

# THE WEXNER FOUNDATION

## **REFLECT, RENEW, REBOOT NOURISHED BY TORAH**

August 28, 2020 | Rabbi JJ Schacter

REFLECT, RENEW, REBOOT: NOURISHED BY TORAH

Jacob J. Schacter

The Wexner Foundation

August 28, 2020

THE LEGENDS OF THE JEWS

BY LOUIS GINZBERG

TRANSLATED FROM THE GERMAN MANUSCRIPT BY HENRIETTA SZOLD

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BIBLE TIMES AND CHARACTERS FROM THE CREATION TO JACOB



PHILADELPHIA THE JEWISH PUBLICATION SOCIETY OF AMERICA 1913

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*are our Father, our Redeemer, from time immemorial is Your Name.* – At a future time, the Holy One, Blessed is He, will say to Abraham: בְּנֵיךְ – Your children have sinned against Me. – אָמַר לְפָנָיו – [Abraham] will reply before Him: יִמְחוּ עַל קְדוּשַׁת מַלְכוּת הַיְיָ – Master of the Universe, let them be obliterated for the sanctity of Your Name!<sup>[17]</sup> אָמַר – Unsatisfied with this reply, [Hashem] will say to Himself: קְרָאתָ לְהוֹן בְּנֵי בְכוּרֵי יִשְׂרָאֵל. שְׂהִיָּה גַלְיָ לַפֶּיךָ שֶׁהָן עַמִּידִין לִמְרַם לַפֶּיךָ בְּקִיָּי נַעֲשֶׂה וְנִשְׁמַע לְקַבֵּל עוֹלָם מִנְּהַגֵּה כְּנִיָּס: דַּע עֲשִׂירִין דְּעָא עֲנִישַׁת לְהוֹן. שְׁקָן מַלְיָו כְּדוּר הַמְדַּמְרִי שְׁלָא עֵנַשׁ הַקְּבִיָּה אֲלֵהּ מִרְיָ שְׁנֵה וּמַעֲלָה דְכִמְרִי (בְּמַדְרֵי הַ) כְּדַמְרִי הַזֶּה יִפְלוּ פַגְרֵיהֶם וְגוֹי מִנְּךָ לִי שְׁנֵה וּמַעֲלָה אֲשֶׁר הִלִּיתִים עָלַי: בִּי אַתָּה אֲבִיָּו. כְּגַד יִחַק אֲמַרוּ וְהוּא אֲמַר לְהַסֵּה הַלְלוּ כְּגַד הַקְּבִיָּה שְׂהוּא אֲבִיָּס: בְּשִׁשְׁשָׁאוֹת שָׁעָ בְּרוּחַ. כְּדִרְךָ כָּל הַגּוֹלִים שְׂהִרִי ע"פ גּוֹרַם גּוֹת יִרַד לְהַסֵּ: בְּהַבְּרִי אֲדָם. בְּשִׁבְעִים חִיבַת הַלֵּסִם מִשְׁכִּיָּס לְמַטְרִים כְּחַנְּנִים וְלֹא כְּשִׁלְשָׁלוֹת: בְּמַדְרֵי עִיר עַל דְּחִיָּהֶם. כְּאֵלֶם הַסּוֹבֵל וּמַסְמִיעַ לְהַמְנוּ לְהַרְסֵי עוֹלָם. מַעַל לְזַחֲרֵה כְּלוֹחִין וְכַמְקוֹלוֹת: וְאֵם אִיָּו אֲבִיָּה. הַטְּיָמִי לֵסֵם כִּם לְהַכִּיל אֵת עֲבוֹת הַפֶּיךָ: מִתַּנְיָ בִּיצֵה קִדְשָׁה. כְּכַר מַפְרֹשֶׁת שְׂהִיָּה בִּצְמַת מְרַנְנוֹת שְׂהִיָּה קִלְה לְבַשָּׁל וְלֹא כְּשִׁיעֵרוּ כָּל בִּצְמַת שְׂעִירוּ אֲלֵהּ כְּגוֹרַגְתָּ מְעִילָה קִלְה: וּכְבִּצְעוּרִין. כָּל מִיָּי תִּזְכִּין זֶה עַם זֶה: קִלְיָי אֲנִיָּו. הַגְּדִילָה ע"פ הַקְּלִפָּה נַעֲרִין לְמַן: סִיָּו. (קְרוּוּ: פּוֹאֵה. (וּרְנָלָא: יָי בְּכַבְּהָ. כְּכֵלָס הַכְּנֵסָה שְׂעִיָּה קִלְיָה נִטוּן מַעַל כְּגַד: נִתְר. מִין אֲמַתָּה שְׁקוֹרִין יִטְרִיָּא: קְפוּרִיָּא וְאֲשִׁלָּה. נְגַמְרָל מַפְרֶשֶׁת לְהוֹ: אֵת הַבְּתָם. שְׁל דַּס נִדֵּה אֲשֵׁלֵוּ הַסְמִין מַעֲמִירִין עַל-הַכְּסֵם שֶׁל דַּס נִדֵּה כְּגַד לְהַסֵּרוּ: גְּמַ' הַתָּם. הוּא דְקוֹלְמוֹס מְרוֹסֵם לֹא מִי לְמִירִי אֲלֵה לְהַסְסֵה: כְּכֵא דְאֲקִלְדִּיא. שֶׁן שֶׁל מַפְתָּח: וּרְמִירָה. אֲמַתָּה דְקַמְתִּי מַכְלִין מַטְרִפִּין שֶׁי מִיָּין לְשִׁיעֵרוּ: בִּי וְהוֹ שְׂמוֹת. מַלְכָּה לְבָן שְׂחֹר וְאֲרוֹן אוֹ אֲפִילוּ גַ' מִיָּין וְהַס (סַס אֲחֵד) שֶׁל אֲסוּר אֲסוּר אֵם מִיָּעֵלֵו כְּהָן אֵם הַקְּדִירָה: וּכְבִּצְעוּרִין. לְמַנְלָה אֵם אֵין כְּגַל אֲחֵד כְּדֵי לְתַבֵּל וּכְמַטְרִפוּ וּמִיָּעֵלוּ: וְאֲמַר הוֹקִיָּה. הֵא דְקַמְתִּי מַטְרִפִּין: מִיָּי

