

***A REFLECTION OF TRUTH***  
**Rabbinate and Academe in the Writings of Rabbi A. S. Rosenthal on  
Violating the Sabbath to Save a Gentile’s Life**

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(English translation by Joel A. Linsider)

***Introduction***

**A. “The New Shall Be Sanctified and the Holy, Renewed”**

The attitude of religious Judaism toward the modern world (that is, the world since the Emancipation) has been shaped by the slogan coined by the *Hatam Sofer* in 1819: “The new is forbidden by Torah law.”<sup>1</sup> The slogan provides a shorthand summation of classical orthodoxy’s teaching: fundamental rejection of halakhic innovation; sanctification of customs, including the most trivial (“anyone who questions our customs requires scrutiny”<sup>2</sup>); absolute reliance on the rulings of R. Moses Isserles (Rema) for the Ashkenazi community (“all Israel discharge their obligations in accord with [the views of] Rema”<sup>3</sup>); concern for the faithful and lack of any worry about those who stray (“we are not responsible for transgressors”).<sup>4</sup>

About one hundred years later, Rabbi Abraham Isaac ha-Kohen Kook coined a slogan that, at first blush, seems to clash with the *Hatam Sofer*’s: “The old shall be renewed and the new shall be sanctified; together, they will become torches that illuminate Zion.”<sup>5</sup> Rabbi Kook, who strictly adhered to the details of existing customs so as not to detract from the received tradition, nevertheless conveyed in this slogan his vision of spiritual and cultural renewal in Israel. As a decisor, he strongly opposed any effort to depart even slightly from traditional law and practice; as a thinker, he ranged all the way to utopian visions of a renewed prophetic spirit that would rouse all of religious life from its exile-induced torpor.<sup>6</sup>

Rabbi Kook’s slogan “the old shall be renewed” became, with slight modification, “the new shall be sanctified and the sacred, renewed”—the slogan of “The Movement for Torah Judaism.” It served as

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<sup>1</sup> It was Moshe Samet who introduced the characteristics of orthodox society as a subject of sociological study. See his article “*Haredi* Judaism in Modern Times,” *Mahalakhim* 1 (Adar 5729): 29-40; *Mahalakhim* 3 (2 Adar 5730): 15-27 (Hebrew). Jacob Katz also broke new ground in the study of orthodoxy; I here note only his article “Orthodoxy in Historical Perspective,” *Kivvunim* 33 (Fall 5747): 89-100 (Hebrew).

<sup>2</sup> *Resp. Hatam Sofer*, part 1, sec. 51.

<sup>3</sup> *Id.*, part 1 sec. 103; part 3, sec. 98. [The quotation referring to Rema translates “*yoze'im be-yad Rema*,” a play on the description of the Israelites’ departure from Egypt in Exod. 14:8—“*u-vene'i yisrae'l yoze'im be-yad ramah*”; “the Israelites went out with a hand raised high.”—*translator’s note*]

<sup>4</sup> *Id.*, part 4, sec. 53.

<sup>5</sup> *Iggerot ha-Re'ayah* [Letters of R. Abraham Isaac ha-Kohen Kook] (Jerusalem, 5745), letter 164, 1, p. 214.

<sup>6</sup> On Rabbi Kook’s halakhic decisional process, see Rabbi N. Gotel, *Halakhic and Meta-Halakhic Considerations in Rabbi Kook’s Jurisprudence*, doctoral dissertation, Hebrew University of Jerusalem (5761) (Hebrew). On his devotion to custom, notwithstanding his vision of renewal, see my article “Preservation of Community Customs vs. Halakhic Unity,” *Aqdamut* 10 (Kislev 5761): 273-276 (Hebrew).

the title for that movement’s first two publications, until being replaced by the title *Mahalakhim*.<sup>7</sup> The Movement was formed in 1966; its founders sensed an urgent need to guide religious Judaism in its confrontation with a changing environment, particularly with respect to nationalism.<sup>8</sup>

### **B. “The Movement for Torah Judaism”**

Rabbis and academics differ substantively in their approach to *halakhah*. Academic research strives to ascertain objective truth through the application of empirical standards. Halakhic decisors, in contrast, must adhere to traditional interpretations that are regarded within the world of Torah as “the word of God.”<sup>9</sup> An academic approach to halakhic decision-making could cut *halakhah* off from its roots and compromise its essential vitality. Prof. Ze’ev Falk has pointed this out in his critique of statements by the Law Committee of the *Masorti* movement in Israel:

Is the historical analysis of sources a technique for ensuring consideration of all sources or does it change the *halakhah*? There is a substantive distinction between the historical approach to writing a halakhic responsum and the traditional, ahistorical approach. It is impossible to write a responsum in a historical manner without considering the meaning of “*Torah min ha-shamayim* [Torah from the Heavens],” the dynamics of *halakhah*, and similar matters.<sup>10</sup>

Most members of the Movement for Torah Judaism were religious academics grounded in the intellectual world but taking halakhic guidance seriously. As individuals leading religious-halakhic lives, they had to account to themselves for the tension between their spiritual-intellectual world and their observance of the halakhic system. For example, Prof. Moshe David Har, a leading spokesman for the

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<sup>7</sup> Publication No. 1 (Jerusalem, 5726) and No. 2 (Jerusalem, 5728) are complemented by nine pamphlets under the title *Mahalakhim*, published between 1969 and 1975; together, they form the Movement’s principal publications.

<sup>8</sup> An account of the movement, its origins, and its goals can be found in Me’ir Roth’s and Yo’el Yarden’s interview of Prof. M. D. Har and Ms. Hannah Urbach, published as “The Movement for Torah Judaism—A Utopia of Religious Intellectuals,” *Gilayon* (Bulletin of the Torah and Labor Movement), Elul 5756. The Lavi Conference, held at Kibbutz Lavi in 1975, can be seen as a direct continuation of the Movement for Torah Judaism’s activities; the conference brought together educators, intellectuals and political leaders from the religious kibbutz movement as well as rabbis identified with Yeshiva University. Twenty-five years elapsed before the next Lavi Conference, and for the last five years, they have been held with the participation of the religious kibbutz movement, *Beit Morashah* in Jerusalem, Bar-Ilan University, and Yeshiva University. The participants in these conferences sought to give a voice to the community interested in the ideas of the old “Movement for Torah Judaism.” An examination of the proceedings of the first Lavi conference in *Lavi Conference-5735 [1975]* (Tel-Aviv, 5735) and of the second conference, in 1999, in H. Goldberg, ed., *Ka-Lavi Yaqum* (Tel-Aviv, 2000) shows that the “Movement for Torah Judaism” was completely forgotten. Not one speaker at these conferences so much as mentioned the movement that was without doubt their precursor in both mode of analysis and conceptual direction.

<sup>9</sup> See M. Kahana, “Talmudic Research in the University and Traditional Study in the Yeshiva,” in M. Kahana (ed.), *Tribulations of Tradition and Change—Essays in Memory of Aryeh Lang* (Rehovot, 5750), pp. 113-142. I will refer to Kahana’s approach below.

<sup>10</sup> Z. Falk, “A View From Outside,” *Responso of the Law Committee of the Rabbinical Assembly in Israel* 6 (5755-5756), p. 337.

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Movement, claimed that “our sages of blessed memory strove for a normative way of life in practice...a distinction was drawn between *halakhah* and thought...*halakhah* strives for the norm, but theoretical analysis is up to each individual.”<sup>11</sup>

Avinoam Rozenak notes that this approach is characteristic of a “dualistic” stance (in sociological terms, “compartmentalization”) between philosophical truth and the religious system: “Through a ‘dualist stance,’ a person can continue to adhere to his tradition, even while maintaining conflicting truth demands. It is the distinction between the world of actions—related to particularistic religion—and the universalistic realm of ideas...*this duality rests on the premise that there is no connection between the two realms, and accordingly, no possible contradiction between them.*”<sup>12</sup>

Rozenak himself sensed that this claim could prevail only as long the academics in question were involved in the study of ideas and processes (that is, were historians and philosophers), but that “‘duality’ becomes more problematic when the truth-seeking research deals with philology, with the study of the halakhic texts themselves, when the realms of practice and research touch on each other.”<sup>13</sup> One prominent individual who lived this sort of dualistic life but, unlike his colleagues, also assumed the responsibilities of a halakhic authority, was Rabbi Eliezer Samson Rosenthal.<sup>14</sup>

### ***Rabbi E. S. Rosenthal—Biographical Sketch***<sup>15</sup>

Rabbi Prof. Eliezer Samson Rosenthal immigrated to the Land of Israel from Germany in 1934, soon after the Nazis’ rise to power. He studied for many years at Yeshivat Merkaz ha-Rav, where he was ordained a rabbi. Two years later, he was drafted into the Haganah and commanded a platoon defending the Bayit ve-Gan neighborhood, where he eventually built his own house. During the 1940s, he served as rabbi of Kibbutz [?] (later Kibbutz Yavneh). He led the seminary for religious counselors in the Youth Aliyah and figured prominently in the absorption of Holocaust refugees. Appointed to a Rabbinat committee dealing with halakhic issues pertaining to “commandments contingent on the Land” (primarily agricultural), his ensuing need to combine expertise in *realia* with text study led him to discover, for the first time, the world of scholarly research. He became acquainted with Rabbi Saul Lieberman’s book

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<sup>11</sup> M. Roth and Y. Yarden (above, n. 8), p. 32; cf. M. D. Har, “The Significance of *Halakhah* in Shaping Jewish History,” in Y. Eisner, ed., *Thought and Halakhah* (Jerusalem, 5728), pp. 139-140 (Hebrew).

<sup>12</sup> A. Rozenak, “*Aggadah* and *Halakhah*—Reflections on Trends in the Study of the Philosophy of *Halakhah*,” in A. Berholtz, ed., *Journey to the Halakhah: Inter-Disciplinary Studies in the World of Jewish Law* (Tel-Aviv, 5763), p. 296 (emphasis in the original)(Hebrew).

