

Organ in the Synagogue: The Feud Between David Ashkenazi and Abraham Isaac Kook

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Preface

In March 1935, Rabbi David Ashkenazi, the chief rabbi of Oran, Algeria, wrote a long, enraged letter to Rabbi Avraham Yitshak Kook, the chief Ashkenazi rabbi of Mandatory Palestine. It was a rich and scholarly reply to a responsum that Kook had sent to an Ashkenazi Jew living in Oran.¹ Kook's responsum opens thusly:

About those Sephardim in A', who received rabbinical permission to have an organ in their synagogue by a rabbi who claims that all prohibitions, taught to us by our great rabbis, in previous generations, were relevant to Ashkenazi Jews, but not Sephardi Jews....²

- * I wish to thank Professor Moshe Halbertal for the help and advice he gave to me in the writing of this paper.
- ** After this paper was accepted for publication, I learned that Gabriel Abensour published a paper on Ashkenazi's text: "A Letter from Algerian Rabbi David Askénazi to Rabbi Kook Advocating for the Use of the Organ in Synagogue Services," *Zutot* 20 (2023): 1–18. It is most encouraging to see research interest and thinking being directed at this topic. Abensour's work touches on some of the issues discussed in this paper, but naturally the two research projects vary with respect to their thematic focus.
- 1 Since we do not know the recipient's name—Ashkenazi does not mention it, and neither does Kook—we shall hereafter call him Reuben, the rabbinic equivalent of "John Doe."
- 2 "A'" refers to Oran, which is spelled with an Aleph in Hebrew. Avraham Yitshak Kook, *Orah Mishpat: Teshuvot be-Hilkhot Shulḥan Arukh Oraḥ Ḥayyim ve-Ḥoshen*

The opening of Kook's responsum introduces us to a fascinating fact: there was an organ in Oran's central synagogue, which was played on Shabbat and Yom Tov. Kook's harsh criticism of the Oran Jewish community's organ and Ashkenazi's infuriated reply to Kook's accusations stand at the center of this paper. Through a careful reading of Ashkenazi's and Kook's texts, it will strive to show that the heated correspondence tells a more significant story than that of the immediate narrative of a clash between two rabbinical egos. Rather, this paper will look at the question of how the two scholars perceive the debate of the organ's halakhic legality as an opportunity to tackle issues such as power, legitimacy, and hierarchy. It will also provide a better understanding of the life and work of the two scholars, focusing mainly on Ashkenazi, the lesser-known of the two.³ Accordingly, our reading will seek to explore the religiopolitical circumstances that Ashkenazi's and Kook's writing reflect: their communities; the institutions that employed them (at the time the letters were written, both Ashkenazi and Kook had been appointed to their positions by non-Jewish colonial empires—the French and the British); and their understanding of their rabbinical commitments, duties, and abilities.

The opening of Kook's letter brings another important theme to the fore: how the halakhic dispute between the two scholars is deeply interwoven with Sephardi–Ashkenazi tensions. In this sense, we can say that Ashkenazi's text is more than a detailed (and fascinating) portrayal of the life and work of a rabbi in twentieth-century colonial Algeria. It is also a unique testimony to Sephardi self-perception and definition, in itself and against the background of Kook's attacks. The paper will explore this issue from various perspectives by delving into Ashkenazi's rich identitarian discourse and claims for Sephardi distinctiveness.

Mishpat (Jerusalem: Mossad Harav Kook, 1979), 49–50 (hereafter cited as Kook). *Orah Mishpat* was edited by Kook's son and published in 1979, more than forty years after Kook's death in 1935.

- 3 Kook's work has been studied extensively. To name but a few studies from the last ten years: Abraham Ofir Shemesh, "For the Public's Improvement and for the Benefit of the Town': Correspondence Between Rabbi Kook and Residents of the Moshavot in Eretz Israel on Ecological and Environmental Matters," *Modern Judaism* 38 (2018): 44–74; Yehudah Mirsky, *Rav Kook: Mystic in a Time of Revolution* (New Haven: Yale University Press, 2014); Benjamin Ish-Shalom, *Rav Avraham Itzhak HaCohen Kook: Between Rationalism and Mysticism* (Albany: SUNY Press, 2012).

In order to discuss how the two scholars understand the organ's halakhic legality, explore the religiopolitical environments in which Ashkenazi and Kook are embedded, and address the Sephardi-identitarian discourse, the paper will analyze Ashkenazi's dense and sometimes convoluted responses to Kook's accusations. Unraveling the deep layers of Ashkenazi's reasoning, we shall deconstruct his reply to Kook into different argumentations, artificially constructing a systematic debate of his claims. The first section gives a general description of the scholars, the texts they exchanged, and the wider context of the question of the organ in the synagogue. The second section discusses Ashkenazi's portrayal of Reuben's character and motivations. The third section examines Kook's decision to intervene in Oran community matters, both from Ashkenazi's perspective and from a general perspective. The fourth section surveys Ashkenazi's portrayal of rabbinical powers, and the fifth and sixth sections explore Ashkenazi's halakhic reasoning for allowing organ music to be played in Oran's synagogue. The concluding section summarizes the research and discusses some of the pertinent issues related to our reading.

The Scholars, the Texts, and the Organ

Before we begin our analysis of the texts and the study of the topics mentioned above, we shall give a brief biographical sketch of the two scholars. Avraham Yitshak Kook was born in Griva, Latvia, in 1865. In 1896, he became the rabbi of Bauska (Boisk), Latvia. In 1904, at the age of 38, he left to become the rabbi of Jaffa and the surrounding agricultural colonies. In 1919, Kook was appointed as the rabbi of the Ashkenazic communities in Jerusalem, and in 1921, he was nominated as the first chief Ashkenazi rabbi of Mandatory Palestine, a post he held for the rest of his life. He died in 1935 in Jerusalem.

David Ashkenazi was born in Oran, Algeria, in 1898. Orphaned at a young age, he had to support himself, working as an accountant and a sales representative while he continued to study at the synagogue and then the yeshiva of Rabbi Hayyim Touboul, who became his father-in-law when Ashkenazi married his daughter, Rachel. The couple had eight children, among them Léon Ashkenazi, also known as Manitou. Ashkenazi and Touboul founded a school of modern religious education, Yagdil Torah, in Oran in 1919. In 1928, Ashkenazi was named deputy *dayyan* of Oran. In 1929, Ashkenazi acted as interim chief rabbi of Oran during the illness of Rabbi Jonas Weil. After Weil's death in 1930, Ashkenazi succeeded him, thus becoming the first chief consistorial rabbi of Oran not to hold a French university degree.

Born, raised, and trained in Oran, Ashkenazi did not attend the Jewish Seminary in Paris. Nevertheless, he served as the chief rabbi of Oran from 1930 until 1960, when he was appointed as the chief rabbi of Algerian Jewry.⁴ He remained in this office until Algeria became independent in 1962 and was the only Sephardi incumbent of the Algerian chief rabbinate during the entire period of French rule. He died in Paris in 1983.⁵

Whereas Kook's life and work are well documented, Ashkenazi is less familiar. While this paper will not fill that void, it will provide a concise encounter with some aspects of his scholarship and leadership. Hopefully, future research will address these knowledge gaps and lay the foundations for a thorough survey of Ashkenazi's work. Consequently, this study will not delve into a detailed account of Ashkenazi's personal and professional biography. However, it will call attention to the fact that, like Kook, Ashkenazi was an officially appointed chief rabbi nominated by a colonial empire: France. We shall speak about the ramifications of Ashkenazi's and Kook's colonial appointment in detail below. At this point, for our purposes, it will suffice to call attention to this fact before we move on to describe the texts that Ashkenazi and Kook wrote to each other, texts that are at the heart of this paper.

In March 1935, Ashkenazi wrote a letter to Kook as a reply to Kook's letter to Reuben, an Ashkenazi Jew living in Oran. As we do not have the complete correspondence between the three men—namely, Reuben's letter to Kook and Kook's original answer to him—we cannot tell for certain which text Ashkenazi is addressing when he pens his reply to Kook. However, it seems very probable that the text Ashkenazi is referring to (or a very close version of it) can be found in *Orat Mishpat*.⁶ The responsum (as it appears in the edited book), dated 14 Tevet 5695 (i.e., December 20, 1934) does not mention a specific recipient.⁷ Discussing the matter of Sephardic rabbinical

4 For a contemporary report about Ashkenazi's nomination, see "Ha-Rav David Ashkenazi Rabbah ha-Roshi Shel Algier," *ha-Arets* (Tel Aviv), March 10, 1960, National Library of Israel.

5 For more details, see Richard Ayoun, "Le Grand Rabbin d'Algérie David Askénazi," *Revue Européenne des Études Hébraïques* 7 (2002): 103–8; see also Monique Lévy, Valérie Assan, and Jean Laloum. "David Askénazi, Grand Rabbin d'Oran, d'Algier et d'Algérie," *Archives Juives* 55 (2022): 144–47.

6 For the full text, see Kook, 49–50.

7 At the end of the text there is a short note (maybe added and edited by the editors of the book) which is addressed to Hayyim Lashtz. Most likely, Lashtz is not the

permission to have an organ in the synagogue, Kook does not beat around the bush, as he starkly asserts that “it seems simple that these things have no basis.”⁸

We cannot know for certain who decided to put an organ in Oran’s synagogue, which was inaugurated in 1918.⁹ Wealthy lay leaders? Consistory members? Presently, we are unable to determine who came to this decision.¹⁰ But the fact is that an organ was placed inside the synagogue and played during Shabbat and Yom Tov worship, with the permission (according to Kook’s text) of the local rabbinate. As a detailed analysis of halakhic and historical aspects of organ playing in the synagogue is beyond the scope of this paper, we will provide a concise summary of this topic in order to explain why organ playing in the synagogue (on Shabbat and Yom Tov, but also in general) ignites such a fierce dispute between the two scholars.

Although there are earlier testimonies of an organ being played during worship (e.g., the Prague *siddur* from 1679), the decision of the Hamburg Reform temple in the early years of the nineteenth century to include organ music in worship aroused furious opposition.¹¹ While the organ was one of several changes to ritual initiated by the Hamburg community, it became a symbol and a watershed issue for European Jewry and ignited a fierce struggle between what would become Jewish Reformism and ultra-Ortho-

original addressee of Kook’s letter but was sent a copy of it since (according to Kook) he wrote to Kook several letters with questions about organ music being played in synagogues.

8 Kook, 49.

9 For more information about the synagogue, and pictures of its exterior and interior, see: “LA GRANDE SYNAGOGUE D’ORAN,” Centerblog, April 17, 2014, <http://benzaken-descendance.centerblog.net/150-la-grande-synagogue-oran>.

10 It is possible that the organ was Simon Kanoui’s—the head of the consistory of Oran—idea. David Nadjari describes him as a person who “always defended the idea of a modernization by stages which would not upset the conscience. A whole series of measures is to be put to its credit.” See David Nadjari, “Simon Kanoui, Président du Consistoire d’Oran, Conseiller Municipal, Conseiller General,” *Archives Juives* 36 (2003): 136–39. Charvit suggests the organ was put in the synagogue by Ashkenazi’s French predecessors. See Yossef Charvit, “The Historic Connection between the Rabbinic Leaders of Algeria and Eretz Yisrael in the Era of Change (1830–1962),” *Libi ba-Mizrah* 1 (2019): 295–322 (306) (Hebrew).

11 See David Ellenson, “A Disputed Precedent: The Prague Organ in Nineteenth-Century Central-European Legal Literature and Polemics,” *Leo Baeck Institute Yearbook* 40 (1995): 251–64.

doxy.¹² Serving both as object and subject around which Jewish identity and affiliation were forged, Conservative rabbis identified the organ with Christian ritual and therefore perceived it as “an idol in the Sanctuary.”¹³ Those who would become the forefathers of Reform Judaism adopted it as a symbol of the Jewish ability to adapt to and survive modernity. One of the prominent voices in this struggle was Moses Schreiber (also known as *Hatam Sofer*), who wrote several important texts against organ music.¹⁴ Below, we will see that both Ashkenazi and Kook address *Hatam Sofer’s* texts, interpreting them differently.

With the organ serving as a symbolic issue around which many Jewish individuals and communities define their Jewishness, it is no wonder Kook’s opinion on the matter of Oran’s central synagogue’s organ is unequivocal. He forbids it, mentioning several halakhic arguments backing up his ruling. Firstly, he denies the possibility that different rules could apply to Sephardi and Ashkenazi Jews with regard to organ music. Kook does acknowledge that in some cases, there are differences in custom but asserts firmly that for organ music, this is not the case: It is not a *minhag* (a Jewish religious custom prevailing in a particular community, having authority through long observance) but a prohibited activity that goes against the essentials of the Torah (*gufei Torah*).¹⁵ He also stresses that the issue of organ music was thoroughly

12 For a full description of the debates about the Temple of Hamburg, see Michael A. Meyer, *Response to Modernity: A History of the Reform Movement in Judaism* (Detroit: Wayne State University Press, 1995), 47–61.

13 *M. Ta’an.* 4:6.

14 The texts were published in *Eleh Divrei ha-Berit*—a collection of twenty-two letters written by leading scholars, from Germany, Hungary, Poland, and other countries, who opposed what would become the first buds of the Reform movement. We should note that among the scholars whose letters were published in the rejoinder were several Sephardic rabbis (Abraham Eliezer ha-Levi, David Hayyim Malakh, Samuel ben Moses ha-Kohen, and Abraham Hayyim Tapiya, to name a few). The book was published in Altona in 1819. For the full book and Schreiber’s letters, see <https://hebrewbooks.org/44543>. For more on Schreiber and Jewish ultra-Orthodoxy, see Moshe Samet, “The Beginnings of Orthodoxy,” *Modern Judaism* 8 (1998): 249–69. For a more multifaceted approach towards Schreiber’s opinions regarding secular knowledge and education, see Aaron M. Schreiber, “The Hatam Sofer’s Nuanced Attitude towards Secular Learning, Maskilim and Reformers,” *Torah U-Madda Journal* 11 (2002): 123–73.

