

## IN FASHIONS & OUT FASHIONS: WHEN APPEARING JEWISH BECOMES ILLEGAL<sup>1</sup>

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### A Different Muslim Ban

Québec's recent issuing of Bill 62, colloquially called the "Religious Neutrality Act,"<sup>2</sup>—with its ramifications that target certain Muslim women—challenges the legitimacy of Canadian Prime Minister Justin Trudeau's refrain that "diversity is Canada's strength."<sup>3</sup> The bill is plainly not aimed at increasing security in public spaces, for it does not require uncovered faces in all public spaces. Rather the bill legislates faces be uncovered only when offering or receiving public

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<sup>1</sup> I presented a preliminary version of the points in this article at the 2<sup>nd</sup> Annual Halifax Communal Beit Midrash on November 19, 2017 at the Beth Israel Synagogue of Halifax, NS. I extend my gratitude to Rabbis Yakov Kerzner and Raysh Weiss who helped in organizing this opportunity to teach. I am also indebted to Rabbi Joshua Cahan and Richard Claman for their valuable editorial comments on this article.

<sup>2</sup> The full text of the bill can be found online as published by the National Assembly: "Bill 62: An Act to foster adherence to State religious neutrality and, in particular, to provide a framework for requests for accommodations on religious grounds in certain bodies" (Québec City, Québec: Québec Official Publisher, 2017) as accessed at <http://www2.publicationsduQuébec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2017C19A.PDF> on December 11, 2017.

<sup>3</sup> See Justin Trudeau, "Diversity is Canada's Strength," address in London, United Kingdom (November 26, 2015), a transcript of which can be found at <https://pm.gc.ca/eng/news/2015/11/26/diversity-canadas-strength> ("Diversity is Canada's Strength" | Prime Minister of Canada) as accessed on January 27, 2018.

services.<sup>4</sup> The bill demands that one must, for example, show one's face when checking out books at a public library's circulation desk, but the law still permits the same person to enter and to run about the library with one's face completely covered.<sup>5</sup> In accordance with this legislation, a criminal who is not a public servant and is found at a video-surveilled entrance of a library could have their face covered so long as the criminal is receiving no public service at the time. As such, Bill 62 fails to heighten security and succeeds only in rendering one visible expression of Islam unfaceable; the legislation seeks to deface diversity by limiting religious freedom.

Upon the passing of Bill 62, Québec's Premier, Philippe Couillard, stated, "You speak to me; I should see your face, and you should see mine; it's as simple as that," deeming the right to the freedom of covering one's face for a religious purpose an offence against the very culture over which he aims to preside; "We," he declared in the same breath, "are in a free and democratic society."<sup>6</sup>

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<sup>4</sup> That the bill targets solely Muslim women with religious face coverings and not other individuals with other face coverings has been clearly articulated and satirically derided. The Canadian Broadcasting Corporation aired on the most recent New Year's Eve the Canadian comedy troupe The Royal Canadian Air Farce's 2017 edition of their annual end-of-year lampoon (*Air Farce New Year's Eve 2017.2018*, directed by Wayne Moss and written by Wayne Testori, Kevin Wallis, Rob Lindsay, Carly Heffernan, Don Ferguson, Sam Mullins and Chris Wilson), in which one sketch depicts a *niqāb* (نقاب)-covered woman repeatedly being refused public medical services while public services continue to be offered visibly to and by a clown whose face is fully painted, a heavily bearded man, and a medical professional wearing a surgeon's mask.

<sup>5</sup> Marilla Steuter-Martin, "Breaking down Bill 62: What you can and can't do while wearing a niqab in Québec" from CBC News (October 25, 2017), as accessed at <http://www.cbc.ca/news/canada/montreal/bill-62-examples-ministry-release-1.4369347> on December 20, 2017.

<sup>6</sup> Benjamin Shingler, "I should see your face, and you should see mine," Québec premier says of new religious neutrality law" from CBC News (October 18, 2017), as accessed at <http://www.cbc.ca/news/canada/montreal/Québec-niqab-burka-bill-62-1.4360121> on December 20, 2017.

Couillard's contradictions – the invoking of purported liberty and the damning of religious visibility – speak for themselves.

Civil rights activists in fact responded quickly to the bill – in its drafting<sup>7</sup> and in its implementation.<sup>8</sup> As of this writing, the terms of Bill 62 that restrict Muslim women from face coverings when receiving or offering public services have been stayed – but only until a time when Québec's legislators have finalized the mechanisms whereby individuals may apply for exemptions to the norms imposed by Bill 62.<sup>9</sup> Nothing suggests that such an application process will guarantee the granting of exemptions.

As a person whose life is shaped by my adherence to a religion the public and private practices and philosophies of which can be and have been not only criticized by purely logical and entirely ethical arguments but also limited by governmentally imposed restrictions – I find myself warily viewing any governmental order that seeks to delimit any religious expression that serves no offences to any non-practitioners. I worry for the hypocrisy and, even more so, the Islamophobia facing Muslim women in Québec who accept upon themselves the practice of covering their faces. Residing in a democratic country that saw Islamic dress restricted by law (even if only enacted in one out of ten provinces), I fear and recognize that democracies themselves are entities capable of restricting Jews from wearing *kippot* (כַּפּוֹת, head

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<sup>7</sup> See, e.g., Janice Arnold, "Québec's Bill 62 Violates Key Rights: Jewish Lawyers Group" in *The Canadian Jewish News* (November 1, 2016), as accessed at <http://www.cjnews.com/news/canada/Quebecs-bill-62-violates-key-rights-jewish-lawyers-group> on December 27, 2017.

<sup>8</sup> See, e.g., Canadian Press, "Québec face-covering law Bill 62 constitutional challenge filed" from *The Toronto Sun* (November 7, 2017), as accessed at <http://torontosun.com/news/national/Quebec-face-covering-law-bill-62-constitutional-challenge-filed> on December 27, 2017.

<sup>9</sup> See, e.g., CBC News, "Judge grants stay of part of Québec's controversial religious neutrality law" from *CBC News* (December 1, 2017), as accessed at <http://www.cbc.ca/news/canada/montreal/judge-grants-stay-of-bill-62-1.4429199> on December 27, 2017.

