Competing Laws – Competing Loyalties

Enlightenment versus Religious Law: Debating Jewish Burial in the Hebrew Press of Late Imperial Russia

> Religion is valid as long as its followers believe in its divine provenance, while the idea of amendment can enter the heart only after this belief was lost, and the human mind no longer fears to approach the sanctum and find faults with it which require mending by human hands.
>
> (Aḥad Ha-Am, »An Open Answer to a Private Letter,« *Ha-Melits*, October 31, 1894)

> Often the less there is to justify a traditional custom, the harder it is to get rid of it.
>
> (Mark Twain, The Adventures of Tom Sawyer, Ch. 5)

An ancient Jewish custom requires that the burial of the deceased be performed without hindrance, preferably on the same day that death occurs before nightfall or otherwise – if unforeseen obstructions are encountered – with as little delay as possible. Consequently, a burial intentionally deferred for any given reason, as in the Christian tradition of a funeral-wake, is considered an insult to the honor of the deceased, and is termed in the corpus of Jewish law (*Halakhah*) as ›keeping the dead for the night‹ (*Halanat ha-met*, hereafter *Halanah*). Abiding by this old religious custom contained an element of risk, for those who seemed to have passed away while being actually unconscious or in a coma could have been placed in their graves prematurely.

By the end of the 18th century, medical science in Europe acknowledged that failing to recognize signs of a pulse or breathing with an unconscious individual was not a sure indication of his or her demise. It was therefore concluded, with no reliable means with which the certainty or exact time of death could be determined, and in order to avoid tragic accidents, that burials should be postponed for a few days until clear signs of decomposition appeared on the body. In some 18th-century German states such new scientific realizations, combined with new ideas and attitudes brought forth by the Enlightenment, inspired a set of new regulations requiring the suspension of burial for three

days, as well as a new »Gothic« literary genre, portraying the horrifying images of those who woke up in their graves after being mistakenly interred. The new legislation terminated the long-held monopoly of religion and the church in determining the time of death, and placed it for the first time within the jurisdiction of the state through its certified representatives – medical doctors.[1]

While in some German states legislation forced the Jews, if only *de jure*, to accept the supremacy of science over religion in such matters of life and death already at the end of the 18th century, in the case of the Jews of the Russian Empire – the largest Jewish community in the world in the 19th century – change was slower to set in. There, traditional Jewish society remained for the most part unmoved by the European Enlightenment and unaffected by new regulations in its spirit, so that the fear of *Halanah* transgressions was rife, and the custom of burying the dead as quickly as possible (*Kvurah mehirah*) continued. However, the juridical-halakhic reasoning behind this traditional custom, as well as the medical soundness of the prohibition of *Halanah*, came under intensified scrutiny and criticism in the Hebrew press of the Russian Empire. Around 1860, a number of Jewish newspapers appeared that used Hebrew – the ancient language of scripture and of the rabbinical elite – as opposed to Yiddish, which was the everyday language of the majority of Russian-Polish Jewry. The newspapers catered exclusively to Jews, and succeeded with time in creating a public sphere in which the most prominent problems and concerns of the Jews in Russia were addressed and debated openly.[2]

In 1880 a journalistic discussion emerged that was to last for over a decade and which mirrored a great ideological divide within the Jewish society of the period.

1 Edicts requiring Jews to postpone the burial of their dead for three days were issued by the duke of Mecklenburg-Schwerin in 1772 and by Friedrich Wilhelm III of Prussia in 1798. Falk Wiesemann, »Jewish Burials in Germany – Between Tradition, the Enlightenment and the Authorities,« *Leo Baeck Institute Year Book* 37 (1992): 17–31, ibid., 18–19; Andreas Reinke, »Zwischen Tradition, Aufklärung und Assimilation: die Königliche Wilhelmsschule in Breslau, 1791–1848,« *Zeitschrift für Religions- und Geistesgeschichte* 43, no. 3 (1991): 193–214.

2 Since Yiddish was much more prevalent than Hebrew, it was regarded as politically dangerous in the eyes of imperial censorship, hence the development of a Yiddish press was harshly restricted until 1902. See David E. Fishman, *The Rise of Modern Yiddish Culture* (Pittsburgh, PA: Pittsburgh University Press, 2005), 21–24. For a more in-depth view regarding censorship policies: Dmitrii A. El'iashevich, *Pravitel'stvennaia politika i evreiskaia pechat' v Rossii, 1797–1917* (St. Petersburg: Mosty kul'tury, 1999), 396, 401, 435, 444, 447. The 1860s also saw the appearance of a Jewish press in both Russian and Polish. See Yehuda Slutsky, *Ha-itonut ha-yehudit-rusit ba-me'ah ha-tesha-esreh* (Jerusalem: Mosad Bialik, 1970); Marian Fuks, *Prasa żydowska w Warszawie 1823–1939* (Warszawa: Państwowe Wydawnictwo Naukowe, 1979).

The world around was changing and modernizing at a previously unknown rapid pace, challenging Jewish society, and creating a dilemma concerning the amount of change and external influence that Jews could, or should, absorb without compromising their unique identity. Some were willing to forgo religious conservatism, to varying degrees, in order to embrace what modernity had to offer them as a minority group in Russia, so they could better integrate into Christian society and improve their social standing. State-regulated education, with its choice of new professions, and the expanding urban centers of the Russian Empire with their secularizing lifestyles, held a special appeal, and were viewed by a growing number of Jews as instrumental in achieving their aspirations in terms of improving their social condition. And so the well-known Yiddish folk-saying, »Seven miles around Odessa burn the fires of Hell«, represents the common conception of the aggressively secularizing powers of big towns during that period, in which those who approach them even from a distance are affected.[3] On the other hand, there were those who faced no dilemma and rejected modernity with its secular influences as being dangerous. For them, Judaism was defined in strictly religious terms with no scope for compromise, and with the understanding that most, if not all outside influence should be blocked.

The part of the Jewish intelligentsia that was non-conservative and to a large extent responsible for creating the Hebrew press, were called *Maskilim* in the language of the period. This term denoted their identification with the ideas of the Jewish Enlightenment – the *Haskalah* – which, as the late Jonathan Frankel summarized, »was not a homogeneous movement but rather a broad concept which covered an entire spectrum of different groups and ideas«, basically sharing »a general agreement that Jewish life had to adapt itself to the modern world, intellectually through an educational revolution and economically through ›productivization,‹ a radical change in Jewish occupational patterns«.[4] The Hebrew press in Russia and Congress Poland was, from its very beginning, meant to serve as a Maskilic mouthpiece and was considered a part of the state-approved ›three-part Maskilic establishment‹ in Russia. This establishment included, in addition to the press, the rabbinical seminaries in Zhitomir and Vilna, and the Society for the Spread of Enlightenment among the Jews of Russia (OPE), all of which were founded in the 1860s.[5] With this said, it is

3 Steven Zipperstein, *The Jews of Odessa* (Stanford, CA: Stanford University Press, 1985), 1.

4 Jonathan Frankel, *Prophecy and Politics*: *Socialism,* Nationalism *and the Russian Jews, 1862–1917* (London–New York: Cambridge University Press, 1981), 30.

5 Eli Lederhendler, The *Road to Modern Jewish Politics* (New York–Oxford: Oxford University Press, 1989), 111–112.

important to note that while a ›Maskilic rhetoric‹ was very apparent in the Hebrew press, preaching for the rationalization, modernization, and Europeanization of Jewish society, the Maskilim were by no means striving to abolish Jewish tradition. Rather, they sought to reform Jewish society while drawing, as Israel Bartal put it, »on an internal Jewish root,« basing themselves on Jewish tradition and on »immanent Jewish sources«.[6]

The opposition to the Maskilim, generally termed ›Orthodox‹ in the language of the period, grouped together those representatives of Jewish society who viewed modernity as posing a set of threats to its traditional existence, »and whose awareness of those threats and its attempts to cope with them, [left] a deep imprint on its whole being.«[7] Here too there was scope for leniency and, as I will demonstrate later, certain Orthodox representatives were willing to use distinctly modern tools – like newspapers – to do battle with their Maskilic nemeses, while others of this group adapted parts of Maskilic ideology, like secular education and proto-nationalism, to the point that they were described by some contemporary scholars as ›Maskilic rabbis.‹[8] Of all the Hebrew newspapers that addressed the subject of the *Halanah* prohibition, two are of particular interest: *Ha-Melits*, whose loyalties lay with the Maskilim; and its rival, *Ha-Levanon*, which served as the formal mouthpiece for Jewish Orthodoxy of the ›Lithuanian persuasion.‹[9] Among all the editors of the different newspapers, the man who was the most instrumental in initiating the journalistic discussion concerning *Halanah* and cultivating the controversy around it was Alexander Tsederboym, the publisher-editor of *Ha-Melits* and a central figure in the world of the Hebrew press from the 1860s.[10]

6 Israel Bartal, *The Jews of Eastern Europe 1772–1882* (Philadelphia, PA: Philadelphia University Press, 2005), 92.

7 For a definition of »Jewish Orthodoxy«, see Immanuel Etkes, »Parashat ha-›haskalah mi-ta'am‹ ve-ha-tmurah be-ma'amad tnuat ha-haskalah be-rusiyah,« in *Ha-dat ve-ha-hayyim: tnu'at ha-haskalah be-mizraḥ eyropah*, ed. idem (Jerusalem: Merkaz shazar, 1993), 167–216, here 214.