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שפרו ורבו. דלל אחד נתעברה אשמו וקר נמלוח שובו לנס לאהליסם  
 ולא יענה היכל רמחם: כשני מיבעי ליה. דומיא דכשנל דלא  
 כתיב כשנלם: ארד עמך אעלך גב עמך. כן רמז ד' גלות גם  
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 לפניך כקיי נעשה ושמע לקבל עולך  
 מנאפה כניס: דע עשרין דעא  
 ענשת להו. שכן מלינו כדור המדברי  
 שלא ענש הקביה אלה מר שנה  
 ומעלה דכמי (במדרי ה) כדמברי  
 הזה יפלו פגריהם וגו' מנן ל' שנה  
 ומעלה אשך הלינוס עלי: בי אתה  
 אבינו. כנגד יחק אמרו והוא אמר  
 להם הלאו כנגד הקביה שהוה אביסם:  
 בששששאוה שש ברוח. כדכך כל הגוליס  
 שהרי ע"פ גורת גלות ירד להם:  
 בהבלי אדם. בשביל חיבת האדם  
 משכמיס למטרס כחננלס ולא  
 כשלשלוה: כמרימי עיר על דחוייהם.  
 כאלס הסובל ומסיע לנהמנו להרס  
 עולה. מעל זארה כלוחין וכמקלות:  
 ואם אינו אביה. הטמי להם כמ  
 להכיל את עבות הפך:  
 מתנני' ביצה קלה. ככר מפורס'  
 שהו בלע מרנוולת שהי  
 קלה לנשל ולא כשיערו כל בלע שיערו  
 אלה כגורגת מנילה קלה: וכבצורין.  
 כל מיני תזנין זה עם זה: קליפי  
 אנוייה. הגדילה ע"פ הקליפה נערין  
 למן: סייס. (קרוו: פואה.  
 (וורנלל: יי כבכה. ככלס הסכנה  
 ששאה קליעט נטון מעט כגד:  
 נתר. מין אמתה שקורין יטריא:  
 קפויא ואשלה. כגמרל מפרס להו:  
 את הבתם. של דס נדה אלו  
 הסמין מעמירין על-הכסם של דס  
 נדה כנגד לטהרו: גמ' התם.  
 הוא דקולמוס מרוסם לא מו למירי  
 אלה להסקס: ככא דאקלידיא. שן של  
 מפתח: ורמירנה. אממני דקמתי  
 מכלין מטטרפין שני מיין לטשיעור:  
 ב' ו' שמות. מלכָּה לְבָן שְׂחֹר וְאֲרוֹן  
 או אֲפִילוּ גַ' מִיָּין וְהַס (סַס אֲחֵד)  
 שֶׁל אֲסוּר אֲסוּר אֵם מִיָּעֵלֵו כְּהָן אֵם  
 הַקְּדִירָה: וּכְבִּצְעוּרִין. לְמַנְלָה אֵם אֵין  
 כְּגַל אֲחֵד כְּדֵי לְתַבֵּל וּכְמַטְרִפוּ וּמִיָּעֵלוּ:  
 וְאֲמַר הוֹקִיָּה. הֵא דְקַמְתִּי מַטְרִפִּין:  
 מִיָּי

שפרו ורבו עליה ישראל מדבר סיני שירדה  
 שנאה לעכו"ם עליו ומה שמו חורב  
 שמו ופליגא דר' אבהו דא"ר אבהו הר סיני  
 שמו ולמה נקרא הר חורב שירדה חורבה  
 לעכו"ם עליו: מונן שקושרין לשון  
 של זהורית וכו': כשנים כשני מיבעי ליה  
 א"ר יצחק אמר להם הקביה לישראל אם  
 יהיו חמאיכם כשנים הללו שסדרות וכאות  
 מששת ימי בראשית ועד עכשיו בשלג ילבינו:  
 דרש רבא מאי דכתוב «לכו נא ונוכחה יאמר  
 ה' לכו נא בואו נא מיבעי ליה יאמר ה' אמר  
 ה' מיבעי ליה לעתיד לבא יאמר להם הקביה  
 לישראל לכו נא אצל אבותיכם ויוכיחו אתכם  
 ויאמרו לפניו רבשיע אצל מי נלך אצל  
 אברהם שאמרת לו «ידוע תרע ולא בקש  
 רחמים עלינו אצל יצחק שבדרך את עשו  
 ורחיב כאשר תריד ולא בקש רחמים עלינו  
 אצל יעקב שאמרת לו «אנכי ארד עמך  
 מצרימה ולא בקש רחמים עלינו אצל מי נלך  
 עכשיו יאמר ה' אמר להן הקביה הואיל  
 ותליתם עצמכם בי «אם יהיו חמאיכם כשנים  
 כשלג ילבינו: א"ר שמואל בר נחמני א"ר יוחנן  
 מ"ד «כי אתה אבינו כי אברהם לא ידענו  
 וישראל לא יכירו אתה ה' אבינו גואלנו  
 מעולם שמך לעתיד לבא יאמר לו הקביה  
 לאברהם בנד חטאו לי אמר לפניו רבשיע  
 ימחו על קדושת שמך אמר אימר ליה לעקב  
 דהוה ליה עמר גידול בנים אפשר דבעי  
 רחמי עליהו אמר ליה בנד חטאו אמר  
 לפניו רבשיע ימחו על קדושת שמך אמר  
 לא בסכי מעמא ולא ברדדקי עצה אמר לו  
 ליצחק בנד חטאו לי אמר לפניו רבשיע  
 בני ולא בנד כשעה שהקדימו לפניך נעשה  
 לנשמע קראת להם «בני בכורי בני  
 ולא בנד ועוד כמה חטאו כמה שנותיו  
 של אדם שבעים שנה דל עשרין דלא ענשת  
 עליהו פשו דהו חמשין דל כ"ה דלילותא  
 פשו להו כ"ה דל תרתי סרי ופלגא דצלווי  
 ומיכל ורביית הכסא פשו להו תרתי סרי  
 ופלגא אם אתה סובל את כולם מוטב ואם  
 לאו פלגא עלי ופלגא עליך ואת"ל כולם  
 עלי הא קריבית נפשי קמך ופתחו ואמרו (כי) אתה אבינו אמר להם יצחק  
 עד שאתם מקלסין לי קלסו להקב"ה ומחו להו יצחק הקב"ה בעיניהו  
 מיד נשאו עיניהם למרום ואומרים «אתה ה' אבינו גואלנו מעולם שמך א"ר  
 חייא בר אבא א"ר יוחנן ראוי היה יעקב אבינו לירד למצרים בשלשלאות של