“coverings”), *tefillin* (תפלין, “phylacteries”),<sup>10</sup> *tzitzit* (ציצית, “fringes”) or *tallit* (טלית, a prayer “shawl”).<sup>11</sup>

Truthfully, I fear that the German Lutheran pastor Martin Niemöller’s oft-improvised sermonic poem “First they came ...”<sup>12</sup> may feel stale to those for whom its words do not resonate with obvious relevance. Nonetheless, amidst my call for Jewish persons to be wary of any limitation on – and strive for the protection of – the rights of Muslims to dress as befitting any peaceable religious outlook, this article seeks to explore several trends in halakhic (*i.e.*, Jewish legal) responses to restrictions imposed on Jewish religious life from throughout Jewish history and mythology.<sup>13</sup>

We will first explore the myth of the Maccabean revolt as the (imagined) response to religious offence and how rabbinic and contemporary Jewish life have themselves reacted to the notion of violent retaliation to a governmental attempt at repressing Jewish visibility. Moving from B.C.E. to C.E., we will encounter the earliest generations of rabbinic scholars pondering the case of *tefillin* that have been forcefully separated from their owners. Traversing to a few centuries later, we will read the text and subtext of rabbinic lore’s relating the fantasy of a miracle that saved one Jew’s life when *tefillin* were out-lawed. Fast-forwarding to beyond a millennium later, we will examine the words of one great Eastern European Jewish leader who blamed his coreligionists for the religious repression they faced. Finally, standing in the present, we will review current pressures in France that restrict

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<sup>10</sup> The section below on *Elisha’* will demonstrate one instance in Jewish memory when *tefillin* were worn publicly.

<sup>11</sup> A *tallit* can still be found worn in public spaces in certain densely Jewishly populated neighbourhoods – especially (perhaps unsurprisingly) in parts of contemporary Jerusalem.

<sup>12</sup> For one text of this poem, see “Martin Niemöller: ‘First They Came For the Socialists...’” at the United States Holocaust Memorial Museum’s *Holocaust Encyclopedia* as accessed at <https://www.ushmm.org/wlc/en/article.php?ModuleId=10007392> on January 2, 2018.

<sup>13</sup> Although we speculate regarding the historicity of certain events described in the Apocrypha or the historical contextualization of events referenced in early rabbinic literature, ultimately the factual bases of these matters nonetheless often remain unknowable.

the wearing of *kippot* and see how French Jewry has handled their predicament.

A chronology of all governmental suppressions of all modes of Jewish practice beyond the displaying of markers of Jewish identity would necessitate a much lengthier survey than this certainly not-comprehensive article seeks to provide.<sup>14</sup> The episodes of Jewish myth and history explored in this work present five of the most widely retold narratives about the criminalization of Jewish appearance. In our rereading of these sources, it is our task to understand what the spectrum of Jewish thought includes within the range of Jewish responsibility and appropriate responses in a time where the freedom to wear one's religion on one's sleeve, so to speak, is persecuted.

### **Maccabean Resistance & Macabre**

Jewish mythology recounts the earliest significant suppression of appearing visibly Jewish as having occurred in the series of supposed legislations that were reputed to inspire the Jewish revolt against Syrian-Greek governance in Judea in the second quarter of the 2<sup>nd</sup> century B.C.E..<sup>15</sup> The Apocryphal Book of II Maccabees reports that

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<sup>14</sup> Similarly, this article does not analyze the converse trend of social and governmental pressures that have demanded that Jews in fact mark themselves as other. For two such reviews of these originally medieval realities, see, e.g., Naomi Lubrich, "The Wandering Hat: Iterations of the Medieval Jewish Pointed Cap" in *Jewish History* vol. 29 (2015), pp. 203-244; and Sara Lipton, *Dark Mirror: The Medieval Origins of Anti-Jewish Iconography* (New York, NY: Metropolitan Books 2014), esp. pp. 7, 16-21, 25, 47, 57, 80, 83, 158, 160 and 255.

<sup>15</sup> The historicity of the Apocryphal myths referenced here has been challenged; see, e.g. and especially, Sylvie Honigman, *Tales of High Priests and Taxes: The Books of the Maccabees and the Judean Rebellion against Antiochos IV* (Oakland, California: University of California Press 2014). Honigman writes that

a proper literary analysis of 1 and 2 Maccabees, the book of Daniel, and Josephus, shows that there was no religious persecution. What we have are complex literary elaborations of a military suppression whose genesis can be

Jews who refused to conform to the norms of Greek living would be sentenced to death, and such is recorded as the fate of two women and their Jewishly ritually circumcised babies.<sup>16</sup> The Book goes on to explain that Judas (ιουδας, *Ioudas* – often known as Judah Maccabee), with a band of approximately 6,000 Jewish men allegedly still adhering to their Jewish roots, prayed to God for a reversal of the cultural

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reconstructed, once again, by being attentive to the ancient authors' culturally conditioned narrative codes. In turn, interpreting the "persecution" stories as accounts of a military suppression implies that the popular rebellion was the cause and not the consequence of Antiochos IV's crackdown on Jerusalem and therefore must have broken out during the king's second campaign in Egypt in 168 B.C.E. This must mean that religious issues were not in fact the primary cause of the rebellion, if a cause at all. (*Ibid.*, Kindle Locations 167-172; 16-17% of Sample Edition as retrieved on January 28, 2018).

The reliability of such reporting in pre-Modern (and certainly many Modern) Jewish histories ought to be questioned with a critical lens. I nonetheless choose to present this series of myths to identify in this article one literarily frozen Jewish *ethos* (ἔθος—although I intend no Hellenistic cultural appropriation by use of this loanword) when it articulated what Jews imagined they ought to have done when an (exaggerated) enemy placed a (fictive) ban on Jewish appearance. This article is less interested in the historicity than the emotive reasonings of the Jewish spirit that authored these myths. Andrew McCarron has written:

Psychobiography... doesn't get hung up on the historical accuracy of a life story. Masks are revealing. A psychobiographer is more interested in the themes and structures of a life narrative that shed light on the mind and life-world behind the story. Appropriating, embellishing, misrepresenting, fantasizing, projecting, and contradicting are all par for the course within the narrative realm. (Andrew McCarron, *Light Come Shining: The Transformations of Bob Dylan* [New York, NY: Oxford 2017], p. 28.)

<sup>16</sup> II Maccabees 6:8-10.

influence on the Jewish people and, taking matters into their own hands, engaged in surprise (and often nocturnal) warfare against non-Jewish persons (and not necessarily politically empowered individuals), seemingly to great acclaim.<sup>17</sup> Similarly, the (also Apocryphal) Book of I Maccabees also details the killing of circumcised Jewish babies—and their mothers who encouraged this somatic religious signification.<sup>18</sup> In response to these deaths, Mattathias (ματταθίας) and his sons engaged in acts of mourning<sup>19</sup> as the patriarch called for faithful Jews to join him<sup>20</sup> in what would become an army<sup>21</sup> that destroyed pagan altars<sup>22</sup> (public expressions of pagan religion) and forced upon all uncircumcised men circumcisions<sup>23</sup> (expressions of Jewish faith that are visible—especially in the context of the public arenas of athletic display, where participants appeared in the nude, supposedly leading sporty Jewish men to undergo surgeries that undid the circumcisions from their younger days<sup>24</sup>).