15 Kook, 49. We shall further explain the halakhic aspects of Kook’s argumentation when we study Ashkenazi’s reply.

debated (and banned) by former generations, most likely referring to *Eleh Divrei ha-Berit*, which he considers as relevant and compelling to all Jews.

After classifying the organ question thusly, i.e., as forbidden to all and an offense against the essentials of the Torah, Kook adds that the employment of this instrument during worship violates not only the ban on the use of musical instruments on Shabbat and Yom Tov but the biblical injunction against imitation of non-Jewish religious practices (*hukkat ha-goyim*, which is based on Lev 18:3, “Thou shalt not walk in their ways”¹⁶) and the rabbinical prohibition against emulating the *minim* (Jewish heretics) as well. Claiming that organ music is a common feature in churches and Reform synagogues, and therefore falls under the definition of *hukkat ha-goyim* and *minim*, Kook sends out a clear message to both Reuben and (mainly, through Reuben to) Ashkenazi: organ music is not to be played in synagogues *anywhere*.

Most probably, Ashkenazi obtained a copy of Kook’s text from Reuben, who sent it to him via post.¹⁷ In response, he pens a lengthy letter, which was sent directly to Kook, and portrays an enraged scholar who is extremely annoyed with Kook’s responsum—its content and general gist. Let us now examine his text more closely.

16 For more on this topic, see David Ellenson, “The Role of Reform in Selected German-Jewish Orthodox Responsa: A Sociological Analysis,” *Hebrew Union College Annual* 53 (1982): 357–80.

17 See David Ashkenazi, Letter to Rabbi Kook, 1935, 1 (hereafter cited as ASK). For the full manuscript, see [https://www.nli.org.il/he/manuscripts/NNL_ALEPH997008653288805171/NLI#\\$FL138198111](https://www.nli.org.il/he/manuscripts/NNL_ALEPH997008653288805171/NLI#$FL138198111). A Hebrew transcription of Ashkenazi’s text can be found in the appendix of this paper. I wish to thank Rabbi Prof. Meir Benayahu’s Collection for allowing me to publish this transcript. References to page numbers of [translated] citations from ASK refer to the manuscript, not the transcript.

It is important to mention that there are some discrepancies in the timeline of the correspondence we just described. In *Orah Mishpat* Kook’s responsum is dated 14 Tevet 5695 (i.e., December 20, 1934). However, in his reply Ashkenazi mentions a letter Kook wrote to Reuben on 18 Shevat 5695 (i.e., January 22, 1934). Did Reuben receive two different letters from Kook? If so, what was in each letter? At this point we are unable to draw any definitive conclusions about these issues. Nevertheless, since Ashkenazi’s text addresses all of the halakhic arguments Kook presents in the text from *Orah Mishpat*, we shall assume he read the text, as it appears in the book, or one very similar to it.

Hypocrites, whose actions are like the act of the
wicked Zimri, but who request a reward like that
of the righteous Pinḥas

The first layer we shall explore in analyzing Ashkenazi's reply to Kook's claims and accusations is Ashkenazi's portrayal of Reuben:

One of our Ashkenazi brothers came to live with us, and we did him many favors, as Jewish people do. He has been quarreling with us for months. . . . But then this man joined useless, base fellows (sons of *Beliya'al*), who desecrate the Shabbat in public. . . .¹⁸ And he wished to assume the reputation of a God-fearing person. . . . But it is of people like this that the Sages said: "Not everyone who wishes to assume the reputation of a God-fearing person may assume it"¹⁹—hypocrites, whose "actions are like the act of the wicked Zimri, but they request a reward like that of the righteous Phineas."²⁰

The biblical story tells of Zimri, who "came and brought unto his brethren a Midianite woman in the sight of Moses, and in the sight of all the congregation of the children of Israel" openly defied Moses's order to refrain from social and sexual interaction with Moabite and Midianite women.²¹ Zimri was slaughtered by Pinḥas, the grandson of Aaron, the high priest. For his deeds Pinḥas, and his seed after him, received God's "covenant of peace" and "the covenant of an everlasting priesthood; because he was jealous for his God, and made atonement for the children of Israel."²²

Describing Reuben as a criminal and a hypocrite who asks for undeserved rewards and honors, Ashkenazi depicts a harsh picture of a foreigner who

18 Ashkenazi's text is rich with biblical, mishnaic, talmudic, and halakhic expressions. In order to give the reader a sense of his layered writing, most textual references will be referred to in footnotes. Biblical verses are taken from Mechon Mamre's website (<https://mechon-mamre.org>). Other citations are mostly from Sefaria (<https://www.sefaria.org>).

19 *M. Ber.* 2:8.

20 *B. Sotah* 22b. ASK, 1–2.

21 Num 25:1–8.

22 Num 25:10–13.

came to Oran “naked and bare”²³ and was received with open arms by the local community, only to cause a great deal of trouble for the community and its leaders: firstly, by publicly desecrating the Sabbath, and later on, when he wished to “assume the reputation of a God-fearing person,” by confronting the community about its decision to play the organ at Shabbat services in the great synagogue.

Pointing out that religious piety is probably not what lies behind Reuben’s complaint about the organ, Ashkenazi’s claim is that Reuben picked this topic in order to try and make a name for himself and to condemn Oran’s religious leadership, first from within, and then by turning to outsiders such as Kook. By doing so, i.e., portraying Reuben as a transgressor and a provocateur who challenges a respectable, hospitable, and charitable community, Ashkenazi casts doubt not only upon Reuben’s intentions but upon Kook’s as well. Asking Kook whether Reuben, a man who disregarded Shabbat in public, is the one who should seek *humrot* (i.e., religious stringencies), Ashkenazi’s rhetorical question alludes to more than Reuben’s insincerity. It paints as dubious Kook’s willingness to believe a stranger writing from a city with a storied halakhic tradition and to actually address Reuben’s claims without checking first with the local rabbinate. It calls into question Kook’s behavior and his motives.

And I wonder about a great man such as yourself

And now, this man has turned to you, meddling with our business. And today I have received, through the mail, a copy of your ruling on this matter that he sent me. And I wonder about a great man such as yourself, deciding to intervene in the affairs of a community that is not under your jurisdiction. The right of redemption is not thine,²⁴ especially as you did not know this troublemaker²⁵ or listen to the judges who actually

23 ASK, 1.

24 Jer 32:7.

25 1 Kgs 18:17.

presided over this matter. Although I know it, my son, I know it,²⁶ that anyone who responds to such a question. . . .²⁷

As we have explained above, our analysis of Ashkenazi's text deconstructs his arguments into several distinctive layers (while the original text has a more shuffled structure). Accordingly, after examining Ashkenazi's anger with Kook for not seeing Reuben for who he was—a person “who goes about and misleads, then he goes up and accuses”²⁸—we turn our attention to other aspects of Ashkenazi's criticism of Kook's letter to Reuben: what he perceives as Kook's disrespect to Oran's rabbinate, which Ashkenazi identifies as an attempt to undermine halakhic decisions made by a local jurisdiction. Before we explore this notion, we must point out that, despite Ashkenazi's anger, Kook is not doing something forbidden or unprecedented. In fact, he is doing what rabbis are supposed to do—answer halakhic questions that may be sent from close or from afar.

However, despite being normative, we should not be naive about Kook's line of action. Most probably, he was well aware of the fact that he was ruling on a matter other scholars had already debated. Interestingly, by answering Reuben, an individual who approached him from afar with a question about the halakhic decisions of a functioning community, Kook is in effect transgressing a code of ethics set by *Hatam Sofer* in one of the letters that can be found in *Eleh Divrei ha-Berit*—the same book of collected writings to which Kook is referring when writing to Reuben. In one of the texts that *Hatam Sofer* contributed to the book, he writes as follows:

And really most of the sages of Israel who are honest in their hearts are careful not to answer the individual who asks, when there is an expert in his city. When the question came from the local expert himself, or sometimes there is a disagreement between the sages and one of the parties asks one of the *gedolim* (rabbinic luminaries), then the respondent answers the local rabbi, asking him, “Why did you rule this way? It is actually your opponent who is right!”²⁹

26 Gen 48:19.

27 ASK, 1–2.

28 *Gen. Rab.* 65.

29 *Eleh Divrei ha-Berit*, 39.

We see that while adhering to *Hatam Sofer's* teaching in regard to organ music, Kook disregards his recommendations about how one should approach local authority when an individual from another community sends a query. Accordingly, we should look at the letter he sent to Reuben as more than an academic-theoretical debate. It is also a power play, and both Ashkenazi and Kook are well aware of it, as they discuss whether Sephardi Jews have rabbinical permission to play the organ in their synagogue.

Since we do not possess the full correspondence—between Reuben and Ashkenazi, and Reuben and Kook—we cannot know for sure, but it seems highly likely that at some point in Reuben's conflict with Oran's rabbinate (probably with Ashkenazi) he was told that "all prohibitions, taught to us by our great rabbis in previous generations, were relevant to Ashkenazi Jews but not Sephardi Jews,"³⁰ and that *Hatam Sofer's* ban was aimed only at Ashkenazi communities, "but our Sephardic rabbis have yet to ban Oran's synagogue, in which for more than eighteen years *Ḥasidim* and *Ḥaredim* have prayed, and no one opened their mouth, or chirped."³¹

As we have seen, Kook's reply to this attempt to distinguish local/Sephardi ruling from Ashkenazi ruling is brusque. According to Kook, such claims have "no foundation at all,"³² as Ashkenazi and Sephardi Jews share the same Torah, "given from one shepherd."³³ We will go deeper into the analysis of Kook's and Ashkenazi's halakhic arguments later. Currently, without attempting to resolve the halakhic dispute between Ashkenazi and Kook over the "correct" understanding of the reach of *Hatam Sofer's* (and other scholars as well) ban of organ music, it is rather easy to see how Kook's intrusive and, more importantly, inclusive and unifying approach can be perceived as annulling not only a specific ruling but an entire tradition. We can also understand why Ashkenazi finds Kook's line of argumentation and tone dismissive, perceiving his unequivocal statements as undermining local/Sephardic leadership rather than vindicating the rule of a shared law. Ashkenazi's response to this aspect of Kook's letter touches on several issues.

Ashkenazi mentions that he has a ruling from a fellow Sephardi rabbi—Rabbi Raphael Ankawa—who supports playing music on Shabbat and

30 Kook, 49–50.

31 Isa 10:14. ASK, 3.

32 Kook, 49.

33 Eccl 12:11.

Yom Tov.³⁴ Unfortunately, Ashkenazi does not cite from this text, or indicate where it could be found. Thus, at present, we do not have Ankawa's ruling on the matter. However, even if we did, we need to acknowledge that despite the adamant tone of Ashkenazi's argumentation, he is slightly coy about the actual state of affairs with regard to organ music in Sephardi communities. Organ music being played in the synagogue on Shabbat and Yom Tov was not a widespread Sephardi *minhag*. In fact, several Sephardi rabbis articulated their objections to organ music in *Eleh Divrei ha-Berit*.³⁵ And while during the twentieth century there could have been Sephardi congregations in which the organ was played, it was not a common or widespread Sephardi practice, and not all Sephardi rabbis supported it. See, e.g., a responsum written by Ben-Zion Meir Hai Uziel in 1947, in which he scolds a Sephardi congregation from Buenos Aires for placing an organ in their synagogue:

And I find it my duty to inform you that this thing is vine slips of a stranger in the vineyard of Beit Yisrael, and it is a duty and mitsvah to uproot it completely.³⁶

Interestingly, Uziel's objection to the organ does not focus on the *hukkat ha-goyim* or *minim* laws—although he does mention that the organ was introduced into the synagogue “under the influence of the Reform community.”³⁷ Citing *Hatam Sofer* (HM 192), Uziel claims that the ban on the organ is based

34 Raphael Ankawa (1848–1935) was the Chief Rabbi of Morocco and a noted commentator, talmudist, *posek*, and author.

35 *Eleh Divrei ha-Berit*, 26, 45–52, 63–69.

36 See the full responsum, dated 4 Elul 5707 (i.e., August 20, 1947), at https://www.sefaria.org/Mishpetei_Uziel%2C_Volume_VIII%2C_Orach_Chayim.18?lang=en. See also Isa 17:10.

Ben-Zion Meir Hai Uziel (1880–1953) was the Sephardi chief rabbi of Mandatory Palestine from 1939 to 1948, and of Israel from 1948 until his death in 1953. For more on his work, see Amihai Radzyner, “Rabbi Ouziel, the Tel-Aviv-Jaffa Rabbinate and the Rabbinical Court of Appeal,” *Bar-Ilan Law Studies* 21 (2004): 129–243 (Hebrew); Moshe Hellinger, “Individual and Society, Nationalism and Universalism in the Religious-Zionist Thought of Rabbi Moshe Avigdor Amiel and Rabbi Ben-Zion Meir Hai Uziel,” *Jewish Political Studies Review* (2003): 61–121; Zvi Zohar, Amihai Radzyner, and Elimelekh Westreich, ed., *Rabbi Benzion Meir Hai Uziel: Thinker, Halakhist, Leader* (Ramat Gan: Bar Ilan University Press, 2020) (Hebrew).

37 *Ibid.*

on the prohibition against “sing[ing] the Lord’s song on foreign ground,”³⁸ which he regards as a twofold issue: the prohibition against showing joy in exile, and the prohibition against practicing rituals that were performed in the Temple, even if the synagogue is a “miniature temple” (*mikdash me’at*).