# FORGIVENESS

למה לא נשאל את ר' חזקוני, חזקוני  
(ירושלמי, ט"ז, דף ק"ג-ק"ד)

שאלה ג.

כת"ר ביקשני לחזור בענין נכרי, לשעבר חבר פעיל במפלגה הנאצית הידועה לשמצה ויש להניח שבעצמו השתתף במעשים נפשעים, וכעת חזר בתשובה ורוצה להתגייר — אם מקבלים אותו.

## תשובה

"Were we to base our ruling on humanitarian concerns, or for that matter, on national honor or sentiment, then surely [there would not be any way to meet this request]. Such a person, whose hands [are stained] with Jewish blood has no place in the [Jewish community]. Indeed, "let him be called 'unclean, yea unclean'" [Lev. 13:45]; let his place be distant from Israel. How difficult ... it is to entitle him 'our brother'.

"Yet from the perspective of the dry halakha I can find no barrier to accepting him. Behold Cain, the first murderer in human history, according to Genesis Rabbah 22) crying, 'I have repented! I have separated!' Exodus Rabba 19:4 describes Job's reference that 'the stranger shall not remain outdoors' to mean that the Holy One, Blessed be He, does not invalidate a human being, He receives everyone, the gates remain forever open .... Does the Talmud not relate that R. Meir descended from Nero ...? Did not Nebuzaradan, slaughterer of Jews, repent and convert (B. Sanhedrin 96b)?

"If the Court is therefore convinced of his utter remorse, of his complete repentance, of [the purity of his motive to convert], then there is no halakhic barrier [to his conversion] ..."

אם לדון מבחינה אנושית בכלל ומבחינת הכבוד והרגש הלאומי בפרט, וט ברור שאין המצפון מרשה להזדקק לו ולענות לבקשתו בחיוב. ברנש ה' אשר ידיו דם יהודי מלאות אין מקומו במחנה ישראל, כי אם טמא טמא לא לו ומקומו הרחק מבית ישראל, ואיך קשה הדבר להכריז עליו: אחינו אתה. אבל מבחינת ההלכה היבשה אינני רואה כל מניעה מלקבלו. הנה הרוצח הראשון בתולדות האנושות, אמר לפי המדרש בב"ר פכ"ב עשיתי טובה ונתלשטתי ועי' במד"ר שמות יט ד, אמר איוב בחוץ לא ילין גר, זין הקב"ה פוסל לבריה אלא לכל הוא מקבלי השערים נפתחים בכל שעה, מי שהוא מבקש ליכנס — יכנס. ועי' בשו"ת בשמים ראש המיוחס לא"ש, שכתב בסי' קעז שמכל האומות מקבלים גרים ואפילו מורע עמלק. בש"ס גיטין נו ובסנהדרין צו, שמנירון הרשע יצא התנא רבי מאיר, וזוראדן רב טבויים, אחרי שהרג ושפך רבבות יהודים החפים מכל פשע. ה' תשובה והתגייר, וחז"ל לא נרתעו לומר, נבזוראדן גר צדק היה. לכן אם בית הדין משוכנע שהוא התחרט בחרטה גמורה, חזר בתשובה ימה, מתאמץ בכנות להכנס תחת כנפי השכינה ולא מסתרת איוו לוונה הנאה אישית או קבלת שררה — אין מצד ההלכה כל איסור לקבלו ק. היהדות.

FORGIVING THE GERMANS:  
PARADIGMS AND DIALECTICS FROM  
HALAKHA

JOSEPH A. POLAK\*

There are signals from cultural and religious communities in Germany, France, even Poland<sup>1</sup>, which indicate an interest in some coming to terms with their inglorious recent past. Charles Maier<sup>2</sup> describes the recent German controversy over *Historikerstreit* in just such terms. In France, the Barbie Trial, with all its limitations, forced French citizens to take note of the moral quagmires posed by the Vichy regime—that it, and accordingly much of French citizenry, were not merely unwitting accomplices in the Final Solution, but active participants<sup>3</sup>. When East and West Germany merged, the former's first public statement was to openly seek forgiveness for its role in the Holocaust.

None of this is to suggest that remorse is pervasive throughout these lands. Judith Miller's book *One by One by One*<sup>4</sup> chronicles the contrary—a marked unwillingness by most major European countries (and America)

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<sup>1</sup> See, for example, *A Polish Pastoral letter on the Jews*, an op-ed piece in the *New York Times*, 1/20/91, p. E19.

<sup>2</sup> See his *The Unmasterable Past: History, Holocaust, and German National Identity*, Cambridge: (Harvard University Press, 1988.) Part of the cultural landscape that emerges from his study is also an unwillingness to face the past. See further in my text.

<sup>3</sup> Pierre Oscar Levy's recent French film, *Premier Contact*, posed these questions with even greater clarity. See Shulman, Ken, *Back Again to Auschwitz to Bear Witness* (review/essay) the *New York Times*, 7/5/92, p. F18.