8 Yosef Salmon, »Ha-ortodoksiya ha-yehudit be-mizraḥ eyropah: kavim le-aliyata,« in *Ortodoksiyah yehudit: hebetim ḥadashim*, eds. Yosef Salmon et al. (Jerusalem: Magnes, 2006), 367–379, especially 367–368.

9 All quotations from the Hebrew press are dated according to the Gregorian calendar, as indexed by the Early Hebrew Newspapers site of the National and University Library in Jerusalem: http://jnul.huji.ac.il/dl/newspapers/index1024.html. For a historical and cultural overview of the »Litvaks«, see Vital Zajka, »The Self-Perception of Lithuanian-Belarusian Jewry in the Eighteenth and Nineteenth Centuries,« *Polin* 14 (2001): 19–30.

10 *Ha-Melits* (»The Advocate«) ed. in Odessa and St. Petersburg from 1860 to 1904 was the most prominent Hebrew newspaper of the period. *Ha-Levanon*, ed. in Jerusalem, Paris, Mainz, and London from 1863 to 1886, was ›adopted‹ as the formal mouthpiece for Jewish Orthodoxy in 1868. Otherwise, *Ha-Maggid* (»The

Tsederboym (Erez) – a publisher and a lobbyist

Alexander Ha-Levi Tsederboym (1816–1893) was a journalist, publicist, and lobbyist (*shtadlan*) for the Jewish cause in Russia. Born in Zamość in the province of Lublin, an important center of the early Haskalah in Congress Poland, he was brought up and educated by his father, who was a watchmaker and a Hebrew poet, in a home that was a meeting place for the local Maskilic intelligentsia. Tsederboym moved to Odessa sometime around 1840, where he made his living in different occupations within the textile business, and where he turned his home into a meeting place for the local Maskilim. At the same time he dabbled in local Jewish politics and cultivated personal contacts with different high-ranking Russian officials. Those connections in high places, as well as his commercial and political skills, enabled him to establish and manage one of the first Hebrew newspapers in Russia which he edited, until his dying day, for 33 years. Writing mainly under the pen-name *Erez* (cedar tree), Tsederboym was known as a controversial figure: a highly opinionated, at times impulsive publicist with a cumbersome, pseudo-intellectual literary style and unrealized aspirations of becoming an influential figure in St. Petersburg's Jewish political circles, which were dominated at the time by Jewish banking and railway magnates, the likes of the Gintsburg and Poliakov families.[11] Yet with all his apparent professional and personal shortcomings, Tsederboym succeeded in harnessing the influence and prestige that his profession earned him in order to support various Jewish causes, both on a local and a national scale. He approached members of the Russian authorities directly in order to intervene on behalf of poor Jews who had been expelled from their villages; he secured stay permits for Jewish university students in St. Petersburg allowing them to live in the town legally, and lobbied that more Jews be granted entrance to universities all over the country, above and beyond the »Jewish quota« imposed by Russian

Herald«), ed. in Lyck, Berlin, Cracow, Vienna, and London from 1856 to 1903, was the first modern Hebrew newspaper to appear and cater to the Jews of the Russian Empire. Finally, *Ha-Tsfirah* (»The Dawn«), ed. in Warsaw from 1862 to 1931, began as a periodical dedicated to scientific topics, and at the close of the 19th century became the formal organ representing the young Zionist movement. For a historic overview, see Menuha Gilbo'a, *Leksikon le-toldot ha-itonut ha-iwrit ba-me'ot ha-18 ve-ha-19* (Jerusalem: Mosad Bialik, 1992), 117–135 (*Ha-Maggid*), 137–157 (*Ha-Melits*), 167–181 (*Ha-Tsfirah*), and 186–195 (*Ha-Levanon*). The latest reference to premature burial that I am aware of is to be found in *Ha-Melits*, February 13, 1893, probably marking the most far-reaching echo of the *Halana* prohibition debate.

11 For a survey of Jewish political sphere in Russia, and specifically in St. Petersburg, see Benjamin Nathans, *Beyond the Pale: The Jewish Encounter with Late Imperial Russia* (Berkeley, CA: University of California Press, 2002), 165–198.

authorities in 1886. Tsederboym's greatest contributions to the national Jewish cause were his success in securing a formal license for *Ḥibat-Tsiyon* (Lovers of Zion), the proto-Zionist movement, and his relentless fight against slander and accusations aimed at the Jews by the Judophobic press in Russia.

It is important to note that as a publisher-editor Tsederboym encouraged open debate and, from an early stage in the evolution of *Ha-Melits*, did not deny those who opposed him or his newspaper's formal ideological stance from writing in his paper. Moreover, his candid approach led him at times to unwittingly publish information that showed him in a less-than-favorable light.[12] Despite being one of the founding fathers of modern Hebrew journalism and his high standing as a public figure among the Jews of Russia, Tsederboym was almost forgotten after his death. His biography has yet to be written, while for the most part only fragmented memoirs – some of his own, some written by others – remain.[13]

Alexander Tsederboym placed himself at the forefront of the opposition to the prohibition of *Halanah*, promulgating a call for a change of what he recognized to be a dangerous custom. The public debate which followed was possibly one of the most intriguing in the Hebrew press at the time, and it was certainly one of the longest, reaching into the 1890s and exceeding the boundaries of newspaper

12 Perhaps the best example of editorial openness is the heated journalistic debate between the Maskilim and the Orthodox in Russia concerning the need for religious reforms (*Pulmus ha-tikunim ba-dat*), which preoccupied the Hebrew press from 1868 to 1871. Orthodox writers were well represented in this public debate and published their views openly in *Ha-Melits* (September 10, 1868), and in other newspapers like *Ha-Maggid* (April 14, 1869). For an overview of this debate, see Shmuel Feiner, *Haskalah ve-historiyah* (Jerusalem: Merkaz Shazar, 1995), 403–416. Publishing opinions that opposed the newspaper's formal ideological line continued in *Ha-Melits* even after Tsederboym's death, as in a set of articles by Yehoshua Yosef Freyl, a former publicist in *Ha-Levanon*, who opposed *Hibat-Tsiyon*, while *Ha-Melits* was the movement's ardent supporter: *Ha-Melits*, June 15, 17, and 20, 1894. For Tsederboym admitting to an embarrassing incident in which he was denied access to the house of Baron Goratsii Gintsburg for previously writing unfavorably about the family, see *Ha-Melits*, May 2, 1882.

13 For a partial list see Tsederboym's own autobiographical essays in *Ha-Melits*, September 8, 1886; October 3, 1890. For monographs, see Reuven Braynin, *Zikhronot: sirtutim mi-ḥayey A. Tsederboym ve-tkhunato* (Kraków: Y. S. Fuks, 1899); Shmuel Leyb Tsitron, *Di geshikhte fun der yidishe prese: fun yor 1863 biz 1889* (Vilnius: Farayn fun Yiddish literatn un zhornalistn, 1923); *Iz arkhiva sem'i Tsederbaum*, ed. V. L. Telitsyn, Iu. Ia. Iakhnina and G. G. Zhivotovskii (Moskva: Sobranie, 2008). To date, the best overview in English is still Alexander Orbach, *New Voices of Russian Jewry: A Study of the Russian-Jewish Press of Odessa in the Era of the Great Reforms, 1860–1871* (Leiden: E. J. Brill, 1980).

journalism, as it appeared in at least three Hebrew books printed in Russia between 1881 and 1892.[14]

The outline of the debate

The *Halanah* debate represented two »spheres of confrontation«: The first was internal to the Jewish community; the second positioned the Jews as an ethnic minority against the imperial state, its law and administration. In the internal Jewish sphere, the Maskilim advocated banning the custom of immediate burial and adapting an alternative procedure that would both pose no danger to those who were only seemingly dead, and at the same time would conform with the state law that required postponing burials for three days. The Orthodox, in response, fought to preserve the old custom out of fear that losing the battle on either front would further destabilize traditional Jewish society, which by 1880 had already been losing ground to the influence of external forces: the spread of secular education and the influence of Russian revolutionary ideology on Jewish youth; the internal Jewish migration to large towns; emigration abroad spurred by harsh living conditions and pogroms, were all persistently driving Jews away from their traditional, religious way of life.[15] The polemical tactics chosen by the Maskilim were to simultaneously attack the Orthodox stance with halakhic and scientific arguments. Initially they sought to demonstrate that the prohibition of *Halanah* did not stand on solid halakhic ground, and should therefore not have been regarded as taboo. Secondly, the Maskilim opposed the custom of immediate burial from a scientific-medical point of view, while specifically targeting Jewish burial societies who were in charge of organizing and administering traditional burials. The Orthodox, on their part, denied that there was any kind of danger inherent to the old custom. Consequently, if there was no problem then there was certainly no need for change.

14 Alexander Tsederboym, *Mishlo'aḥ manot* (St. Petersburg: Tsederboym and Goldblum Press, 1881); David Elazar Finkel, *Meytsarey she'ol* (Warszawa: M.Y. Halter Press, 1889), translated from German; Dov Ber Yehuda Leib Ginzburg, *Emunat ḥakhamim* (Vilnius: Orlozorov Press, 1892), in which the 3rd chapter polemicized against Finkel's book.