The differences between Ashkenazi and Uziel—in argumentation, reading of *Hatam Sofer’s* work, and conclusions—are fascinating. It is clear that more research needs to be done into the question of organ music in Sephardi congregations: Were there many congregations in which the organ was played? In the responsum cited above Uziel mentions another congregation (probably Sephardi) in which an organ was played during prayers, in Paris. We also know of a Sephardi community of Bordeaux that had a choir beginning in 1821.³⁹ Were there other Sephardi rabbis who approved of this ritual? And if so, on what grounds?

At this point, we cannot venture to say more on this important topic. Therefore, let us turn our attention to another tactic that Ashkenazi deploys, in addition to Ankawa’s approval and the claim that *Hatam’s Sofer’s* ban was aimed only at Ashkenazi communities, in order to refute Kook’s attempts to disregard local/Sephardi halakhah:

This and more, if . . . *Hatam Sofer’s* ban is extended to all congregations, old and new, you should smite the land with utter destruction.⁴⁰ America, Europe, France, and Africa—did you send them thy sweet words?⁴¹ Or perhaps you decided that silence is fitting for the wise?⁴²

Ashkenazi’s point is clear as he asks Kook why he does not write to the many (Ashkenazi) communities in which an organ is played on a regular basis. Why does he choose to focus solely on one Sephardi community, which has its own halakhic traditions and rabbinical institutions? A possible practical

38 Ps 137:4.

39 For more on progressive Jewish congregations in France (including Sephardi communities), see Stephen Berkowitz, “Progressive Judaism in France,” *European Judaism* 49 (2016): 19–31.

40 Cf. Mal 3:24: “And he shall turn the heart of the fathers to the children, and the heart of the children to their fathers; lest I come and smite the land with utter destruction.” Ashkenazi is using the Hebrew word “*herem*,” which can mean “ban” or “destruction.”

41 Prov 23:8.

42 *B. Pesah*. 99a. ASK, 4.

answer would be that Kook is answering a question sent to him rather than embarking on a global crusade. However, when we look at Kook's biography and career, which Ashkenazi was very familiar with, we see that Kook did have global, unifying ambitions, especially earlier in his career. Appointed as the first Ashkenazi chief rabbi in Mandatory Palestine in 1921, Kook entered the office with a vision of establishing an institution resembling the Sanhedrin, which would function as a Jewish high court for the whole world. His hopes were soon dashed, however.⁴³ By the time he delivered his sweeping ruling regarding the playing of organ music in the synagogues of Oran, he was all too aware that the Chief Rabbinate had no legal power beyond the narrow realm assigned to it by the British—namely, the personal status of Jews in Mandatory Palestine. Still, as Ashkenazi complains, Kook chooses to write to Reuben as if he has the right to intervene with any community, disregard its local jurisdiction and traditions, and promote his own Ashkenazi halakhic agenda.

You have no power or might of hand at all;
thou art as I am

After criticizing Kook's dismissive style, complaining about his attempt to marginalize Oran's rabbinical sovereignty, and ridiculing his global ambitions, Ashkenazi turns his attention from Kook's failure to establish (Ashkenazi) uniformity to his inability to rule in his own home, i.e., to control the population he was nominated to oversee:

Pray tell me . . . did you excommunicate all those groups of our Ashkenazi brothers, who came to the beautiful land⁴⁴ and defiled it with their transgressions and their detestable things?⁴⁵
You have no power or might of hand at all; thou art as I am.⁴⁶

An interesting aspect of Ashkenazi's anger unfolds in that Kook is expecting him to do what he himself fails to do in his own jurisdiction: achieve compliance. Here we learn, for the first time, that despite his confrontational

43 Menachem Friedman, *Society and Religion: Non-Zionist Orthodoxy in Eretz-Israel, 1918–1936* (Jerusalem: Yad Ben-Zvi, 1978), 128 (Hebrew).

44 Dan 11:16.

45 Nahmanides on Deut 8:18.

46 2 Kgs 3:7. ASK, 4.

rhetoric, Ashkenazi does not approve of the organ either. We shall return to this important matter later. For now, let us further explore Ashkenazi's accusation that Kook has no power over "his people." As we know, Kook was a highly regarded scholar. He had two rabbinical positions (in Zaumel and Bauska) before being invited to be Jaffa's (1904) and later on Jerusalem's (1919) chief Ashkenazi rabbi. In 1921, he was nominated by the British Empire to rule as the Ashkenazi chief rabbi of Mandatory Palestine. However, despite his scholarly greatness and his official nominations, in reality, many a time Kook was unable to implement his religious agenda on the Jewish population, especially with regard to secular and Haredi societies.

Interestingly, after attacking Kook for this inability, Ashkenazi confesses that he, too, is unable to enforce his religious agenda on the community he was nominated to rule:

We now must discuss what made us, the Haredim, who protect His name, remain silent in regard to the organ in our community. This took place in this way: It has been almost four years since I was nominated as chief rabbi. But the organ has been in place and in use in the Great Synagogue many years before. . . . And my predecessors were not pleased, and protested it, but the ruling committee would not hear of it.⁴⁷

As we have mentioned above, we cannot know for sure who decided to place an organ in Oran's synagogue. Reading Ashkenazi's account of how it came to be, it seems that this was not a rabbinical decision. As Ashkenazi describes it, his predecessors were not pleased with the organ, but were unable to prevent it, and he inherited this situation when he came into office. Alongside describing the "ruling community" as a public body that holds actual power to make decisions with regard to the central synagogue's structures and ritualistic features—even such a controversial item as an organ—elsewhere in his text Ashkenazi mentions other institutional restraints on his rabbinical independence and authority: "the sovereigns of this land."⁴⁸

Ashkenazi does not elaborate on the nature or mechanism of these restrictions, referring probably to regulations instituted by the French colonial regime, which sought to govern and oversee every aspect of the rabbis' work in Algeria. However, although we cannot know for sure which

47 ASK, 5.

48 ASK, 4.

specific regulations Ashkenazi is referring to, it is important to note that he describes the colonial authorities as a regulating force that must be taken into consideration when making rabbinical decisions. Accordingly, we come to realize that, perhaps unintentionally, Ashkenazi's reply to Kook draws a revealing portrait of a twentieth-century Algerian rabbinate as limited by and bound to two secular-civil systems: the consistory and the colonial regime. As we cannot give a full account of the creation of the French consistorial system and its implementation in colonial Algeria, let us touch upon the major events and timeframes that shaped the social-political-religious conditions to which Ashkenazi is referring.⁴⁹

On March 17, 1808, an imperial decree—*Décret Impérial du 17 Mars 1808 Qui Ordonne L'exécution du Règlement du 10 Décembre 1806 Concernant les Juifs*—gave the force of law to the 1806 *règlement*, an official document that formulated the work done by the "Assembly of Jewish Notables,"—French officials and other Jewish leaders—into an organized, state-recognized policy.⁵⁰ The 1808 decree, which Albert describes as a ruling that "all subsequent laws stem from, modify, or react to,"⁵¹ regulated almost every aspect of Jewish life: marriage, education, synagogues, rabbinate, and ritual. All were supervised by and accountable to the state, through varied outer and inner mechanisms

49 For a thorough review of Algerian consistories, see Valérie Assan, *Les consistoires Israélites d'Algérie au XIXe siècle: "L'alliance de la civilisation et de la religion"* (Paris: Armand Colin, 2012). For a general treatment of the subject—consistories, Jewish communities, and French government—see Phyllis Cohen Albert, *The Modernization of French Jewry: Consistory and Community in the Nineteenth Century* (Hanover: University Press of New England, 1977).

50 On the Assembly and the Grand Sanhedrin, see Jay R. Berkovitz, "The Napoleonic Sanhedrin: Halachic Foundations and Rabbinical Legacy," *CCAR Journal* 54 (2007): 11–34; Joshua Schreier, "Napoleon" Long Shadow: Morality, Civilization, and Jews in France and Algeria, 1808–1870," *French Historical Studies* 30 (2007): 77–103; Pierre Birnbaum, *L'aigle et la Synagogue: Napoléon, les Juifs et L'état* (Paris: Fayard, 2007).

As for the 1808 decree, see Jonathan Zvi Kaplan, *Between the Devil and the Deep Blue Sea? French Jewry and the Problem of Church and State* (Providence: Brown Judaic Studies, 2009); Patrick Girard, *Les Juifs de France de 1789 à 1860: De L'émancipation à L'égalité*, (Paris: Calmann-Lévy, 1976). For the full text of the decree, see Girard, 277–82.

51 Albert, *Modernization of French Jewry*, 58.

of control, located (mostly) within the consistorial system, which was also initiated by the 1808 decree.⁵²

Soon after the French invasion of Algeria, which began in 1830, the colonial regime targeted autochthonous Jews as candidates for a similar religious reorganization.⁵³ The local rabbinate was one of the main objectives of this mission to ameliorate native Jewry. In 1842, two delegates from the Marseilles consistory—Isaac Altaras and Joseph Cohen—presented the French government with a report about the Jews of Algeria (the Altaras and Cohen Report). The report described Algeria's Jewish life as degenerate and in dire need of fundamental reform; highlighted the poor state of native spirituality and of the local rabbinate; and suggested that autochthonous religious leadership be repressed and abandoned in order to make way for new and improved faith and leadership—preferably from “countries where the flame of intelligence and spiritual freedom shone for the Israelites,” i.e., “most modern European states.”⁵⁴

The constituting of the Algerian consistorial system in 1845 and the appointment of Michel Aaron Weill (born in Strasburg, educated and ordained at the *Ecole Centrale Rabbiniq*ue in Metz) as chief rabbi in 1846, enforced Altaras and Cohen's recommendations, applying far-reaching restrictions on local religious leadership, whose jurisdiction over their coreligionists was already severely limited by the *Ordonnance Sur l'organisation de la Justice en Algérie* from September 26, 1842.⁵⁵ The *Crémieux* decree, which granted full French

52 Michael R. Shurkin, “Consistories and Contradictions: From the Old to the New Regime,” *Historical Reflections/Réflexions Historiques* 32 (2006): 80–81.

53 On the mission of civilization, and how it shaped the interactions between the French, French Jews, and Algerian Jews, see Lisa M. Leff, “Jews, Liberals and the Civilizing Mission in Nineteenth-Century France,” in *The Jews of Modern France: Images and Identities*, ed. Zvi Jonathan Kaplan and Nadia Malinovich (Boston: Brill, 2016), 129–53.

54 This quote from the Altaras and Cohen Report is taken from Simon Schwarzfuchs, *Les Juifs d'Algérie et la France: 1830–1855* (Jerusalem: Yad Ben-Zvi, 1981), 111. For more on this document, see Vered Sakal, “Reports, Evaluations and Coerced Religious Revolutions: A Postcolonial Critique of the Altaras-Cohen Report,” *Jewish Studies Quarterly* 27 (2020): 58–72.

55 See, e.g., section 32: “Les ministres du culte israélite institués à un titre quelconque par le gouverneur general pour l'exercice on la police de ce culte n'ont aucune juridiction sur leurs coreligionnaires, lesquels sont exclusivement justiciables des tribunaux français. . . .” Robert Estoublon and Adolphe Lefébure, *Code de l'algérie annoté: Recueil chronologique des lois, ordonnances, décrets, arrêtés, circulaires, etc.*,

citizenship to the Jews of North Algeria in 1870 and forced them to submit to French family law, officially dissolved the last aspect of Jewish law that granted local rabbis some kind of jurisdictional autonomy.

This survey of the intentional marginalization and disempowerment of Algeria's native religious leadership, is, of course, far too brief and schematic. Nevertheless, it does give us a better understanding of Ashkenazi's social-political-religious circumstances, vis-à-vis the consistory and the colonial regime. No wonder, then, that Ashkenazi describes his rabbinical status as "weak judgment"⁵⁶ when he explains to Kook that he does not have the capability to protest effectively against the organ. Later, we shall address Ashkenazi's duality—on the one hand, he advocates for the halakhic legitimacy of the organ; on the other, he admits he does not approve of it. At this point, let us take a closer look at Ashkenazi's honest testimony, which is in fact a sincere confession of a religious leader who is conscious of his limited power over his own community.

While Kook's writing does not echo the difficulties he encountered during his rabbinical tenures—with other rabbis as well as with large portions of the Jewish population in Mandatory Palestine—Ashkenazi's text does not shy away from delving into the dilemmas he faces, supplying us not only with a depiction of a restrained and undermined rabbinate but also of a Jewish community that is sectional and fractured. In a forthright and rather intimate portrayal of his religiopolitical circumstances, Ashkenazi provides us with insight into the Jewish mindset of twentieth-century Oran and his attempts to negotiate his position amid differing social, cultural, and religious groups. Trying to find a way to lead those who may not want to be led by him, Ashkenazi seems very well aware of the complexity of the communal and colonial power grid and perhaps even of the irony of his diminished power in the eyes of French officials and his congregation members despite his official appointment as state-nominated chief rabbi. While his employers and congregation may want him to perform ceremonies, give sermons, and answer halakhic questions when they seek his advice, they do not assign his rulings an obligatory value.

formant la législation Algérienne actuellement en vigueur, avec les travaux préparatoires et l'indication de la jurisprudence, suivi d'une table alphabétique de concordance (Algeria: Adolphe Jourdan, 1896), 25.

56 Ashkenazi uses the term "*ha-din ha-rafeh*." ASK, 3.

Though far removed, Ashkenazi's difficulties in French Algeria mirror the challenges that Kook was dealing with in Mandatory Palestine. As we have mentioned above, both scholars were not nominated to their posts (at the time of their correspondence) by their communities (as was traditionally done, even though such nominations did not guarantee communal submission as well)⁵⁷ but were officially appointed and nominated as chief rabbis by non-Jewish colonial empires, French and British respectively. As many scholars of law and colonialism have observed, colonial law exhibits a tendency—especially in the light of native forms of religiosity—to preserve existing codes.⁵⁸ It thus promotes a pluralistic legal system under which subjects are subordinate to multiple laws and courts. Carefully redefining their legal responsibilities and powers, colonial authorities customarily re-empowered autochthonous religious courts.