*Aggadah* (אגדה, “narrative”) and *halakhah* (הלכה, Jewish “law”) are—fortunately for halakhically-minded pacifists—not one and the same. Moreover, we can learn much from the simple historiographic decisions of the rabbis, who did select the rather historically-tinged books of Ezra and Nehemiah for inclusion within the sacred canon of the Hebrew Bible but evidently never seriously opted to include any of the Apocryphal Books of Maccabees in the same genre of ritual literature. Indeed, no Hebrew-language original on which the Greek-language I Maccabees is based survives. Nonetheless, the description of a holiday centred on dedication—which is, in Hebrew, (חנכה *hanukkah*)—designates a span of 8 days and begins on the 25<sup>th</sup> day of Kislev (כסליו) — or *Chaseleu* (χασελευ) in the Greek text<sup>25</sup> — implying very clearly that the subject at hand<sup>26</sup> is a predecessor to that holiday rabbinic

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<sup>17</sup> *Ibid.*, 8:1-7.

<sup>18</sup> I Maccabees 1:60-64.

<sup>19</sup> *Ibid.*, 2:14.

<sup>20</sup> *Ibid.*, 2:27.

<sup>21</sup> *Ibid.*, 2:42-44.

<sup>22</sup> *Ibid.*, 2:45.

<sup>23</sup> *Ibid.*, 2:46.

<sup>24</sup> See, e.g., *ibid.*, 1:14-15.

<sup>25</sup> *Ibid.*, 4:52.

<sup>26</sup> For this description, see *ibid.*, 4:52-59.

circles called *Ḥanukkah*.<sup>27</sup> Yet the Talmudic narrative that serves as the rabbinically authorized etiology of *Ḥanukkah* almost entirely overlooks any Jewish brute force that permitted Jewish re-entry into the Temple in Jerusalem. The rabbis tell the whole tale of Syrian-Greek conquest and Jewish revolt in 12 Hebrew words, strung together in the form of a dependent clause:

שכשנכנסו יוונים להיכל טמאו כל השמנים שבהיכל וכשגברה  
מלכות בית חשמונאי ונצחום...

For when the Greeks entered the Palace [of God], they made all of the oils in the Palace impure, and when the kingdom of *Beyt Hashmonai* (בית חשמונאי, “the Hasmonean House”) arose in strength and conquered them...<sup>28</sup>

Having pared down to a mere dozen words a legend chronicled over the course of several Apocryphal chapters (some of which were likely written in hundreds of rabbinically rejected Hebrew words), the Talmud’s narrator immediately shifts focus. The text explains—in multiple independent clauses comprising more than twice the quantity of words that summarized the Maccabean revolt—the truly exceptional moment of Jewish continuity did not happen by way of Jewish revolution but by way of one of the Temple accoutrements that truly outshone what any member of the venerated cleanup crew (the identities of whom the Talmud relegated to the Hasmonean rulers) had done or anticipated:

בדקו ולא מצאו אלא פך אחד של שמן שהיה מונח בחותמו של  
כהן גדול, ולא היה בו אלא להדליק יום אחד. נעשה בו נס והדליקו  
ממנו שמונה ימים.

They checked and did not find anything other than one vessel of oil that had been placed with the seal of the *Kohen Gadol* (כהן גדול, “High Priest”), and in it was nothing other than the potential to maintain light for one day. A miracle was performed, and they made light from it for eight days.<sup>29</sup>

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<sup>27</sup> Babylonian Talmud, Shabbat 21b.

<sup>28</sup> *Ibid.*.

<sup>29</sup> *Ibid.*.

Preceded by the curious (and perhaps mocking) question of “מאי חנוכה” (“What is *Ḥanukkah*?”)—this particular origin story of Judaism’s 8-day festival of lights never utters the word *Ḥanukkah* or any words derived from its trilateral root (*het-nun-khaf*, ח-נ-כ) but does conclude by admitting that such a (perhaps not-to-be-recalled-or-revived) holiday (which in the rabbinic imagination is merely a celebration of an oil miracle) does (or perhaps did) exist:

לשנה אחרת קבעום ועשאום ימים טובים בהלל והודאה.  
In another year, they established those [days] and made them goodly [festive] days with praise and gratitude.<sup>30</sup>

The rabbis resisted praising the Maccabean resistance, and, seemingly, these sages simply saw no sanctity in the violence that permeated the process of regaining control over the Temple. Indeed, all Jewish communities practicing any centuries-old rabbinically ordained lexical cycle of *haftarot* read, amidst the Prophetic excerpts read on the first (or only) *Shabbat* of *Ḥanukkah*, Zechariah 4:6, which testifies the Divine proclamation that the road to redemption is found in neither valour nor strength but in God’s spirit. Prior to the medieval and early modern period—when Jewish communities did, in various fashions, adopt the practices of reciting or recalling events told in such works as *Megillat Antiyyokhus* (מגלת אנטיוכוס, “The Scroll of Antiochus”)<sup>31</sup> and *Megillat Yehudit* (מגלת יהודית, “The Scroll of Judith”)<sup>32</sup>—

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<sup>30</sup> *Ibid.*.

<sup>31</sup> For a brief history of *Megillat Antiyyokhus*, see David Golinkin, “Why Don’t We Read a Scroll On Hanukkah?” in David Golinkin, *Responsa in a Moment* 5:1 (November 2010), as accessed at <http://web.archive.org/web/20110211185223/http://www.schechter.edu:80/responsa.aspx?ID=54> on January 4, 2018. For an overview of well-transmitted textual traditions, see Varady’s notes to Aharon N. Varady, “Megillat Antiokhus for Ḥanukkah in Aramaic, translated in Hebrew, Yiddish, and English” on *The Open Siddur Project*, as accessed at [www.opensiddur.org/prayers-for/special-days/commemorative-days/hanukkah/megillat-antiokhus/](http://www.opensiddur.org/prayers-for/special-days/commemorative-days/hanukkah/megillat-antiokhus/) on January 4, 2018.

<sup>32</sup> For a history of the Jewish narrative of the tale of Judith, see Deborah Levine Gera, “The Jewish Textual Traditions” (ch. 2) in Kevin R. Brine,

the meagre rabbinic lore surrounding *Hanukkah* and the few laws that the rabbis added to the observance of this holiday almost universally point away from the earthly Maccabean violence that was committed in the name of Jewish faith. In turning away from the natural disaster that is the human capacity for belligerence (even amidst defence), the rabbis chose to emphasize (in inheriting or inventing) instead a wondrous tale of a strange supernatural occurrence where oil exceeded the expectations the Temple's caretakers (whose own acts of aggression – even with religious justification – the rabbis found unremarkable).<sup>33</sup>

In light of all this, early rabbinic thought had effectively little tolerance for or pride in the Maccabean response to the suppression of visual expression of Jewish identity. In its efforts to formulate rabbinic Judaism, the Talmud offered no praise to Jewish massacres of non-Jews who legislated – or were bystanders at the time of – prohibitions that punished Jews who had undergone or supported circumcisions. However, later strata of Jewish thought would come to be mixed in its appraisal of this Maccabean might.