<sup>13</sup> A. Rozenak, id. pp. 297-298. At note 78, Rozenak notes that difficulties along these lines are apparent among some members of the “Movement for Torah Judaism” as well as in the writings of R. Jacob Jehiel Weinberg, author of *Seridei Eish*.

<sup>14</sup> R. Rosenthal’s halakhic teachings can be found in the archives of the religious kibbutz movement at Kibbutz Yavneh.

<sup>15</sup> The biographical details are taken for the pamphlet *Professor Eliezer Samson Rosenthal, of blessed memory*, Hebrew University—Institute for Jewish Studies (Jerusalem, 5741)(Hebrew).

*Tosefet Rishonim* on the talmudic Order *Zera'im* (which deals primarily with agricultural laws) and was drawn into the world of the academy, where he eventually became, at a relatively late age, a leading talmudic philologist, whose writings were carefully studied by talmudists around the world. His meticulous academic work overshadowed his activities as a rabbi paving the way for a religious-Zionist movement that could grapple with the spiritual and practical questions raised by the encounter between Israel's national renewal and its adherence to its ancestral tradition. The founders of the Movement for Torah Judaism called on Rabbi Rosenthal to chair its *halakhah* committee and guide its work. An examination of that committee's deliberations discloses a multi-faceted figure: a man of the academy, bound by scholarly standards of careful and critical reading of texts, and a man of the *halakhah*, aware of his place in its unbroken chain and devoted to the hierarchical structure of the institutions responsible for its preservation and development. His deep involvement in philological research gives particular importance to his method in dealing with halakhic change and flexibility. Rabbi Rosenthal moved freely between academics able to live at peace within a regime of “duality” and non-academic rabbis, who lacked any literary or historical sensitivity.

I've selected for discussion here Rabbi Rosenthal's remarks at the founding conference of the “Movement for Torah Judaism,” held on the intermediate days of Passover in 1976.<sup>16</sup> He delivered these remarks as chairman of the movement's *halakhah* committee, and, by their very nature, they provide background and guidance on the contemporary halakhic world. The particular subject to be considered is the *halakhah*'s treatment of Sabbath violation for the sake of an ill gentile.

### ***Rabbi E. S. Rosenthal's Dicta On Sabbath Violations For The Sake Of An Ill Gentile—Halakhah And Meta-Halakhah***

#### **A. Background: Chief Rabbi Unterman's Position**

Shortly before Passover in 1966, a story went around in Israel about Jews in Jerusalem declining to treat, lest they violate the Sabbath, a black man who had passed out on a Jerusalem street on Saturday morning. In time, it became clear that the story was a fictitious trial balloon, floated by Dr. Israel Shahaq in an effort to poison relationships between religious and secular Jews.<sup>17</sup>

In an article published in *Ha-Aretz* on Passover Eve of that year, Chief Rabbi Unterman wrote as follows<sup>18</sup>:

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<sup>16</sup> Eleizer Samson Rosenthal, “Concluding Remarks at the Founding Conference (Third Intermediate Evening of Passover),” *The New Shall Be Sanctified and the Holy, Renewed—The Movement for Torah Judaism* 1, Jerusalem, 5726.

<sup>17</sup> Dr. Shahaq, a lecturer in chemistry at Hebrew University, was a frequent writer of anti-religious letters to the editor.

<sup>18</sup> Different versions of the article appeared in other publications: *Or ha-Mizrah* 10 (5725-5726): 227-231; *Qol Torah*, Year 20 (5726), 6, pp. 3-7; *Morashah* 1 (Sivan 5731): 5-10.

Sad to say, recent comments have challenged the ethical values of Torah-adherent Judaism, particularly the Torah’s view of gentiles and human beings, and have implied that the *halakhah* lacks a proper attitude toward gentiles. But when the critics are shown the explicit *halakhot* that refute their comments and demonstrate their total lack of merit, they seize on one specific claim: they argue that these *halakhot* do not represent the law *per se*, but were established only for the sake of peaceful relations (“*darkhei shalom*”). It therefore becomes necessary to explain the true meaning of the concept “*darkhei shalom*”: it represents neither an attribute of gratuitous kindness nor a mechanism for self-defense; rather it flows from the essence of the Torah’s ethical system.

Rabbi Unterman elaborates on the concept of “*darkhei shalom*,” saying, among other things:

Just as one who deprecates the *halakhot* established by the rabbis cannot be considered observant of the Torah and commandments, neither can one be considered observant if he declines to follow the enactments related to *darkhei shalom*. For all of it flows, via the oral Torah’s chain of transmission, from our Torah’s source of living waters.

With specific reference to Sabbath violation for the sake of a gentile, Rabbi Unterman says:

The leading later authorities (*aharonim*) permit tending to the medical needs of ill non-Jews on the Sabbath when the work involved is not forbidden *de-orayeta* [directly by biblical law]. But when the work is forbidden *de-orayeta*, it is permitted only if necessary to avoid hatred that might endanger Jews. See in this regard the responsa of *Hatam Sofer* (*Yoreh De`ah*, sec. 131, cited as well in *Pithei Teshuvah*, sec. 154), who says that one may rely on the view of Nachmanides, who himself assisted a gentile giving birth on the Sabbath when no labor forbidden *de-orayeta* was involved. [*Hatam Sofer*] adds: “But if the hatred [that would be incurred by not tending to the gentile] entails a risk of mortal danger, even labor forbidden *de-orayeta* should be permitted. [That is so] notwithstanding the comments of *Magen Avraham* (toward the end of sec. 334) implying that only extinguishing [the fire]—a labor not needed for its inherent product [and therefore involving a lesser degree of prohibition]—would be permitted, but not absolute, clear-cut labor; for an examination of *Eruvin* 44b and *Shiltei Gibborim* ad loc. shows clearly that even labor forbidden *de-orayeta* is permissible if it is impossible [to deal with the situation] in its absence.”

Rabbi Unterman concludes:

It goes without saying that nowadays, withholding medical care from a gentile can produce hatred entailing a great risk of mortal danger that might, God forbid, reach [Jews in] all corners of the world. If one man’s fictitious story can cause a furor and generate grievances on the part of anti-Semites in various countries, who can imagine the consequences of an actual case in which a Jewish doctor declined to treat a gentile.

Four days after the article’s publication, the founding conference of “The Movement for Torah Judaism” met in Jerusalem. Chaired by Prof. E. E. Urbach, it was attended by hundreds of religious Jews, most of them academics. Establishment of the Movement was impelled in large part by principled opposition to stringent and extremist trends in the religious community (particularly in its political and legislative expressions). The Movement sought to present a tolerant Judaism, one dealing with social, economic, and political questions and fully sharing in responsibility for social systems and their functioning. In the context of the responsibility to instill the values of Torah and observance of *halakhah* throughout the nation, the Movement requested the halakhic authorities to deal with the practical issues related to the State of Israel and modern Israeli society.

In the conference’s summary remarks, Rabbi Rosenthal gave prominence to the need for “*derekh erez*,” which preceded the Torah.<sup>19</sup> As an example, he favorably cited Rabbi Unterman’s comments on saving a gentile on the Sabbath. The following discussion, as noted, is based on that statement.

### **B. Between *Mishnah Berurah* and *Hatam Sofer***

*Much praise to Chief Rabbi A. Y. Unterman, may he live long and happily, who, regarding the saving of a gentile on the Sabbath, moved, between Purim and Passover, from the statement of the Mishnah Berurah to the view of the Pithei Teshuvah...<sup>20</sup>*

Rabbi Rosenthal begins with praise for Rabbi Unterman, who took a position seemingly at odds with the accepted halakhic view and based his ruling on the *Hatam Sofer*’s statement quoted in *Pithei Teshuvah*. That, at least, is how I understand his position, though others have taken it differently.<sup>21</sup>

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<sup>19</sup> See, e.g., *Leviticus Rabbah* 9:3—“R. Ishmael son of R. Nahman said, *derekh erez* preceded the Torah by twenty-six generations. The term “*derekh erez*” is variously used to mean “worthy, proper conduct” or “worldly labor,” among other things.—*translator’s note*.

<sup>20</sup> See above, n. 16. Quotations in italics here are from that article.

<sup>21</sup> Then Minister of Education Rabbi Kalman Kahana, a member of *Kibbutz Hafez Hayyim* and a leading spokesman for *Po’alei Agudat Yisra’el*, understood Rabbi Unterman’s statement differently. In a review of *He-Hadash Yitqadesh*, published in the newspaper *She’arim* on Sukkot Eve 1966, Rabbi Kahana wrote, “With sarcasm ill-befitting a professor lecturing *ex cathedra*, he praises Rabbi Unterman...” On Rabbi Kahana and his critique, see further below.

*Mishnah Berurah*, 330:8, speaks as follows regarding desecration of the Sabbath to save the life of a gentile:

And know that nowadays, even the most worthy physicians are not the least bit cautious about this, for on every Sabbath they journey substantial distances to tend to idolaters and they themselves write and grind medicines, but they have no [halakhic] basis for doing so. For even if we say that it is permitted to violate the Sabbath with respect to a rabbinic prohibition in order to avoid hatred on the part of the idolaters (and even that is unclear; see *Peri Megadim*), all authorities agree it is forbidden to transgress a Torah-based prohibition; and those who do so are deliberate desecrators of the Sabbath, may God protect them.

As already noted, the *Hatam Sofer*'s comments are quoted in *Pithei Teshuvah* on *Yoreh De'ah* 154:2—

See *Resp. Hatam Sofer*, sec. 131 regarding the Turkish prince's directive that each town and village hire a skilled midwife who had studied specifically with their experts. And even if they already had talented midwives, they would still be required to hire one who had passed the test imposed by the physicians.