In Mandatory Palestine, the British authorities created the Chief Rabbinate on the basis of the Ottoman millet system—a set of arrangements between religious groups and the Empire through which “Jewish, Greek Orthodox and Armenian communities organized their existence in the empire wherever they resided and whether or not they were a numerical minority or majority.”⁵⁹ Although “reluctant to interfere with local legal practices of a ‘customary nature,’” the British colonial administration established two commissions to study Jewish life in Mandatory Palestine.⁶⁰ These proposed that the post of *Hakham Bashi* (Chief Rabbi) be abolished, “state-backed religious courts” be created, and Sephardi and Ashkenazi chief rabbis be appointed.⁶¹

57 Jewish history can tell many stories of rabbis who had immense power without any kind of official nomination, due to their greatness, and many who were nominated to rule a community by civil authorities, but were unable to do so, since the community did not value their knowledge, and looked down upon, or at least unfavorably at, their foreign employers. As Friedman puts it, when describing the problematics of Kook's official appointment, it “destroys the existing balance in the rabbi's authority structure, between the component of the position and the component of knowledge in the halakhic literature.” Friedman, “Non-Zionist,” 111.

58 Judith Surkis, *Sex, Law, and Sovereignty in French Algeria, 1830–1930* (Ithaca: Cornell University Press, 2019), 48.

59 Karen Barkey and George Gavrillis, “The Ottoman Millet System: Non-Territorial Autonomy and its Contemporary Legacy,” *Ethnopolitics* 15 (2016): 24–42 (25–26).

60 Ronen Shamir, *The Colonies of Law: Colonialism, Zionism and Law in Early Mandate Palestine* (Cambridge: Cambridge University Press, 2000), 64.

61 Shamir, *Colonies of Law*, 64.

While the British were committed, at least *de jure*, to the *status quo ante bellum* principle, the French intervened in Jewish life and law in colonial Algeria much more heavily. Following the conquest of the country in 1830, the colonial authorities introduced a series of regulations designed to reshape native Jewishness in accordance with the consistory system devised by Napoleon in 1807. Dividing Algeria into three consistories—Algiers, Oran, and Constantine—they installed chief rabbis in each. Mainly educated and ordained at the *École Centrale Rabbinique de France*, these rabbis were sent to Algeria to replace and/or reeducate the autochthonous rabbinate and population, creating a new leadership that would promote a more sophisticated form of faith. Despite their official status, they had very little power, however, with the metropole limiting their jurisdiction to a very narrow sphere of religious consultation in order to retain control over Jewish life through civil-colonial legislation.⁶²

We see, then, that among other things, Ashkenazi's and Kook's correspondence provides us with the opportunity to look at the intentional, institutionalized disempowerment of local-autochthonous rabbinate (at least from Ashkenazi's perspective), and to explore how Jewish scholars sought to define and reinstate their religious place and power despite these restrictions. Admitting to his lack of authority due to shifts in communal religious preferences and direct governmental intervention, Ashkenazi is very well aware of the need to rule (both in the sense of making halakhic decisions and the sense of leading-directing) differently to create novel models of guidance and leadership through which he can maintain Oran's commitment to Jewish values and practices.

The Halakhic Aspects of Ashkenazi's Reply

Throughout our analysis of Ashkenazi's text, we have noticed a clear duality in his reasoning and argumentation: on the one hand, he claims organ music is halakhically permissible; on the other, he claims that he and his predecessors only tolerated the organ due to their inability to have it removed. Before we try to resolve this conflict, let us go over the halakhic arguments that Ashkenazi deploys against Kook's accusation of the organ being a halakhic transgression. Ashkenazi's halakhic discussion can be broken down into four sub-questions: 1) whether playing an instrument on Shabbat goes against

62 We shall develop more on this topic later, at the conclusion of this paper.

the essentials of the Torah (*gufei Torah*); 2) whether playing an instrument on Shabbat is forbidden at all; 3) whether playing an organ is a transgression of the *hukkat ha-goyim* law (i.e., the prohibition against imitation of non-Jewish religious practices); 4) whether playing an organ is a transgression of the rabbinical prohibition of emulating the *minim* (Jewish heretics).

Ashkenazi's discussion of these topics utilizes what we can define as halakhic questions from the first and the second (or higher) order. Fisch describes the difference between the two as follows: "Meta-halakhic [is] a concern with the second-order question of the appropriate way of best deliberating and deciding halakhah, rather than a first-order concern about who ended up getting it right. . . ."⁶³ Following Fisch's definition of first-order questions as referring to conclusions, and second-order questions as referring to the circumstances in which deliberating and deciding occur, we will divide our discussion of Ashkenazi's halakhic claims into two sections: conclusional, which will be debated in this section; and meta-halakhic, which will be debated in the next.

Without engaging in detailed analysis, Ashkenazi dedicates just one paragraph (to be found in pp. 5–6) to disputing Kook's claim that organ music in the synagogue is a prohibited activity that goes against the essentials of the Torah (*gufei Torah*):

You judge the matter of organ music in the synagogue as if was one of the essential parts of Torah, claiming there is no dispute on the matter, as all are given from one shepherd.⁶⁴ But this is surely a misunderstanding, and an error on your part. It is quite the opposite—everything that was said about the organ is controversial and is not forbidden by the Torah. Moreover, it is not even clear whether it is, indeed, forbidden *de-rabbanan*, and even if it is, as with other cases that involve an uncertainty with regard to the legal status of an item prohibited by rabbinic law, the ruling should be lenient.⁶⁵

63 Menachem Fisch, "Deciding by Argument versus Proving by Miracle: The Myth-History of Talmudic Judaism's Coming of Age," *Toronto Journal of Theology* 33 (2017): 103–27 (106).

64 Eccl 12:11.

65 Ashkenazi uses the term "*safek de-rabbanan le-kula*." ASK, 6.

Ashkenazi does not give a detailed explanation or textual proofs to support his curt, unequivocal answer to Kook's claim that the prohibition of "organ music in the synagogue . . . was one of the essential parts of Torah." Rather, as we see in the paragraph cited above, he merely states that Kook is wrong, giving the reader no first-order indications to support his claim. Moreover, according to Ashkenazi, it is not even clear whether the music in the synagogue is "forbidden *de-rabbanan*," as there are so many varied and even opposing opinions. If we look at the matter from the second-order perspective, it is perhaps easier to understand why Ashkenazi so adamantly refutes Kook's claim that the prohibition of organ music is *gufei Torah*. If the issue is forbidden by the Torah, one's ruling must be more severe and follow the strictest interpretation of the law. If the issue is *de-rabbanan*, it leaves more maneuvering space and one may take a more lenient position. And so, we come to understand why it is so important for Ashkenazi to refute Kook.

After concisely pointing out the organ debate's halakhic status (supposedly *de-rabbanan*; definitely not *gufei Torah*) Ashkenazi adds an additional meta-halakhic layer to his refutation of Kook's claim that there can be no debate/diversity on the matter of organ music:

If they chose to be stringent . . . the truth is that in those times, the *Hatam Sofer* and his friends made up the hedge for the House of Israel.⁶⁶ It was necessary not only in regard to the organ, but also for the three transgressions of Israel,⁶⁷ as anyone who reads these responsa with open eyes can clearly see.⁶⁸

Ashkenazi never misses an opportunity to slight Kook. Calling out his erroneous reading of the law, he censures him not only for misjudging the debate's halakhic status but also for not understanding the larger meta-issues at hand: how religiopolitical circumstances shaped *Hatam Sofer's* and his peers' discussion of organ music. Describing them as choosing the more stringent approach not because the prohibition of organ music is one of the essential parts of Torah, but as a reaction to the reality of their lives in nineteenth-century Europe, Ashkenazi's criticism of Kook's ruling is twofold: on the conclusional level, a flawed understanding of the halakhic law in itself;

66 Ezek 13:5.

67 Amos 2:6.

68 ASK, 6.

and on the circumstantial level, Kook's inability to perceive *Ḥatam Sofer's* holistic, relational approach to halakhah.

Moving beyond the *gufei Torah* question, Ashkenazi discusses whether playing an instrument on Shabbat is forbidden *de-rabbanan*. According to Ashkenazi, it is not clear whether organ music in the synagogue is "forbidden *de-rabbanan*" as there are so many varied and even opposing opinions in the matter.⁶⁹ In his rich and textured writing style, he likens the varied, and sometimes opposing, rabbinical opinions on organ music—"one said: on this manner; and another said: on that manner"—to God's ascending and descending angels on Jacob's ladder.⁷⁰ He then continues to explain that organ music on Shabbat is permitted since it falls under the category of *amirah le-nokhri*, i.e., instructing a non-Jew to perform work for a Jew on Shabbat for the purpose of a *mitsvah*.⁷¹ Describing how many congregants come to the synagogue for Shabbat prayers only for the music played during service, he deems it as necessary, and therefore allowed.⁷² In support of this claim, Ashkenazi mentions a ruling of a fellow rabbi, Rabbi Raphael Ankawa, which supports the *amirah le-nokhri* argument when it concerns playing music on Shabbat and Yom Tov.⁷³

Ashkenazi's discussion of whether playing an organ is a transgression of the *hukkat ha-goyim* law goes into more detailed analysis, providing ample halakhic references to the writings of Maimonides, the Maharik (Joseph Colon ben Solomon Trabotto, 1420–1480), Rabbi Joseph Karo, and other distinguished scholars.⁷⁴ Given the centrality and significance of Leviticus 18:3 to the discourse of Jewish identity and distinctiveness, and the complexity of this biblical commandment, it is no wonder the two scholars pay extra attention to the topic (it constitutes the larger portion of Kook's text) and read it very differently.⁷⁵ To summarize Kook's main claim, citing Maimonides's *Mishneh Torah*, he asserts, "It is forbidden to follow the customs of idolaters

69 ASK, 5.

70 ASK, 6. See 1 Kgs 22:20.

71 ASK, 6. This is the only reference in Ashkenazi's text which alludes to the question of who was playing the organ—a Gentile or a Jew.

72 ASK, 5–6.

73 ASK, 7.

74 ASK, 7–9.

75 For a thorough survey of the topic, see Beth A. Berkowitz, *Defining Jewish Difference: From Antiquity to the Present* (Cambridge: Cambridge University Press, 2012).

or to imitate them.”⁷⁶ He goes on asserting that this ban is even more severe when it comes to religious customs, since one must take heed to “inquire not after their gods, saying: ‘How used these nations to serve their gods? Even so will I do likewise.’”⁷⁷ And since, according to Kook, the organ is an established and common Christian religious practice, it is obvious that it is forbidden to all Jews, regardless of local customs or rulings.⁷⁸

Ashkenazi’s reply to this claim is based on and comprised of several different arguments. First, he attacks Kook’s inclusiveness, which subsumes all foreign customs as forbidden without discerning (as Maharik’s ruling suggests) whether or not the custom has an “accessible rational basis,” or has been adopted in the name of pride and haughtiness, i.e., performed, as Berkowitz puts it, “exclusively out of the desire to be similar to [one’s] gentile neighbor.”⁷⁹ Second, after delineating Kook’s absolutism as strikingly different from the opinions of Karo, who follows Maharik (citing him in *Beit Yosef*⁸⁰) and Moses Isserles (in *Darkhei Moshe* and *ha-Mappah*), Ashkenazi claims that Kook also counters Meir ha-Kohen’s directions, in *Haggahot Maimuniyyot*, which forbid adding to the list of those practices identified by the Sages as imitating “star-worshippers.”⁸¹

Ashkenazi’s line of reasoning is clear: Where others (great ones, such as Karo) sought to confine and limit the law, Kook takes the liberty to expand it. For Ashkenazi, this is sufficient evidence that Kook’s categorical claim that the organ is a transgression of *hukkat ha-goyim* is contingent at best. After undermining Kook’s all-inclusive and conclusive negation of the organ, and proving that a more balanced approach regarding the boundaries of the *hukkat ha-goyim* prohibition is in line with the teachings of the great scholars, Ashkenazi’s next move is to claim that, according to their teachings, the use of the organ in the Oran synagogue is not motivated by irrationality or pride and haughtiness (here, the desire to emulate gentile religious practice).

76 MT, Laws of Idolatry and the Customs of the Nations 11:1.

77 Deut 12:30; Kook, 49.

78 Kook, 49.

79 Berkowitz, *Defining Jewish*, 178–79.

80 YD 178 (“*shahats ve-ga’avah*”—“pride and haughtiness”).

81 Meir ha-Kohen, *Haggahot Maimuniyyot*, Foreign Worship and Customs of the Nations 11:1 (שהין להוסיף מסברה על מה שמנו חכמים שהיתה קבלה בידם שהוא מחקות העובדי) (כוכבים). ASK, 6–7.

We shall explore the logic of rationality and the necessity of the organ in length in the following chapter when discussing the meta-halakhic aspects of Ashkenazi's ruling. At this point, let us note, however, that his "foreign but not forbidden" line of reasoning invites us to ponder the foreignness of Oran's organ. For even in twentieth-century Oran, after more than a hundred years of French rule, the Oran central synagogue organ appears foreign on several different levels. First and foremost, despite the evidence we found of organs installed in quite a few Sephardi congregations around the world, it is not a commonplace Sephardi practice.⁸² In addition, there is the intriguing question of the neighbor, that is, the "other," whose rituals are (or are not) coveted and imitated. Since (most) Algerian Jews' gentile neighbors were Muslim, we should ask ourselves: what did the organ symbolize to those who made the decision to place it in Oran's central synagogue? And what did it symbolize to the rest of the worshipers?