As aforementioned, certain Jewish medieval texts emphasize Hasmonean huskiness. Nonetheless – though one might be tempted to attribute a vengeful state of mind to Jewish revenge fantasies borne

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Elena Cilette, Henrike Lähnemann (eds.), *The Sword of Judith: Judith Studies Across the Disciplines* (Cambridge, UK: Open Book Publishers 2010), pp. 23-39, accessible at <http://books.openedition.org/obp/986> as of January 4, 2017. See also Levine Gera, "Shorter Medieval Hebrew Tales of Judith" (ch. 5) in *ibid.*, pp. 81-95 and Susan Weingarten, "Food, Sex, and Redemption in *Megillat Yehudit* (the 'Scroll of Judith')" (ch. 6) in *ibid.*, pp. 97-125, accessed at <http://books.openedition.org/obp/992> and <http://books.openedition.org/obp/1045> respectively on January 4, 2018. My gratitude to Aharon Varady for alerting my attention to this research – as well as the transcription work he published at Aharon N. Varady, Susan Weingarten, Isaac Gantwerk Mayer and Moshe Shmi'el Dascola, "Megillat Yehudit, the Medieval Scroll of Judith to be said on *Hanukkah*" on *The Open Siddur Project*, as accessed at <http://opensiddur.org/prayers-for/special-days/commemorative-days/hanukkah/megillat-yehudit-for-hanukkah/> on January 4, 2018.

<sup>33</sup> I am indebted to Rabbi Robert Scheinberg for sharing a similar interpretation of the rabbinic attitude towards the Maccabean revolt as uncovered in the Talmudic etiology of *Hanukkah*.

after witnessing the Crusades—certain well-dispersed products of medieval Jewish culture still refrain from commending any human agency that smelt of ferocity. Thus, for example, the *piyyut* (פיוט, liturgical “poem”) popularly called by its incipient words *Ma’oz Tzur* (מעוז צור, “The Strength of the Flint”), follows the lead of the Babylonian Talmud in mentioning the Hasmoneans in passing only once and not until the fifth (and perhaps once-final) strophe. The *piyyut* brushes over any Hasmonean influence on Jewish history by accounting nothing of what the Hasmoneans did. Moreover, the song attempts to erase their reputation, deliberately mispronouncing and misspelling the Hasmonean namesake of the חשמונאים (*hashmona'im*), preferring instead חשמנים (*hashmannim*). Creative license purposely misidentifies these ancient muscle Jews who rose to power, renames these men of brawn for the sake of poetry’s bookish ends, rendering them subservient to the next rhyme and the punchline of the true miracle: השמנים (*hashemannim*) “the oils,” from which just a small portion remained pure and from which eight days of illumination were made miraculously possible (with no thanks to any Maccabees).<sup>34</sup>

With the combination of emancipation, nationalism and colonialism infiltrating European discourse in the 19<sup>th</sup> and 20<sup>th</sup> centuries, Zionists who saw conquest of the Land of Israel as a necessity in achieving a national home for the Jewish people admired the actions of Jews such as Mattathias and Judas. In them—and in the rabbinically-discarded (but Apocryphally approved) etiology of *Hanukkah*—such Zionists found heroic models of Jews who fought

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<sup>34</sup> Notably, in reducing the Hasmoneans to the spelling of חשמנים (*hashmannim*), which, on account of the visual similarity of ח (*chet*) and ה (*heh*), looks nearly identical to השמנים (*hashemannim*), the author of the *piyyut* suggests that whatever miracle the Hasmoneans accomplished appeared to be hardly any different from the wonderment of the oil—if the Hasmoneans were even noticeable to those not carefully observing. For dating and further analysis of this *piyyut*, see אפרים חזן (Ephraim Hazan), “מעוז צור ישועתי” (*Ma’oz Tzur Yeshu’ati LaMeshorer Ushmo Mordokhai*, “*Ma’oz Tzur Yeshu’ati*” by the Poet Named Mordokhai”) at האקדמיה ללשון העברית (*The Academy of the Hebrew Language*), as accessed at <https://tinyurl.com/yd9875dw> on January 2, 2018 (Hebrew).

against the odds for the sake of a sacred purpose, combatting a trend that contemporary political discourse would eventually call “anti-Semitism.” Whereas the rabbinic telling of how *Hanukkah* came to be removed human agency from the miracle and attributed the unexpected to the realm of the sacred, in the words of Amir Mashiach (עמיר משיח):

בקיבוצים חגגו את חג החנוכה כנס ניצחון המכבים לוחמי החירות, תוך התעלמות מהמעורבות אלוהית ועקירתה ממנו. למשל, על משקל הפסוק “מי ימלל גבורות ה'” (תהילים ק"ו 2), כתבו ושרו את השיר “מי ימלל גבורות ישראל...” שם האל וגבורותיו מוחלפים בגבורת האדם-ישראל. לימים שרו את השיר “נס לא קרה לנו, פך שמן לא מצאנו...” בניגוד לעומתי מתריס כלפי התפיסה הדתית-מסורתית של משמעות החג. מעתה, הכוח, האופניביות והאקטיביזם הם בידי האדם ולא בידי האל העוזר לאדם הפסיבי-דפניסיבי, כתפיסת חז"ל.

In *kibbutzim* (קיבוצים, socialist “collectives”), they celebrate the festival of *Hanukkah* as the miracle of the victory of the freedom-fighting Maccabees, amidst their ignoring any Divine involvement and the removal of that [involvement] therefrom. For example, following the metre of the verse *Mi Yemallel Gevurot Adonai* (“מי ימלל גבורות ה'”) (Psalm 106:2), [those in *kibbutzim*] wrote and sang, *Mi Yemallel Gevurot Yisra'el* (“מי ימלל גבורות ישראל”)... The name of the Divinity and its mighty deeds are exchanged for the might of humanity – Israel. For days, they [also] sang the song *Nes lo karah lanu; pakh shemen lo matzanu* (“נס לא מצאנו; פך שמן לא מצאנו”) “A miracle did not happen for us; we did not find a vessel of oil...”, directly countering the traditional religious understanding of the holiday. Henceforth, power, the commitment to the offensive and activism, were in the hands of humanity and not in the hands of the God who helps a passive, defensive human-

ity in accordance with the understanding of our sages of blessed memory.<sup>35</sup>

And even before setting foot on the Jewishly sacred soil in Ottoman and eventually Palestine, Zionist celebrations of the Maccabean revolt—and the reinvention of *Hanukkah*—raised concern among rabbinic authorities. Thus, for example, Robert Wistrich recounts:

The Jewish religious establishment was particularly offended by the open appeal of Kadimah students [who fully identified with Leon Pinsker's argument that Jews were organically incapable of assimilation, that their efforts at fusion were in vain, and that only the creation of a Jewish nation on Jewish soil would bring anti-Semitism to an end] for the "regeneration of the Jewish nation" and by the patriotic cult of the Maccabees which constituted the annual climax of fraternity meetings at the end of each year. The Maccabees were celebrated for having conducted a liberation struggle against foreign oppression, for their military valor, their self-sacrificing idealism and their uncompromising defense of Jewish national identity... For [the scholar, Rabbi Adolf] Jellinek, this nationalistic reinterpretation of the ancient religious festival of Hanukkah was unacceptable and obnoxious. Judaism, he emphasized, did not celebrate the deeds of individual heroes, nor did it idolize prowess in war...<sup>36</sup>

The Zionist revaluation of the Maccabean revolution as not only an integral part of Jewish history but an essential component of the

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<sup>35</sup> מהימים ההם לזמן הזה ניתוח אופי המגורים " (Amir Mashiah), "היהודים בחברה הישראלית כיום, לאור הזהויות היהודיות בעת העתיקה" ("From past to present - An analysis of the various sectors in modern Israel based on Jewish identities from ancient times") in סוגיות בישראל (*Social Issues in Israel*) 17 (חורף תשע"ד; Winter 5774/2014), pp. 38-68 (Hebrew). Translation of the passage my own.