15 For a concise review of the different challenges that Jewish Orthodoxy faced in the 19th century, and the various responses to modernity it created, see Mordechai Breuer, »Ortodoksiyah: mats'a le-vedek bayyit histori«, in *Ortodoksiyah yehudit: hebetim ḥadashim*, eds. Yosef Salmon, Aviezer Ravitzky, and Adam S. Ferziger (Jerusalem: Magnes Press, 2006), 79–85. For the influence of secular, and especially university education on Jewish youth, see Nathans, *Beyond the Pale*, 201–256; Yvonne Kleinmann, *Neue Orte – neue Menschen. Jüdische Lebensformen in St. Petersburg und Moskau im 19. Jahrhundert* (Göttingen: Vandenhoeck & Ruprecht, 2006), 100–110.

In the second sphere, that of confrontation between Jews and the state, traditional Jewish society was retaliating against the efforts exerted by the imperial authorities to enforce secular burial legislation as inscribed in state law. This action was perceived by Jewish Orthodoxy as yet another in a string of attempts, which already began during the reign of Nicolas I (1825–1855), to weaken the juridical and administrative autonomy of the Jewish community in Russia, and the Orthodox accordingly sought to either ignore or evade state legislation.[16] The state, which was not initially concerned with traditional Jewish ways of handling the dead, began to show growing interest in the subject once it became clear that it involved an ongoing and blatant breach of law on the part of Jews.

The internal Jewish sphere – maskilic criticism

On November 30, 1880, *Ha-Melits* published a news item that had appeared earlier that month in the *Frankfurter Zeitung*, depicting how during the funeral procession of a Parisian fur merchant in St. Ouen Catholic Cemetery, screams for help were heard from within the coffin which, once opened, revealed the fur merchant in a deep state of shock, yet very much alive. This near tragedy which befell a Catholic who was undoubtedly buried after a funeral vigil of some length, prompted Tsederboym to add an explosive footnote in small print. In a few short paragraphs he delivered a scorching attack on those whom he termed ›our Orthodox brothers‹ (*aḥeynu ha-ḥaredim*), who, in order to refrain from committing the sin of *Halanah*, practiced the custom of »bringing the dead quickly to their graves while their flesh was still warm«.[17]

It is both interesting and important to note that Tsederboym's point of departure for his attack reflected the realization that premature burial was not merely a vague possibility, but rather a gruesome reality. Once he asserted that particular point, he went on to strike at the heart of its religious justification: He argued that there *was* no unequivocal Jewish law forbidding delayed burial, but instead that immediate burial was a custom which was based on mere superstitions mixed with kabbalistic nonsense. Then he pointed an accusing finger at the leading rabbis of Russian-Polish Jewry, posing the rhetorical question: Seeing that Jewish law very explicitly commanded that one should strive to do all in one's power to save the life of even *one* human being, how can the rabbis remain

16 For the juridical autonomy of the Jews in Russia, see Michael Stanislawski, *Tsar Nicholas I and the Jews: The Transformation of Jewish Society in Russia, 1825–1855* (Philadelphia, PA: Jewish Publication Society in America, 1983), 127; Eli Lederhendler, *The Road to Modern Jewish Politics*, 50–52.

17 *Ha-Melits*, November 30, 1880.

indifferent to this dangerous custom, if there was a danger that even one in a thousand could accidentally be buried alive?[18]

Finally, *Ha-Melits*' publisher-editor delivered a blow to the scientific validity of the halakhic procedure of determining the certainty of death, and especially the old custom in which signs of breathing were checked by placing a feather to the nose or mouth of the individual suspected to be deceased.[19] He noted that specialists and doctors could not recognize any other definite sign of death save the appearance of signs of decay on the body, which are known to appear only a few days after the moment of death. At times even a prolonged delay of burial was not enough to determine death with absolute certainty, as the above-mentioned story of the fur merchant illustrated. With this in mind, he asked, how can Jews rely on the »feather test« and then assume certain death based upon the experience – not of a doctor or a paramedic – but that »of the Jewish undertaker and the Jewish layabout?«[20]

By March 1881 Tsederboym had expanded his footnote into a 26-page-long essay which was printed as a booklet titled *Mishlo'aḥ manot* and distributed among *Ha-Melits*' subscribers as a supplementary gift for the Purim holiday in hundreds of copies.[21] This was a somewhat hastily composed essay in which Tsederboym repeated and expanded his previously stated arguments, while at the same time unabashedly attacking Jewish Orthodoxy and criticizing the custom of hasty burial from both halakhic and scientific points of views.

18 Ibid. The reference Tsederboym evoked was that of *Piku'aḥ nefesh*, a halakhic term which places the sanctity of human life and the need to save it even above observing Jewish law (*Babylonian Talmud*, Yoma, 85).

19 The halakhic reasoning for the use of a feather to test »the breath of the nose« (*Nishmat apo*) was a deduction from a case in which a man was buried under a pile of rocks on a Sabbath, and this is the continuation of the above-mentioned debate. It was then permitted to violate the sanctity of the Sabbath and dig him out (*Piku'aḥ nefesh* surpasses the Sabbath), and accordingly check for vital signs all over his body, »all the way up to his nose.« Ibid. Yoma, 86:71.

20 *Ha-Melits*, November 30, 1880. This is a play on words which rhymes in Hebrew: *Ha-kavran ve-ha-batlan*.

21 *Mishlo'aḥ manot* is the name given to the customary gift of food and sweets which Jews exchanged with each other during Purim. The number of *Ha-Melits* subscribers in 1881 is unknown; in 1885–1886 it fluctuated between 1,600 and 2,700 due to harsh competition with the first Hebrew daily which appeared in St. Petersburg at the time. See Tsederboym's letter published in *He-Avar* 2 (1954): 148. Hundred of copies thus seems like a conservative estimate for the distribution of *Mishlo'aḥ manot*, given the fact that it was supposedly attached as a gift to each newspaper issue sent to subscribers. For a study of the distribution of Hebrew literature and the Hebrew press in our period of interest, see Hagit Cohen, *Be-ḥanuto shel mokher ha-sfarim: ḥanuyot sfarim yehudiyyot be-mizraḥ eyropah ba-maḥatsit ha-shniyyah shel ha-me'ah ha-19* (Jerusalem: Magnes, 2006).

The opening part of *Mishlo'aḥ manot* was dedicated to a meticulous study of the various references to Jewish burial procedures in Halakhah.[22] It is important to note that there are not many references to the prohibition of delaying burial in Jewish law, so that even an individual with an average knowledge of Halakhah could have a good grasp of the topic without a great deal of effort. This certainly aided the Maskilic stance in what otherwise would have been one of its weakest points, as only a halakhic sage – in other words, a rabbi – who dedicated his whole life to the study of Jewish law and was ordained by another rabbi, could claim the authority to comment or rule on such important issues. The Maskilim, with whom Tsederboym sided, with their affinity to foreign, secular ideals and philosophies, could not claim the same authority. Furthermore, as Tsederboym argued before, the sum of halakhic references to *Halanah* does not imply a decisive ruling on the matter, allowing space for different interpretations, and there have indeed been halakhic sages throughout the ages who took a strict stance on the matter, and others who were more lenient.[23] Once again, this fact played into the hands of the Maskilim, for if Halakhah showed itself to be irresolute in such a serious matter concerning life and death, it could not serve as an authoritative source.

Initially, Tsederboym noted, the prohibition of *Halanah* appeared in the Pentateuch (*Deuteronomy* 21:22–23), but this clearly referred and applied only to executed criminals. In later centuries, Tsederboym continued, this restriction was expanded to include all those who died, and the custom of burying the deceased on the day of death was already well established during the Second Temple Era, i.e. roughly from the 6th century BCE. This custom was later codified in the Talmud (3rd century CE), albeit with the reservation that delaying burials was possible in order to prepare shrouds or coffins. The burial custom in its most uncompromising form eventually found its way into various kabbalistic works which further strengthened its authority as the sole burial practice.[24] In the 11th and 12th centuries, prominent medieval commentators like Rabbi

22 Tsederboym, *Mishlo'aḥ manot*, 2–4.

23 For a contemporary exploration of the halakhic background of the *Halanah* prohibition, which agrees with Tsederboym's study, see Moshe Samet, »Halanat metim: le-toldot ha-pulmus al kvi'at zman ha-mavet,« *Asufot* 3 (1989): 413–465, and especially 463 for the above-mentioned observations. Samet's article is thus far the most comprehensive study of the *Halanah* debate in the 18th and 19th centuries. Unfortunately, he did not dedicate more than a short footnote to the 19th century debate as it appeared in the Hebrew press of our period of interest.

24 Tsederboym, *Mishlo'aḥ manot*, 2–3; Samet, »Halanat metim,« 415, with source references. For the reservation concerning shrouds and coffins, see *Babylonian Talmud*, Sanhedrin, 46: 71.