In some villages, the only midwife so qualified was a Jewess, and the question was asked whether she could be employed as midwife, to serve on both weekdays and the Sabbath. He [*Hatam Sofer*] replied that since there were several otherwise qualified midwives, it was certainly permissible, even without the rationale of [avoiding] hatred, as the author of *Bet Yosef* [R. Joseph Karo] wrote in *Bedeq ha-Bayit*, “Nachmanides acted...” And, as a matter of practical *halakhah*, there is reason to rely on Nachmanides' determination to act in a particular way. And if that is so, in our case it is permissible even on the Sabbath [for the midwife] to [tend to the mother] in ways that do not involve desecration of the Sabbath, as when the mother is sitting on the birthing stool and the infant has begun to emerge, as *Magen Avraham* has written in sec. 130, par. 106. But the midwife should direct a competent gentile assisting her to cut the umbilicus, which is a labor prohibited by biblical law; but if doing so would cause hatred that might bring about mortal danger, even biblically prohibited labor should be permitted. And even though *Magen Avraham*'s statement at the end of sec. 134 teaches that only extinguishing a fire is permitted, for that is labor whose direct product is not needed, and that a full-fledged labor would indeed be prohibited, an examination of the *mishnah* at *Eruvin* 44b and *Shiltei Gibborim* ad loc. clearly shows that even biblically prohibited labor is permitted if there is no way around it. Thus far his comments; *q.v.*

Hatam Sofer’s innovation was that when hatred entailing mortal danger may exist, even biblically forbidden labors are permitted. A reading of the passage from the *Mishnah Berurah* quoted above suggests that Hatam Sofer objected to expanding the “avoiding hatred” exemption beyond rabbinic prohibitions. From that point of view, it was Rabbi Unterman’s reliance on *Pithei Teshuvah* rather than on *Mishnah Berurah* that Rabbi Rosenthal found praiseworthy.<sup>22</sup>

Rabbi Rosenthal saw Hatam Sofer’s statement as an important departure, both in the specific law of saving a gentile on the Sabbath and in halakhic dynamics generally. In another article,<sup>23</sup> Rabbi Rosenthal provides a comprehensive analysis of Hatam Sofer’s comments, comparing two of his responsa, one on *Hoshen Mishpat* (supplement, sec. 194) and one on *Yoreh De`ah* (sec. 131). I here present his principal ideas.

In the responsum on *Hoshen Mishpat*, Hatam Sofer considers a Jewish physician traveling in a gentile’s cart to treat both Jews and gentiles. After identifying all the prohibitions there entailed and weighing the pertinent factors, he writes:

But, as said earlier, where there is merely [a need to avoid] hatred [of Jews], he can offer the excuses noted above [and decline to violate the Sabbath]; but [it is different] where there is reason to be concerned about the danger [flowing from the hatred] to which we are exposed, for we live amongst them, and they may increase their hatred and strife, saying that we treat gentile blood lightly, and they will not accept explanations related to Sabbath observance. Moreover, in most places the physicians are gentile, and they may come to treat Jewish blood lightly. And it is possible that the Talmud spoke only of its times, when it was uncommon for Jews and gentiles to live together, as *Tosafot* said (*Avodah Zarah* 15a, s. v. *Imur*), their times differ from ours, and Rosh ad loc. (*Avodah*

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<sup>22</sup> *Mishnah Berurah* itself (334:26), however, also suggests a different result from the one quoted above. R. Rema had written that “Where there is uncertainty regarding the danger, it is permissible even to extinguish a fire in a gentile’s house, and that is our practice, but it applies specifically to extinguishing the fire, which is a labor whose product is not needed, and there will be danger if he fails to extinguish; but it is forbidden to desecrate the Sabbath to save [property].” In commenting on that passage, *Mishnah Berurah* says: “Even if extinguishing [the fire] were a labor needed for its product, it would still be permitted, for he wrote that danger is present.” This implies that where there is a possibility of danger ensuing from a failure to aid, the actions that may be taken to rescue a gentile are not limited to those that transgress only rabbinic prohibitions, and that even biblical prohibitions are waived—precisely the point made by Hatam Sofer. The seemingly conflicting passages in *Mishnah Berurah* may be distinguishable, however, in that he does not see the risk of danger in the context of withholding routine medical treatment, but where danger definitely is present, there is no alternative to transgressing even biblical prohibitions. See further below, in Rabbi Rosenthal’s analysis of Hatam Sofer’s comments.

<sup>23</sup> As far as I know, this article was never published. I received a copy of it (and many hand-written drafts) from his sons, my teacher Prof. David Rosenthal and Dr. Abraham Rosenthal, and I want to thank them for their help and good will. The article has no heading or date, but it likely was written around the time R. Kalman Kahana’s review was published (Sukkot 1966).

*Zarah*, chap. 1, sec. 1) likewise said that commerce with gentiles differed then [in his day, compared to talmudic times]...

It may be that even nowadays it is forbidden [to assist in birthing, because of idolatry concerns unrelated to the Sabbath], but to travel in a wagon driven by a gentile to provide medical treatment to a gentile may be permitted nowadays, for there is reason to be concerned about the ways of peace and the possibility of danger to all. (From a ms.)

*Hatam Sofer* steers directs the physician toward avoid forbidden travel to the extent possible. If there are people needing care within his town, he should try to treat them and thereby avoid traveling, for that avoidance entails no danger since “it is very common for physicians to be delayed because they are treating other, earlier, patients.” But if he cannot get out of traveling, he should go on the carriage of a gentile who has already set out for some other purpose. Moreover, he is forbidden to return after treating the patient, for that differs from setting out to save him. But when all is said and done, he allows the journey (which involves only rabbinic prohibitions) because of concern about danger.

In the responsum on *Yoreh De`ah* 131 noted above (the later of the two responsa<sup>24</sup>), *Hatam Sofer* adds an important determination: if withholding medical treatment creates a risk of mortal danger, then even if the treatment entails transgression of biblical prohibitions, it should be permitted just like any other labor permitted on the Sabbath where there is a risk of mortal danger.

In his article, Rabbi Rosenthal takes the view that these responsa represent a revolution in Jewish-gentile relations:

[These responsa] demonstrate both the wisdom and the courage of [their author]. He was moved to uncover, in the recesses of the halakhic tradition, textual support (*asmakhta*) for a halakhic innovation: the idea that mortal risk to a gentile should be considered “nowadays” under the same rubric as mortal risk to a Jew, “because of the ways of peace and the possibility of danger to all” (from the ms.).

In analyzing *Hatam Sofer*’s position, R. Rosenthal strives to hear in it echoes of the Emancipation sweeping at full force through early-nineteenth-century Europe. He attempts by close reading to distinguish between the terms “ways of peace” and “danger to all” as *Hatam Sofer* uses them. The underlying authorization to provide medical treatment to gentiles (that is, without regard to Sabbath-related issues) “because of the ways of peace” goes back all the way to Nachmanides, as Rabbi Unterman noted in his article. But *Hatam Sofer* went further, supplementing “the ways of peace” in the contemporary context with “danger to all.” Rabbi Rosenthal explains that move as follows:

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<sup>24</sup> It bears the date 21 Menahem Av 5539 (1 August 1839)—about two months before *Hatam Sofer*’s death.

This juxtaposition seems to suggest that not only did our forebears already inform us, as is their way, of the principles of equality now being introduced and instruct us that they derive their force from “the ways of peace” and “the peace of [God’s] creatures”; they also taught us that nullifying these principles and rights would be, God forbid, a real sort of “danger to all.” For without “human rights” and respect for them, man would consume his fellow alive...Precisely because of the modern, liberal shape of Jewish and gentile intermingling that has gone on since the Tolerance Patent of Joseph II, we have reason to be concerned about danger that would not have arisen earlier, in talmudic times or in the dark Middle Ages...This interpretation, it seems to me, does not fall wide of the mark of *Hatam Sofer*’s meaning in these responsa; and, if that is so, the responsa are of particular interest in the halakhic history: *they provide a very striking example of how a socio-political principle whose entire force flows from the heritage of the European Enlightenment found its authentic halakhic expression.* The principle of equal rights for all, with no religious discrimination, gains the force of a halakhic ruling *because of the ways of peace and as a sort of danger to all* [if disregarded]. But that all being as it may, we today have no choice but to act in accordance with the principal of equality, considering all persons fully equal even to the point that the Sabbath may be displaced when they face mortal danger, “because of the ways of peace and as a sort of danger to all!” For we Jews in particular have tasted the cruel reality of that danger in almost every generation, and certainly in the most recent. When they rose up to destroy us, we stood against them in the dark of night, defending ourselves and crying out: “Are we not your brothers, not the sons of the same father or the same mother—how have we differed from every other nation that you persecute us harshly?” But we were not answered, and nothing was of use. *And so we cannot believe that the law of the Torah requires us, in our present situation, to abandon any person’s life, even to preserve the sanctity of the Sabbath.* And if one tells us that we do not concern ourselves with the life of a gentile on the Sabbath, we do not heed him, for many already have the practice of being concerned. And all of this flows from the force of our juridical understanding. To be sure, we drew it from the world in which we have been planted, the culture in which we were raised; *but we have acquired it with our blood, and it is impossible for us now to deny it without denying ourselves and our very essence.* And how fortunate are we that one of our greatest *aharonim*, Rabbi Moses Sofer, author of *Hatam Sofer*, has already gone forth and lent support to our recognition of this development in his own manner, *and found an*

*honored place for this conception in the array of practical halakhah* (from the ms.; emphasis supplied by the author of this article).

Rabbi Rosenthal speaks out of a profound attachment to modern society, suffused with the values of democracy—first and foremost, that of human equality. It is from that stance that he approaches *halakhah*; but does he operate as a quintessential halakhist, or does he subordinate the *halakhah* to his beliefs and views?