<sup>36</sup> Robert S. Wistrich, "Zionism and Its Religious Critics in fin-de-siècle Vienna" in *Jewish History* 10:1 (Spring 1996), pp. 93-111; see esp. p. 97.

updating of Jewish religious history—one that celebrates the miracle of Jewish autonomy in the contemporary State of Israel—creates a dilemma for today’s heirs of rabbinic Judaism. Any discourse that labels Jews in diametric (and often bias-revealing) categories of ideologies—*e.g.*, Zionists vs. anti-Zionists, traditionalists vs. anti-traditionalists, *etc.*—can defame Jewish religious thought leaders rather quickly. Either Jewish thinkers embrace the tradition of ignoring (if not condemning) the Maccabean revolt, or Jewish leaders celebrate the Maccabean revolt and discard the predominant religious narrative. The former constitutes an ideological posture that can isolate Judaism from a myth celebrated by a people who succeeded in fighting for Jewish survival in the modern State of Israel (paralleling the Maccabean might that claimed the victory of Jewish autonomy over 2 millennia ago). The latter stance—valuing the Maccabean revolt as exemplifying the Jewish right to and need of self-defence in the face of discrimination—unites Jewish religion with forms of Jewish identity that demographics prove to be more compelling than religious responsibility: Jewish culture and Jewish nationalism.<sup>37</sup>

Modern Jewish religion still maintains, however, the responsibility to articulate the aspiration for a Jewish people that only engages in military action when necessary. To celebrate the brute force of warriors who ostensibly created a not-necessarily-religious Jewish polity—albeit one where circumcisions were permitted—in the Land of Israel would be a misplacement of gratitude. The cause for celebration should be not the last-resort means of muscle and machismo being achieved by Jews but end-results whereby Jewish religion is permitted to continue. The rabbis zealously opposed the Maccabees and praised the fabulous oil, and I presume that this was likely due to the difficulty of articulating the nuance of celebrating Jewish survival against the odds.<sup>38</sup>

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<sup>37</sup> On such trends, see, *e.g.*, Pew Research Center, *A Portrait of Jewish Americans: Findings from a Pew Research Center Survey of U.S. Jews* (October 1, 2013), esp. pp. 7-22 and 47-94, as accessed at <http://assets.pewresearch.org/wp-content/uploads/sites/11/2013/10/jewish-american-full-report-for-web.pdf> on February 19, 2018.

<sup>38</sup> Without any reason to think that the rabbis inherited the myth of the oil, I believe that the *shemen* (שמן, “oil”) serves as a punning explanation of why *Hanukkah* lasts *shemonah* (שמונה, “eight”) days—with

In summing up a Jewish understanding of the Maccabean model: Though physically fighting is an option for times when absolutely necessary, the rabbis—and Jewish religion at its best (in my estimation)—ultimately demand that we do everything that we can to avoid retaliating with physical force when appearing Jewish is outlawed. Halakhic literature therefore suggests other methodologies.

### Trapped and Stranded and Strapped *Tefillin*

The Mishnah (משנה, literally “Teaching”), compiled circa 225 C.E., presents the ominous case of someone who finds *tefillin* in a (seemingly public) place they don’t belong (whereas they seemingly do belong in a private domain). Tractate ‘Eyrubin, which exhibits the legal quandary at hand, delineates the laws that restrict and permit the transferring of articles from one domain to another on *Shabbat* (שבת, the “Sabbath”)—a fact that, despite later interpretations, likely only relates to a small portion of the teachings at hand.<sup>39</sup> An oft-succinct document, the Mishnah spares no time detailing how or where

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*shemen* and *shemonah* sharing the same trilateral root of *shin-mem-nun* (ש-מ-נ). Separately, I understand the small remnant of *shemen* to serve as a symbol of ritual’s ability to survive massive physical destruction. More specifically, the story of the *shemen* captures the rabbinic understanding of the Jewish religion’s power to continue even when the odds are stacked against its continuity. And finally, the rabbinic tale of the *shemen*—just one small component of the Temple rite—communicates to the religious audience that the awe for the supernatural—even in the face of great feats of human achievement (whether brawny or brainy)—ought to outweigh any pride we take in human and, ultimately, nature’s greatness. The mysteries of religion—embodied in the *shemen*—yield unpredictable enlightenment.

<sup>39</sup> Although it is likely that the original texts here did not deal with the finding of *tefillin* on *Shabbat* necessarily, the possibility that aspects of this text alluded specifically to *Shabbat* certainly determined the fate of these teachings to appearing in Tractate ‘Eyrubin. Prior to the ordering of the Mishnah, it is possible that the words that now are catalogued as Mishnah, ‘Eyrubin 10:1-2 served as a teaching that dealt with lost *tefillin*—and, in as few as merely one case, how to handle them on *Shabbat*.

these *tefillin* were abandoned or how or by whom (or often, when) they were found. The text quickly jumps to suggesting proper halakhic solutions:

המוצא תפלין מכניסין... ובסכנה, מכסין והולך לו:

One who finds [lost] *tefillin* brings them in[to wherever they belong]... But amidst danger, one covers them up and goes one's way.<sup>40</sup>

The aforementioned danger in the Mishnah, when read through the lens of the commentary of 'Ovadyah (עובדיה) of Bertinoro (c. 1445 C.E.-c. 1515 C.E.), often printed alongside the Mishnah, becomes most obviously relevant to a conversation on the restriction of public displays of religion:

ובסכנה: שגזרו שמד שלא להניח תפילין. ומתניתין חסורי מחסרה והכי קתני, בד"א בסכנה של שמד...

**But amidst danger:** for they have decreed an act of persecution: that it is not [in accordance with the law] to lay *tefillin*. But our Mishnah is deficient with a major deficiency. Rather, thus it [intends] to teach [in lieu of the widely transmitted version of the text]: Regarding what are these words spoken? Amidst the danger of persecution...<sup>41</sup>

Set before a conference of *Tanna'im* (תנאים, "teachers" whose careers preceded and coincided with the Tannaitic era's ending upon the compilation of the Mishnah), the Tannaitic debate in the Mishnah effectively records a rabbinic controversy over how best to respond when religious articles are restricted from public view. The Mishnah itself—in teaching two *Mishnayyot* (משניות, units of Mishnaic teaching) on the subject (presented here in full)—recalls differing ways of handling these forsaken *tefillin*:

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<sup>40</sup> Mishnah, 'Eyrubin 10:1.