<sup>4</sup> *One by One by One: Facing the Holocaust*, New York: Simon and Schuster, 1990.

to face the past. The Bitberg affair confirms such a lack of contrition, as does the anti-semitic rhetoric of Cardinal Glemp when confronted by some damning questions about the convent at Auschwitz, and as we write these lines in the summer of 1992, we hear that Austria is coming out with a postage stamp bearing the image of Kurt Waldheim and that German skinheads are vandalizing Jewish cemeteries. Yet the modern Jew, indeed, the contemporary halakhic decisor, is confronted by contrite individuals and communities, and must begin to deal with them in honest dialogue with the authenticity of their claims. This paper is meant to examine the halakhic sources that speak to such claims.

These pages are meant to constitute a response, rather than a responsum. They are occasioned by the approach of one such contrite individual to the author, and his question forms a paradigmatic case by which these issues may be studied in a more concrete way.

About ten years ago, then, a young German—he was not yet thirty—arrived at my study with a request. He was part of a group of young Christians, he explained, who had visited Auschwitz as part of their religious education. At the end of the visit, each member of the group made a vow to give up a year of his or her life as penance for the Holocaust their parents and grandparents had authored. His particular penance was to volunteer for a year to improve, together with Cesar Chavez and his followers, the plight of the much-abused migrant farm workers. His request was simply for the use of a room and a telephone at our campus ministry center. I was deeply moved at the time. On the one hand I remembered the rabbinic adage "Nothing stands in the way of repentance." On the other I was troubled that both as a Jew and a survivor, I needed to be a part of this penance. He certainly did not know that I was a survivor, and in the end, I provided him with the quarters he sought.

Here then was young man who felt that he had inherited the iniquities of his forbearers, and that he had to take some responsibility for them. I do not know whether he sought forgiveness from G-d for these iniquities, although I suspect as much; what I am aware of is his deep religious need for moral cleansing, and that his strategy for this cleansing meant in some way doing the opposite of (and thereby in his soul and in the German soul perhaps undo) what the Nazis had done. Whereas Krupp and I.G. Farben engaged Jewish slave workers and let them work until they died, his penance consisted in doing everything in his power to improve the lot of hispanic laborers in California and Ohio who each

day breathed-in carcinogenic crop sprays and who were denied toilets and clean drinking water in their work-places<sup>5</sup>.

The questions for this paper thus present themselves: What does halakha have to say, first, about the repentant Nazi? Second—are the descendants of Nazis born, say, after 1943, to be treated as innocent victims of their parents' evil, or as tainted by their crimes? Are there consequences to such taint? Third—is there an halakhically identifiable role for Jews in any process of penance by Nazis or their innocent descendants (i.e. was I following halakha in giving the young German a room)? Fourth—is there an halakhic analogue to the Holocaust, or do we say that because its crimes were so unimaginable, halakha here is simply inapplicable? Fifth—is there an halakhic concept of collective guilt, such that we may speak of a Nazi-sympathetic collectivity about whom, and about whose offspring, moral/halakhic statements may be made? And finally—can an halakhic case be made for the notion, implicit in most of these questions, that evil can be undone, and if so, would this be true of all evil?

A word about method: Our concern is the way in which Jewish law as legal system deals with these questions. While the mandate of halakha is to establish rules for human behavior and not to engage in metaphysical speculation, its assumptions are based upon, and therefore point to, an intricate theological value system. It is this value-system—the one implied by the sources in halakhic literature—that these pages will attempt to expose.

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We begin, in a way, at the end. Israel's foremost authority (at the time) on matters of conversion, Rabbi Moshe HaLevi Steinberg, was approached during the 1960's with the following extraordinary query<sup>6</sup>: It seems that a former Nazi, thought to be directly implicated in genocidal activity, approached a local rabbi for conversion<sup>7</sup>. The rabbi sought R. Steinberg's advice on the matter, and the latter replies,

<sup>5</sup> I am not suggesting, of course, that either he or I saw a genuine parallel between doomed prisoners of the Third Reich and the farmworkers. But I felt there was much to be said in trying to atone one injustice by righting another; even if the two injustices had little parallel in scope and extent.

<sup>6</sup> *Huqath haGer*, Jerusalem, Fubin Mass, 1971, pp. 103-105.

<sup>7</sup> It will be recalled that conversion is a process completed by a Jewish court.

"Were we to base our ruling on humanitarian concerns, or for that matter, on national honor or sentiment, then surely [there would not be any way to meet this request]. Such a person, whose hands [are stained] with Jewish blood has no place in the [Jewish community]. Indeed, "let him be called unclean, yea unclean" [Lev. 13:45]; let his place be distant from Israel. How difficult ... it is to entitle him 'our brother'.

"Yet from the perspective of the dry halakha I can find no barrier to accepting him. Behold Cain, the first murderer in human history, (according to Genesis Rabbah 22) crying, 'I have repented! I have separated!' Exodus Rabbah 19:4 describes Job's reference that 'the stranger shall not remain outdoors' to mean that the Holy One, Blessed be He, does not invalidate a human being, He receives everyone, the gates remain forever open .... Does the Talmud not relate that R. Meir descended from Nero ...? Did not Nebuzaradan, slaughterer of Jews, repent and convert (B. Sanhedrin 96b)?

"If the Court is therefore convinced of his utter remorse, of his complete repentance, of [the purity of his motive to convert], then there is no halakhic barrier [to his conversion] ..."