It should be noted that in the early 1960s, even before Rabbi Rosenthal’s statement, this position was taken by R. Eliezer Waldenberg, then rabbi of Sha`arei Zedek Hospital. In his *Resp. Ziḳ Eli`ezer*, he published summaries of the *halakhah* classes he had taught to the hospital’s physicians. In the course of those classes, he considered the *Mishnah Berurah*’s rulings cited above:

These comments of the *Mishnah Berurah* are not only a harsh indictment of physicians generally; they are like flint swords drawn against worthy physicians who fear God’s word, subjecting them to severe perplexity inasmuch as the rule today for physicians throughout the world is that they sincerely undertake, as a condition of entering their profession, to devotedly treat any patient coming to them without regard to race or religion, and a physician found to have treated a patient with laxity because of his race or religion would be expelled from his profession. Moreover, such laxity would arouse a great and widespread outcry, generating intense animosity toward Jews, whose ultimate consequences cannot be foreseen. And it is mere fantasy to think that the nations today would accept our excuse were we to say that we desecrate the Sabbath on our own behalf [where necessary to avoid mortal danger to our health] because we also observe the Sabbath, but for you, who do not observe the Sabbath, we also do not desecrate it. This excuse would be particularly unavailing if offered by licensed physicians; indeed, it would simply compound the hatred. And it is impossible to sweep this away by saying that our generation is unworthy and that even the most pious physicians disregard their [religious] guides, as argued in *Responsa Yaskil Avdi*, part 6, supplements, on *Tur, Orah Hayyim* sec. 9, q. v.<sup>25</sup>

Rabbi Waldenberg’s position differs from Rabbi Rosenthal’s only in its wording. Rabbi Waldenberg’s frame of reference is his work with physicians at Sha`arei Zedek Hospital, and he writes out of a sense of responsibility to provide practical guidance for a hospital in the State of Israel. He has no need for theory; he is motivated by the likely practical consequences of failing to live up to the

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<sup>25</sup> *Resp. Ziḳ Eli`ezer*, part 8 (Jerusalem, 5725), sec. 15.

“physicians’ oath.” He does not engage here in theology or moral philosophy; he works on a practical level as a halakhic decisor striving for a clear goal and applying all the tools of his trade to achieving it, without taking any stance as a matter of moral theory.<sup>26</sup> Other contemporary decisors considering the issue followed in R. Waldenberg’s path,<sup>27</sup> and the remainder of this article will consider the differences between the ideological and the pragmatic approaches to halakhic decision-making.

### C. Politics and Ethics as Halakhic Rationales

In his article,<sup>28</sup> Rabbi Rosenthal emphasizes the importance of Rabbi Unterman’s statement and points to a central problem in the halakhic world:

*The Chief Rabbi’s statement as published four days ago in Ha-Aretz on Passover Eve comprises practical halakhic guidance combined with intellectual and ideological rationales. But the importance of the statement lies primarily in its halakhic ruling; the ideological rationale it reflects may not be entirely to our liking (relating more to politics than to ethics).*

The halakhic decisor’s mode of discourse relies on talmudic concepts and analytical tools, focusing on the practical aspects of the question and often omitting any value-based consideration of its aesthetic and ethical aspects. Most rabbis who dealt with the matter at issue here never raised the question of the gentile’s status and the sanctity of his life; they simply accepted the halakhic literature’s formulation that the Sabbath may be violated to provide medical treatment to a gentile where failing to do so might endanger Jews. Given that, a broader conclusion follows: because danger nowadays is an omnipresent concern, it follows that violating the Sabbath to save a gentile is permitted. But do these decisors really mean that where there is no risk of danger to Jews, the Sabbath is not to be violated and the gentile is to be left to die? As a general matter, decisors avoid asking theoretical questions of that sort. The overwhelming majority apply halakhic categories and extend them no further than necessary.

Nevertheless, the halakhic world is occasionally penetrated by a new mode of analysis, drawn from the world of ideas, that seeks to examine the content of the categories and draw operative conclusions. Any such intrusion raises difficult questions, however. If a gentile may be saved on the

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<sup>26</sup> I elaborated on this in my article “Don’t Judge a Book By Its Cover,” *Meimad* 22 (2001): 24-27 (Hebrew), and see further below.

<sup>27</sup> Rabbi Sh. Z. Auerbach, as quoted by his student, Rabbi Y. Y. Neubart in the latter’s book *Shemirat Shabbat ke-Hilkhatah* (Jerusalem, 5739), chap. 40, par. 14, n. 42: “[This is] especially [so] nowadays, when word can spread instantaneously from one end of the world to the other, and withholding treatment from a gentile certainly entails great danger.” See also, e.g., Rabbi Ovadiah Yosef, *Qobez Halakhah ve-Refu’ah*, part 1, p. 147. They quote *Hatam Sofer* but do not go into ideological questions of equality and human worth.

<sup>28</sup> Above, n. 16.

Sabbath only “to avoid hatred,” what would be the ruling in case where avoiding hatred was not a consideration? Should the Jewish physician in that instance not tend to the gentile patient? The issue was in fact posed in Rabbi A. Ronetzky’s book on military *halakhot*, which suggested that if a soldier found himself in a situation where “avoiding hatred” was not at all a concern (as, for example, where there were no witnesses), refusing to desecrate the Sabbath for the sake of wounded gentile might be an acceptable result. That ruling promptly elicited a sharp outcry from the humanistic flank of the religious community.<sup>29</sup>

The fact is that most halakhic decisors do not open up the *halakhah* to ethical questions, as Rabbi Rosenthal might wish them to. In that respect, Rabbi Unterman is no different from other great decisors (including Rabbi Waldenberg). From their point of view, it is enough to rely on the *Hatam Sofer* to lead the *halakhah* to a point that avoids any desecration of God’s name, and there is no need to embark on a substantive, value-based deliberation on the worth of human life *per se*.

Coming to this issue from the opposite orientation, A. Sagi called attention to what he saw in it as an esoteric expression of an ethical stance substantively different from, and counterpoised against, the more typical one. In various articles dealing with *halakhah* and ethics, he quotes Rabbi Jacob Avigdor, who writes, “Those who believe the Jew is not to save the gentile [believe] a lie. Saving a gentile is not a matter of the Torah’s law or statute; it is a matter of man’s good, human, attributes.”<sup>30</sup> That quotation enables Sagi to present a halakhic source that associates the Jew with a universal ethical community and that does not rely on the aesthetically problematic rationale of “to avoid hatred.” Of course, Rabbi Rosenthal’s position is related to Rabbi Avigdor’s; both are distinguished by their dissatisfaction with the *halakhah*’s ability to solve problems and by their quest to renew *halakhah* from within.

#### **D. “An Elder Has Already Ruled”—The Significance of Hierarchical Decision-Making**

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<sup>29</sup> See the exchange of letters between Yoska Aḥituv and Rabbi Ronetzky, *Itturei Kohanim* 180 (Kislev 5760): 26-41.

<sup>30</sup> The quotation is from a book by Sh. Z. Shragai, *Practical Problems in the Light of Halakhah* (Jerusalem, 5753), pp. 1-12 (Hebrew). Sagi quotes him whenever he wants to invoke the *halakhah*’s ethical tone. I have come across no contemporary rabbi who cites Rabbi Avigdor in any context, and evidently no one had heard of him until Shragai published his essay. It is clear that Rabbi Avigdor carries less weight in the halakhic decisional process than do other, far more renowned decisors. Sagi’s effort to alter this balance by presenting all the voices on a level plane fails to reflect the true halakhic dynamic. (To avoid any unintended deprecation of Rabbi Jacob Avigdor, let me note that my father was acquainted with him in the Buchenwald concentration camp, where they were assigned to the same block, and recalls him as one who worked mightily to preserve the divine image in man. Among the incidents recounted by my father was one of a Passover on which Rabbi Avigdor recited *qiddush* over a piece of bread he happened to have, adding a learned explanation for his action. After the liberation, Rabbi Avigdor emigrated to the United States and then to Mexico, serving as rabbi in Mexico City, where he died in 1967.

As noted, Rabbi Rosenthal praises Rabbi Unterman’s approach, despite his ideological reservations. He goes on to focus on the halakhic side of the question:

*Nevertheless, this cannot detract from their decisional importance. For an elder has now ruled publicly, explicitly, and without reservation that it is permissible—indeed, it is fitting—for a Jew, and a fortiori a Jewish physician, to save the live of a non-Jew on the Sabbath, even where a labor forbidden by Torah law is involved. But his rationale and explanation are consistent with his point of view.*

I imagine Rabbi Rosenthal was happy to read Rabbi Avigdor’s statement noted above, but I doubt he would have relied on it, given Rabbi Avigdor’s relatively low standing in the intra-halakhic hierarchy. In contrast, Rabbi Unterman’s ruling carries considerable weight in view of his governmental role as Chief Rabbi of the State of Israel; and his express ruling—though lacking a proper ethical foundation—creates a situation in which “an elder has already ruled.” Rabbi Rosenthal in his writings often stresses the need for “an elder [to have] ruled,” that is, for a ruling by the community’s senior halakhic authorities and not merely by students. The phrase “an elder has already ruled” expresses institutional deference, even where the individual acting “deferentially” is himself very learned; this is evident from the talmudic source of the expression (*Shabbat* 51a):

[We have learned that] Rabbi [Judah the Prince] sat down and said: It is forbidden [on the Sabbath to] place cold food where it will be kept cold [or warmed slightly; the passage is variously understood—*translator’s note*]. R. Ishmael the son of R. Yosi said before him: my father permitted so placing cold food. [Recanting, R. Judah] said: An elder [i.e. R. Yosi] has already ruled. R. Papa said: Come and see how much they cherish one another. For if Rabbi Yosi had still been alive, he would have deferred and sat as a student before Rabbi [Judah the Prince], for Rabbi Ishmael the son of Rabbi Yosi was as great a scholar as his father had been, yet he deferred and sat as a student before Rabbi [Judah the Prince]; nevertheless, [R. Judah recanted and] said “an elder has already ruled.”