<sup>41</sup> 'Ovadyah of Bertinoro on Mishnah, 'Eyrubin 10:1.

המוצא תפלין מכניסין זוג זוג. רבן גמליאל אומר, שנים שנים. במה דברים אמורים, בישנות, אבל בחדשות, פטור. מצאן צבתים או כריכות, מחשיך עליהן ומביאן. ובסכנה, מכסן והולך לו:<sup>42</sup>  
 רבי שמעון אומר, נותנן לחברו, וחברו לחברו, עד שמגיע לחצר החיצונה:<sup>43</sup>

One who finds [lost] *tefillin* brings them in[to wherever they belong] pair by pair. Rabban Gamli'el says: [one brings them into wherever they belong] two by two. Regarding what are these words spoken? Regarding old [*tefillin*]! But regarding new [*tefillin*], one is exempt [from the obligation to bring them to wherever they belong on *Shabbat*]. If one found them arranged in set-pairs or wound, one waits for them until nightfall and brings them [to where they belong]. But amidst danger, one covers them up and goes one's way.<sup>44</sup>

Rabbi Shim'on says: One gives them to one's peer, and one's peer [gives] to their peer[, etc.,] until arriving at the [neighbouring] external court.<sup>45</sup>

The reader might, upon first encountering the first *Mishnah* (משנה, singular of *Mishnayot*) be perplexed by the statement of Rabban Gamli'el (רבן גמליאל) that "two by two" (שנים שנים) is preferable to the anonymously voiced opinion at the beginning of the *Mishnah* that prescribed carrying the *tefillin* "pair by pair." A perfectly rational response would be to note that "two by two" equals "pair by pair." But Rabbi Shelomoh Yitzhaki (רבי שלמה יצחקי), also known by the abbreviation of Rashi (רש"י) (France and Germany, 1028<sup>46</sup>-1105), offers that the *Mishnah's* first opinion implies otherwise:

<sup>42</sup> Mishnah, 'Eyrubin 10:1.

<sup>43</sup> *Ibid.*, 10:2.

<sup>44</sup> *Ibid.*, 10:1.

<sup>45</sup> *Ibid.*, 10:2.

<sup>46</sup> For this dating (despite a popular dating of 1040 as Rashi's birth), see אביגדור אפטוביזר (Victor Apowitz), ספר ראבי"ה (*Sefer Ra'avayah*) (Jerusalem, Israel: 5698 A.M./c. 1938 C.E.), p. 395 (Hebrew). Kirsten Fudeman follows this reasoning. See, e.g., Kirsten Fudeman, "The Old French Glosses In Joseph Kara's Isaiah Commentary" in *Revue des Études Juives*, 165:1-2 (janvier-juin 2006), pp. 147-177, esp. p. 149.

זוג זוג: אחד בראש ואחד בזרוע, והיינו זוג, כדרך שלובשן בחול, וחוזר תמיד ומכניסן זוג אחר זוג, עד שיכלו.

**Pair by pair:** [with] one on one's head, and one on one's arm; this is a pair – in accordance with the way whereby one wears them during a weekday. And one repeats and brings them in [to the city or to the home] pair after pair until those [missing *tefillin*] are complete[ly brought to their correct place].<sup>47</sup>

Rashi, in turn, understands that Rabban Gamli'el sought an accelerated process that permitted each Jew traveling to the city or house (where the *tefillin* belonged)<sup>48</sup> and from the field (where they were lost)<sup>49</sup> to wear twice as many phylacteries as accustomed for the sake of proclaiming Jewish identity:

שנים שנים: זוג בראש וזוג בזרוע.

**Two by two:** [with] one pair upon one's head, and one pair upon one's arm.<sup>50</sup>

Rashi suggests that, in seeing lost *tefillin*—markers of Jewish identity – no *Tanna* (תנא, singular of *Tanna'im*) was going to permit *Shabbat's* restrictions on wearing *tefillin* or carrying items from one domain to another to let a sacred expression of Jewish identity disappear in some unidentified field. (Rashi indeed understood the whole of Mishnah, 'Eyrubin 10:1-2 as halakhic cases concerning *tefillin* found on Shabbat.)<sup>51</sup> Preserving symbols of Jewish faith—or at least preserving *tefillin* (for halakhic literature has a tendency to restrict the implications of halakhic disputes despite the broad significance of the cultural symbolism embedded in them)—was ruled of greater importance than the restrictions that limit their wearing. It is within

<sup>47</sup> Rashi on Babylonian Talmud, 'Eyrubin 95a.

<sup>48</sup> See *ibid.*, *s.v.* מכניסן (*makhnisan*, “Brings them in”).

<sup>49</sup> See *ibid.*, *s.v.* המוצא תפילין (*hammotze tefillin*, “One who finds *tefillin*”).

<sup>50</sup> See *ibid.*.

<sup>51</sup> See Rashi on Babylonian Talmud, 'Eyrubin 95a, *s.v.* אבל בחדשות פטור (“But regarding new [*tefillin*], one is exempt”) (reproduced in this article).

this spirit that Rabban Gamli'el (at least in Rashi's perception) permitted the sporting of a doubled Jewish identity when jettisoned ritual items hint that at least two Jewish identities have been endangered.

The Mishnah however suggests that not all *tefillin* are equal. That which is worn is more likely to become worn out and more likely to wear away, but, for the Mishnah, older *tefillin* take precedence over newer *tefillin* in the mission to rescue Jewish identity. Rashi proposes that the Mishnah understands *tefillin* to contain no inherent holiness, which might strike the modern reader as funny since *tefillin* do contain parchments containing God's sacred name which *halakhah* seeks to protect from defilement. Nonetheless Rashi advocates on behalf of the Mishnah's logic:

בישנות: שניכר הקשר העשוי כמין שדי, דודאי תפילין הן, ויש בהן קדושה, ואסור להניחן בבזיון.  
 אבל בחדשות פטור: דילמא קמיע הן בעלמא, ואין בהן קדושה אלא בנעשים כהלכתן, והיינו לשמן, הלכך, לא מחללינן שבתא עלייהו.

**Regarding old [*tefillin*]:** [they take precedence,] for the tying is recognizably made into the form of [the letters of] שדי (the Divine Hebrew name of *Shaddai*): [which implies, in Aramaic, punningly:] דודאי (*devadai*, "that, for certain"), these are *tefillin*,<sup>52</sup> and they have inherent sanctity, and it is forbidden to lay them disgracefully.