The Steinberg responsum, while appealing in its humanity, leaves us philosophically short-handed. Consider the Talmudic text (B. Sanhedrin 96b) on which it draws for legal precedent:

"Nebuchadnezzar sent Nebuzaradan [to destroy the Temple] ... He went and smote the gate [of Jerusalem] ... and it opened ... He hewed down [the Jews] as he proceeded, until he reached the Temple ... [where] he saw the blood of Zechariah seething ... [when he asks what it is, the people reply that it is animal blood. He asks to boil animal blood and sees that this was different. He insists on the truth and] they replied: 'This is [the blood] of a priest and a prophet, who foretold the destruction of Jerusalem to the Israelites and they killed him.' 'I,' said he, 'will appease him. So he brought scholars ... schoolchildren ... young priests ... until he had slain ninety-four thousand ... [yet the blood still seethed] ... [He calls out to Zechariah, pleading with him to stop the seething, and Zechariah obliges]. Thoughts of repentance came into his mind: if they who killed one person only, have been [so severely] punished, what will be my fate? So he fled ... and became a [righteous] proselyte.<sup>8</sup>"

<sup>8</sup> All talmudic translations (with occasional minor emendations) are from the Soncino edition of the Talmud; here, *Sanhedrin*, p. 651f. The word "righteous" is inserted a little out of context. It actually occurs a few lines past our passage describing Nebuzaradan.

Surely, one may ask, while there is nobility on the part of the court in accepting the turnabout of Nebuzaradan, does it have no obligations with respect to the crimes of which he was guilty? Or do we say, with the Talmud in B. Yebamoth 22a, that a convert is as a newly-born child i.e. he has no past, and therefore is not to be tried for crimes in his former life?

It is true that R. Steinberg was only asked whether the former-Nazi could be converted, but our issue runs deeper—what, we must ask, are the Nazi's responsibilities, and those of the court, to his past?

The Talmud (B. Sanhedrin 71a) replies: "A Noahide ... who slew an Israelite ... [and then converted] ... is [capitally] punished." This piece of legislation together with the apparently contradictory tradition of converts being newly-born and therefore bereft of their past, is the subject matter of a responsum published in 1699 by R. Ya'ir Bachrach<sup>9</sup>. A convert from Amsterdam asks whether he is required to return to its owners what he stole while still a gentile. R. Bachrach replies with the resolution of *Tosafot*<sup>10</sup>: a convert is forgiven those trespasses of his past that are between himself and his Maker, but this is not true for trespasses between himself and society. He is therefore required to return the goods.

R. Bachrach's analysis goes beyond *Tosafot*. "When we say," he writes "that 'a proselyte who converts is like a newborn child', [then this is true] because with his very taking on of the yoke of the commandments [he is engaging in an act of such profound contrition] that he is forgiven all the abominations of the Lord which he wrought [for we speak of a gentile who negated the Creator of the world]<sup>11</sup>. [Thus his conversion is analogous] to the repentance of a Jew, and his sins are considered as if he had committed them while a Jew<sup>12</sup>. Consequently his conversion is of no use to him with respect to any capital offense ..."

Nebuzaradan might thus have repented, but his past would accompany him on his journey to Judaism, and he would be required to stand trial for his genocidal crimes immediately, so to speak, upon his emergence from the proselyte's ritual bath. Thus, R. Steinberg's responsum, in leaving us with the impression that all is well with the former-Nazi who could now convert, is surely misleading<sup>13</sup>.

<sup>9</sup> Resp. *Havoth Ya'ir*, 79.

<sup>10</sup> B. *Sanhedrin*, 71b, s.v. *Ben Noah*

<sup>11</sup> Brackets are of the author, or perhaps his editor.

<sup>12</sup> Italics mine.

<sup>13</sup> A full discussion of the pre-conversion obligations of a proselyte is found in the *Encyclopedia Talmudit*, Vol. 6, s.v. *Ger*, sec. 6.

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While Judaism thus has profound faith in the individual's capacity for remorse and repentance, this repentance does not of necessity free him of his past deeds; even conversion, at once the ultimate identification with one's victims, as well as, per R. Bachrach, the supreme statement of repentance, neither frees nor exonerates one from crimes past. So the first in a series of dialectics on this subject: On the one hand halakha recognizes the authenticity of the perpetrator's remorse; on the other, it seems to suggest, remorse is not enough—that in this case, repentance alone does not lead to redemption from sin.

The second dialectic also emerges from the Laws of Repentance. Suppose our repentant Nazi could ask forgiveness for his crimes. Whom would he ask? No one, after all, can speak for the dead, much less for Six Million dead. Rabbi Yosai bar Hanina offers a solution: Just as part of the process of repentance is to confess before our living victims, including recalcitrant victims, and ask for their forgiveness, so "... if he [against whom he had sinned] had died, he should bring ten persons and make them stand by his grave and say: I have sinned against the L-rd of Israel, and against this one whom I have hurt."<sup>14</sup> Maimonides<sup>15</sup> adds "and against this one against whom I did as follows ..." That is, as in most of commandments there is a locus necessary to, and inherent in, their fulfillment; so too with the commandment of repentance: We need to go to the where the person upon whom we perpetrated the trespass finds himself, and there seek forgiveness.

The problem, of course, is that the Six Million have no graves. A monument made up of seven tons of human ash stands today at what was the death camp at Majdanek; a supreme monument to the absence of graves. So we complete the second dialectic by claiming that because there is no place at which to ask forgiveness, the commandment can no longer be properly fulfilled. The tradition recognizes the perpetrator's capacity to seek forgiveness, but in the absence of locus, denies him the right to accomplish it. The perpetrator is relegated to a realm of marginality halfway between heaven and hell, in which he is aware of, even regrets, his crimes, yet remains powerless, perhaps in perpetuity, to get past them.

<sup>14</sup> B. Yoma, 87b

<sup>15</sup> Yad, Teshuva 2:11.

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In perpetuity?

What about Nebuzaradan's children? The young man seeking a room was the child, perhaps the grandchild of perpetrators. The same page of Talmud which tells Nebuzaradan's tale records how some of Israel's greatest sages were his decedents. We move then, to understand the role, in halakha, of the children of perpetrators.