Earlier, we mentioned that we cannot know for sure who made the decision regarding the organ. We understand now that not knowing *who* also prevents us from understanding *why* or *what for*. Not only would this information help us judge whether it is a transgression of *hukkat ha-goyim*, (or decide who is right—Kook or Ashkenazi), but, more importantly, it would help us better understand the cultural orientations, social strata, and religious dilemmas of Jewish Oran. At the beginning of this paper, we suggested that the organ might have been head of the Oran consistory Simon Kanoui's idea.⁸³ Whether it was Kanoui, or other communal leaders who had tight connections with France's Liberal/Reform movement,⁸⁴ if the organ was installed by Algerian Jews who sought to imitate what they perceived to be an enlightened, improved, Europeanized version of Judaism and Jewish

82 See note 36 above.

83 See note 10 above.

84 Rabbi André Zaoui, who was born in Oran in 1916, was nominated as the leading rabbi of Union Libérale Israélite de France (which is the oldest Reform synagogue in France) in 1946. For more on Union Libérale Israélite de France, see Catherine Poujol, "Pour une spiritualité juive moderne: l'Union libérale israélite et ses fondatrices, Marguerite Brandon Salvador et Clarisse Eugène Simon," *Archives Juives* 42 (2009): 69–83. On organ and other nonorthodox practices in French Judaism, see Phyllis Cohen Albert, "Nonorthodox Attitudes in Nineteenth Century French Judaism," in *Essays in Modern Jewish History: A Tribute to Ben Halpern*, ed. Frances Malino and Phyllis Cohen Albert (Rutherford: Herzl Press, 1982), 121–41.

practice, our discussion of the organ should look beyond the *hukkat ha-goyim* discourse into colonial and post-colonial perspectives.

We shall return to the theme of the organ as a colonial object in our final chapter. For the moment, let us look at one more argument that Ashkenazi employs in his attempt to refute Kook's all-encompassing *hukkat ha-goyim* claim. At the end of the paragraph we have been studying, before going into a detailed refutation of Kook's discussion of the Maharik's opinion on purple garments (as a behavior that violates traditional humility and is therefore forbidden), Ashkenazi suggests one more reason disparaging Kook's halakhic inclusiveness, stating: "We Sephardim, we have nothing but the words of the holy Maran, and a word to the wise is sufficient."⁸⁵ Although we should not miss the irony of Ashkenazi defending what most Jews see as a Reform-Ashkenazi practice by relying on Sephardic loyalty to Joseph Karo's rulings, we should notice how Ashkenazi keeps referring to Kook's ruling as an Ashkenazi annexation attempt. Aligned with his mention of Rabbi Raphael Ankawa and other references scattered throughout his response, Ashkenazi is not only refuting Kook, but actually asserting and affirming Sephardi distinctiveness and jurisdiction.

To sum up: We will not attempt to rule in favor of Ashkenazi's or Kook's understanding of *hukkat ha-goyim*, or their reading of the halakhic texts mentioned above. However, we should note that by arguing that playing the organ in a synagogue on Shabbat and high holidays does not violate the prohibition against imitation of non-Jewish religious practices and describing Kook's rulings as a misunderstanding of *Hatam Sofer*, Maimonides, Karo, and others, Ashkenazi is knowingly making a rather bold choice, siding with a small group of scholars mostly identified with Reform Judaism.

As for Kook's claim that playing an organ is a transgression of the rabbinical prohibition of emulating the *minim* (in this case, probably Reform Jews—the original ruling referred to Karaite Judaism) who, according to Kook, "left the Torah . . . betrayed the Shabbat . . . and married foreign women."⁸⁶ Ashkenazi's refuting argumentation builds on differentiating between the way we look at individuals and communities when deciding on this matter. According to Ashkenazi, we should be suspicious of an individual who carries out heretical practices, for "we do not know his manners and his inner thoughts." But the community, whose "purpose is for the sake of Heaven,

85 ASK, 7.

86 Kook, 50.

to draw the hearts of its sons, and keep them praying, even if it is only once a week," should be trusted.⁸⁷ Providing proof from the Babylonian Talmud, which discusses a synagogue in Neharde'a in which there was a statue of a human figure, Ashkenazi explains that the prohibition of emulating the *minim* should indeed be applied to individuals, but not to communal institutions, since "a public institution is different. The community/collective is not suspected of having idolatrous intentions."⁸⁸

Besides his use of the "the many is not suspected" (*rabbim de-leyka hashda*) argument, two things should be noted regarding Ashkenazi's reply to Kook's *minim* claim: First, true to his dualistic inclination, before he provides proof from the Babylonian Talmud, Ashkenazi mentions that the issue might indeed be an *issur de-rabbanan* (forbidden by the Sages) from the *minim* perspective, but "great is a transgression committed for the sake of Heaven, and it is time for the Lord to work."⁸⁹ Second, and overlapping with the first, is Ashkenazi's language, which alludes to an aspiration to "draw hearts" and keep Jews coming to the synagogue/praying, "even if it is only once a week."⁹⁰ The use of such terminology suggests that second-order reasoning is indeed a substantial factor in Ashkenazi's decision (to rule the organ use in his community as not violating the prohibition of emulating the *minim*), and that his ruling on the matter is, at least in part, meta-halakhic. As with his deliberations on the *gufe'i Torah/de-rabbanan* question, Ashkenazi merges the conclusional, relational, and responsible approach to halakhah.

Before we turn to discuss Ashkenazi's tendency toward meta-halakhic reasoning, let us sum up the issues that we have surveyed thus far. According to Ashkenazi, playing the organ in the synagogue on Shabbat (or any day of the week for that matter) does not fall into the category of imitating non-Jewish religious practices, and it is not to be considered as related to

87 ASK, 7–8.

88 *B. Avod. Zar.* 43b. Neharde'a was one of the earliest and most prominent centers of Babylonian Judaism. It hosted the Neharde'a Academy, one of the most important talmudic academies in Babylonia. The halakhic principal Ashkenazi is referring to—*rabbim de-leyka hashda*—is discussed in other rabbinical texts as well. See, e.g., *Sh. Ar. YD* 141:4.

89 Ashkenazi combines the two known phrases from Ps 119:126 and *b. Naz.* 23b.

90 ASK, 7–8. It is worth noting that the issue of praying just once a week was also a major concern for the scholars who wrote for *Eleh Divrei ha-Berit* (along with the reformulations of the prayers themselves, and the organ of course). See, e.g., *Eleh Divrei ha-Berit*, 22–24.

heretical (i.e., Reform) tendencies since the congregation and its leaders have no such inclinations. On the contrary, it supports their efforts to increase attendance at prayer and to foster commitment to the community's values, and it does not go against the essentials of the Torah (*gufei Torah*), nor even the Sages' rulings. It was prohibited by *Hatam Sofer* and his contemporaries for circumstantial-temporal rather than first-order halakhic reasons.

It is therefore preferable for them to be unaware that
they are violating a prohibition and remain merely
unwitting sinners

Throughout our analysis of Ashkenazi's first-order claims we noticed the pivotal role that rationality and utility play in his argument in support of playing the organ during Shabbat service: in his analyzing *Hatam Sofer's* reasons to ban the organ; in his describing playing the organ as a legitimate *amirah le-nokhri*, since it is necessary for the purpose of a *mitsvah* (prayers); in his fully committing to Maharik's criteria of having an "accessible rational basis" as a template through which to examine the legitimacy of practice;⁹¹ and, of course, in his reference to the "transgression committed for the sake of Heaven" and it is "time for the Lord to work" narratives.

Recognizing Ashkenazi's tendency towards meta-halakhic reasoning, even in his first-order responses to Kook's accusations, let us explore the arguments that he discusses from the purely higher-order perspective. Addressing issues such as plausibility and viability, Ashkenazi explains his halakhic decision-making as a process that takes into consideration the ramifications and costs of enforcing unfavorable rulings on an unwilling public: He can either speak up against the organ, knowing it will not affect his community's decision, or he can refrain from publicly opposing it. On the face of it, we would think that Ashkenazi is obligated to inform his congregants about their missteps. However, Ashkenazi chooses not to do so, believing that his duty is to protect the community by constructing a state of ignorance and therefore innocence for them:

If people engage in a certain behavior that cannot be corrected,
it is better not to reprove them, as they are likely to continue
regardless of the reproof, and then they will be sinning inten-

91 Berkowitz, *Defining Jewish*, 178.

tionally. It is therefore preferable for them to be unaware that they are violating a prohibition and remain merely unwitting sinners.⁹²

In accord with his reading of *Ḥatam Sofer's* halakhic stringency as a response to the *zeitgeist*, Ashkenazi allows the religiopolitical circumstances of twentieth-century Oran to impact his decision-making. Knowing his ruling will be roundly ignored, he abides by the halakhic principle of “better an unwitting sin than an intentional one,”⁹³ which is oftentimes utilized by rabbinical leaders to sustain (certain types of) nonobservant Jews within the observant community.⁹⁴ Interestingly, in Ashkenazi's case, it is not deviant individuals whom the scholar seeks to include and conserve but a whole community that he wishes to maintain within the lines of Jewish normativity. He therefore refrains from reprimanding them. He tolerates their illicit behavior, not only because he knows they will not abandon it but also because of what he (and the community) might gain from allowing the lesser evil of organ music:

[A]s our experiences in our community have taught us—we do not speak for other communities—that it draws our brothers, tempting them to join the prayers, as they got accustomed to and fond of the organ's sound. Through the performance of *mitsvot* not for their own sake, one gains understanding and comes to perform them for their own sake.⁹⁵

Along with his effort to manage the transgression by designing it as an unwitting sin rather than a deliberate violation, Ashkenazi's meta-halakhah takes into consideration the organ's benefits: extended attendance in the synagogue, and more importantly, a continuing commitment to the “study of Torah . . . slaughter, *gittin*, *ḥalitsah*, charity, supporting the poor, etc.”⁹⁶ Echoing

92 ASK, 1.

93 “It is better that they be unwitting in their halakhic violations and that they not be intentional sinners, for if they are told about these prohibitions they may not listen anyway.” *B. Shab.* 148b. For more on this halakhic rule, see Bitkha Har-Shefi, “Custom and Halakha: The Case of Misguided Customs among Women,” *Jewish Studies* 44 (2007): 215–48 (Hebrew).

94 See Iris Brown, “‘The Violation of the Torah is Its True Fulfillment’: Ultra-Orthodox Ruling against the Halakhah for the Emendation of the Sinners—R. Hayim of Sanz as a Case Study,” *Tarbiz* 78 (2009): 555–91 (Hebrew).

95 ASK, 7.

96 ASK, 5.

the arguments he used when discussing the question of *hukkat ha-goyim* and the prohibition against emulating the *minim*, Ashkenazi overtly refers to the rationale of the practice and to the higher-order benefits gained from its non-criminalization. Not only does it preclude community members from becoming sinners and, therefore, outcasts, but it also actually keeps them coming to the synagogue and performing other Jewish duties.

Portraying his deliberations and decision-making process as attuned to halakhic circumstances that are bigger than mere conclusional questions, it seems as if Ashkenazi is attempting to draw a sharp distinction between himself and Kook: a holistic, responsive, pragmatic approach versus a strict and narrow ruling aimed at “pierc[ing] the mountain,” at all costs.⁹⁷

It is important to note that despite Ashkenazi’s rather one-dimensional depiction of Kook’s halakhah as stern and rigid, scholars tend to disagree about Kook’s stance on halakhic change (in his early and later years). Some claim that there is a large gap between Kook’s innovative and daring philosophy and his halakhic rulings, which are “conservative and devoid of innovation and valor.”⁹⁸ Others, on the other hand, claim Kook’s halakhic work is innovative, courageous, and exceptional in its breadth of coverage, the topics and terms it utilizes, and its conclusions.⁹⁹

Whatever Ashkenazi’s position on this question might have been, it is most probable he knew Kook had made several lenient/pragmatic choices during his rabbinical career in Mandatory Palestine, the most famous one being his ruling on the *shemittah* (the biblical commandment to allow the land to lie fallow every seventh year) debate of 1910–11, in which, although bitterly

97 *B. Sanh.* 6b: “The judge must assure that the true judgment will prevail at all costs and metaphorically pierce the mountain, as it is stated: ‘For the judgment is God’s’ (Deut 1:17). And similarly, Moses would say: ‘Let the judgment pierce the mountain.’”

98 Neria Guttel, “The Philosophical and Historical Status of ‘The Generation in the Modern Era’ as a Consideration in the Halakhic Rulings of R. Kook,” *Sidra* 17 (2001): 23–61 (25) (Hebrew). Guttel provides a comprehensive bibliographical survey of rabbinical and scholarly works written on Kook’s halakhah. See *ibid.*, 23–25.

99 Neria Guttel, *Innovation in Tradition: The Halakhic-Philosophical Teachings of Rabbi Kook* (Jerusalem: Magnes Press, 2005), 251–52 (Hebrew). See also Hagi Ben-Artzi, *The New Shall be Sacred: Rav Kook as an Innovative Posek* (Tel Aviv: Miskal, 2010) (Hebrew). Ben-Artzi’s claim is that Kook was an innovative and revolutionary *posek* “who puts a clear Zionist alternative in the face of ultra-Orthodox jurisprudence . . . and even lays the groundwork for a halakhic breakthrough.” *Ibid.*, 10.

attacked by Haredi leaders, Kook, as Asher and Susser put it, “broadened the sale dispensation permitting Jews to work the land on the *Shmita* year and set aside the stipulation that non-Jewish labor be utilized for certain tasks.”¹⁰⁰

Putting Ashkenazi’s deliberate (or non-deliberate) forgetfulness aside, let us focus on what we can learn from the distinction that he is trying to draw between Kook’s and his own approach to ruling—both in the sense of making halakhic decisions and in the sense of leading-directing. It seems that more than anything else, Ashkenazi’s portrayal of himself (against what can be described as an imagined depiction of Kook as extremely rigid) as practical, sensible, responsive, and responsible, conveys his view of himself: an open-minded, innovative, and courageous scholar who struggles to preserve not only the distinctiveness but also the very existence of his community by knowingly choosing the halakhic road less taken.