Shlomo ben Itshak (Rashi) and Rabbi Moshe ben Maimon (Maimonides) offered strict interpretations of the biblical passage, requiring all burials to be performed without delay while disallowing leniency.[25]

Yet, by the 16th century, when Yosef Karo's *Shulḥan arukh* was adopted as the handbook for Jewish religious conduct by Ashkenazi Jews – and thus by East European Jewry[26] – some additional reservations were introduced to soften the strict law: If, for example, the Sabbath or a holy day were approaching, in which working at a grave would represent a transgression, then the burial was to be deferred until the Sabbath or holy day ended. Furthermore, the funeral could be postponed if the shrouds were not ready, or members of the deceased family had to arrive from far away, or if mourners were to be hired. Furthermore, Jewish burial societies had the right to delay funerals if the deceased's relatives refused to pay for them.[27] Such mitigations that were clearly to be found in Halakhah supported yet another of Tsederboym's initial arguments, in which he claimed that the taboo associated with delaying Jewish burials did not originate in formal law, but rather in the mystical traditions of the Kabbalah. The obligation to hasten the burial of the dead, he emphasized, was a folk custom that evolved from a very selective reading of religious law. Those mystical traditions, asserting that the soul of the deceased would find no rest until his or her body was interred in the ground, could be traced back to the Middle Ages and the *Zohar*.[28] They probably gained special popularity among Ashkenazi Jews with the appearance of handbooks for the ritualization of death and dying, the likes of the 17th century compilation *Ma'avar yabok*.[29]

Moving on to criticize »the feather test«, and in an attempt to strengthen his initial claim that premature burial was not a rare occurrence, Tsederboym repeated tales he knew from his younger years in Zamość concerning Jews from different small Polish towns in the Lublin area who were mistakenly believed to have died and then buried, or who were nearly buried alive. He

25 Tsederboym, *Mishlo'aḥ manot*, 2–3. See Rashi's commentary to *Deuteronomy* 21: 22–23; Rambam, *Book of Commandments*.

26 The *Shulḥan arukh* was adapted to the Ashkenazi ritual by rabbi Moshe Isserles (The »Rema«, 1520–1572) of Kraków. For a discussion of the *Halanah* prohibition in *Shulḥan arukh*, see Avraham S. Avraham, *Nishmat Avraham: Hilkhot ḥolim, rof'im ve-refu'ah* (Jerusalem, 1983).

27 *Shulḥan arukh*, Yoreh de'ah, 357; Hoshen mishpat, 107: 4.

28 Tsederboym, *Mishlo'aḥ manot*, 12; *Zohar*, Trumah: 141.

29 *Ma'avar Yabok* (Mantova, 1626) was a collection of 112 prayers and ceremonies dedicated to the sick and the dying. Written by the Kabbalist Aharon Brakhya of Modena (d. 1639), the book was later translated from Hebrew into Yiddish and gained tremendous popularity among the Jews of Eastern Europe. See Avriel Bar-Levav, »Ritualisation of Jewish Life and Death in the Early Modern Period,« *Leo Baeck Institute Year Book* 47 (2002): 69–82, especially 75.

complemented those old tales with more recent stories of premature burials quoted from newspapers, other than his own, that involved non-Jews and occurred in Hungary, France, and Romania.[30] In an almost casual manner, Tsederboym then brought forth what could have been one of his strongest arguments against Jewish Orthodoxy: The custom of immediate burial opposed state law, which required a waiting period of three days before burial. On that point he noted ironically that he recommended that Jews refrain from trying to »influence« state officials, like doctors and policemen, to register the time of death of the deceased as earlier than it actually was.[31] Tsederboym was referring to a well-known procedure in which dates of death were recorded retroactively, so as to avoid the transgression of *Halanah* while appeasing the authority's requirements for delaying burial, and it was clear from Tsederboym's words that he was hinting that »influencing« the authorities meant bribing them.[32]

Tsederboym's essay concluded somewhat strangely with a reprint of the three-way correspondence from 1772 between Moses Mendelssohn (1729–1786), Rabbi Jacob Emden (1698–1776), and Rabbi Mordechai Yaffe of Mecklenburg-Schwerin debating the prohibition of *Halanah*.[33] Despite the seemingly odd choice of conjuring up a century-old debate which had taken place among Jewish rabbis in German lands, it served a double purpose. First, Tsederboym used Mendelssohn and his support for a delayed Jewish burial procedure, expressed in that three-way correspondence, as a stamp of approval for the

30 Tsederboym heard of a case of the near premature burial of a Jew in Rejowiec from his father. He heard of a similar case that allegedly happened in Tyszowce from the poet and mathematician Jacob Eichenbaum. *Mishlo'aḥ manot*, 4–6.

31 Ibid., 14.

32 Bribing state officials so they would falsify the recorded time of death was widespread among Jews in the German states at the end of the 18th and the beginning of 19th centuries, see Wiesemann, »Jewish Burials in Germany,« 23. Recent studies have shown that the Jews in 19th-century Congress Poland were no strangers to this practice of »retroactive registry« either. See Agnieszka Jagodzińska, »Kaddish for Angels: Revisioning Funerary Rituals and Cemeteries in 19th Century Jewish Warsaw,« *Jewish Cultural Studies* 3 (2011): 265–289, here 273; Jan Paweł Woronczak, *Cmentarz żydowski w Kromołowie jako tekst kultury*, Ph.D. thesis, University of Wrocław, 1999, v.

33 For the historical background for this correspondence and the 18th-century premature burial controversy between the German *Maskilim* and their Orthodox rabbi opponents, which evolved into a long journalistic debate in the maskilic periodicals at the turn to the 19th century, see Shmuel Feiner, *The Jewish Enlightenment* (Philadelphia, CA: Philadelphia University Press, 2002), 331–335; Moshe Pelli, *The Age of Haskalah* (Leiden: Brill, 1979), 207–211; Moshe Samet, »Halanat metim,« 418–423. For an index of the German Haskalah essays on the subject, published (in Hebrew) in the maskilic periodicals of the period in question, see Pelli, *The Age of Haskalah*, 185.

halakhic stance voiced in *Mishlo'aḥ manot*. Mendelssohn was considered to be the founding father of the Jewish Enlightenment, and his stance in regard to the issue of *Halanah* – his only attempt at religious reform – was later adapted by the Maskilim of Central and Eastern Europe as a symbol of their aspirations toward modernizing religious practices.[34]

Secondly, in reviving the old journalistic debate concerning the practice of immediate burial, which preoccupied the old Maskilic periodicals in German-speaking lands on and off for over three decades, Tsederboym was implying that *Ha-Melits* was a direct successor to those old and prestigious Hebrew periodicals. Now that *Ha-Melits* was picking up the discussion where the old periodicals left off, Tsederboym was metaphorically donning the halo of the pioneering Maskilim of a century before by spearheading the Maskilic camp in its struggle against Orthodoxy on the issue of *Halanah* prohibition.

The ramifications of these actions were very clear: This was a frontal attack on Halakhah itself and a public declaration of war that the representatives of Jewish Orthodoxy in Russia could not remain indifferent to. Accordingly, they retaliated against Tsederboym and *Ha-Melits* with a journalistic counterattack that appeared in *Ha-Levanon*, which was published in Mainz at the time, and which had already begun to serve as the formal mouthpiece for Jewish Orthodoxy in Russia.

The internal Jewish sphere – the Orthodox response

As fate would have it, the Orthodox response to the journalistic debate initiated by Tsederboym lasted only a short time, from June to October 1881, after which *Ha-Levanon* and its publisher-editor Yeḥiel Bril (1836–1886) encountered a series of difficulties that affected the paper's frequency of publication, leading to the *Halanah* controversy being dropped in favor of other topics of discussion.[35]

34 Samet, »Halanat metim,« 463. Tsederboym copied the three-way correspondence between Mendelssohn and the rabbis from an old maskilic periodical called *Bikurey ha-itim*, published in Vienna from 1820 to 1831 and 1844 to 1845, which he knew from his youth. *Mishlo'aḥ manot*, 14. See Moshe Pelli's annotated index. *Bikurey ha-itim*: *bikurey ha-haskalah* (Jerusalem: Magnes, 2005), with an extensive English abstract.

35 Bril left Mainz – the home of the newspaper's editorial and sponsors – to visit the Jewish Pale of Settlement after the pogroms of spring 1881. Consequently, *Ha-Levanon* turned from a weekly into a monthly periodical, and 1882 was the last year in which it appeared regularly. This period also marked Bril's warming up to *Ḥibat-Tsiyon*, the proto-Zionist movement in Russia, which may have somewhat diminished his devotion to the Orthodox camp. For the newspaper's history during those years, see Gilbo'a, *Leksikon le-toldot ha-itonut ha-ivrit*, 194–195 (*Ha-Levanon*). For a survey of *Ha-Levanon*'s political inclinations, its Ortho-

Bril's withdrawal meant that, by the end of 1881, only those newspapers which were associated with the Maskilic camp were left to continue the public debate; yet even during that short period of active Orthodox response, *Ha-Levanon* published a rebuttal of Tsederboym's publications that represented both an example of classic Orthodox apologetics and a formal statement of defense on the subject of *Halanah*.

The man who stepped into the journalistic ring to confront the Maskilic attack was Rabbi Israel Ḥayyim Daykhes (1850–1937), a descendant of a prominent line of Vilna rabbis who, despite his relatively young age, was already considered a halakhic authority thanks to his published commentary on the Jerusalem Talmud. In addition, Daykhes was proficient in Haskalah literature and clearly did not oppose journalism in principle, as he was familiar with the debates in the Hebrew press, and at some point became a journal editor himself.[36] In a four-part essay appearing in installments all through June 1881, Daykhes conducted a direct and scorching attack on *Mishlo'aḥ manot* and its publisher, arguing the following main points:[37]

1) The Jews were loyal subjects to the Tsar and obeyed state law, and thus regularly delayed the burial of their dead as the law demanded. Consequently, the journalistic discussion involving hasty burial was purely theoretical, and all of Tsederboym's insinuations concerning bribes and falsifications of registries were nothing but baseless accusations – a fact that revealed Tsederboym to be a slanderer, an informer, and a traitor to his people.

