closed on Sundays following the introduction of a government decree in 1906, even as it permitted, as explained above, limited trade on Sundays. This was, however, a temporary measure, while the permanent law on Sunday rest was only accepted by the State Duma – the lower chamber of parliament – in 1910. The Duma’s version of the law included no exceptions, expressing the nationalist feeling of the Duma majority and its unwillingness to take into account the interests of Jews and Muslims. However, the upper chamber of the parliament – the State Council – revised the law in 1912, which in its final form allowed shops to open on Sunday for five hours. The State Council showed no sympathy for Judaism or Islam, but acted out of its general conservatism and desire to preserve the old order: together with the possibility of limited trade on Sunday the State Council reinstated a 15-hour working day for shop assistants, abolished by the Duma’s version of the law. Jewish needs were satisfied nonetheless by this legislative revision.⁸⁹

Another major threat to Jewish observance in Europe was the prohibition of *sheḥitah* – Jewish ritual slaughter. Beginning in the 1850s, animal protectionists in Britain and Switzerland demanded that animals be kept from suffering by stunning them before they were slaughtered – a demand that was generally regarded as prohibited by Halakhah.⁹⁰ This idea was adopted by anti-Semites and the combined lobbying of both of these groups brought about the prohibition of *sheḥitah* first in St. Gallen in 1866 and then all throughout Switzerland in 1893. In 1886–1887 the prohibition of *sheḥitah* was debated in the German Reichstag and rejected, but the Kingdom of Saxony outlawed ritual slaughter from 1892–1910.⁹¹

In Russia the idea of outlawing *sheḥitah* first appeared in 1876, while the Society for Protection of Animals initiated this question again in 1891. However, the energetic defense of *sheḥitah* by Isaac Dembo, who based his arguments on scientific experiments and the governmental reluctance to accept such a measure put an end to the initiative.⁹² The memoranda of rabbis in 1908 did not

89 For the history of the law on Sunday rest and the attempts of Orthodoxy to prevent it, see Levin, »Ha-politikah ha-yehudit,« 278–282.

90 *Jewish Encyclopedia*, vol. 11, s.v. »Scotland«, 122; *Ibid.*, s.v. »Switzerland,« 609–612, here 612; *Jüdisches Lexikon*, vol. 4/2, s.v. »Schächten,« 134–137, here 136; *Encyclopaedia Judaica*, vol. 14, s.v. »Sheḥitah«, 1337–1344, here 1340–1341; Elijah Judah Schochet, *Animal Life in Jewish Tradition: Attitudes and Relationships* (New York: Ktav Publishing House, 1984), 283.

91 On debates about the prohibition of *sheḥitah* in Germany, see Dorothee Brantz, »Stunning Bodies: Animal Slaughter, Judaism, and the Meaning of Humanity in Imperial Germany,« *Central European History* 35 (2002): 167–194.

92 *Evreiskaia entsiklopediia*, vol. 16, s.v. »Shekhita«, 23–26, here 25; Dembo’s work was published in German: Isaak Dembo, *Das Schächten im Vergleich mit anderen Schlachtmethode*n (Leipzig: H. Roskoschny, 1894).

therefore mention the issue. In late 1913 the Extreme Right Faction of the State Duma introduced a bill explicitly prohibiting Jewish ritual slaughter, but the bill was not discussed due to the outbreak of World War I and the subsequent cessation of routine legislative work.⁹³

However, in Finland – an autonomous state within the Russian Empire – the *shehitah* was indeed outlawed in 1909 as an inhumane method of slaughter. The term proposed by Robert Crews to describe the relationship between the Russian Empire and Islam, could be equally applied to the empire's approach to Judaism.⁹⁴ The Finnish legislature, in striking contrast to the Russian imperial Duma, accepted a great number of progressive ideas, such as women's suffrage in 1906 and animal rights in 1909. As the Hebrew newspaper *Hed ha-zman* wrote while reporting on the new law, »Until now we knew that the Russian government opposed prohibiting *shehitah* in Finland. [...] And now, evidently, the Russian Council of Ministers decided that it was not worth it to fight with the Finnish Senate for the sake of the Jewish religion.«⁹⁵ The aforementioned assembly of Orthodox rabbis in Vilna appealed to the Finnish Senate to revoke the prohibition,⁹⁶ but to no avail: in 1913 the Russian Jewish encyclopedia reported that »the Finnish Jews have to order their meat from St. Petersburg.«⁹⁷

Conclusions

The failures to introduce a civil marital code, to prohibit *shehitah*, and to impose an obligatory Sunday rest clearly demonstrate that in spite of various anti-Jewish restrictions, the *ancien régime* in the Russian Empire was relatively hospitable to observant Jews. The level of centralization of the Russian state differed from that in the West, especially in the area of state control over its subjects and the uniform implementation of law. Imperial Russia was thus well suited to pre-modern Jewish tradition.