Concluding Thoughts

Reading Ashkenazi’s and Kook’s correspondence (while focusing mostly on Ashkenazi’s response to Kook’s letter to Reuben and the halakhic claims made in it), our analysis sought to explore and address several issues: to single out the halakhic aspects of Ashkenazi’s and Kook’s disagreement over organ music being played in the synagogue; to probe Ashkenazi’s understanding of his role as a religious scholar and leader; to inquire into the peculiar characteristics of Ashkenazi’s halakhic decision-making; and to examine issues of rabbinical power, legitimacy, and hierarchy. Guided by these perspectives, our study dissected Ashkenazi’s layered text into different argumentations, striving to construct an organized debate of his claims. This structural breakdown opened quite a few avenues of exploration.

Duality: It seems that the most prominent feature found in Ashkenazi’s text is duality. Throughout our analysis, we have noticed a few deep tensions and conflicts: a leader who wishes to rule but is aware of his limited powers; a scholar who disapproves of organ being played in the synagogue but nevertheless finds ample halakhic justifications for it; a traditional Orthodox rabbi who allows for a religious custom that is considered as signifying

100 Asher Cohen and Bernard Susser, “The ‘Sabbatical’ Year in Israeli Politics: An Intra-Religious and Religious-Secular Conflict from the Nineteenth through the Twenty-First Centuries,” *Journal of Church and State* 52 (2010): 454–75 (460).

Reform Judaism.¹⁰¹ How should we account for these dualities? Perhaps we need not. Duality, complexity, ambiguity—these were (and remain) signs of the times for Ashkenazi and for many other rabbis throughout the Jewish world. Religious leaders were looking for ways to lead communities going through rapid changes, in which the place and responsibilities of the rabbi were continuously renegotiated. In this sense, Ashkenazi is a typical representative of a generation of scholars who were seeking (though not always successfully) novel models of governance and leadership through which to maintain their communities' commitment to Jewish values and practices.

The seemingly unavoidable complexity and ambiguity involved in halakhic ruling for transitioning and fractured communities notwithstanding, these qualities do invite us to reflect on some of the more intriguing conflictual points that were raised in Ashkenazi's text. For example, the issue of allowing/enduring the organ, which, as a symbol of the debate regarding Orthodox-Liberal approaches to modern Judaism, was not a trivial, peripheral, or neutral matter. Is Ashkenazi what we would now term "non- or post-denominational"? A Jewish scholar who abjures conventional and rigid distinctions of Jewishness, describing himself as Haredi while tolerating, or even supporting, the organ? Or is he a pragmatist? This one text does not allow us to draw conclusions or even form a preliminary idea about Ashkenazi's mindset. Likewise, we cannot make a conclusive judgment about the impact of Ashkenazi's self-proclaimed powerlessness on his decision-making. However, we will point out that Ashkenazi's text is imbued with references to limited rabbinical powers and to the need to make realistic, practical decisions in order to preserve Jewish commitments and continuity.

Another key issue emerging from the theme of duality is the role that first-order/second-order criteria play in Ashkenazi's halakhic ruling. While our division of Ashkenazi's halakhic argumentations into the two categories might have been somewhat rigid, it did allow us to examine the conclusion/circumstantial balance that shapes his work. As mentioned above, Ashkenazi puts forth strong arguments in support of both lines of

101 Ashkenazi refers to himself as a Haredi (ASK, 4), a Hebrew concept he was probably well familiar with. He also expresses a deep intolerance of secular Judaism. See the way he portrays the secular Ashkenazi Haluzim: "Our Ashkenazi brothers, who came to the beautiful land and defiled it with their transgressions and their detestable things." ASK, 3.

reasoning: providing a thorough analysis on some matters, while being concise on others, alongside powerful claims about his given religiopolitical situation. Can we explain this duality or pinpoint the relative importance of each factor? We might offer a rationale for why Ashkenazi uses first-order/second-order claims—many scholars did. However, the twofold quality of his discourse is harder to elucidate: He meticulously proves that an organ is not a transgression of the *hukkat ha-goyim* law but at the same time maintains that it is an undesired practice, tolerated only because of communal benefits or a rabbinical inability to protest. We shall therefore leave the matter here, in the hope that we have offered a comprehensive survey of this issue and a detailed portrayal of the question it raises.

Allowing/Enduring/Non-Criminalizing/Non-Ruling/Creating/Constructing Innocence: Employing these concepts in our analysis of Ashkenazi's text enriched our discussion about his halakhic-rabbinical reaction to the organ. The number of concepts we used suggests the difficulty in determining the reasoning behind Ashkenazi's line of action. For although the result is the same, it might be derived from very different reasons: halakhic approval; knowing his ruling will be roundly ignored; tolerance; pragmatism; a strategy to draw sinners near so they will not completely despair of atonement.¹⁰² Whatever the reason(s), the result is a rabbinical policy that can be described as noninterference—Ashkenazi withholds judgment, allowing his community to rule on the matter.¹⁰³

102 Ashkenazi's text discusses at length the issue of exclusion and banishment of transgressors. Referring to scholars such as Joshua ben Alexander ha-Kohen Falk (1555–1614), Rema (Moses Isserles, 1530–72), and Maharam (Meir of Rothenburg, 1215–93), he demonstrates how these scholars, who were attuned to the needs, circumstances, and concerns of their communities, refrained from banning sinners/lawbreakers: "And these are words of extraordinary wisdom, for them, and for us, the shepherds of Israel, who should always have the left hand to drive sinners away and the right to strongly draw them near [so that the sinner will not totally despair of atonement]. ASK, 3 (based on *b. Sanh.* 107b).

103 Coming back to the fact that we do not know for sure who decided to build and use an organ in Oran's synagogue, an interesting observation about the community's conception of its own Jewishness and denominationalism arises: Here we have a community that does not define itself as Reform, but nevertheless chooses to install one of the major Reform symbols in its synagogue. This might suggest what we can call an open/lenient approach to Jewish identity, which does not abide by the rigid lines of denominational distinctions of practices and rituals. Similar notions can be found in current discussions about women's place in the Orthodox synagogue. See, e.g., Yael Israel-Cohen, "Jewish Modern Orthodox

Weak judgment: power, legitimacy, and hierarchy: Describing Ashkenazi as a rabbi who lets his community rule on a liturgical matter of significance draws our attention to questions about power, legitimacy, and hierarchy. And indeed, Ashkenazi's text is saturated with themes and concepts that call out for an exploration of rabbinical ability, authority, and control; for example, his revealing confession about having "no power or might of hand at all,"¹⁰⁴ or, the way he describes his subjugation to the ruling committee and the "sovereigns of this land."¹⁰⁵ This self-portrayal is, no doubt, a reflection of the religiopolitical circumstances of twentieth-century colonial Algeria, in which rabbis worked under state legislation that sought to undermine their power and jurisdiction from the very beginning of the colonial takeover in 1830. See, e.g., the *Ordinance Sur l'organisation de la Justice en Algérie* from September 26, 1842:

The ministers of Israelite worship appointed to some title by the governor general for the exercise or the policing of this worship have no jurisdiction over their coreligionists, who are exclusively answerable to the French courts. . . .¹⁰⁶

Or the *Ordinance Portant Organisation du Culte Israélite en Algérie* from November 9, 1845:

The Algerian consistory will regulate the organization, the number, and the district of the individual synagogues as well as the number and the method of nomination of officiating rabbis and ministers necessary to the exercise of worship Its decisions will be subject to administrative authority, and will not be enforceable until approved by it [i.e., the administrative authority].¹⁰⁷

Women, Active Resistance and Synagogue Ritual," *Contemporary Jewry* 32 (2012): 3–25.

104 ASK, 4.

105 ASK, 4–5.

106 Estoublon and Lefébure, *Code*, 25.

107 "Le consistoire algérien réglera l'organisation, le nombre et la circonscription des synagogues particulières ainsi que le nombre et le mode de nomination des rabbins et des ministres officiants nécessaires à l'exercice du culte.—Il consultera les consistoires provinciaux pour tout ce qui aura rapport à leur ressort—Ses décisions seront soumises à l'autorité administrative, et ne seront exécutoires qu'après avoir été approuvées par elle." Estoublon and Lefébure, *Code*, 82–83.

We will not go into a detailed analysis of these texts, or a comprehensive discussion on the issue of French intervention with Jewish-indigenous religiosity in colonial Algeria. However, in order to provide a general context for our exploration of Ashkenazi's religiopolitical circumstances, let us look at another section of the *Ordonnance Portant Organisation du Culte Israélite en Algérie* from November 9, 1845:

The duties of the chief rabbi and of the rabbis are: First, to teach the religion, to encourage in all circumstances obedience to the laws, allegiance to France, and the duty to defend her; second, to officiate, to preach, to recite prayers for the king and the royal family in all synagogues of their district; third, to attend burials and to perform religious marriages; fourth, to inspect the nursery schools and the Jewish schools. . . .¹⁰⁸

What a vivid portrayal of institutionalized disempowerment. No wonder, then, that between his community—with its rifts, diversity, and lay leadership empowered by the government—and aggressive French legislation with regard to Jewish practices and governance, Ashkenazi's ability to enforce halakhic rulings had been limited. Having his halakhic authority and legitimacy revoked, Ashkenazi actually finds himself subordinated to a rigid hierarchy in which the consistory and colonial authorities have precedence over him in ritualistic/halakhic matters.

As opposed to Ashkenazi's honest depiction of his powers and abilities, Kook's text projects another image, that of a sovereign ruler, one that perhaps does not truly reflect the difficulties he was no doubt having during his tenures as the rabbi of Jaffa, the rabbi of the Ashkenazic communities in Jerusalem, and the chief Ashkenazi rabbi of Mandatory Palestine. Since this paper focuses on Ashkenazi and Oran, we will not attempt to analyze Kook's situation, halakhic authority, or the way he chooses to portray himself when he writes to Reuben. We would like to make one last point, though, before we conclude our discussion of weak/strong judgment, power, hierarchy, and rabbinical honesty: Does the "greater good" principle, which seems to guide Ashkenazi's decision making in the case of the organ, make for weak judgment? Or rather a robust sense of agency, which allows for making difficult, controversial choices?

Locality vs. globality: One of the more prominent motifs that we identified in Ashkenazi's text is the tension between his commitment to the local-traditional sphere, as opposed to Kook's universal-unifying inclinations. This tension can be categorized by two principal, intertwined aspects: Sephardi-Ashkenazi and intervening-centralizing. As for the Sephardi-Ashkenazi perspective—beginning with Ashkenazi stating that prohibitions regarding the organ are relevant to Ashkenazi Jews but not to Sephardi Jews; to Kook's unequivocal negation of this claim; to Ashkenazi's multilayered response—the question of Sephardi halakhah, tradition, and distinctiveness was one of the underlying interpretive structures through which we read Ashkenazi's arguments.

Without going into the rich study of Sephardi-Mizrahi halakhah, let us touch upon the topic briefly, mentioning one of the more significant debates on whether, and if so how, Sephardi-Mizrahi halakhah has distinctive, inherent features through the discussion between Brown and Zohar.¹⁰⁹ Summing up a lengthy and vigorous debate, it could be said, for the sake of simplifying, that while Zohar claims that Sephardi-Mizrahi halakhah has inimitable, inner lenient and forbearing features, Brown claims that what we tend to see as Sephardi-Mizrahi leniency is actually the outcome of specific religiopolitical circumstances. According to Brown's thesis, had modernization occurred differently for Jews living in Muslim countries (i.e., like it happened in Western and Eastern Europe), the rabbinical response would have been just as harsh and radical.

It is plausible and tempting to look at Ashkenazi's and Kook's feud about the organ from the perspective of this argument: to portray Ashkenazi in accordance with Zohar's paradigm, as a model of a "Sephardic state of mind": a rabbi knowingly choosing the halakhic road less taken—proudly calling himself a Haredi, while adopting what might seem like Reform argumentation. We shall refrain from doing so. Focusing on Ashkenazi's motives and halakhic reasoning, rather than the rituals his community members practiced, our analysis reveals various complexities and ambiguities, which do not allow us to provide a clear-cut labeling of his halakhic disposition. However, even without precisely defining what the term "Sephardi halakhah"

109 Benjamin Brown, "Sephardi Rabbis and Religious Radicalism: Toward a Revision," *Akdamos* 10 (2001): 289–324 (Hebrew); Zvi Zohar, "Orthodoxy is Not the Exclusively Authentic Halakhic Approach to Modernity: A Reply to Benjamin Brown," *Akdamos* 11 (2001): 139–51 (Hebrew).

means, we can say that Ashkenazi makes great efforts to portray Sephardi ruling as a robust, well-founded, and, most importantly, autonomous body of knowledge, and that his is not simply a map of spatial coordinates, but a cartography of halakhic localities (e.g., Ankawa's Morocco) and loyalties (*Maran*).¹¹⁰ No wonder, then, that he interprets Kook's claim—that there can be no difference in halakhic ruling for Sephardi and Ashkenazi Jews (excluding minor differences in custom)—as intrusive and insulting. Presenting several counterclaims (some more solid than others), Ashkenazi advocates for the distinctiveness and sovereignty of Sephardi halakhah, asserting firmly that it does not have to abide by what Kook describes as universal, biblical laws, but what are really Ashkenazi rulings in a halakhic paradigm responding to nineteenth-century European religiopolitical circumstances, and thus irrelevant to his and his fellow Sephardi rabbis' rulings.