2) Daykhes strongly opposed not only the contents of Tsederboym's publication but even his very attempt to deal with halakhic matters. The right to publish a halakhic commentary was reserved exclusively to ordained rabbis, and a newspaper editor-journalist had no halakhic authority whatsoever. Daykhes argued that Tsederboym lacked the proper training to write commentaries, and that this essay also showed the lack of a basic understanding of the law. *Mishlo'aḥ manot* was therefore completely off the mark in its halakhic claims, and worse – it was a dangerous essay because it sought to destabilize the very foundations of Jewish religion. Daykhes then offered a meticulous halakhic discussion of his

dox, anti-maskilic stance, and Bril's ideological shift, see Gideon Kouts, *The Hebrew and Jewish Press in Europe* (Paris: Suger Press, 2006), 43–59.

36 For a short biography of Daykhes, rabbi of Vladislavov (Suwałki province) from 1885, and of Leeds from 1901, publisher of a Hebrew periodical dedicated to Jewish thought and biblical commentary (London, 1902–1904), and a list of his publications, see Elyakim G. Kressel, *Leksikon ha-sifrut ha-ivrit ba-dorot ha-aḥaronim*, vol. 1 (Merḥavia: Sifriyat po'alim, 1965–1967), 549.

37 »Ha-gam erez ba-hora'ah?« *Ha-Levanon*, June 8, 15, 22, and 29, 1881.

own, proving the *Halanah* prohibition to be thoroughly based on sound law, rather than custom, and therefore clearly obligatory for any observant Jew.

3) In the last part of his essay, Daykhes addressed the claim concerning the inherent danger of premature burial in the prohibition of *Halanah*, and offered his own explanation for the journalistic reports of people who were thought to be dead before they miraculously recovered. The experienced functionaries and undertakers of the Jewish traditional burial societies, he claimed, knew how to tell the difference between those who were unconscious and those who were dead. Furthermore, if the ancient sages of blessed memory had not specifically required a delayed burial, it meant that they had not deemed the delay necessary or important for determining the certainty of death. Finally, while he reluctantly accepted the possibility that in certain cases a few Christians had indeed almost been buried alive as different newspapers reported, Daykhes concluded that the traditional handling of the dead protected Jews from such tragic consequences, and that even if such tragic misfortunes did occur, they did so »once in a thousand years and therefore are not worth relating to«.[38]

It is interesting to note that Daykhes did not address Tsederboym's memories of premature and near-premature burials of Jews from the Lublin area that were mentioned in *Mishlo'aḥ manot*, though he could have legitimately claimed that they were unreliable hearsay testimonies, especially as Tsederboym never showed them to be anything more than that. Then again, during summer 1881, when Daykhes challenged Tsederboym's Maskilic criticism, expressing utter denial regarding the possible dangers inherent in hasty burial, no journalistic reports concerning the suspected premature burial of Jews were known from the Pale of Settlement,[39] yet a dramatic change came that autumn when contemporary, first-hand reports, began to trickle in and appear in the newspaper in the form of letters sent in by a very specific group of readers, who were commonly known as »the correspondents«.

The correspondents of the Hebrew press: journalistic importance and social role

The correspondents, or field reporters, were Hebrew-writing Jews who sent their reports, for the most part on a volunteer basis, to the newspapers' editorial boards from all over the Russian Empire, describing various features of daily life within the Jewish sphere – from both central areas and the peripheries. During

38 Repeated twice in his essays on June 22 and 29, 1881.

39 According to the 1897 census, over 95% of all Jews in the tsarist empire lived within the limiting borders of the Pale of Settlement, see Yaakov Leshchinski, *Dos yidishe folk in tsifern* (Berlin: Klal-Farlag, 1922), 21.

their humble beginnings in the 1860s, the Hebrew newspapers were not able to finance a network of news correspondents, so they had to rely on the good will of whoever was able to write news stories in Hebrew and could afford to post them.[40] Those volunteers, who were sometimes referred to as *pirḥey sofrim* (»cadet writers«), were driven by the deep traditional reverence for the written word found among both the Maskilim and the Orthodox, and were motivated by the enormous esteem in which Jewish society held those who published – virtually any text – in Hebrew. Sixteen was a typical age for a budding correspondent, and many were the complaints leveled at the youngsters whose writing showed neither respect for their elders nor reverence for Hebrew grammar.[41] Nonetheless, this group of young people included some of the future publicists, novelists, and even national-movement activists of the period that extended to World War I. In addition, the correspondents fast became a central and at times vociferous segment of Jewish public opinion, and served as an important force in their local communities in unmasking and warning against social wrongs. The social implications for those who managed to have their work published and see their names printed »in square script« were often dramatic, and their social status and »value« on the match-making market frequently rose almost overnight.[42]

The fact that editors had to rely on their readers to produce news from the Jewish sphere turned the question of correspondent reliability into a critical one. Professional reporters who were on the editors' payroll were just beginning to emerge in the 1880s, but even then the Hebrew papers were still dependent on news sent in by casual, and sometimes unknown, contributors whose trust-

40 In the very first issue of *Ha-Maggid* – the first modern Hebrew periodical to appear – editor Eliezer Lipman Zilberman called upon his readers to write the editorial about »any matter that concerns the good of the Jewish people, or that concerns an individual that he alone, or more people like him, would like to inform the public about«. *Ha-Maggid*, June 4, 1856. The system of correspondents was thus established as an informal journalistic institution that was active well into the 1890s.

41 For instance *Ha-Maggid*, February 12, 1885.

42 Ḥayyim Tchernovits (1870–1949), professor of theology, Hebrew publicist, and sometime deputy state rabbi of Odessa, recalled in his memoirs how his correspondence, published in *Ha-Melits* when he was only sixteen, won him a seat of honor in a meeting of the elders of his town, see idem, *Pirkey Ḥayyim* (New York: Bitsaron, 1954), 112. For a similar story, see Mordekhay ben Hilel Ha-Cohen's memoirs *Me-erev ad-erev* (Vilnius: Greber press, 1904), 130. Publishing a correspondence in the Hebrew press and thus becoming a ›lucrative catch‹ for well-off fathers-in-law, held the promise of a comfortable living for a young Maskil: Y. D. Bayerski, »Sod baḥurim,« *Ha-Melits*, May 12, 1884; Elyakim G. Kressel, *Toldot ha-itonut ha-ivrit be-erets israel* (Jerusalem: Ha-sifriyah ha-tsiyonit, 1964), 13.

worthiness was hard to verify.[43] Hence, if a spurious report was ever accidentally published, it would be discovered by one of the readers – usually a person involved in the matter at hand – who would send a rebuttal to the editorial board. The renegade correspondent would then be blacklisted by the editor in order to prevent any additional publications based upon his false reports.[44] This system of self-correction, which relied on the feedback of the reading public, worked well enough, but the unintentional publication of unreliable news items that could only be detected in retrospect, urged the editors to adapt a series of preventive measures to help them protect their newspapers' credibility from being undermined by such reports: Correspondence sent to the newspaper editors by unfamiliar people had to be authenticated by the local Crown Rabbi or by one of his deputies with an official governmental stamp. In cases in which this was not possible, the correspondent would be requested to have his letter authenticated by someone whom the editors regarded as a reliable witness such as another correspondent or a newspaper distribution agent. Even if the protective system was not entirely flawless, it seemed to have produced satisfactory results on the whole.[45]

Consequently, when examining a journalistic debate in the Hebrew press of the period through the prism of correspondence, and in order to get a satisfactory overview of the matter at hand, it is necessary to consider both the reports that appeared and the rebuttals that were possibly published at a later

43 »As we are far away from the place of occurrence«, wrote Tsederboym after a falsified report from Ekaterinoslav was accidentally published, »and we cannot discuss the details of all the deeds that we are informed of, we can only depend on the reports of our correspondents when we know them to be trustworthy men.« *Ha-Melits*, February 17, 1888.

44 Avraham Tsvi Brodsky from Bessarabia, for instance, was denounced publicly by another reader in *Ha-Melits* for copying old reports from *Ha-Melits* and sending them to another Hebrew newspaper. Tsederboym reassured his readers that he already knew all about Brodsky and his nefarious deeds, indicating that he had already been ›blacklisted‹. *Ha-Melits*, January 24, 1887.

45 See Tsederboym's accusatory footnote in which he raged against »the lying informants from Borisov« (Minsk province), who misled him with a false report. He publicly threatened that no more correspondences from Borisov would be published unless they were to be properly authenticated by the Crown Rabbi, or by »a familiar man« (to the editorial board), see *Ha-Melits*, December 28, 1886. The Crown Rabbi (*Kazennyi ravvin*) was more often than not a mere government bureaucrat, as opposed to the »Spiritual Rabbi« (*Dukhovnyi ravvin*), who was the halakhic authority in the Jewish congregations, see ChaeRan Y. Freeze, *Jewish Marriage and Divorce in Imperial Russia* (Hanover–London: Brandeis University Press, 2002), 95–130. On one rare occasion, talented forgers managed to have a falsified letter published with a fake signature of the substitute Crown Rabbi of Antopol (Grodno province), see *Ha-Melits*, November 17, 1890.

date. Otherwise, another feature typical of the Hebrew press was its uncanny ability to preserve the impulse for heated debates concerning specific topics over long periods of time, often spanning whole decades.[46] This was due to the fact that quite in contrast to the familiar cliché that »today's newspaper wraps tomorrow's fish«, Hebrew newspaper issues were carefully collected at the end of every year, bound in hardcover, and sold at bookstores as sought-after collectors' items even years after they were published. As those yearly volumes became an indispensable part of both personal and public libraries, they enabled their owners to read them again and again as if they were classical literature, while new generations of young enthusiasts became to varying degrees familiar with discussion topics of the past.[47]

The reports supplied by the correspondents therefore assisted both in supporting the debate concerning the *Halanah* prohibition and maintaining it as an engaging topic of discussion for years to come. No less importantly, the appearance of correspondences dealing with the question of Jewish burial traditions signified a shift of venue for the journalistic discussion, which in turn reflected a change in the public debate. Once the discussion exhausted itself in the »high«, intellectual, journalistic sphere, in which editors and rabbis polemicized about halakhic matters, the debate entered the sphere of »current affairs«, with common people using the language of facts to report news.