- 93 »Zakonodatel'noe predpolozhenie ob otmene korobochnogo sbora i ob ustanovlenii sposobov uboia domashnikh zhivotnykh,« *Vestnik evreiskoi obschiny* 1914, no. 1: 50–53; *ibid.*, 1914, no. 2: 42–48; Vladimir Grosman, »Bor'ba so shekhitoiu,« *ibid.*, 1914, no. 3: 38–41; D. M., »Korobochnyi sbor v Biudzhetnoi Komissii Gosudarstvennoi Dumy,« *ibid.* 1914, no. 5: 19–22; Heinz-Dietrich Löwe, *The Tsars and the Jews: Reform, Reaction and Anti-Semitism in Imperial Russia, 1772–1917* (Chur et al.: Harwood Academic Publishers, 1993), 296.
- 94 Robert Crews, »Empire and the Confessional State: Islam and Religious Politics in Nineteenth-Century Russia,« *American Historical Review* 108 (2003): 50–83.
- 95 Editorial in *Hed ha-zman*, no. 55, March 6 (19), 1909: 1.
- 96 RGIA, coll. 821, inv. 9, file 51, fol. 326.
- 97 *Evreiskaia entsiklopediia*, vol. 16, s.v. »Shekhita«, 23–26, here 25.

Most frictions between Russian civil law and Halakhah – as expressed by the rabbis in 1908 – were caused by the introduction of modern institutions and norms, like the drafting of Jews into the army, state control over marital issues, secular schooling, juridical reform, etc. The increasing role of the state, growing centralization and the tightening of state control over the population in the 1880s and 1890s caused more frictions and led to the abolition of practices »favorable« to Jewish observance such as the ability of Jewish soldiers to eat separately, prohibited in 1887–1888, kosher food in prisons, eliminated in 1889, and the exception from writing in state schools on Saturdays, rescinded in 1882. Legal measures with potentially major implications for observant Jews, such as the prohibitions of Sunday trade and of ritual slaughter, were not proposed until in the last years of the empire, and were never actually implemented: not because the government was attending to Jewish needs, but solely due to the strong conservative tendencies in Russian governing circles.

At the same time, the Russian imperial legislation on Jews, while supporting their religion and recognizing halakhic norms in general, failed to include the details and subtleties prescribed by Halakhah and tradition. The laws were written by officials acquainted with Christianity, but usually ignorant of rabbinical Judaism; they relied on information from Jewish mediators, but never assimilated it completely. For example, a clause in the 1844 law on state-sponsored Jewish schools stipulated that each Jewish school would have a hall where its pupils were obliged to conduct Jewish religious rites on holidays, in a manner similar to the Christian practice in all the other state schools of the empire. However, as the principal of the Jewish school in Zhitomir informed his superiors in 1850, he could not implement the clause since none of the pupils in his school were older than 11 years, while a quorum of ten thirteen-year-old boys (*minyān*) was needed for Jewish public prayer.⁹⁸ It is logical to assume that many other Jewish schools could not comply with the law and organize separate prayers either, due to the absence of a halakhically valid *minyān*.

The most striking example of mixing recognition of Jewish religious practices with Christian perceptions was the law of 1835 defining the duties of rabbis. By obliging rabbis to perform rituals in person, as described above, the state clearly wanted to improve the registration of vital events, but in fact failed as the rabbis genuinely could not meet those requirements. Although the state of Jewish vital records had improved significantly by the early 20th century, it never reached the desired completeness and continued to suffer from numerous omissions.⁹⁹

98 State Archives of Zhytomyr Region (DAZhO), coll. 71, inv. 1, file 958, fol. 4. Consulted as microfilm in CAHJP, H2/9344.5.