Rabbi Rosenthal applied this policy to himself as well; that is, he saw himself as subservient to the institutional authority of the established rabbinate, which was authorized to rule even though he was not pleased with its actions. After the Six-Day War, the “Movement for Torah Judaism” considered the status of the fast days observed in commemoration of the destruction of the Temple. They agreed that Israel’s repossession of the Temple Mount and the greater consolidation of the State of Israel should be given halakhic expression, but the limits of the required change were the subject of debate:

Immediately after 28 Iyyar 5727 [7 June 1967, the day Jerusalem was reunified], it was determined that it was no longer necessary to observe the fasts of “the fourth month, fifth month, and tenth month” as a matter of pure *halakhah*, as determined in tractate *Rosh ha-Shanah* (18b), but opinions remain divided on how those days should be treated. Should they be days on which fasting is permitted though not required, or should they already be treated as days of rejoicing? It is clear that those taking the former position are influenced by the continuation of the war, which claims victims almost daily, while adherents of the latter position take account only of the fact that the Jewish state has unimpeded sovereignty over the entire holy city.<sup>31</sup>

On the fast day of 17 Tammuz of that year (25 July 1967), a group convened at the home of Rabbi Immanuel Hartom and prayed in accord with the usual weekday liturgy, without *Tahanun* (prayers omitted on days of even slight festivity) and without the Torah reading for fast days. A year later, a similar group convened for prayer at the Western Wall. The following year, the group met at Prof. E. E. Urbach’s home. They omitted the Torah reading for fast days (it was a Thursday, when Torah is read in any event, so they read the usual reading for that week), but they accepted Urbach’s view and recited *Tahanun*.

In 1970, the Movement’s *halakhah* committee, chaired by Rabbi Rosenthal, renewed its consideration of the question. Rabbi Rosenthal recounts that with regard to the Fast of the Ninth of Av, “it was clear...that even in the future it should be observed with all stringency as a public fast day.”<sup>32</sup> Opinions differed, however, regarding the Fast of the Seventeenth of Tammuz. Rabbi Rosenthal sets forth the talmudic sources, analyzes them on the basis of the mss. and the early literature, and reaches a practical conclusion:

Today, as we witness a transformed era...we are certainly *obligated* to determine...that “there is no persecution,” and therefore we are no longer obligated to observe the days of fasting and prayer... (Id., p. 23; emphasis in original).

He reaches this conclusion as a halakhic researcher and as one wishing to declare the conclusion that properly follows from his research. He is convinced that the dynamics of *halakhah* demands revocation of the obligation to fast in view of “the transformed era.” But while he has no doubt of the ruling indicated by the texts, he does not stop there:

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<sup>31</sup> “Editors’ Comments, *Mahalakhim* 2 (Menahem Av 5729): 45.

<sup>32</sup> A. S. Rosenthal, “From the Deliberations of the *Halakhah* Committee,” *Mahalakhim* 4 (Marheshvan 5731): 21 (Hebrew).

Nevertheless, there was a view that opposed abolishing these public fasts. Not because it was improper to do so—it certainly was!—but because it was far from clear that we had the authority to do so. At present, Jews observe these days as public fasts—not with all the associated stringencies, but “in principle, they are public fasts.” *Accordingly, the question is whether our small group is permitted to abrogate something that most Jews observe as a sort of public fast. I, for one, believe we are not so authorized, for only the community abrogates the community[’s determination].* But we must question and provoke, explain and interpret, write and declare that the time has come for those who are empowered to lead the community in all matters of religion and law—that is, the official or chief rabbinate—to be truthful with themselves and with us and cancel the communal nature of these fasts, declaring that they are no longer obligatory but that, as the Talmud enacts and the *ge’onim* rule, “if they wish to, they fast; if they wish not to, they do not fast,” for, God be praised, there is no more persecution. (Id., pp. 23-24, emphasis supplied by the author of this article.)

Here, Rabbi Rosenthal returns to the halakhic arena and suggests people “question and provoke, explain and interpret, write and declare.” There is a clear intention to work “from below,” so that the authorized powers “above” respond to the hue and cry and take the steps needed to reconcile the two worlds. From his point of view, only the authorized powers “above” are qualified to effectuate the halakhic change, and dissatisfaction with the rate of progress does not justify resort to self-help. Rabbi Rosenthal does not exclude himself from the group of rabbis who can provoke, but he acknowledges that his determinations lack the force of “an elder has ruled.”<sup>33</sup>

### **E. It All Depends on Opinion**

Let us return to our subject. Rabbi Unterman’s statement enables Rabbi Rosenthal to identify a principle important to the understanding of halakhic decision-making:

*The lesson—if we compare the statement to the rulings on the matter issued by some rabbis—is that everything depends on opinion and that even halakhic ruling in accordance with the Shulḥan Arukh and in accordance with opinion derives its textual support from the decisional literature.*

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<sup>33</sup> I commented on this aspect of Rabbi Rosenthal’s statesmanship in a review of halakhic writings by the Conservative Movement: “*Halakhah Has Been Abandoned*,” *De`ot* 6 (Tevet 5760): 22-26. Rabbi David Golinkin responded to my article in his “*Halakhah For Our Day*,” *De`ot* 7 (Nisan 5760): 36-38. He maintains that Rabbi Rosenthal exemplifies the “fear of ruling” that has characterized Orthodoxy since the days of *Hatam Sofer* and that demonstrates the failure of Modern Orthodoxy.

In this paragraph, Rabbi Rosenthal gets to the essence of the halakhic concept that “it all depends on opinion,” or that “*derekh erez* precedes Torah”—the primary point of view applied by Rabbi Rosenthal in determining the *halakhah*. It should be noted that this position is disputed by many decisors, who see the *halakhah* as “God’s word” (“God’s word is *halakhah*—*Shabbat* 138b), having absolutely nothing in common with the decisor’s worldview.<sup>34</sup>

#### F. The Law of Persons and the Law of the Sabbath

Rabbi Rosenthal next turns to a fundamental examination of the starting point for halakhic rulings regarding gentiles:

*Our relationship to people who are not of the Covenant [i.e., non-Jews] is, first and foremost, a question of opinion and proper conduct. A person—including a Torah sage—must determine his understanding of “the law of persons” before moving on to the halakhot of the Sabbath, for the latter determination depends on the former, rather than the other way around. A person must choose in this regard between two fundamental and comprehensive opinions. On the one hand, he may adhere to the fundamentalist position, includes nothing (except, perhaps, for a greater or lesser measure of Jewish chauvinism, perhaps mystical and certainly archaic) beyond what is written in the usual halakhic decisional literature, construing its simple words broadly. Alternatively, he may take the informed and autonomous position of a man of culture, whose education and understanding make it clear to him that “this is the book of human history” [Gen. 5:1] is a great principle from which there is no ethical or intellectual escape.*

This passage is based on the famous dispute between R. Aqiva and Ben Azai (*Sifra, Qedoshim* 2:4):

“You shall love your fellow as yourself”—R. Aqiva says this is the great rule of the Torah; Ben Azai says “this is the book of human history” is a still greater rule.

R. Aqiva’s view [taking “fellow” as “fellow Jew”—*translator’s note*] has always been seen as the dominant one. The attitude of the Talmud and the usual halakhic literature (that is, the central corpus of halakhic writings) toward the gentile rests on clear statements that define the gentile as inferior to the Jew,

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<sup>34</sup> See Avi Sagi, “An Examination of Two Models of the Concept of Halakhic Truth and Their Meaning,” in A. Berholtz (ed.), *Journey to the Halakhah—Interdisciplinary Studies in the World of Jewish Law* (Tel-Aviv, 5763), pp. 221-241 (Hebrew). This article is an adapted and corrected version of an articles published in *Higgayon* 1 (5749): pp. 69-90.

not only with respect to Sabbath observance, but also with respect to the sanctity of his life. The leading statement is that of R. Simeon bar Yoḥai: “You are called “person [*adam*]” but gentiles are not called human” (*Yevamot* 60b).<sup>35</sup> The halakhic result was more a matter of theory than of practice, for a Jew in the Diaspora was not required as a practical matter to consider the sanctity of a gentile’s life; in general, it was all he could do to protect his own life from the enemy’s sword. Only in modern times, when Jewish physicians began to need guidance in this matter and when humanistic currents began to waft through Europe, did rabbis and thinkers begin to deal with the subject. A. Sagi analyzed the attitude of decisors and commentators over the ages to R. Simeon bar Yoḥai’s statement,<sup>36</sup> dividing them into two principal groups: a group that saw the matter ontologically, embodying a substantive difference between Jew and gentile; and a group that confined the statement to a given concrete situation rather than seeing in it a comprehensive conception of Jewish-gentile relations. Sagi concludes, in light of his researches, that the tendency to limit the radical implications of R. Simeon bar Yoḥai’s statement is particularly widespread among modern sages exposed to the world outside Jewish society.

Rabbi Rosenthal expresses his own, non-scientific, sense that “the usual halakhic writings” fall into the former category, seeing an ontological difference between Jew and gentile. His attitude toward that view is unambiguous; he sees it as “Jewish chauvinism—perhaps mystical and certainly archaic.” He has no interest in probing the intellectual basis for that approach but simply emphasizes his own determined view that “this is the book of human history,” stressing the biblical passage that serves as the main source for the humanistic position that negates any hierarchy in Jewish-gentile relations. Using his sharp pen, Rabbi Rosenthal decisively distinguishes between “the forces of light” and “the forces of darkness”—between Jews exposed to general culture and Jews still “imprisoned” by the bonds of the archaic tradition.

Rabbi Rosenthal here takes a humanistic stance, not a political one. He wants to change the point of departure with respect to the sanctity of a gentile’s life, and, from that new point of departure, to begin dealing with the issues on his agenda. He takes the novel position that saving a gentile on the Sabbath is not in the first instance a question of Sabbath law; it is, rather, under the rubric of laws that follow from “this is the book of human history.” To state it differently: only a humanistic point of departure, which seems the image of God in every human being, enables one to deal honestly with this question; for if the life of a gentile lacks sanctity, the Sabbath should never yield to it. Whether to desecrate the Sabbath for a gentile is a question that can genuinely be struggled with only if one starts from the position that the gentile’s life is sacred. And if we return to the beginning of Rabbi Unterman’s comments, we see that

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<sup>35</sup> For a socio-historical examination of this aphorism, see Y. Kohen, *The Attitude Toward Gentiles in Halakhah and in Practice in the Time of the Tanna'im*, doctoral dissertation, Hebrew University (Jerusalem, 5735) (Hebrew).