A short time after Tsederboym published his *Mishlo'aḥ manot*, a steady trickle of reports began to appear in the Hebrew press – mainly in *Ha-Melits*, but also in *Ha-Tsfirah* and *Ha-Maggid* – containing descriptions of confirmed mishandlings of Jews whose death had not been fully determined, and reporting on both Jews and Christians who were supposedly dead but woke up before they were buried. Reports about Christian cases were usually copied from the non-Jewish press. Those concerning Jewish cases were testimonies from the field, describing for the first time how unconscious people, mistaken for dead, were almost buried

46 The *Etrog* – a lemon-like fruit of the citron family, used for ritualistic purposes on the Jewish holiday of *Sukkot* – was the center of a heated journalistic debate that started in the late 1860s, and was still alive and kicking in the 1890s, for it involved the halakhic question (which later turned political) of which type of *Etrog* was preferable, that of Corfu or that of Palestine, see Salmon, »Ha-ortodoksiyah ha-yehudit be-mizraḥ eyropah,« 375; *Ha-Melits*, January 17, 1894.

47 As E. G. Kressel put it: »The newspaper was not only read, it was *studied*.« Kressel, *Toldot ha-itonut ha-ivrit*, 12 (emphasis in the original). One of those young fans of the Hebrew press was Israel's national poet, Ḥayyim Naḥman Bialik (1873–1934), who reminisced in his childhood memoirs on how he used to delve secretly into old copies of *Ha-Melits* and *Ha-Tsfirah* that he discovered in the attic of his home. »*Ha-Melits*, *Ha-Tsfirah* ve-tseva ha-niyyar,« *Kol kitvey Ḥ. N. Bialik* (Tel Aviv: Dvir, 1951), 268–272.

alive, increasing the realization that premature burial was not so infrequent after all, and indeed not a misfortune that occurred »once in a thousand years«.

The case of Shmuel Vonizenski

Among all the reports dealing with suspected premature burials which appeared in the 1880s, the burial ordeal of the unfortunate Shmuel Vonizenski received the widest exposure. All of the first-hand witnesses to this incident who sent their reports to the Hebrew newspapers agreed upon the following details: Vonizenski, a sixty-five-year-old Jew »with a constitution of iron«, visited the public bathhouse in his native town of Smorgon in Vilna province, on a certain Friday afternoon in September 1881.[48] After spending some time in the hot steam he felt unwell and proceeded to the corridor to cool down, where he lost consciousness and collapsed. The doctors who had rushed in could not revive him with smelling salts, and several attempts at bloodletting failed as well due to the »freezing« of the blood in his veins. Once all resuscitation attempts proved futile, a feather was brought and placed against Vonizenski's nostrils, and since no signs of breathing were detected, he was declared dead. Preparations for an immediate funeral then ensued in order to complete his burial before the Sabbath set in. As custom obliged, Vonizenski's body was wrapped in shrouds, shards of clay were put over his eyes and mouth, and he was interred without a coffin, still wearing his prayer shawl (*talit*). Once buried, his body was covered in planks, yet the earth that was put over it was not poured into the grave itself, leaving the body in an enclosed space. According to the reports in *Ha-Melits*, the local spiritual rabbi flew into a rage when he heard of the haste involved with the burial, but there was no turning back.[49]

As opposed to the rabbi, the local chief of police in whose absence – and without his approval – Vonizenski's burial took place, had no qualms about opening the grave when he returned to town two days later. The gruesome sight which unfolded was described both in *Ha-Melits* and *Ha-Levanon* thus: The deceased was found lying a small distance away from his shrouds and prayer shawl which were both stained in blood and vomit. The shards which had been placed on his eyes and mouth were cast aside, and »the face and throat of the body were extremely swollen, while many marks testified that the poor wretch had died quite recently of asphyxia«.[50]

48 David Kupelevitch [a correspondence from Smorgon], *Ha-Melits*, September 13, 1881.

49 Ibid., For a survey of Jewish burial customs, see *Encyclopaedia Judaica,* 1st ed., s.v. »Burial.«

50 *Ha-Melits,* September 13, 1881. Tederboym noted that he had an additional correspondence from Smorgon, which he did not publish, testifying to the

Denials of Vonizenski's alleged premature burial appeared in *Ha-Levanon* a few weeks later when Tsvi Hirsh Fridzon, Deputy Crown Rabbi of Smorgon, wrote a correspondence claiming that none of the reports portraying the state of the body in the grave were true, and that all of the newspaper coverage had been the result of a personal feud between the correspondent, David Kupelevitch, and Vonizenski's son-in-law. Furthermore, he noted, six hours elapsed before the deceased was buried, during which he showed no signs of life, making it highly unlikely that he could have regained consciousness later on.[51] Alongside Fridzon's report there was another correspondence sent in by an anonymous writer using the pseudonym Sh.L.Y., with additional information and a more balanced approach: The deceased had a short neck, he claimed, which made him especially susceptible to strokes. The majority of details concerning the state in which the body was found were true, but – he explained – according to the doctors who examined the deceased, it was not unusual for digested food to spew out of a lifeless body, and the blood which stained Vonizenski's prayer shawl must have trickled out of his severed veins that were cut by the doctors after he collapsed in the bathhouse. There were no signs that the body »moved« in the grave, he concluded, though he admitted that it could have been advisable to postpone the burial for a longer period of time in order to refute any doubts regarding the certainty of Vonizenski's death.[52]

Seen from a 21st-century medical point of view, the reports at hand do not present us with enough information with which to determine that Vonizenski was buried alive. Assuming that all the signs mentioned in the correspondences as proof of his awakening and suffocation in his grave indeed appeared, they could just as well indicate a physiological activity that is known to occur postmortem. The »Vonizenski affair« will thus, for the time being, remain an enigma.[53]

What is clear in this journalistic context is that, in contrast to the uncompromising stance and sweeping denial offered by Rabbi Daykhes as a representative of the Orthodox intelligentsia, the journalistic discussion initiated by reporters moved away from the halakhic and into the scientific sphere. Both supporters and opponents of the custom of immediate burial considered the facts at hand without attempting to interpret present occurrences in accordance

alarming state of the body. The correspondence in *Ha-Levanon* agreed with the publication in *Ha-Melits*, except that it was reported that the deceased was found »lying on his side.« *Ha-Levanon*, September 14, 1881.

51 *Ha-Levanon*, October 7, 1881.

52 Ibid.

53 I am indebted to Dr. Jack Horner, M.D., for examining the journalistic evidence and offering his professional input.

with the past, and without denying a reality that contradicted or opposed the world as it was framed and interpreted by Halakhah. It is intriguing that such a factual discussion mainly took place in a newspaper that was committed to uphold the Orthodox cause, which may possibly suggest that segments of *Ha-Levanon*'s readership were not as conservative as their rabbis.

While criticism of the *Halanah* prohibition concerned itself with the scientific validity of the halakhic ruling, it also addressed the medical and moral qualifications of the officers whose task was to implement religious law. This part of the discussion centered on the Jewish burial societies, and similarly to the whole *Halanah* debate, it too represented an old Maskilic complaint about Orthodox Judaism, for which the Hebrew press offered a new venue of expression.

Administers of burial and death

The institution of *ḥevrah kadisha* (Holy Society) already existed in Talmudic times and was to be found all over the Jewish world – with slight variations – in different centuries and geographical locations, but its fundamental functions remained the same. The duty of its members was to take care of all matters, logistical and otherwise, connected with the handling of the deceased, from their last hours on their deathbeds through their final interment. The *ḥevrah kadisha* performed the ritual cleansing of the corpse, wrapped it in shrouds, carried it to the burial site to the allotted plot, and carried out the actual burial. Their actions were considered to be the greatest religious obligation (*mitsvah*) one could perform, and it was termed a *ḥesed shel emet*, »a true act of grace«, for this was a favor that the receiving party could never pay back.

Among the Jews of tsarist Russia, the *gabayim* (»managers«) of the burial societies were usually the leaders and dignitaries of their congregations. Formally, they were expected to volunteer for service without pay, and they were required to be elected to their office every year. Further down the chain of command were different laborers who belonged to the less prestigious and educated classes, and among them were the *shamashim* (beadles) who were in charge of the manual labor involved, such as carrying the dead and digging graves. A corresponding society of »righteous women« volunteered to offer exactly the same services for deceased women, attending to the sick on their deathbeds, cleansing bodies, and sewing shrouds.[54] Thanks to the high social

54 For the history and role of *the ḥevrah kadisha* in early modern Ashkenazi society, and its position among other religious-philanthropic organizations within Jewish congregations, see Jacob Katz, *Tradition and Crisis: Jewish Society at the End of the Middle Ages* (New York: Schocken Books, 1971), 157–167. For

ranking of its leaders, the *ḥevrah kadisha* was considered to be a prestigious organization, and this prestige very often wielded considerable political power which at times was exploited in dubious manners. Such was the contempt that some burial societies incurred, that Maskilic discourse turned the *ḥevrah kadisha* into a literary topos representing pure evil, and which the novel *Kvurat ḥamor* (»A Donkey's Burial«) by Perets Smolenskin is probably its most outstanding example.[55]

Accusations against burial society *gabayim* extorting considerable sums of money from bereaved relatives who were obligated to bury their loved ones, as well as complaints concerning their vindictiveness in settling personal scores with members of their congregation, punishing them for their »unacceptable lifestyles« after they died, were heard in Congress Poland as early as the 1820s.[56] Reports in the Hebrew press of the last two decades of the 19th century seem to suggest that not much had changed, as a biting editorial in *Ha-Melits* of December 1890 indicated with a summary of the burial societies' transgressions.