**But regarding new [*tefillin*], one is exempt:** from bringing them in[to the city or the home], lest they simply be an amulet, and they have no inherent sanctity other than when they used in accordance with their *halakhah*, which is for their [own] sake. Therefore, we do not desecrate Shabbat for these [new *tefillin*].<sup>53</sup>

<sup>52</sup> Recognizing that Hebrew's prefixal ש (*she* or sometimes *sha*) and Aramaic's prefixal ד (*de* or sometimes *da*) both mean "that" and that the sound of the word די (*dai*, "enough") and perhaps its etymology resemble those of ודאי (*vadai*, "for certain")—Rashi suggests that religiously positioning the straps of *tefillin* into the shapes of the letters that compose *Shaddai* ascertains the sanctity of these objects.

<sup>53</sup> Rashi on Babylonian Talmud, 'Eyrubin 95a.

In Rashi's estimation, *tefillin* are sanctified not by virtue of their physical makeup but by the relationship and history forged between the wearer and the *tefillin*. With the tucks, turns and tightenings that the straps undergo, the donor refashions the *tefillin* to imitate the form of the letters of God's name *Shaddai*, twisted, reshaped and tailored nearly daily to fit along the unique creases and contours of the user's corporeality. In linking the mundanity and variety of human bodies to the namesake of the impalpable transcendence and oneness of Divinity, *tefillin* acquire their sanctity by being employed in the task of being worn. The Mishnah, argues Rashi, sees *tefillin* as merely false-magical, impotent amulets until humans have accorded them a history of ritual utilization. Until *tefillin* give identity to specific, named Jews who wear them and render these former-amulets into the image of God's name, *tefillin* bear no sanctity of marking Jewish peoplehood.

The ending of the first *Mishnah* and the entirety of the second address the appropriateness of handling someone else's belongings. *Mishnah*, 'Eyrubin 10:1-2 never implies anywhere internal to the text that our question of how to respond when one finds *tefillin* is limited specifically to *Shabbat*. One might be tempted to determine that the penultimate clause in the first of these *Mishnayyot* applies specifically to *Shabbat*: "מִצָּאֵן צִבְתִּים אוֹ כְּרִיכוֹת, מִחֲשִׁיד עֲלֵיהֶן וּמִבֵּיאַן" ("If one found them arranged in set-pairs or wound, one waits for them until nightfall and brings them [to where they belong]"). This waiting until nightfall might be a call for the finder to wait until after *Shabbat* before transferring the *tefillin* from where it has been found. Or the text may simply be stipulating that the finder should wait for nightfall in all cases of finding wound *tefillin* or set-pairs. Waiting before returning gives time for a potentially alive and aware owner of lost *tefillin* to retrace their steps to retrieve their missing possessions (before the finder displaces the *tefillin* again in the trek to return the lost objects). The likelihood that intentionally arrayed *tefillin* are owned by someone still alive seems high, and the likelihood that aesthetically displaced *tefillin* would appear exclusively on *Shabbat* seems low.<sup>54</sup>

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<sup>54</sup> The text itself never includes any form of the word שבת (*Shabbat*). Nonetheless a certain rabbinic logic and the context—that is, the location of these teachings in Tractate 'Eyrubin—presume the intimation of the case taking place on *Shabbat*, smoothing over the challenge in

Similarly in the tension of affirming or denying that this *Mishnah* truly is a series of cases of *tefillin* found on *Shabbat*, one might elect to read Rabbi Shim'on's formula of the continual *tefillin* handoff as a loophole for avoiding carrying an object too far on *Shabbat*. But this reading overlooks that ultimately—in returning an object from a public domain to a private domain—at least one carrier will violate the halakhic prohibition of such a transfer between domains. It seems more likely that the *Mishnah* is truly concerned with whether any single non-owner of the *tefillin* has the right to handle them. Rabbi Shim'on designs—in what might look like a relay race activity—a system of partnership in the handling and non-handling of something that is inappropriate to be handled by a non-owner, ensuring that no human hands seriously engaged with these *tefillin*. After all, if Rashi is correct in presuming that the *Mishnah* sees *tefillin* as sanctified in the way they are shaped by the wearer, both Rabban Gamli'el and the incipient voice of *Mishnah*, 'Eyrubin 10:1 have suggested improper methodologies of returning the *tefillin* (i.e., wearing the *tefillin*), thereby defying the sacred and unique relationship forged by the *tefillin*'s true wearers and the *tefillin* themselves.

But 'Ovadyah's interpretation of the dangerous setting that may in fact preside over the whole of *Mishnah*, 'Eyrubin 10:1-2 looms large, suggesting that the wearers of the lost *tefillin* may in fact be missing persons. It is possible that 'Ovadyah saw Rabbi Shim'on not suggesting merely that nobody should hold the *tefillin* for too long. It is possible that 'Ovadyah read these *Mishnayyot* rather accumulatively, with Rabbi Shim'on countering that we always wait until nighttime and, in a time of danger, we do not hide the *tefillin* when it is too dark for others to see our actions. In this reading, Rabbi Shim'on prefers that we create a covert operation in the dark of the night, where one peer passes the *tefillin* from one to the other. Depending on how many peers 'Ovadyah thought Rabbi Shim'on had in mind—merely two folks or a whole band of merry *menschen*—'Ovadyah may have pictured (rather fantastically) a whole lineup of rebels passing bootlegged phylacteries from person to person until the town was reached.

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reading the ambiguity that results from the *Mishnah*'s shorthand, a lingo that often dumbfounds the *Mishnah*'s commentators so much so that their interpretations thereof often diverge.

Our attempt to find one model of an appropriate Jewish response to the banning of Jewish expressions of identity reads these two *Mishnayyot* as suggesting multiple different models all agreeing on the same goal of protecting *tefillin* in a time when *tefillin* have been displaced, if not disgraced. The Mishnaic collective differs on whether markers of Jewish identity such as (or perhaps only) *tefillin* should be worn—regularly or irregularly—or awkwardly handled in sacred partnership as Jewish hands try to return these ex-amulets (and ex-amulets only) to their rightful owners. Still, another—not necessarily identifiable—voice in the Mishnah suggests that in times when *tefillin* endanger the Jewish people, Jewish identity might be best conceded, concealed beneath the natural outgrowths of the fields where they were once found lost and subsequently hidden.

Rashi's reading—which aligns neatly with the overall spirit of the text—suggests that *tefillin* truly are unique. Any conversation about Jewish identity markers ultimately suffers from not recognizing that sacred Jewish identity markers can become sacred only by way of Jewish concern for these objects. The Mishnah ultimately points us to do what we can to return holy objects to their owners—and to forego this return only in a time of extreme danger—for markers of Jewish identity only perform their function when these items are relationally imbued with sanctity by being worn, even worn out.