To do so, we need first to seek an area of halakha that bears some analogy with the Holocaust; a crime, parallel, perhaps conducive to genocide, dealt with by the Jewish legal sources and of which the perpetrators of the Holocaust were guilty. Fortunately this work has already been eloquently done for us by Emile Fackenheim: we speak, of course, of the crime of idolatry<sup>16</sup>.

After describing the rabbinic preoccupation with idolatry long after people had ceased worshipping idols, Fackenheim writes, "Idol worship is a possibility implicit in the human condition. It is a possibility even though the idols are no-gods. It remains a possibility even when men know that they are no-gods. It is and remains possible because sinful passion can reach a point at which it becomes an independent power—as if it were an alien god within—a point at which the ordinary relation is reversed and passion no longer belongs to man but to passion. This is why the Rabbis refuse to belittle idolatry by defining it too narrowly, as a folly safely surpassed, or by defining it too widely, as indistinguishable from sin in general ..."

Calling on Freud for a way to understand the seriousness of this internalized mode of idolatry, Fackenheim suggests the concept of projection. "The ancient idolater projects a feeling—fear, hope, pleasure, pain—upon an external object, and he then worships the object ... The projected feeling [then] gives [the object] a life of its own, and there may be, even must be a special rite during which this life is conjured into it. There is, then, *worship* because the object is *other* and *higher* than the worshipper, and the *worship* is *idolatrous* because the object is *finite*—if only because it is an object."<sup>17</sup>

But Freud's own understanding of projection, Fackenheim argues, was limited by his own prejudices; what he did not understand was that

<sup>16</sup> See the chapter *Idolatry as a Modern Possibility* in Emil L. Fackenheim, *Encounters between Judaism and Modern Philosophy*, Schocken Books, N.Y., 1980, pp. 171-197.

<sup>17</sup> *Ibid.*, pp. 185-6. Italics are Fackenheim's.



"we must bestow on the concept of projection a dimension of infinity: what is projected by the idolater upon the finite object is an infinite fear, hope, pleasure, or pain. Only because the feeling is *infinite* is there a religious—not pseudoreligious—relation to the finite object." For Fackenheim, then, idolatry takes place with the projection of an infinite feeling upon a finite object.

Finally—"Nazism has internalized the idolatrous identification of finiteness and infinitude. The *Fuhrer*, no emperor-god, embodies the *Volk*, and the *Volk*, no worshipping community, realizes its selfhood in blind obedience and total sacrifice." Nazi ideology, in short, which ends with the destruction of the Six Million as its sole, surviving accomplishment, is classical idolatry couched in modern terms. The idolatrous symbols are internal and not physical, but as we abstract their components, we expose their reality. We also expose how its consequences in evil are the same, and by virtue of Fackenheim's extraordinary philosophical footwork, how Nazism as idolatry's correlative contemporary evil, legitimizes for us the biblical and extended rabbinic rage against idolatry.

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What is the law, then, when a community becomes idolatrous?

There is such a law, of course, in Judaism, but it is for Jews; it speaks of a Jewish community which has been seduced or beguiled by its own members into idolatry,<sup>18</sup> and requires the courts to engage against it with some rather harsh measures. If the word is out, so to speak, that this is an *'ir hanidahath* (the biblically described beguiled city; hereinafter: IhN), then the court is legally required to investigate it.<sup>19</sup> If the minority of the residents turn out (following the normal legal channels of acquiring unassailable testimony from two reliable and authorized witnesses, admonition, and due process from a court licensed to try capital crimes) to be idolatrous, each idolatrous resident is individually tried, and women, minors, and several other minorities are exempt from prosecution. If, however, the majority of the inhabitants of IhN is found to be guilty, then the entire city (with few exceptions) is executed by the sword, and its contents are burned.

<sup>18</sup> See Deuteronomy 13:13–19, B. Sanhedrin 111b, ff., Maimonides, Yad, Chapter 4 of *Akum*.

<sup>19</sup> So Malbim on 13:13

About the IhN, the Tosefta<sup>20</sup> records: "There never was an IhN, nor is there one ever destined to be. It was written of only to tell thee, 'interpret it and seek thy reward.'" The ghastly scenario of the IhN must thus never be enacted—the Tosefta removes it from practical law and limits it to theoretical law. Theoretical law we use, among other purposes, to determine legal attitudes and theoretical directions. Surely if we wish to learn how an idolatrous community is legally *understood*, then the Tosefta has here given us license to so do by examining the traditions regarding IhN. Since, furthermore, halakha is legislation for practise<sup>21</sup> limited to Jews, then perhaps in areas of law where this no practise (such as IhN), it may not be inappropriate for theoretical purposes to generalize to other communities.

This brings us to our next dialectic. This Tosefta, the Talmud<sup>22</sup> advises us, agrees with the opinion of the Tanna, R. Eliezer, who maintained, based on conventional rabbinic exegesis, that "no city containing even a single *mezuzah* can be condemned." "R. Jonathan," however, "said, 'I saw an [IhN] ... and sat on its ruins.'" We may condemn a whole community, R. Jonathan advises us, even the innocent within it, if its sin was idolatry. So one end of our dialectic. The other side, that of no less distinguished a tanna than R. Eliezer, tells us that we cannot. Maimonides seems to side with R. Jonathan.

The IhN exists then, in halakha and does not. We may employ it to legislate for Jews, and we may not. But we may surely employ it qua concept, as theoretical possibility, to establish that there is such a thing as an idolatrous community—a community about which we may posit an halakhic notion of collective guilt.

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Can this community repent?

Maimonides: "[After the courts have legally established the existence of the IhN], it dispatches two scholars thereto to admonish its inhabitants, and to [bring them to] repentance. If they return [from their errant way] and repent, then well and good ... If they persist in their ways [then the penalties are carried out by military force, but with due process as well].

<sup>20</sup> *Sanhedrin*, 14:1, in standard editions, as in Zukermandl.

<sup>21</sup> The exception to this statement are Noahides; hardly a description of the Third Reich.

<sup>22</sup> B. *Sanhedrin* 71a.