<sup>36</sup> A. Sagi, *Judaism: Between Religion and Morals* (Tel-Aviv, 1998), chap. 8 (Hebrew).

they reflect a humanistic point of departure: “Sadly, recent comments have challenged the ethical values of Torah Judaism, particularly the Torah’s view of gentiles and human beings, and implied that the *halakhah*’s attitude toward gentiles is improper.”<sup>37</sup>

One can find many writers whose moral sensibilities regarding a gentile’s life lead them, like Rabbi Unterman, to speak of the halakhic obligation to save that life. None, however, are as vocal as Rabbi Rosenthal, who attempts to ground the halakhic decision on Ben Azai’s position regarding “this is the book of human history.” One authority who spoke to the issue was Rabbi David Zevi Hoffmann, head of the Hildesheimer Rabbinical Seminary in Berlin, who spoke sharply of the desecration of God’s name that could be occasioned by Jews who act in a manner that dishonors Judaism in gentile eyes.<sup>38</sup> With regard to the talmudic law (quoted in *Shulhan Arukh*, *Hoshen Mishpat* 425:5) that “it is a commandment to kill” heretics, Rabbi Hoffmann writes:

All will acknowledge that at the time the *Shulhan Arukh* was written, when Christians would kill non-believers in cruel and unusual ways, this law could be publicized throughout the world without thereby diminishing the honor of Judaism in the eyes of gentiles. Quite the contrary; for that law in no way conflicted with then-regnant standards of justice. But we are confident that the *Shulhan Arukh* itself would have strictly forbidden persecution of heretics if principles of tolerance had then prevailed among the nations as they do today...The prohibition against desecrating God’s name, regarded by Jewish law as the gravest sin identified in the Torah, strictly forbids an action not justified under our contemporary juridical and moral consciousness.<sup>39</sup>

### **G. Examine It and Re-Examine It, For All is Within It**

Rabbi Rosenthal sees particular importance in the decisor’s efforts to find a supporting textual peg for his approach:

*And even if he find a clear, unambiguous contradiction with the sanctified sacred books, he cannot rest until he locates, in the hidden resources of the rich and variegated halakhic tradition, an authorized textual peg that can reconcile his opinion with his*

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<sup>37</sup> See above, n. 18.

<sup>38</sup> Rabbi Hoffmann is quoted by Rabbi Rosenthal in his unpublished article (see above, n. 22) and is mentioned in his comments in *Mahalakhim* 5 (Elul 5731): 19. Rabbi Hoffmann’s German essay is titled *The Shulhan Arukh and the Decisors on the Attitude of Jews to Gentiles* (Berlin, 1894), pp. 64 et seq. Rabbi Rosenthal translated a part of this essay, and I quote from that translation. [The English here translates the Hebrew translation rather than the original German.]

<sup>39</sup> Rabbi Rosenthal comments on this: “Would that you could arise and witness, Rabbi David Zevi Hoffman, that a later generation would conceal what you had discovered and that your students’ students today act as if they had never seen the light.” Rabbi Rosenthal is referring to the critique by Rabbi Kalman Kahana (see below), who was an alumnus of the Rabbinical Seminary in Berlin.

*learning. And he will even try to improve on it through his overpowering halakhic-interpretive skill. That is the way of halakhic wisdom and that is its praise. That has always been and always will be the way of sages in their learning, even if some pietists now come and try in their piety to cast doubt on it.*

Rabbi Rosenthal claims that the decisor’s worldview, which is basic to his very existence and with which he approaches every halakhic question he sets out to decide, impels him to find authorized sources on which he can base his practical halakhic determination. This method implies that the decisor knows, more or less, the direction in which he is headed, and that he combs the halakhic sources for the earlier decisor or decisors who are consistent with his general leaning. He does not engage in systematic, comprehensive study of the entire decisional tradition (as one might in an encyclopedia entry); rather, he conducts a focused study that seeks to extract from the inner world of the *halakhah* the particular voices that comport with his own spirit and to amplify those voices above all the others.

### ***The Academic Rabbinate—Critique And Assessment***

The halakhic approach presented by Rabbi Rosenthal generated opposing reactions from both flanks—the rabbinic-*haredi* and the *dati*-modern side. The former produced an article by Rabbi Kalman Kahana, which dealt with the Movement for Torah Judaism’s first publication and delivered a frontal attack on Rabbi Rosenthal’s statement. On the latter side, Prof. Menahem Kahana, one of Rabbi Rosenthal’s leading students, wrote an article on the difference between yeshiva-style and academic study and expression reservations about applying Rabbi Rosenthal’s approach in the realm of *halakhah*.

These two attacks represent two very different critical perspectives on Rabbi Rosenthal’s approach. In what follows, I consider his method in light of both perspectives.

### **A. Is “Opinion Precedes *Halakhah*” Valid?—Rabbi Kalman Kahana**

Rabbi Rosenthal’s underlying principle that “all depends on one’s opinion” infuriated Rabbi Kalman Kahana<sup>40</sup>:

We rule not according to our wills, not according to our desires, and not even according to a “culture” of uncertain origin. We have only clear words of *halakhah* and clear Torah-opinion (“*da`at Torah*”). And so, we accept as the halakhic way only devotion to a fundamentalist method. We have only the opinion of our sages of blessed memory and

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<sup>40</sup> Rabbi Kalman Kahana studied in Rabbi David Zevi Hoffmann’s rabbinical seminary and was ordained a rabbi and awarded a doctorate. He immigrated to the Land of Israel, joined Kibbutz Hafez Hayyim, and was a pre-eminent student of the *Hazon Ish*. His article was published in the newspaper *She`arim*, Sukkot Eve 1966, pp. 3, 6. At the time, he served as Deputy Education Minister on behalf of *Po`alei Agudat Yisra`el*.

the earlier and later authorities (*rishonim and aharonim*), and we have only the broad and simple meaning of their words. We do not take words out of context in order to win the approval of gentiles or of Torah-deniers, and it is the way of Reform to set itself up as supra-halakhic judge...We do not argue; we determine. To our sorrow, separate determinations have been made. But the simple meaning of the *Shulhan Arukh* decides for them, and what use is the *Shulhan Arukh* for those whose culture decides for them.

The issue of whether a prior ethical-cultural position underlies the decisor’s work has been widely investigated,<sup>41</sup> and I intend here not to add to that inquiry but only to situate Rabbi Rosenthal *vis a vis* other rabbis of his time. The position represented by Rabbi Kalman Kahana is usually seen as the classical *haredi* position of intense opposition to any consideration of time and place in halakhic decision-making. But while that reaction certainly typifies the *haredi* world, it can be found as well among those firmly planted within modernity, such as Yeshayahu Leibowitz or Rabbi J. B. Soloveitchik.<sup>42</sup> Rabbi Rosenthal’s position, which declares so openly that opinion precedes *halakhah*, is almost unknown in the halakhic world. Some investigators confirm that *halakhah* has always functioned in that manner and that many disputes among the talmudic sages are based on pre-existing worldviews,<sup>43</sup> but the decisors themselves avoided saying so. Does that silence negate Rabbi Rosenthal’s view? Not necessarily; for it seems to me that the decisors’ presentation only of objective decisional considerations, and their avoidance of any reference to their inner thoughts, cannot be said to demonstrate conclusively a total estrangement between their cultural context and their halakhic decisions or a failure on their part to take cultural context into account.

Let me offer as an example the comments of one of the great rabbis in twentieth-century Galicia, Rabbi David Menahem Monish Babad, chief judge of the Jewish court in Tarnopol<sup>44</sup>:

At the outset, let me say what I heard directly from the *ga’on* Rabbi Berish Rappoport, chief judge of the community of Rawa, who had heard from his teacher, the renowned *ga’on*, the chief judge of the community of Lublin, that when a question came before him, he would first assess the matter in accordance with the human mind, and if the human mind suggested to him that the claim was true, he would then examine it in

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<sup>41</sup> A. Sagi’s book *Judaism: Between Religion and Morals* is devoted to examining this subject. The author’s inclination to accentuate morality that does not stem from divine command is prominent throughout the book.

<sup>42</sup> See A. Sagi’s article “Rabbi Soloveitchik and Prof. Leibowitz as Halakhic Theoreticians,” *Da`at* 29 (Summer 5752): 131-148.

<sup>43</sup> Recent studies have examined the concepts involved in “philosophy of *halakhah*” and the meta-halakhic norms implicit in the halakhic process. See the collected articles of Eliezer Goldman in his *Inquiries and Studies—Jewish Thought Past and Present* (Jerusalem, 5757) (Hebrew).

<sup>44</sup> Rabbi David Menahem Monish Babad, *Responsa Havazelet ha-Sharon* (Bilgorai, 5698), sec. 28.

accordance with the laws of the holy Torah to determine how to rule. And so it is with me: when a question comes before me regarding an *agunah* [a woman whose husband cannot (because he is missing or incapacitated) or will not divorce her and who therefore cannot remarry] or a similar case, if it is clear to me through the application of the human mind and thought that the matter is true, then I toil to find a way to permit [the indicated action] in accordance with the statutes and laws of our holy Torah.

Contemporary decisors quote these words as they try to defend their rulings, reached on the basis of reason and logic. The quotation is used, for example, by Rabbi Jacob Bereish<sup>45</sup> in the context of an effort to permit the remarriage of an *agunah* whose soldier-husband’s ship went down during the Second World War. Most of his arguments are based on international law and current political and security-related circumstances; in light of those circumstances, he tries to depart from the ruling of the *Shulhan Arukh*, which is based on the significantly different circumstances that prevailed at the time of the Talmud. To bolster his position, he cites the foregoing statement by Rabbi Babad in *Resp. Havazelet ha-Sharon*. The statement is cited as well by Rabbi Y. Y. Weiss, rabbi and chief judge of the Jerusalem *haredi* community, in a responsum dealing with whether a particular *mamzer* (the offspring of a forbidden union, barred from marrying anyone except another *mamzer*) should be permitted to marry. Rabbi Weiss cites *Resp. Havazelet ha-Sharon* to demonstrate that a decisor can have a point of departure as he begins his consideration of the issue.<sup>46</sup> Rabbi Babad’s statement was likewise discovered by Prof. E. E. Urbach, who cited it as an example of a decisor being influenced by local (in time as well as place) intellectual currents.<sup>47</sup> The use of this quotation in such diverse areas demonstrates two things. First, this one statement is widely cited because virtually no other statement like it can be found in the halakhic decisor’s “workshop.” Second, Rabbi Babad attests to a normative decisional tradition widespread in Poland and Galicia, not an exception to the rules of decision-making.