There was nothing »holy« about the *ḥevrah kadisha*, the anonymous writer claimed. Its managers avoided any contact with the deceased, leaving the »dirty work« to the *shamashim*, and instead concentrated mainly on assessing how much money they could demand from the bereaved families, very often above and beyond their financial means.[57] Some *gabayim*, the writer argued, were ruthless enough to delay the burial of the deceased as a means of exerting pressure on those relatives who were reluctant to pay, and the allotment of burial

the burial society's role among Polish Jews, see François Guesnet, *Polnische Juden im 19. Jahrhundert: Lebensbedingungen, Rechtsnormen und Organisation im Wandel* (Köln: Böhlau, 1998), 357–386; Anna Michałowska-Mycielska, *The Jewish Community: Authority and Social Control in Poznań and Swarzędz,* 1650–1793 (Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego, 2008), 143–153.

55 Smolenskin (1842–1885), depicted a young Maskil who was persecuted by his coreligionists for stealing the cakes from the *ḥevra kadisha* banquet. This led him to financial ruin and divorce, so in order to survive he was forced to become an informer for the tsarist authorities. This incited the members of his congregation to have him killed, and their revenge was completed when they buried him as they would a beast of burden. The novel was published in installments in Smolenskin's periodical *Ha-Shaḥar* 4 (1872), and printed as a book only after his death (Warszawa: Katsenelbogen, 1901).

56 Marcin Wodziński, *Haskalah and Hasidism in the Kingdom of Poland: A History of Conflict* (Oxford: The Littman Library of Jewish Civilization, 2005), 9–115; Jagodzińska, »Kaddish for Angels,« 268–269.

57 The correspondent from Novgorod-Severskiy (Chernigov province), who went by the pseudonym *Gerve-toshav*, described the unabashed corruption that accompanied elections for public office in Jewish congregations. Victory in the elections was bought, he claimed, »with money, with vodka, and with the fist.« *Ha-Melits*, September 18, 1885.

plots by the *ḥevrah kadisha* very often involved the sale of prestigious locations at elevated prices, even though the cemeteries were public property owned by the congregation as a whole. The money collected from bereaved families often lined the pockets of the *gabayim* themselves, while they were sometimes used to finance the traditional yearly banquets of the burial societies, which, the author claimed, occasionally turned into an outrageous display of gluttony and debauchery. Finally, the author reported that the beadles, whose job it was to handle the corpses, were prone to alcoholism and violence, which was often directed at mourning relatives, or even at other members of the *ḥevrah kadisha*.[58]

The burial societies' exclusiveness in handling the dead and their monopoly on administering funeral arrangements, with all it involved, meant that in practice they – and no one else – determined the certainty of death. Seen in this wider context, the abhorrence found in Maskilic discourse towards the *ḥevrah kadisha* is easier to understand, and all the more so Tsedeboym's aversion towards »the Jewish undertaker and Jewish layabout« who, using their »feather test«, decided who was to be considered dead and ready for burial. Here there were matters of life and death entrusted into the hands of those who were both corrupt and ignorant while they – and not trained men of science and medicine – were the ones who decided not just where one's final resting place would be, but also when one's death became definite. Consequently, reports that depicted the *ḥevrah kadisha* as carelessly – if unintentionally – killing people who happened to lose consciousness in one way or another are numerous, and the following is a partial yet informative list.

One report from Medzhibozh (Podolia province), told of a baby that had received an overdose of prescribed medicinal wine and fallen into a deep sleep. His mother called one of the beadles of the burial society, who rushed to begin funeral procedures before nightfall, but the baby luckily woke up while being ritually cleansed.[59] Similarly, an eighteen-year-old from Lakhva (Minsk province), who was known to suffer from heart problems, lost consciousness and was assumed dead. Fortunately for him, one of beadles who cleansed his body

58 *Ha-Melits*, December 2, 1890. For correspondences depicting drunk and violent *ḥevrah kadisha* beadles, see *Ha-Melits*, June 10, 1883 (from Balta, Podolia province); October 31, 1883 (from Aleksandria, Kherson province); April 28, 1885 (from Vetka, Mogilev province). Tsederboym himself, it was reported after his death, served as one of the managers of the *ḥevrah kadisha* in St. Petersburg for many years, yet it did not prevent him from publicly criticizing his peers when in 1884 one of the *gabayim* attempted to extort money from a bereaved family, see *Ha-Melits*, September 14, 1893; February 1, 1884.

59 *Ha-Melits*, June 12, 1885.

thought he recognized some vital signs, stopped the burial preparations and called a doctor who managed to revive the young man.[60]

A seventeen-day-old infant from Riga who was born prematurely was, however, not as lucky. Thought to be stillborn, the baby was left in a drafty funeral room for the night in order to delay its decay. Come morning the beadles arrived to conduct the burial and realized the child was alive, and the doctor who was rushed in managed to revive it. However, the child did not survive the exposure to the cold and died the same evening.[61] Similarly, the wife of a local rich man in Vorontsova (Kiev province), fell victim to the over-diligent »righteous women« of the local *ḥevrah kadisha*. As she had suffered a second stroke in ten days, the women decided – based on the »feather test« – that this time she was not in a »lethargic sleep« as she had been a week before, so they promptly set off to bury her without consulting a doctor. The correspondent Baruch Kritzstein reported that the »body« swallowed its saliva and groaned while being cleansed, but the pious women attributed those symptoms to the machinations of an »evil spirit«, and the woman was placed in her grave.[62]

The concerns of the imperial authorities

As mentioned before, the *Halanah* debate involved two main spheres of confrontation: The first was a discussion that was internally Jewish; the second pitted the Jews and their religious traditions against the Russian state and its secular laws and regulations. In general, Jewish burial was regarded by the state as a traditional religious custom which the Jews, not unlike other denominations in the Russian Empire, could practice freely according to their ancient law – very much like marriage, divorce, and circumcision. The state lacked the motivation to intervene unless the custom somehow interfered with imperial law or regulations, or if an action was considered to be a transgression by the standards of the denomination itself.[63] The Imperial Medical Codex (*Vrachebnyi ustav*) required that every individual assumed dead would not be buried before he or she was examined by a doctor, or alternatively by a policeman or a priest. Burials were required to be postponed for three days, while there were

60 *Ha-Melits*, February 18, 1887.

61 *Ha-Melits*, May 31, 1886. This tragic story was reported both in the *Rigasche Zeitung* and the *Rigasche Polizei Zeitung* of the same week, and supplemented by an eyewitness account in *Ha-Melits*.

62 *Ha-Melits*, August 15, 1884.

63 As in the case of bigamy, a transgression according to Jewish law, and therefore punishable by the state; see Freeze, *Jewish Marriage and Divorce*, 227.

recognizable exceptions to the law in which urgent burials were permitted, or indeed – vital.[64]

Nonetheless, the Jewish custom of immediate burial represented a clear breach of state law, and the picture that emerges in the Hebrew press reflects a growing interest in Jewish burial customs on the part of the imperial authorities in the 1880s, though the few relevant correspondences dealing with the topic report only local regulations of governors. This might imply local initiatives toward reinforcing state laws with regard to the Jews rather than an imperial policy that was dictated from above. Unfortunately, it is hard to identify what triggered such local legislation, but it seems justifiable to speculate that at least some of these initiatives were spurred on by provincial occurrences and internal conflicts among various Jewish communities.

For instance, the newspapers reported in 1885 that the governor of Podolia province had ordered that all the Jews under his jurisdiction delay the burial of their dead for three days without, however, any clear explanation given for that decision. On the other hand, similar orders were handed down in the province of Bessarabia and in Warsaw in 1887, while in the former case it was specifically noted that the legislation was initiated in reaction to Jews informing on each other.[65] The sporadic nature of these reports seems to suggest that there was generally no strict enforcement of burial regulations with regard to the Jewish congregations, at least as long as no special attention was needed and no suspicion of foul play was raised. As stated before, the arrangement in which the date of death was registered »retroactively« was convenient for both Jewish traditionalists and state bureaucrats, and the prevailing trend seems to have been that such falsified registration was more common in peripheral towns and in the countryside, where the Jewish population was generally more observant and kept to traditional burial customs. In the large cities of Russia and Poland, where police supervision was more pronounced and a greater portion of the Jewish

64 *Svod zakonov Rossiiskoi Imperii*, vol. 11, part 1 (St. Petersburg, 1906), article 1327, 127. Sub-clause no. 4 relates that no burial should take place before the time stipulated by medical regulations. The medical regulations (*Svod zakonov*, vol. 13, book 2, part 1, ch. 4.) provided for a three day delay, yet permitted urgent burial in cases of epidemics (article 713), or in times of warm weather when at least 24 hours passed since the assumed time of death, and clear signs of decomposing were detected (article 714).