Rabad: "[t]hen well and good" ... Repentance will certainly help [their souls], but I have found [no source to indicate] that after admonition and deed [i.e. subsequent violation] that it is of any [legal] help."<sup>23</sup>

Another dialectic—their repentance has legal/social consequences, and it does not.<sup>24</sup> Their repentance is not without consequence; but whether it can cleanse, whether it can regenerate, is left abandoned as argument in the twelfth Century between these two mighty *rishonim*.

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We have attempted to show that there is a notion, within halakha, of collective guilt. We have likewise tried to establish that while the individual sinner can totally atone for his sin (as with Nebuzaradan) there are views in halakhic literature that he may not be cleansed. This ambiguity—we have called it a dialectic—is also true of the community (as in IhN). In each case we are left with the single question—how long their guilt? Or, to what extent are their children implicated? We now turn at last to these most excruciating of all the issues under discussion.

We return to the Tosefta<sup>25</sup>: "The small children of the IhN beguiled [together with their parents] are not executed [the preceding from an anonymous source]. R. Eliezer says that they are. R. Akiva says [from exegetical reading]—they are not. R. Eliezer ... [reads R. Akiva's critical verses differently]."

We thus have in the Tosefta what we found earlier with Maimonides and Ravad: what we have been calling a dialectic. One could argue that for R. Akiva, children are children—they are innocent of the evil of their forebearers. R. Eliezer says that they are not. Unfortunately, unlike the Maimonides-Ravad dialectic, we cannot leave the matter hanging, because halakha does not:

Maimonides:<sup>26</sup> "If [after the aforementioned admonition and urge towards repentance] the majority [of the IhN is found guilty,] then they

<sup>23</sup> *Yad, Akum*, 4:6.

<sup>24</sup> It would certainly appear that Ravad's position is consonant with that of *Havoth Ya'ir* cited above. *Lehem Mishne* (on Maimonides, ad locum) suggests that Rabad was reading a scribal error. Yet the matter remains unresolved among *ahronim*. See, nonetheless R. Joseph Rozin, *Tzofnat Pane'ah 'al haRambam*, Jerusalem, 1979, *Akum* 4:6, who argues that once members of the IhN repent, the appellation IhN is withdrawn from the place, and thus, so are the concomitant rulings. This would certainly answer Ravad's difficulties.

<sup>25</sup> Tosefta, *ibid*.

<sup>26</sup> *Ibid*, 4:6

are brought to the Great Court, where they are sentenced, and each worshipper [of idols] is executed by the sword. [Further,<sup>27</sup> if the entire<sup>2</sup> [community] is implicated, then every individual is executed by the sword, including women and children. If, [on the other hand] only the majority [of the community] is implicated then only the women and children of the worshippers are executed by the sword.

Maimonides thus supports R. Eliezer, and in the late thirteenth Century, R. Shem Tov ben Abraham ibn Gaon<sup>29</sup> reports that R. Meir HaLevi Abulafia of Toledo (d. 1244)<sup>30</sup> was understandably distressed by this support, and consulted with the Sages of Lunel for their wisdom on this question. "Why punish women and children," he asks, "when they have no obligations in this matter?"<sup>31</sup> The Sages replied as follows:

- 1] Maimonides' ruling was no surprise insofar as it was consonant with the definitive ruling to this effect in the halakhic midrash *Sifré*.
- 2] In an argument in *Kritot*, R. Akiva rules that children of evil Israelites are not executed with their parents, while R. Eliezer maintains that they are. Maimonides rules like R. Eliezer, and beyond thus maintaining his own internal consistency, Maimonides follows R. Eliezer's ruling because so does the author of the *Sifri* (R. Simeon).<sup>32</sup>

<sup>27</sup> This section of Maimonides is not without its literary difficulty. I follow the reading of the *Kesef Mishne* of R. Joseph Karo ad loc. (s.v. *miyad*).

<sup>28</sup> emphasis mine.

<sup>29</sup> author of the commentary on Maimonides' *Yad* known as the *Migdal 'Oz*, from which the observations (ad loc.) in our text which follow are taken. R. Shem Tov was a disciple of Rashba and Maharit (see *Encyclopedia Judaica* 8:1174).

<sup>30</sup> R. Abulafia, the author of the classic *Yad Rama* was one of the major rabbinic authorities of his time.

<sup>31</sup> The reference here, presumably is to the IhN, since women, certainly, are required to fulfil the second Commandment.

<sup>32</sup> The just-quoted passage of Maimonides also provokes the curiosity of Prof. Isadore Twersky in his magisterial *Introduction to the Code of Maimonides*, New Haven & London, Yale University Press, 1980. On p. 308, n. 172, he cites this passage as indicative of Maimonides' "original interpretations of laws stemming from philosophical conceptions ..." Agdin, on p. 478 n. 307, Twersky writes, "This intellectualism—the emphasis upon the importance of cognitive perception, of the purity of theory and theoretical guidelines—is not constricted to history or eschatology, but has halakic repercussions as well. Note [this] example: In *'Akum* iv, 6, Maimonides concludes, to the amazement of most commentators, that even women and children of IhD ... are put to death. In *Moreh Nevuhim* 1,54 (p.127), Maimonides himself

- 3] The women and children of Korah's minion, and those of Yabesh Gilead, while innocent, were also killed as part of the punishment of the guilty.

The scholars of Lunel and Maimonides are not the only ones to move in this direction. Consider the following responsum cited by the *rishon* Mordechai ben Hillel (d. 1298):<sup>33</sup>

"A question was asked of RI<sup>4</sup> regarding whether one was obligated to mourn a one- or two-year-old child who [was joined with his mother in] apostasy ... He replied, It seems to me that we *do* mourn him. For surely while [the Talmud teaches in B. Sanhedrin 46b that] we do not mourn an adult apostate ... and [that] the 'demise of the wicked is taken joyfully' [ibid, 49b], with respect to a child, what does it matter that he is brought into another faith—it is [surely] as if he never apostacized?