Ashkenazi's assertive Sephardi-Ashkenazi line of thought echoes the intervening-centralizing theme as well, with Ashkenazi's understanding of Kook's text as an attempt to unify and centralize halakhah, and thus enforce a foreign set of rules upon a sovereign community that enjoys its own long and respectable halakhic tradition. As we have mentioned, some may claim that Kook's letter can be perceived as a neutral action in the sense of a (great) scholar answering a question sent to him from afar, because he is, as Kirschenbaum puts it, "a great Torah luminary who had been an accepted decisor (*posek*) in his lifetime and whose authority had been accepted far beyond his own locality."¹¹¹

110 Ashkenazi also mentions Rabbi Shlomo-Eliezer Alfandri (the Sabba Kadisha, 1820–93), who was the Hakham Bashi of Damascus (1897–94) and Tsefat's chief rabbinical judge. Alfandri was known for his opposition to Mandatory Palestine's Rabbinate and his criticism of Kook's ideas concerning Zionism and modernity. Many, including Ashkenazi, describe Alfandri's relation to Kook as disapproving and even derogatory. Ashkenazi claims Alfandri used to call Kook "*ḥamar lavan atik*" ("old white wine") (*b. Ker. 6a*). "*Ḥamar*" could mean "wine," but it could also mean "mule." See ASK, 9. He also claims he knows of many other verbal insults Alfandri made in regard to Kook but will not write them, as "matters that were taught orally you may not express them in writing" (*b. Git. 60b*). However, there is other evidence that suggests Alfandri had high respect for Kook. See, e.g., <http://www.orhaorot.022.co.il/BRPortal/br/P102.jsp?arc=279338>.

111 Aaron Kirschenbaum, "Mara de-Atra: A Brief Sketch," *Tradition* 27 (1993): 35–40 (38). Kirschenbaum mentions Joseph Caro (as the *mara de-atra* ["master of the locality"]) of Sephardic Jewry), Moses Isserles (as the *mara de-atra* of Ashkenazic

Kook might have thought of himself as someone whose “rulings were given the status of binding precedent,”¹¹² but it is clear that Ashkenazi did not. His adamant rejection draws sharp geographical and subcultural boundaries set to limit what he perceives as Kook’s unifying-controlling inclinations in order to establish halakhic separateness and independence.

The organ: Throughout our reading of Ashkenazi’s and Kook’s texts, we noticed the pivotal role the organ played in their dispute. Our analysis of their heated correspondence suggests that the object in itself, and the question of playing it in a synagogue, are anything but mundane or theoretical matters. Rather, it is a watershed issue which creates an idiosyncratic clash (outside of the nineteenth-century Hamburg Temple context) in which halakhic and cultural worlds collide. Our breakdown of Kook’s and Ashkenazi’s perceptions of the organ showed that while Kook looks at the organ from the perspective of *Hatam Sofer*, Ashkenazi is actually calling for a reassessment of the topic, seeking to alter the relative value of the organ appointed to it in what he considers as foreign, irrelevant religiopolitical circumstances. In what can be perceived as a criticism of Kook’s automatic-reflexive approach, he adopts a more neutral position that disregards the religiopolitical weight or burden of past disputes, which turned the organ into a *Tselem ba-Heikhal*—an “idol in the Sanctuary.”¹¹³

Notwithstanding Ashkenazi’s neutralizing and normalizing attempts, we should not ignore the exceptionality of the organ from communal, local, and geopolitical aspects. Accordingly, we should ask: What did the organ symbolize to those who decided to install it? What did it symbolize to the members of the congregation, the Jews of Oran who came to pray in the central synagogue?

As mentioned above, Jewish Oran was an ancient, multilayered community. A seaport on the Mediterranean, Oran is located in Western Algeria near the border with Morocco, at the point where Algeria is closest to the Spanish coast. Although Oran was captured by Spain in 1509, the Jews of Oran lived in the Spanish enclave in a distinct district of the city where they

Jewry), and Maimonides (as the *mara de-atra* of Yemenite Jewry) as examples of such scholars.

112 Kirschenbaum, “Mara de-Atra,” 38.

113 *M. Ta’an* 4:5.

had a synagogue and openly practiced Judaism.¹¹⁴ They were expelled from Oran and its vicinity in 1669 and would return to Oran and live there freely only after the Muslims captured the city at the end of the eighteenth century. The French entered Oran in 1831, ruling until Algerian independence in 1962, after which most of Oran's Jews—with Ashkenazi as their leader—relocated to France, bringing an end to a centuries-old Jewish community.¹¹⁵

Despite Oran's fascinating and complex history, the evidence we have of the strong connections between Oran's lay-secular leadership to France and French Jewry, and our understanding of the fluidity and richness of identity of what we now call "Port Jews," the central synagogue's organ still poses a challenge when we attempt to determine its role and impact on the local Jewish community.¹¹⁶ For, as Ashkenazi would surely agree—Oran's uniqueness notwithstanding, it is not (in) Europe. Hence, the organ does bring forth the notion of colonialism: an intentional effort to reshape indigenuous-inferior Jewishness in accordance with alien-European conceptions of what is proper/dignified/refined religious worship.

The fact that the organ drew many to the synagogue for prayer services does not obscure this aspect. Yet, it might suggest that it meant different things to different people: To those who installed it, it was probably a declaration of European (or Europeanized) identity, rather than a mere object of beauty or pleasure. To other Jews, who might have belonged to what Tsur describes as the "Judeo-Arabic cultural zone,"¹¹⁷ the organ could seem innocuous or alluring. (Regardless, it did alter the way they practiced their Jewishness.) Others might have found it offensive, choosing not to attend that particular synagogue because of it, or even, like Reuben, to protest against it. Either way, as Ashkenazi's prolonged and diffuse letter demonstrates, it is most likely

114 Unlike other Jews in other Spanish colonies in which there was a total ban on Jewish presence and crypto-Jews were persecuted by the Inquisition.

115 This short historical review is based on Haim F. Ghiuzeli, *The Jewish Community of Oran, Algeria*. See <https://www.anumuseum.org.il/jewish-community-oran-algeria/>. See also Joshua Schreier, *The Merchants of Oran: A Jewish Port at the Dawn of Empire* (Stanford: Stanford University Press, 2017); Joshua Schreier, "Recentring the History of Jews in North Africa: The View from Oran," *French Historical Studies* 43 (2020): 47–61.

116 On "Port Jews," see David Cesarani, *Port Jews: Jewish Communities in Cosmopolitan Maritime Trading Centres, 1550–1950* (Portland: Routledge, 2014).

117 Yaron Tsur, "Jewish 'Sectional Societies' in France and Algeria on the Eve of the Colonial Encounter," *Journal of Mediterranean Studies* 4 (1994): 263–77 (265).

that most Jews found the organ to be an exceptional, out-of-the-ordinary object, whose presence was hard to ignore.

David Ashkenazi—son of Mata Maḥasia,
Oran of the Sages:

And I, the little and young David, took it upon myself, this humble task of making some amendments to this congregation of mine. I, a son of Mata Maḥasia, Oran of the Sages.¹¹⁸

David Ashkenazi was indeed a true and loyal son of Oran of the Sages—the physical city in which he ruled for many years, and the remembered and longed-for city whose inhabitants he continued to lead and serve long after they left Algeria when it was liberated from the French occupation in 1962. Examined in light of his self-proclaimed commitment to Oran's (past and present) community and its longstanding traditions, we realize Ashkenazi's letter to Kook is much more than an enraged reply. It is a credo as well as a pledge of a leader, struggling to maintain and preserve his congregation in a rapidly changing world.

118 Mata Maḥasia is Sura, a city in Babylon in which talmudic academies resided. ASK, 5.

Appendix

עותק של המכתב של ר' אשכנזי לר' קוק נמצא באוסף רבי פרופ' מאיר בניהו - אוסף פרטי שנוסד על ידי פרופ' מאיר בניהו, וכולל למעלה מ-1,600 כתבי יד עבריים.

אני מודה למנהלי האוסף על שהרשו לי לפרסם תעתיק של כתב היד.

(עמ' 1) תשובה מגולה על פסק הרב כמוהר"ר קוק הי"ו ראש הרבנים לעדות

האשכנזים בארץ ישראל על ענין העוגב בבתי כנסיות ובפרט בקהלנו ישצ"א

במח"ק נמצא איש אחד מאחינו האשכנזים הבא לגור אצלנו ועשינו לו טובות רבות כהלכת גוברין יהודאין. וזה כמה חודשים מחרחר ריב ומדון לעשות אומנותו של שטן עולה ומשטין יורד ומקטרג מראה טלפים כדבר אחר לאמר ראוני שאני טהור ולמדן. ובאתי לאסר אָסר על מה שנהגתם מח"י שנה אתם וקהלתכם. ולא שם על ליבו ולא ידע מדת השלום ואת אשר אמרו רז"ל גדול השלום שאפי' ישראל עברו עע"ז ושלום ביניהם אין השטן מקטרג עליהם שנאמר (הושע ד') חבור עצבים אפרים הנח לו ושנוי המחלוקת שנאמר (הושע י) חלק לבם עתה יאשמו. ועוד מה שאמרו מוטב שיהיו שוגגים ולא מזידים אף בדברי תורה (כדאמרינן בפרק המביא כדי יין) והנח להם לישראל וכו... ככהנה וכהנה רבות לא יכילם ספר ולא אמרי שפר. והנה פנה אליך להטפל בענינו להיות ערב לדמיונו. והיום הזה שלח אלי ע"י הבי-דואר העתקה מפסקך. ותמיהא לי טובא עליך האדם הגדול, שרצית להתערב בקהלה שאינה תחת השפעתך ולא לך משפט הגאולה. ובפרט טרם דעת טיבו של עובר זה ושמוע דברי חכמים היושבים על מדין, הגם שידעתי בי"ני ידעתי דכל המשיב ע"פ סגנון השאלה מותר דהוי כדרך אם כנים הדברים.

עתה, קודם כל למ"ודעי אני צריך, שהאיש הלזה עת באו לעירנו והא ערום ועריה, עלה במחשבתו ובקש לעקור את הכל לעבד ביום (עמ' 2) שבת קדש לפרנסתו, הודיעני נא את דרכיך, אם יאות לו לבקש לחומרות דרבנן (דבעוגב אין בו יותר כאשר יתבאר להלן בעז"ה) אחר שהיה בדעתו לעבר באמת על גופי תורה כלאחר יד, לחלל שבת החמורה שנאמר עליה שמר שבת מחללו וכל השמר שבת כהלכתו אפי" עע"ז, ומאן דנטר שבתא כמאן דנטר וכו...

ויותר מכל היה לך לשאול ממנו מי שמו לשר ושופט בקהלה רבה עיר ואם בישראל שנמצאו שם חכמים ורבנים שקטנם עבה ממתניו, והלא הוא בעצמו התפלל שנה ושנתיים בביה"כ אשר מנגנים בו בעוגב ולא דבר מאומה. גם לא בא לפני רבותיו לשאל מהם על מי ועל מה שתקים של פתגם דנא. אך מחדש נתחבר עם בני בליעל, בלי יועיל פריצים המחללים שבת בפרהסיא שלא על חנם הלך הזרזיר אצל הערב, ורצה ליטול את השם ביניהם עליו ועל כיוצא בו ודאי נאמר לא כל הרוצה ליטול את השם יבא ויטול צבועים העושים מעשה זמרי ורוצים לקבל שכר כמעשה פנחס...

אבל עשית את הרבנות כדבר הרשות לתת לו במכתבך של יום ח"י לח' שבט תארים שאין לו חלק בהם לא מנה ולא מקצתה ודי לי בפתחתי זאת אשר קצרתי בה מאפס העת והפנאי.

עתה אבוא העיר"ה על עצם שאלתו, מתחלת תשובתך נראה ששקר ענה, ותלה תנא בדלא תנא, יען במכתבו שכתב לנו בצרפתית מיום 20/2/34 שועלי"ם הלכו בו, באמר לנו איך אין לנו ידיעה מחרם הרב ח"ס ז"ל על כל הנכנס לביה"כ שמנגנים בו העוגב אז לקים מה שנאמר ענה כסיל כאולתו, השבנו לו צרפתית על החרם - ולא דברנו מאומה על האסור עצמו - שהרב ח"ס ז"ל החרים בדורו את (עמ' 3) קהלות האשכנזים ורבותינו הספרדים עדין לא החרים את בית הכנסת באוראן של חכמים, ומח"י שנה מתפללים בו חסידים וחרדים - אף אם יש בדבר אסור - ואין פוצה פה ומצפצף.

זאת ועוד כמה חכמים ורבנים עברים ושבים כוללים ספרדים ואשכנזים התפללו בו. ועד אחרן הרב דוב לוי עגלנדר צעיר המשתלח מאת המזרחים ולא חשו ולא הרגשו לחרם הזה אשר באמת היה דבר נחוץ לשעתו ולדורו למגדר מלתא ותו לא, אלו היו ת"ד בק"ן ומי הוא זה ואיזהו שיש מוח בראשו המרחיב עוו בנפשו בזה הזמן להחרם ולנדות קהלה אחת או אפי' איש אחד אף על גופי תורה?