99 For different aspects of Jewish vital statistics, see Avrutin, »The Politics of Jewish Legibility,« especially 155–161, and idem, »The Power of Documentation.«

Incompatibility of the description of rabbis' duties with Jewish practice became apparent quite soon, but was never resolved. The bulk of the proposals made by the crown rabbis in 1908 reflected their difficulties in fulfilling this law. Some governors openly tolerated the existing practice and supported proposals to reformulate the obligations of rabbis in 1908,¹⁰⁰ while other administrators were adhering strictly to the letter of law.¹⁰¹

One salient feature of the Russian imperial legislation on Jews was its inconsistency over time. In the early 20th century, Jews still lived according to the laws introduced during the reign of Nicolas I (1825–1855), when the government actively sought to absorb Jews into the structures of the Russian state. That legislation was usually supportive of the Jewish religion in principle, but failed to take into consideration many important details. Laws introduced during the next period, the epoch of the Great Reforms of Alexander II (1855–1881), which aimed at modernization and Westernization, tended to overlook Jewish differences and to include the Jewish population into general legal norms. The judicial reform of 1864 did not thus mention Jews, instead implicitly applying to them the norm that witnesses must take an oath in the courtroom,¹⁰² thus making it possible to swear on Saturdays. After the crisis of 1881–1882 legislative politics became mostly anti-Jewish: in addition to the introduction of various restrictions, the state was also reluctant to »improve« the situation of Jews. During the same period it began to assume more effective control over all spheres of life. Therefore, the obvious inconsistencies in the laws of two previous eras were not corrected, while the implementation of laws became stricter. The opinion of the governors given in 1908 clearly expressed their suspicion of Jews and their tendency to reject Jewish requests.

As the material that was gathered during the preparations for the Rabbinic Commission of 1910 demonstrates, the rabbis prepared a long list of frictions between the state law and Halakhah and anticipated the adjustment of civil law to the religious one.¹⁰³ These expectations were the result of the generally

100 RGIA, coll. 821, inv. 9, file 63, fol. 7 (governor general in Kiev), fol. 31–36 (governor general in Vilna).

101 RGIA, coll. 821, inv. 9, file 63, fol. 9–12 (the governor of Ekaterinoslav province).

102 See the decision of the Governing Senate, the highest judicial body in Russia, in 1870, *Zakony o evreiakh*, eds. Gimpelson and Bramson, 709.

103 It is noteworthy that the idea of adjusting Halakhah to state law was not discussed during the preparations for the Rabbinic Commission of 1910. Only a few crown rabbis proposed canceling certain »annoying« rituals, like *halitsah* etc., which, in their opinion, did not fit with the *Zeitgeist*, but those proposals were not taken seriously. See RGIA, coll. 821, inv. 9, file 51, fol. 145, 158, 280. The Central Consistory in Paris, for instance, looked for halakhic means to overcome

favorable attitude of imperial legislation toward the Jewish religion and of the rabbinical expectations that the government was interested in facilitating Jewish observance after the Revolution of 1905–1907. Those expectations turned out to be unfounded because of the combination of two factors: growing anti-Semitism, which excluded almost any possibility of »favorable« or even »pragmatic« approaches to the Jews; and – probably more importantly – a growing legal awareness of the authorities. The selectivity and voluntarism of previous periods, which allowed for the toleration of particular Jewish traditional practices, were gradually replaced by a stricter and more unified approach to the enforcement of laws, thus intensifying frictions between state legislation and Halakhah. The rabbis who were requesting changes in the imperial law were not able to grasp this change.

At the same time, the rabbis' proposals also demonstrated that in spite of some inconsistencies in civil law, the tensions which they caused were of minor character. Notwithstanding the developments of the late 19th and early 20th century, the Russian legislation was still generally supportive of Judaism and allowed Jews to follow the norms of Halakhah without great obstacles or harsh economic concessions. The Russian Empire was, contrary to common perception, a relatively hospitable place for observant Jews, where Jewish religious commandments and traditional behavior could still be followed almost freely into the early 20th century.

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the contradictions between civil and religious laws, out of the understanding that there is no way to adjust French civil law to Halakhah. However, its attempts failed due to the discouragement of prominent Eastern European rabbis. See Kaplan, »The Thorny Area of Marriage.« In the late Russian Empire, by contrast, traditional rabbis were reluctant to look for general halakhic solutions, hoping for state laws to be adjusted. This issue has to be discussed separately, in the framework of research on Jewish Orthodoxy and the Reform movement in Eastern Europe.

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