Against this background, it is interesting to read Rabbi Joseph Dov Soloveitchik’s comments on the influence exercised by the environment on the man of *halakhah* and on the need to separate that influence from the halakhic decisional process itself:

The [historical] event certainly leaves its imprint on the man of *halakhah*, stimulates his intellectual powers, guides his observations, whets his curiosity, feeds his thought, directs his attention to horizons illuminated by the event, and compels him to grapple with ideas

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<sup>45</sup> Rabbi Jacob Bereish served as rabbi of the *Haredi* community in Zurich from 1934 (when he fled the Nazis) until his death in 1977. The quotation below is from his *Responso Helqat Ya`aqov* (Tel-Aviv, 5752), *Even ha-Ezer*, sec. 56.

<sup>46</sup> *Resp. Minhag Yizhaq*, part 9, sec. 150.

<sup>47</sup> E. E. Urbach, “Tradition and *Halakhah*,” *Tarbiz* 50 (5741): 163 (Hebrew).

that can help resolve the event’s perplexities. But the mutual influence of *halakhah* and event is manifested not in the arena of pure halakhic analysis but only in the inner depths of the halakhic man’s soul. The event is a psychological motivator that impels the pure analysis on its course, but once it sets out on its specific course, it is steered not by the event but by its unique normative-idealist rules. For example, the rabbis always shared the sorrow of the despairing *agunah* and therefore ruled leniently in her case. But when a rabbi sits down to decide the case of an *agunah*, he is not pressured in his decision-making by his feelings of sympathy, even though he takes pity on the poor woman, but reaches his decision in accordance with theoretical halakhic principles...Psychologizing or sociologizing the *halakhah* is an assault on its soul...If halakhic thinking depends on inner, personal considerations, it loses all objectivity and deteriorates to the level of insubstantial subjectivity.<sup>48</sup>

Does the decisor’s awareness of the socio-cultural background and its influence on his halakhic stance generate a sense that the decision is merely a human creation rather than a revelation of God’s word in the world? One might say that a decisor deliberating on a halakhic question fundamentally sees himself not as *creating* the ruling but as in effect discovering the divine truth. That has been the basic posture of the rabbinical world for many generations, from Rabbi Judah ha-Levi and Nachmanides to the *Hafez Hayyim* and Rabbi Soloveitchik.<sup>49</sup> But that sense of discovering God’s word as one rules on a halakhic question does not contradict the fact that the decisor is on a mission, with cultural connections that guide his thought and incline him in particular directions. Rabbi Soloveitchik and Rabbi Rosenthal differ only in the degree to which they are prepared to fully recognize the influence of the cultural environment on their halakhic decision-making. Each will acknowledge that the environment, including changing values, influences and even alters the decision-making process. But Rabbi Soloveitchik will

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<sup>48</sup> Rabbi Joseph Dov Soloveitchik, “*Mah Dodekh mi-Dod*” in *Sod ha-Yahid ve-ha-Yahad* (Jerusalem, 5736), pp. 223-224.

<sup>49</sup> In his article (above, n. 33), Avi Sagi seeks to prove the dominance of the concept that the *halakhah* is the decisor’s creation. In my judgment, however, the decisors experienced the matter differently. See, for example, R. Judah ha-Levi, *Kuzari* 3:41—“Do not stray [from the sages’ directives; cf. Deut. 17:11]’...for they are assisted by God’s presence...so that they do not err”; Nachmanides, *Commentary on the Torah*, Deut. 17:11—“In accordance with their [the sages’] views, He gave me [Moses] the Torah...for the spirit of God is on his servants”; *Hafez Hayyim on the Torah*, ed. Rabbi S. Grayman (Benei-Beraq, 5703), p. 30—“One whose opinion is the opinion of Torah (*da`at Torah*) can resolve all the problems of the world...on condition that his opinion be pure, with no distraction or diversion whatsoever”; Rabbi Soloveitchik, *Divrei Hagut ve-Ha`arakhah*, p. 12 (in the context of a eulogy for R. Hayyim Ozer Grodzhinsky)—“That priest whose brain was suffused with the holiness of the Torah...would see by the holy spirit the answer to all current political questions.” See also the article by L. Kaplan, “*Da`at Torah—A Modern Understanding of Halakhic Authority*, in Z. Safrai and A. Sagi, eds., *Between Authority and Autonomy in Jewish Tradition* (Tel-Aviv, 1997), pp. 105-145 Hebrew).

conceal that awareness (even from himself) when he sits in judgment, while Rabbi Rosenthal will strive to reveal it.<sup>50</sup>

Like the decisor’s cultural background, so, too his ethical world: the rabbinic world sees autonomous, human-generated morality as an expression with no grounding in Judaism. Jewish morality is theonomous, derived from the Holy One Blessed Be He. Rabbi Shelomo Aviner comments on the subject as follows:<sup>51</sup>

It is clear that our morality is not a morality that man created for himself, “autonomous morality.” It is, rather, “heteronomous” morality, drawing its strength from outside the human being, or, more precisely, “theonomous morality” whose source is in the will of God, who created the moral and spiritual order that we face. Accordingly, one must be very wary of any pretense to give up God’s word for the authority of society or for religious norms created by man.<sup>52</sup>

Given that, Rabbi Rosenthal’s words must be examined with great care. Did he write from the point of view of an investigator surveying halakhic processes from the outside or as one fully engaged in that process from within? Rabbi Kalman Kahana’s critique is striking in its referring to Rabbi Rosenthal as “professor,” without the title “rabbi.” Rabbi Kalman Kahana knew Rabbi Rosenthal well, as a member of the Chief Rabbinate’s committee on *halakhah* related to commandments contingent on the Land. In characterizing Rabbi Rosenthal as “professor” rather than “rabbi,” he intended to rule out the possibility of any rabbinic foothold for the viewpoint that places *derekh ereẓ* (in the sense of general culture) before Torah (in the halakhic sense). This combining of a man of the *halakhah* with a man of the academy generates many difficulties, among them the different points of view regarding the subject here at hand: the halakhic man is situated within it, while the academician observes it from outside. A halakhic man who is also an academician finds himself simultaneously at two viewpoints, each of which demands to be fully taken into account. The academic eyes seek wide-ranging inquiry (be it philological or historical-intellectual), while the halakhic eyes want to set out on the sea of *halakhah* and search directly for practical solutions to the issue at hand. In that sense, Rabbi Prof. Rosenthal’s article serves as a remarkable example of an intra-halakhic reading, one that elicits as well the ethical-historical reading of the *Hatam Sofer*’s responsum.<sup>53</sup>

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<sup>50</sup> This tendency of Rabbi Soloveitchik has been discussed by his son-in-law, Rabbi A. Lichtenstein, in “Human Dignity,” *Mahanayim* 5 (Iyyar 5753): 14-15 (Hebrew).

<sup>51</sup> Rabbi Sh. Aviner, *Am ke-Lavi*, part 2 (Jerusalem, 5743), p. 65.

<sup>52</sup> For a fuller consideration, see Y. Twersky, *Introduction to Maimonides’ Mishneh Torah* (Jerusalem, 5751), pp. 338 et seq. (Hebrew).

<sup>53</sup> Let me add a minor note to the debate on this matter between Prof. D. Statman and Rabbi Y. Sharlow. In an interview (“Seeking the [??],” *De`ot-Amudim* 12 [Tevet 5762]: 6-10), Rabbi Sharlow set forth a critique of religious

And so, Rabbi Rosenthal’s observation that “this has always been and always will be the way of sages in their learning” has not generally been accepted among Torah scholars and halakhic decisors. It has been accepted in the academy, the source of voices calling for a renewal of *halakhah* in accordance with contemporary values.<sup>54</sup> But the approach more accepted in the rabbinic world holds that the *halakhah* in no way depends on changing circumstances. The Torah’s eternal spark stands far above all considerations of time and place, and any attempt to interject such considerations into the halakhic world stems from reformist tendencies seeking to undermine the fortress of believing Judaism.<sup>55</sup>

### **B. Prof. Menahem Kahana’ Critique**

Prof. Menahem Kahana, a prominent student of Rabbi Rosenthal,<sup>56</sup> had reservations about the application of his teacher’s halakhic method. In the course of describing the difference between Talmud study in the yeshiva and in the academy, Prof. Kahana presents the dilemma confronted by a religious researcher<sup>57</sup>:

The problems of theology and authority that the religious Talmud researcher grapples with are made more biting by his *awareness* of the subjective and relative nature of the

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academics. Prof. Statman responded in a letter (“Let Us Have Rabbis Who Study in the Academy,” *De`ot-Amudim* 13 [Iyyar 5762]: 39), in which he described, as one of the modern religious community’s features, its positive attitude toward general learning and its interest in having its children obtain an academic education. Statman wants rabbis who study history, literature, cinema, and psychology, and who do so not merely to be able to respond to anti-religious challenges from those quarters, but for the greater glory of Torah. Rabbi Sharlow replied forcefully in an ensuing article (“Let Us Have Rabbis Who Are Not Academics,” *De`ot-Amudim* 14 [Elul 5762]: 4-6), raising several arguments. He begins, under the heading “Why I Have No Desire For an Academic Rabbi,” by citing the aloofness and disengagement of academic writing: “This aloofness seeps through from academic method to life-ethos. The academician is usually a disinterested third party, observing from the side as analyst and investigator rather than participating himself.” It strikes me that this is the most substantial of his arguments. At issue are two human states-of-mind—that of the investigator and that of the rabbi—and the modern religious person is indeed influenced by both, despite their contradictoriness and occasional rivalry. The essence of the modern person, rooted in a world centered on individual autonomy, stands at odds with the world of the religious person, who sets God at the center of existence. Much has been written on the subject, particularly around the complex image of Rabbi Soloveitchik. See A. Sagi, ed., *Faith in Changing Times* (Jerusalem, 5757), Part 4: “Between Old and New—Judaism and Modernity” (especially M. Sokol’s article, “Master or Servant—On Human Autonomy Before God in the Thought of Rabbi Joseph Soloveitchik,” pp. 403-444) (Hebrew). See also Z. Safrai and A. Sagi, eds., *Between Authority and Autonomy in Jewish Tradition* (Tel-Aviv, 1997) (Hebrew), which includes numerous articles on this divisive issue in modern religious life.