הלא ידעת מה שכתב בעל הדרישה, ומהר"ם כתב דבזמן הזה שהנדוין מקולקלים אין מנדין כל מי שראוי לנדות אף בעבירות גדולות וחמורות ודעת מ"ו אפי' בשורת הדין לא החמירו חכמים פן ימנעו מלעשות תשובה כ"ש שבדורינו שנבלים יביישו את האדם על ככה ולפעמים אין האדם מושל ברוחו ויצא לידי דברים הרעים ואפי' לידי שפיכות דמים. והרמ"א ז"ל פסק בהגה בש"ע י"ד סי' שלד ס' צ"ז ולכן נהגו להקל מלמחות בעוברי עבירה שיש לחוש שיהיו עומדין על גופינו ומאודינו.¹¹⁹ ודברים של טעם וחכמה יתירה הם הן מצדיהם הן מצדינו שאנחנו רעים את הצאן ותמיד תהיה שמאל דוחה וימין מקרבת בחזקה ואם אין אתה דן ככה ויעלה על דעתך שהדין הרפה יקוב את ההר ושיש בידו ואינו מוחה אף אם כנפשו או כממונו נתפס על אותו עון אמור נא לי אתה שהקולר תלוי עליך גלל ארץ הצבי החכמת כל קבוצות של כל אחינו האשכנזים אשר באו אל הארץ ויטמאוה במעשיהם ובשקוציהם? ואם אין לאל ידיך הלא כמוך כמונו!

(עמ' 4) זאת ועוד אם אליבא דהלכתא חרם הח"ס חל על כל קהלות ישנות וחדשות יש לעשות כל הארץ חרם! אמריקא, אירופא, צרפת, ואפריקא בכלל השלחת להם את דבריך הנעימים או אם חשבת שתיקה יפה לחכמים. ולו שמעת עצת המלך החכם מכל אדם היה טוב לך! וכבר הורה זקן, הגאון האמתי הספרדי עמוד הימיני התשב"ץ בתשובה נ"ה מחלק הראשון פוסק על מה שפשתה המספחת, שקרא קאי, שאם באנו להחרים ולנדות המלמדים לשונם לדבר שקר אין נקי, והיתה כל הארץ חרם, דון מנה ובה.

119 The quote is actually the gloss of the Rema on *Sh.Ar. YD 334:48*.

לא זו בלבד, אלא הח"ס עצמו בתשובה פ"ט מחלק ששי מודה בעצמו אני פי מלך שמור וכו'. ונצטוינו מעלית עילתא דלא להעדא דינא דמלכותא ואם כן האמת יורה דרכו שלא היה בידו להחריים וכל שכן דלא חל עלינו מה שאין גם כן בדינינו לעשות כמוהו משום מלכותא דארעא. אף אם נודה שהוא אסור מן הדין, וזה אינו כלל ועיקר וכלל כי יש בו דוקא חומרת איסורי דרבנן

פש גבן לברורי מה ראינו אנחנו החרדים על דבר כבוד שמו לשתוק על העוגב הזה בקהלתנו, ומעשה שהיה כך היה. קרוב לארבעה שנים נמנתי פה לנשיא הרבנות וכבר היו מתפללים משנים קדמונית (וסימנך י"ד החזקה) בבה"כ הגדול עם עוגב קטן וחכמים שקדמוני ראו בתחלה למחות שלא ינגנו בעוגב ואנשי הועד לא קבלו מהם בשום אופן וכל העם מגדול ועד קטן באים ומתפללים ונעשה להם הדבר לעצם התפלה ממש, ואדרבא רבו כמו רבו שלא היו יודעים דרך בה"כ אלא פעם אחת בשנה ולא ישנה להם ונמשך לכם וכאו מדי שבת בשבתו לשמע אל הרנה ואל התפלה וכלם ששים ושמיים לעשות רצון קוניהם.

(עמ' 5) ודוד הוא הקטן אנכי הצעיר קבלתי על שכמי משרת ענוים לתקן כמה תקונים בקהלתי זאת, יען אני מילדי מתא מחסיא, אורן של חכמים ואמרתי ללבבי יבטל הרע במעוטו ומהי חומרת העוגב אצל תלמוד תורה כנגד כלם: שחיטה, גטין, חליצות, גמילות, חסדים, קופת עניים וכו'. ובשנה שעברה נמנו וגמרו, ואחרי רבים להטות להחלף העוגב הקטן בגדול רע בטוב ולא היה בידי לעכב כי אז יהיה המישור לעקוב ואפסד את כל תקנותי להרס קרן הדת, התורה ומצוה, ולחנם אריב עם קהלתי, וכמה קלקלות יצאו מן הדבר

אני דנתי דין אמת לאמתו דאף בדברי תורה מוטב שיהיו שוגגין ולא מזידין, דבפרק המביא כדי יין אסקינא דאפי' באורייתא לא מחינן במילתא דידיעין דלא מקבלי מגן ובדבר שכלם שוגגין ועיין התשב"ץ חלק שני ענין מ"ז והרשב"ש סי' תקס"ב שבמקצת דורות יש קצת שנוהגים קצת קלות בקצת ענינים ואין כח בגדוליהם למחות בידם ושקלתי בפלס מאזנים וראיתי שיצא שכרו בהפסדו והעוגב כאפס וכאין כנגד דברים אחרים שהעולם עומד עליהם.

אתה הראת לדעת שעד כאן דברנו על ענין החרם ולא על עקר הדין אם אסור או מותר, וכעת אתינא לעומקא דדינא.

את העוגב אתה דן בגופי תורה ואומר שאין בו מחלוקת ובגללו הכל נתן מרועה אחד, הא ודאי ליכא, ושגיאה היא שפלטה מידך, ואיפכא מסתברא, דכל הנאמר על העוגב שנוי במחלוקת ואינו אסור מדברי תורה, ואף אסורו מדרבנן אינו מפורש כלל. ואם כן יש לדון בספק דרבנן ואזלינן לקולא, ואם הם החמירו אינו אלא הא אטו הא וקושטא קאי דבעידנא שהח"ס וחבריו עמדו לגדור גדר היה הדבר נחוץ

(עמ' 6) לא על העוגב בלבד אלא על שלשה פשעי ישראל כמו שהמעייין ירא בעינא פקוחה בתשובות הללו.

עתה תבא דינ"א על פי הבאר, מצד אסור השמעת קול בשבת ויום טוב. ידוע הדבר ומפורסם הענין שהוא דוקא ע"י גוי ואמירה לגוי היא שבות דרבנן וכבר מלאכי אלהים עולים ויורדים בה זה אמר בכה וזה אמר בכה, ובדבר מצוה שרינן כמו הדלקה וכבוי נר בשבת בכה"כ שיש לנו על מי לסמוך דתפלה מקרי דבר מצוה, אך יש לנו לדעת אם העוגב נצרך כל כך לתפלה, אנחנו אמרים בפה מלא והנסיון הורה לנו בקהלתנו - ואין אנו ערבים לקהלות אחרות - שהוא מושך לבב אחינו להתפלל ומתוך שלא לשמה יבואו לשמה, ובפרט שכבר הרגלו לבוא בשביל נגינת העוגב אם כן יכולים אנחנו לסמוך להתיר אמירה לגוי מבעוד יום בשבות דרבנן, ושנית ליך פה רק ראשי פרקים בהעברה ויש לי פסק מאת הגאון המפורסם נר המערב כמוהר"ר רפאל אנקווא הי"ו המתיר לנגן ביום שבת"ק וביום טוב ע"י גוי וכדאי הוא לסמוך על הוראותו, כנגד אלף המחמרים ופסקו אפי' באלף לא בטל.

ועוד באתה לאסור את העוגב משום דבחוקותיהם לא תלכו וכללא כילת לכל מנהג שלהם יהיה מה שיהיה בלי שום חלוקה, ואתה מביא ראיה מהרמב"ם באמר כך הוא קבלו דעתי, והפוך הוא שאין ראיה מזה על העוגב יען הרואה יראה והלומד ידע בדעת נכונה שמהרי"ק בשורש פ"ח פוסק שאין לאסור משום חק אלא בא' משני חלקים הא' הדבר אשר אין טעמו נגלה והיא קבלה ביד אבותיהם וענין השני דברי שחץ וגאווה כמו לבוש ארגמן וכך היא דעת מרן בבית יוסף כמו שמפרש סי' קע"ח בטור י"ד וגם כן דעת הרמ"א בדרכי משה ובהג"ה על הי"ד

(עמ' 7) סימן הנז"ל ובעוגב אין אחד משני טעמים ובעל הגהות מימוניות אומר בפירוש משם הרא"ש שאין להוסיף מסברא על מה שמנו חכמים שהיתה קבלה בידם שהוא מחקות העכו"ם והרי אתה הוספת מדעתך ומסברתך ולך ראיה ברורה ששנוי במחלוקת ולנו הספרדים אין לנו אלא דברי מרן, ולחכמיא די ברמיזא.

את אשר אמרת שמהרי"ק בתשובה קצ"ב קסבר שלבוש אדום אין בו משום תועלת, התשובה הזאת לא נמצאת אצלי ואם כונת לתשובת פ"ח הדרנא למאי דכתבנא לעיל, ופירוש מהרי"ק על הספרי גם כן בקשתיו לא מצאתיו, האמן. ויש לי פירוש הזרע אברהם על הספרי והוא מייתי דוקא את הש"ך משם מהרי"ק שאין דרך הצנועים להיות אדומים בלבושיהם וכו'. ועוד התם מסורת בידנו להקפיד על לכישת האדום לבני עמנו ואין מי שעלה בדעתו שהספרי דבר על הדברים המיוחדים לשם פולחנם, אלא אתה בפלפולך ואגב חריפותך, הלזה תקרא גוף תורה? ובר מן דן, יש בידנו לישב הרגשתך על המהרי"ק. אם הדברים כהויתם. ונלענ"ד דמה שאמר שבלבוש ארגמן אין בו תועלת היינו שאין להתיר את הארגמן משום תועלת וכבוד מאחר שהעכו"ם לובשים משום שחץ וגאווה ואית משום הטעם השני. וזה פשוט לכל מי שמעייין בעיני יפה בשורש פ"ח של מהרי"ק וק"ל.

אם כן עדין לא נמצא בדבריך אות או מופת חתוך לאסור את העוגב מדברי תורה או מדרבנן בלי מחלקת ושנוי דעת הפוסקים דכל אחד לשטתו אזל בפירוש דברי הרמב"ם והספרי ובידנו לסמוך על מי שנרצה ועל מה שעלה בדעתך להביא ראיה לחשש מינות ואפיקורסות הם דברים הנאמרים על היחיד שאין אנו

(עמ' 8) יודעים אותו ואת מחשבתו הספונה, או מפני מראית העין, אבל קהלה רבה שהיא ידועה לעיני כל, וכונתה לשם שמים להמשיך לב בניה להתפלל אף פעם אחת בשבוע, לזה ודאי אמינא אעפ"י שיש חומרת אסור דרבנן גדולה עבירה לשמה ועת לעשות לה'.

וכל שכן דברבים ליכא חשדא כדרגסינן בפרק כל הצלמים ומי חיישינן לחשדא והא בי כנישתא דשף ויטיב בנהרדעא דאוקמי ביה אנדרטא (ופי רש"י צלם) והווי עיילי ביה אבוה דשמואל ולוי ומצלו בגויה ולא חיישי לחשדא? רבים שאני.

והעלתי לך כל זה להראות שגם לטענותיך יש ויש תשובה ולא קטני קני באגמא הווי הספרדים (וזכור את הרב אלפאנדרוי ז"ל אשר היה בשעתו והגידו לנו מגידי אמת שעם כל חכמתך וכבודך היה קורא לך פעם בפעם, חמ"ר חיור עתיק, אף אם הוא שבח דאמר קרא רבין בין המשתים. ודברים שבע"פ איני רשאי להעלותם בכתב) אבל כל זה אך למותר דבעוגב שאני שבפסוק מלא בכתובים, ודוד קא צוה ומצוה הללוהו אל בקדשו, ותרגימין הללויה שבחו אלהא בבית מקדשה הללוהו במינים ועוגב. ואם איתא משום איכה יעבדו הגוים את אלוהיהם ואעשה כן גם אני, השתא דוד לא הוה ידע. ואם נגד התרגום ונגד האמת אתה אומר כמו הח"ס ז"ל שדוד לא קאמר על בית המקדש והוה מנגן בביתו בעוגב הלא אסרת ליחיד משום חוקותיהם, ומשום לחקות להם, ומשום מינות. אלא האחת יורה דרכו דליתא משום כולי האי. ודוד הוא העד אם בבה"מ אם בביתו, והעוגב אינו אסור לא מצד עצמו לא משום ע"ז ולא משום מינות.

(עמ' 9) ואם אתה עדין חושד את קהלתנו ואותנו, כמונו כמוך שכבר נחשדת לפני הרב בלומנפאלד צוק"ל שבפומבי היה קורא לך מין ואפיקורס עם כל זה צא ולמד מתשובת הרמב"ם מאמר קדוש השם שמשה נענש לאלתר משום החושד בכשרים וכמו כן ישראל בימי אליהו היו כולם עובדי ע"ז ולא טוב עשה אליהו ללמד חובה על ישראל וגם כן בזמן ישעיהו וכו'... עיין שמה.

ואם לא די לך עם כל הנאמר לעיל ותרצה שהחומרא היתירה תקוב את ההר מצוה עליך לפרסם במחנה העברים, שעדתנו כעדת צדוק וביתוס וענן, ואנחנו בדין כמו שאר קהלות צרפת אירופא ואמריקא. וכל הטובות שעשינו לאחינו האשכנזים בית החולים של דיסקין, המזרחים וכו.. וכו.. הן הנה אסורות מדברי תורה והשמרו לכם פן ואל יבואו עוד אצלנו שום שלוחים מאתכם כי אז נראה למי החתמת וה' אל אמת צדיק יבחן וידענו שרחמנא לבא בעי וישע לאחר שלנו יותר מאחר שלכם, ואם אתם יודעים

שלא טוב עשיתם להתערב בקהלה אשר איננה מאתכם, הלא כתוב את נְהַב בסופה,
ואנשים אחים אנחנו

הלכ"ד החותם פה אורן של חכמים
יום כ"ח אדר השני מהאי שתא ופעל ידיו תרצ"ה
בסדר וכבוד ה' מלא את המשכן
ב"ה אלהי עוזי ומעוזי
הצב"י ע"ה