65 For Podolia, see *Ha-Melits*, August 10, 1885 (a memorandum issued by the governor to the Crown Rabbis of Balta); for reports from Soroka (Bessarabia) and the reports of mutual informing among the Jews, see *Ha-Melits*, June 21, 1887; for Warsaw, see *Ha-Tsfirah*, November 6, 1887.

population tended to be less attached to religious tradition, Jews seemed to have abided more by state law in this particular regard.[66]

Jewish tradition came into harsh conflict with state law in cases which necessitated special treatment, such as sudden inexplicable death – as in the case of Vonizenski cited above – or when death was known or suspected to have been a result of violent action. An autopsy would then have to be performed before burial, and if the deceased had already been interred, the body would be exhumed for inspection.[67] Jewish Orthodoxy viewed autopsy as a profane action which resulted in *nivul ha-met* (desecration of the dead) so that autopsies performed on Jews were to be avoided at all cost, even if a direct confrontation with the authorities would follow.[68]

Thus, when the body of a ninety-year-old Jew from a village near Liubeshov (Minsk province) who had been murdered sometime before, was discovered on the road to town, his relatives from his native village were not too concerned with informing the police of the murder so those responsible might be found, but instead rushed to bury the old man in Liubeshov, lest the police find out about the body and order an autopsy.[69] Conditions in Russia in this period were such that the number of professional doctors was small, their workload unmanageable, and the support they received from the state meager. Consequently, it is not hard to imagine how the shortage of doctors, especially in rural areas, enabled the Jews to bury their dead in accordance with their customs.[70]

66 For Poland, see Jagodzińska, »Kaddish for Angels,« 273. For postponed Jewish burials in Grodno, St. Petersburg, and Riga, see *Ha-Melits*, January 15, 1894; April 20, 26, and 28, 1893. This tendency toward more conservative Jewish conduct in the countryside and more liberal conduct in towns was known in Germany as well; see Wiesemann, »Jewish Burials in Germany,« 26.

67 *Svod zakonov Rossiiskoi Imperii*, vol. 11, part 1, (St. Petersburg, 1906), article 1327, 127. Sub-clause no. 4, *Vrachebnyi ustav*, in: *Svod zakonov*, vol. 13, book 2, part 1, ch. 4 (article 715).

68 For a discussion of *Nivul ha-met* with extensive halakhic references, see Michael Greyber, *Nitu'aḥ ha-metim le-tsorkhey limud ve-ḥakirah: mi-nekudat hashkafat ha-dat ha-israelit* (Jerusalem: Mad'a, 1943).

69 Eventually word got out and the body had been exhumed and checked by the authorities; see Moshe Epstein [a correspondence from Liubeshov], *Ha-Melits*, September 3, 1888.

70 As late as 1900, there were no more than 19,842 qualified doctors (including military medics) in the Russian Empire, and even less than that in earlier decades. The law required doctors, in the public and private sectors alike, to perform an autopsy in every case that required special attention, and they were obliged to testify in court if foul play was involved. This duty very often obliged doctors to travel long distances at their own expense, see Nancy Mandelker Frieden, *Russian Physicians in an Era of Reform and Revolution, 1856–1905* (Princeton, NJ: Princeton UP, 1981), 266–267, 323.

A rather extreme case, which is nonetheless illustrative for the clash of tradition and state law, was reported in *Ha-Melits* on September 8, 1886: The police commander at Shpola (Kiev province) set out to fetch a doctor from a nearby town to examine a Jew who had died suddenly, and left his deputy in charge of the corpse.[71] The deceased's relatives managed to trick the deputy, however, and conduct a secret burial, while placing an old tombstone over his grave to camouflage it. Two days later, when the commander returned with the doctor, he could not find the grave or even enter the graveyard as the Jewish congregation was physically blocking the way. It took the humiliated state official six weeks before he managed to assemble thirty armed Cossacks and force his way into the cemetery, but even after he dug up a fair portion of it and exhumed an unknown number of corpses, he could not identify the Jew in question. He then had to console himself with arresting members of the family of the deceased and some of the Jews who had obstructed the entrance to the cemetery six weeks previously.

It would generally seem that political rule and medical conditions in Russia during the period in question enabled the majority of Jews who still lived according to their ancient traditions to continue and practice their age-old burial customs. It is also likely that this went on without extracting too high a price from the Jewish congregations who sometimes managed to brazenly ignore state law, or alternatively utilize persuasive measures in dealing with the local authorities. The same pattern of behavior was to be found among Orthodox Jewish congregations in other countries, as in the German states and the Austrian Empire, where laws forbidding premature burial had already been constituted in the 18th century, and there too the issue remained unresolved generations later. Only in times and places where state enforcement was uncompromising – mainly in the second half of the 19th century – did the Orthodox yield to secular legislation, which in turn prompted them to find »halakhic bypasses« to justify their need to delay the burial of their dead.[72]

Conclusion

The shift from religious to scientific thought, inspired by the Enlightenment, spurred on state legislation imposed from above, which in the case of Jewish

71 The term used here for »police commander« is *pakid*, which means »clerk« in modern Hebrew, but this more likely referred to the *stanovoi pristav* (police commander) who was in charge of the local police force, as *pakid* in the Hebrew of that period probably simply meant »officer«. See the translation from Hebrew to Russian suggested in contemporary newspapers, e.g. *Ha-Tsfirah*, July 12, 1892; *Ha-Melits*, October 6, 1893; *Ha-Melits*, November 5, 1894.

72 Samet, »Halanat metim,« 450–451, 455.

burial customs clashed with a two-thousand-year-old tradition and – in the particular case of Russian-Polish Jewry in the 1880s and 1890s – infringed upon the vestiges of a 400-year-old Jewish religious autonomy. In this general context the debate over the *Halanah* prohibition becomes a convenient test case through which it is possible to examine Jewish responses to both external and internal pressures – those that had been applied by the state and its regulations on the one hand, and those which originated from internal Jewish conflicts on the other.

Orthodox Jewry was faced by a threat to one of its foundations, the infallibility of Halakhah, which was a system of conduct designed to encompass virtually every aspect of Jewish life. If this system could be shown to be undecided on such weighty matters as life and death, if it could not remain outside the jurisdiction of scientific criticism – or indeed of any type of criticism – it might no longer be regarded as the perfect, flawless, and timeless system it was thought to be. By further deduction, if Halakhah was not perfect and flawless, it just might show itself to be redundant and irrelevant, and all the more so in a world that was constantly changing and modernizing. From that point on, the road to apostasy, as far as the Orthodox were concerned, seemed wide open.

Consequently, Jewish Orthodoxy could not but act with unfailing suspicion towards any imposed change in traditional customs, even if a halakhic justification for such a change could be found within Jewish juridical sources. That is why even rabbis with some Maskilic inclinations such as Rabbi Daykhes, refused to acknowledge the possible dangers inherent within the ancient burial custom so as not to admit Halakhah's lack of soundness on matters of life and death.[73] Locally, with regard to the burial societies, it is easy to imagine how they feared that tampering with the well established procedures of caring for the dying and handling the dead would somehow compromise their monopoly, threatening their political and economic grip on their congregations.

Not unlike the imperial state, the Hebrew press of Russian-Polish Jewry also served as an agent of change. By reflecting anti-Orthodox ideological approaches and cultivating a new modernized discourse in which novel and non-halakhic solutions for various problems were considered, it succeeded over time to influence and mold public opinion. The special status the Hebrew press enjoyed among its Jewish readers, which categorized it as a literary genre of sorts,

73 A collection of *responsa* (rabbinical correspondence) from the last two decades of the 18th century, from Italy and elsewhere in Europe, shows that the rabbinic elite was not unaware of the dangers of premature burial. But their conservatism eventually won out, and the furthest they were willing to go was to instruct those in charge of the burial procedures to »take extra care« to notice vital signs in those presumed dead. Ibid., 453–455.

preserved the relevancy of the *Halanah* debate for over a decade. While Tsederboym's role in this process was central, it would seem, ironically, that his decision to revive the burial controversy in 1880 was spontaneous, as it was probably triggered by that particular report about the French fur merchant who had almost been buried alive. Tsederboym's familiarity with the *Halanah* debate a hundred years before increased his and his newspaper's prestige as direct heirs to the founders of Haskalah, yet unlike the Orthodox rabbis at the end of the 18th century who disregarded the journalistic discussion, the rabbis in Russia understood the importance of trying to influence public opinion and had no qualms about trying to do so through the printed media. Still, if the Orthodox were doing their best to resist change and avoid the implementation of state law when it conflicted with their religious customs to the point of using, in extreme cases, violence at the local level, they could not stop a journalistic debate from penetrating public discourse and reaching down to the »lower echelons« of Jewish society. Since halakhic debates were no longer an issue restricted to the rabbinical elite and its halakhic correspondence (*responsa*), the weaknesses of religious law on critical issues were now openly discussed and denounced.

At its core, the *Halanah* debate reflects Jewish society's slow, and to a large extent self-propelled mentality shift towards non-traditional modes of thought. The public journalistic debate – in itself an innovation among Russian-Polish Jewry of this period – offered a unique opportunity to advance this process. The rift was growing steadily between those segments of Jewish society that placed science at the center of their system of beliefs and thought, and those who chose religion, with its mystical traditions and the conviction that no new or relevant knowledge could be found outside Jewish lore. Though the journalistic sources do not disclose the extent to which the abolition of the traditional burial custom was successful at the end of the 19th century, it is clear that a fundamental change was well on its way.

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