<sup>54</sup> See, for example, E. E. Urbach, “On Revitalizing the *Halakhah*,” *Publication of the Movement for Torah Judaism* 2 (Jerusalem, 5728), pp. 68-76 (Hebrew). Urbach reviews two longstanding and widespread halakhic currents: first, the tendency that dares to decide halakhic issues by legislation or actions that take account of the environment and changes in it; and, second, the tendency of “those fearful of ruling,” who reject all change. Urbach tried to show the latent potential of *halakhah* in pre-modern times, before “those fearful of ruling” gained the ascendancy (“precisely in an era of change in all areas of social and individual life”).

<sup>55</sup> See, for example, the comments of Rabbi E. Waldenberg, *Resp. Ziz Eli`ezer*, part 5, introduction.

<sup>56</sup> See, for example, the esteem with which he eulogized his teacher in the memorial booklet cited above, n. 15, pp. 27-39. At the end of his remarks, Prof. Kahana says: “We are indebted to you for most of our Torah, bottom to top: from the proper treatment of texts, through the attitude toward sources, all the way to the formulation of our worldview on fundamental dilemmas of research and education, critical approach and religious faith, humanism and Judaism, man and God.”

<sup>57</sup> M. Kahana (above, n. 9), p. 129

commandments he is observing. The religious community’s *internalization* of the academic researcher’s conclusions will make it harder for them to accept *the halakhah’s authoritativeness* (emphases in the original).

As an example of this difficulty, Kahana cites Rabbi Rosenthal’s remarks analyzed in this article. He raises doubts regarding Rabbi Rosenthal’s concluding statement that “this has always been and always will be the way of sages in their learning”<sup>58</sup>:

Even if we start from the premise that the decisor can, in fact, find an authoritative textual peg that will support his effort to reconcile his opinion with his learning on all basic issues—a premise I regard as questionable—we still face a difficult question of heuristics and authority.

The development of *halakhah*, as noted, is a continuous process, but excessive awareness of that process—on the part of the rabbi and the community alike—could undercut, for reasons noted above, the continuation of that process in the future. If a rabbi who has internalized a critical mode of thinking adopts a clear and decisive view that his cultural context requires him to set aside an earlier decision—itsself growing out of an earlier culture and its circumstances—his reliance on a reinterpreted textual support peg may become intellectually and ethically deficient and be regarded derisively by the knowledgeable community.

Kahana sees the self-awareness of the rabbi-investigator as closing the door on the development of *halakhah* via reinterpretation. Nor is the method of concealing information from the masses (common in the Middle Ages) any longer possible in a modern community devoted to equal and open education, a community continually diminishing the intellectual gap between itself and its spiritual leaders. With those two courses of action eliminated, Kahana falls back on what he takes to be the only remaining possibility: “to occasionally favor conscious innovation over questionable supporting precedent.”<sup>59</sup> The implication of Kahana’s suggestion is to forgo the interpretation of sources that permit preserving the tradition along with practical innovation, and instead to innovate (*ex nihilist?*) on the basis of overall cultural considerations.

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<sup>58</sup> Id., p. 131.

<sup>59</sup> Id., p. 133. One gets the sense that Kahana fully understood the meaning of his words but toned them down considerably in an effort to diminish somewhat the daring nature of his suggestion.

If that is so, it appears that Rabbi Rosenthal’s innovation here is the effort to blend the world of the academic researcher, aware of the cultural environment’s influence on the *halakhah*, with the world of the halakhic man, who strives to interpret *halakhah* from within. He is unwilling to forgo the accepted mode of decision-making, in which the *halakhah* interprets itself, and he is supremely confident of the *halakhah*’s vitality and its power to find solutions within itself.

Between the two Kabanas, Rabbi Rosenthal is situated as rabbi and academic researcher, clinging to the accepted decision-making policy that never favors novelty without a supporting peg but also is unwilling to forgo innovation in the absence of one. Rabbi Prof. Rosenthal’s confidence in both the Torah’s eternity and its capacity for adaptation and interpretation made him a beacon of optimism and hope regarding continuation of the halakhic tradition in modern society.

### ***Concluding Thoughts: Creating Communities Along With Rabbis***

Rabbi Rosenthal reiterated his views at the conference of the Movement for Torah Judaism held in the summer of 1970.<sup>60</sup> The conference was considering the Movement’s effort to establish an institution to train secularly educated rabbis equipped to grapple with current questions. Rabbi Rosenthal dedicated part of his comments to the negative view of secular learning held by both the yeshiva rabbinat and the government rabbinat. As an example, he cited the question of Sabbath violation for the sake of a gentile and Rabbi Kalman Kahana’s reaction (discussed above) to his comments at the Movement’s founding conference. He determined that

Our ethical and cultural perceptions in no way correspond to the fundamental perceptions set before us by the rabbinat. If the sense of unease has reached that point, we must say: change is needed.

But the mode of change to which Rabbi Rosenthal was moving did not involve rending the *halakhah*. The model he proposed was the creation of scholars, steeped in both Torah and secular knowledge, and the creation of communities seeking rabbis of that sort:

Communities will be formed, because the opposition I have attempted to present will require new organization.

The key to that new organization is cooperation between community and rabbi, and the question considered here—Sabbath violation for the sake of a gentile—offers a good example of the process. The decisors permitted a physician to violate the Sabbath (even performing a labor forbidden by biblical law) as a result of changed circumstances (improved telecommunications, the physicians’ oath, and other

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<sup>60</sup> *Mahalakhim* 5 (Elul 5731): 16-21.

matters). The physicians who requested a rabbinic ruling were religious doctors (as can be seen in the passage from *Mishnah Berurah* cited above) seeking a way out of the conflict between their obligation to *halakhah* and their obligation to humanity. The halakhic innovation did not arise independently but drew from earlier sources, as the *halakhah* has always done. There are many analogous instances in which the *halakhah* has changed, consistent with its rules, in reliance on earlier rulings and their analysis. These changes are generated within a community that is loyal to the *halakhah* and that intensely experiences both religious life and modern environment. The change is not created by the community but by the rabbi asked to rule; the role of the halakhically-committed community is to raise the question suggested by the changing times and circumstances and to spur orderly halakhic change.<sup>61</sup>

The issues of the day in the modern religious community are varied, but they are focused primarily on the individual’s standing *vis a vis* halakhic authority. One such issue is the role of women in religious life—the extent to which they can become involved in public worship, Torah reading, the call to joint recitation of the blessing after meals, etc. The community’s independent resolution of the issues, in the absence of cooperation with the halakhic world, will produce an internal rift and undermine relations with the halakhic decisors.<sup>62</sup> Practical solutions not tempered by substantive halakhic opinion convey an air of reform and ruination of *halakhah*. Of course, operating cooperatively within a halakhic rubric will delay matters, slow the pace of progress, and even produce a sense of frustration; but it will be the salvation of Israel. In that spirit, Prof. E. E. Urbach concluded his article on revitalizing the *halakhah*<sup>63</sup>:

The prospect of revitalizing the *halakhah* depends on the *halakhah* itself, on the history of its growth and development, and it is part of its essence; but the condition precedent to its realization is that Jews who are observant and trained in Torah and who genuinely want revitalization of the *halakhah* find the strength to pose the questions in accordance with their understanding and the knowledge to create a rear guard to be reckoned with in the community, one that by its devotion to the authority of the *halakhah* and its institutions will be prepared to battle to raise their level and independence.

Many modern Orthodox individuals find themselves situated between the audacity to raise the questions arising from discontinuities between *halakhah* and changing circumstances and the reticence demanded of individual and community alike, which forecloses efforts to put immediate answers into

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<sup>61</sup> For example, the “Zomet” Institute, led by Rabbi Israel Rosen, resolves questions of technology; the “Pu`ah” Institute, led by Rabbi Menahem Burstein, deals with questions of fertility and family; and the “Institute for Imparting *Mishpat Ivri* [Jewish civil law],” headed by Rabbi Razon Erusi, resolves questions related to the legal system. They all participate in the effort to build bridges between societal reality and the world of *halakhah*.

<sup>62</sup> See, for example, Tamar Ross, “Orthodoxy, Women, and Halakhic Change—Theological Analysis and Interpretive Perspectives,” *Journey to the Halakhah*, above, n. 12, pp. 422 et seq. (Hebrew).

<sup>63</sup> E. E. Urbach, above, n. 53, p. 76.

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place. From that vantage point, they pray for the development of the *halakhah* together with the growth of Israel in its land.

Let us conclude with Rabbi Rosenthal’s closing remarks to the founding conference of the Movement for Torah Judaism:

We still lack the ability to decide with finality all those large halakhic questions or the perplexities raised here. We have problems, severe problems. But do we not know how to solve them? ... Our discussions in committees and in the plenary session appear to have taught us that we see the image of an idea, a reflection of truth, but nothing more. But even this reflection is bright enough to deny us rest, and to impel us to join together and seek, by the light of this reflection, the truth of the Torah.<sup>64</sup>

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<sup>64</sup> Above, n. 16, p. 20.