"Rabbenu Tam<sup>35</sup> [on the other hand] says that we *do not* mourn him, as evidenced from the Tosefta of [tractate] Sanhedrin [which reads as follows]: [With respect to] children who were also led astray within an lhN—R. Eliezer says: they are executed; the Sages say they are not executed. [Now] from R. Eliezer's [very] statement that they are

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provides the explanation for his ruling: the ideological source of contamination must be eliminated in toto because its practical consequences are so damnable."

While the quotation from the *Morah* is accurate, it is not necessarily an explanation of Maimonides' ruling; it may just as well be his hermeneutic extrapolation of what the ruling means. The response of the Sages of Lunel currently quoted, especially their working the ruling of Sifré to be consonant with the view of R. Eliezer is adequate explanation (although my own argument here is not what it should be because I have not been able to locate this Sifré). Add to this their remaining proofs, and we do not need to argue from here about the originality of the Maimonidean *pesaq*.

When, moreover, R. Joseph Karo (op cit.) finds problems with the answers of the Sages of Lunel, he is careful to say that he does so with *some* (i.e. not all of their answers). One would suspect he refers to the aggadic reasons (q.v. our text) they cite, rather than the halakhic ones. Thus, Prof. Twersky's statement "to the amazement of most of his commentators" is problematic; there does not appear to be that much amazement, and the originality of the Maimonidean rulings does not appear to be as thoroughly proven from this passage as he would have us believe. I quibble on this point only because it is about a major ideological issue in the understanding of Rambam's method, and as such, all the evidence needs to be scrutinized with love and care.

<sup>33</sup> : This source is found in Mordechai's commentary on the fifth chapter of B. Sanhedrin, where it is listed as #716.

<sup>34</sup> The reference is to R. Isaac b. Samuel of Dampierre, a major Tosafist who died c. 1185.

<sup>35</sup> The reference is to R. Jacob b. Meir Tam, RI's uncle and teacher, who knew suffering at the hands of the Crusaders. He died in 1171.

executed, it is clear that the Rabbis would agree that children are nonetheless not mourned. This is because the exclusive difference between R. Eliezer and the Sages regards execution. [On all other related issues they are, in other words, of a single mind and therefore] with respect to mourning the Rabbis agreed [and thus Rabbenu Tam concludes] that we *do not* mourn them.

"Yet [Rabbenu Tam's argument] is hardly convincing. Surely [this Tosefta] speaks of somewhat grown children who had engaged in idolatrous practise. A child, on the other hand, who cannot distinguish between his right and his left is [surely to be] considered a regular Israelite. Furthermore, the [generalization applicable] to the lhN [i.e. that all residents of the city become culpable if merely a majority, having being properly forewarned, continue to offend] does not extend to other [geographical] areas—Rabbi Eliezer himself argues that [normally] a minor who practices idolatry is not culpable.

"Ultimately Rabbenu Tam concludes that the practise is not to mourn them."

What first appears to be a dialectic (Mordechai arguing that these children are mourned, Rabbenu Tam, his superior, to whom he gives the final word, arguing that they are not) turns out to be unilaterally resolved by R. Joseph Karo in the Code<sup>36</sup>: "We do not mourn [i.e. "sit shiva" for], he writes, "a one- or two-year-old minor who apostacizes with his mother."

The issue is elaborated, as it turns out, a few chapters later in the Code<sup>37</sup>. R. Karo rules that a mourner must rend his garment if his deceased is a some-time sinner. This moves R. Isserles to respond that if the deceased inclined to be sinful, then he is not mourned. "So also", he adds, "a minor apostate who is brought into apostasy with his mother or father—[halakha] deems him ... [as being coerced, and he is mourned by his survivors]." But the matter does not end here—R. Isserles adds, "And there are those who say that we do not mourn him, and that is [the final law.]" His source, needless to say, is the same Tosefta in Sanhedrin.

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<sup>36</sup> *Yoreh De'ah* 345:6. The Gaon of Vilna (and the *Be'er HuGolah*) here also cite our Tosefta in Sanhedrin as the source of this ruling, and the Gaon additionally points out that while the disagreement in the Tosefta is about execution, all would agree that there is no mourning for the child.

<sup>37</sup> *Ibid.* 340 (laws of *Qriah*), #5.

Of particular interest with respect to this ruling is its analysis by R. Joseph Saul HaLevi Nathanson (d. 1875).<sup>38</sup> The point of this law, he explains, is that normally if one is present for the death of a child, one does rend; he may be a child but his soul is that of an adult.

To which we would of course add that as such, he is implicated in the trespasses of the society around him. And here of course, we have come full circle. Halacha seems to rule rather firmly and dispassionately that children are implicated by their parents. We would not be wrong in saying that if our analysis is correct, Nazism's children are, from the perspective of halakha, forever doomed to be participants in their parents and grandparents' guilt.

Yet the dialectics remain, and to rule so would surely be hasty. It is important to note that Maimonides rules, uncontested, that children of Noahides are never punished.<sup>39</sup> Halakha would surely find it difficult to implicate those who lived through the years 1935-1945 believing in a single G-d, and who acted with a corresponding conscience. Nor can we make, as we have said, an absolute equation with the Third Reich and the IhN—the latter may only be used as a model for theorizing, and the road from theorizing to *pesaq* is surely a long, tricky one. And finally, we cannot forget the original argument in the Tosefta upon which so much of this law is based, in which it was R. Akiva who argued that the children (even those of the idolaters) were not to be implicated. I, for one, were I looking for halakhic guidance on these questions, would want R. Akiva on my side, and here, of course, I have him.

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<sup>38</sup> *Yoreh De'ah*, op cit. R. Nathanson was the author of the voluminous *Resp. Sho'el u'Mayshiv*.

<sup>39</sup> See, e.g. R. Moses, Sofer, *Resp. Hatam Sofer*, (standard editions) *Yoreh De'ah*, #317.