### **When *Tefillin* Grow Wings**

The same rabbinic culture that bequeathed to Rashi the gall to call brand new *tefillin* nothing but amulets also recognized the apotropaic power of Jewish ritual objects. The rabbis imagined *tefillin* as magically injected with the capacity to mutate into something a little more spectacular. In the Babylonian Talmud, Rabbi Yannai (רבי ינאי) praises one Jew whose *tefillin* worked their magic and saved the day:

דאמר רבי ינאי: תפילין צריכין גוף נקי כאלישע בעל כנפים. מאי היא? אמר אביי: שלא יפיח בהם. רבא אמר: שלא יישן בהם. ואמאי קרו ליה אלישע בעל כנפים? שפעם אחת גזרה מלכות הרשעה גזרה על ישראל, שכל המניח תפילין על ראשו יקרו את מוחו. והיה אלישע מניח תפילין ויצא לשוק. וראהו קסדור אחד. רץ מלפניו ורץ אחריו. כיון שהגיעו אצלו, נשלן מראשו ואחזן בידו. אמר ליה: מה

בידך? אמר לו: כנפי יונה. פשט את ידו ונמצאו בה כנפי יונה. לפיכך  
 היו קוראין אותו בעל כנפים. מאי שנא "כנפי יונה" דאמר ליה, ולא  
 אמר ליה שאר עופות? משום דדמיא כנסת ישראל ליונה, שנאמר:  
 "כנפי יונה נחפה בכסף ואברותיה בירקרק חרוץ." מה יונה זו כנפיה  
 מגינות עליה, אף ישראל מצות מגינות עליהן.

For Rabbi Yannai said: *Tefillin* require a clean body like [that of] Elisha' Ba'al Kenafayim. What is meant by this? Abbayey said: That one should not pass wind [while enwrapped] in them. Rava said: That one should not sleep [while enwrapped] in them. But why did they call that [person] "Elisha' Ba'al Kenafayim?" For once, the evil kingdom decreed a decree upon *Yisra'el* (ישראל, "Israel") that they would peck off the head of whoever would lay *tefillin* upon their head. But Elisha' [once] laid *tefillin* and went out to the market, and one quaestor [that is, a Roman official] saw him. He [Elisha'] ran ahead of that [quaestor], and that [quaestor] ran behind him. When he reached up to him, he [Elisha'] lifted those [*tefillin*] off of his head and held them in his hand. That [quaestor] said to him, "What is in your hand?" He said to that [quaestor], "*Kanfey* [כנפי, 'the wings of'] a dove." He stretched [forth] his hand, and, inside it, *kanfey* a dove could be found. Therefore they called him Ba'al Kenafayim (בעל כנפים, "Possessor of Wings"). Why is it taught that "*kanfey* a dove" is what he said and not [*kanfey*] any other species of fowl? Because the assembly of *Yisra'el* is likened to a dove. For it says, "*Kanfey* a dove are covered in silver, and its limbs are impressed with greenness" (Psalm 68:14). Just as the dove's wings protect it, so too *Yisra'el's mitzvot* (מצוות, observance of Divine "commandments") protect them.<sup>55</sup>

This remarkable but brief tale depicts a member of the Jewish resistance who refuses to obey the orders of a harsh sovereignty (presumably—given the presence of the קסדור [*kesdor*, the 'quaestor']—a rulership with some sort of Roman influence). The

<sup>55</sup> Babylonian Talmud, Shabbat 130a.

people in power in Palestine have attempted to remove a rather public marker of Jewish identity—for *tefillin*, the Babylonian Talmud suggests, were worn by sages not only amidst prayer but when they were, like Elisha' Ba'al Kenafayim, up and about.<sup>56</sup> The Talmud's editors apparently cared to relate the particular narrative of this Elisha' because of the extraordinary circumstances. Not only did he transgress secular law and temporarily outrun the quaestor, but, when he ran out of steam and was finally caught, he was caught neither red-handed nor *tefillin*-handed, but bearing wings. The quaestor, unable to find Elisha' exhibiting any taboo fashion choices, seemingly was convinced that he had to let go of this benefactor of Jewish magic. What this wings-master's secret was though remains unrevealed. The Talmud does not conclude whether Elisha' enjoyed a moment of Divine intervention, had a background in the occult arts or simply benefitted from the talented performance of a trick my own *tefillin* have yet to try.

Whatever the means that gave Elisha' Ba'al Kenafayim his fame, the rabbis—believers in magic—did warn their students not to try these tricks at home. Repeated in various forms, the Talmud's rabbis clearly stated “לא סמכינן אניסא” (“we do not rely on a miracle”).<sup>57</sup> Having not shared Elisha's secret and having warned against trusting the supernatural with dangers, the rabbinic moral to the story of Elisha' could not have been that repeating Elisha's actions would end well for commoners. Indeed, Elisha's actions yield a cautionary tale. Had there been no dove wings to save him in the last minute (and there's no proof that they make *tefillin* like Elisha's these days), Elisha's end could have come right there and then, and no fantastic tale would remain for us to tell.

Elisha' Ba'al Kenafayim, as a model for how to respond when Jewish expression is suppressed, predominantly communicates apophatically. The rabbinic conscience has no interest in Jews attempting to emulate Elisha's life-threatening actions, for we understand that danger is no plaything.<sup>58</sup> Markers of Jewish identity—if govern-

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<sup>56</sup> See, e.g., Babylonian Talmud, Menahot 36b.

<sup>57</sup> See, e.g., Babylonian Talmud, Shabbat 124a and (with a *vav* [י] prefixal conjunction preceding the first word) Pesahim 64b.

<sup>58</sup> Among the most astounding—if not intentionally comical—morals to be learned from the story of Elisha' Ba'al Kenafayim must certainly be

mentally restricted from public view – are to be hidden from public view.

## Russian Reversal: Jew Against Jew

Jumping ahead approximately one millennium and a half, we turn our attention to the Eastern European Rabbi, Yisra'el Me'ir Kagan (HaKohen) (1839-1933). Also known by the name of his famous book advocating any refraining from speaking ill of anyone else, the *Hafetz Hayingim* (חפץ חיים, “Desiring Life”), wrote a substantial epistle in 1930, in which he called attention to the woeful state of Russian Jewish life:

הנה קול שועת אחב"י במדינת רוסיא באה אלינו, אשר תצילנה  
אזני כל שומע מהרדיפות הנוראות והגזירות האיומות על תורה"ק  
ולומדיה. ספרי תורות וספרי תלמוד, תפילין ומזוזות נתונים  
לשריפה בעוה"ר לעיני כל, ברחובות קרי'. בתי המדרשים נסגרים  
ונהפכים בעוה"ר לבתי תיאטראות ולבתי מרוח, בתי הטבילה נסגרו  
על מסגר וביטלו טהרת המשפחה. כמו כן הרימו יד על הש"ק, ובכל  
חם מתאמצים להשכיח את יום השבת וד' מאחב"י.

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the halakhic conclusion of the Polish-born Rabbi Yitzchok Zilberstein (יצחק זילברשטיין) (1934-present). In his *Hishukey Hemed* (חשוקי חמד, “Desirings of Pleasure”), on the Babylonian Talmud, Megillah 15a, the contemporary Israeli scholar extrapolates from the story of the very clean man who wore *tefillin* that the wings appeared when the *tefillin* vanished at the moment when, not only did Elisha' begin to fear for his life, but he feared that he might soil his *tefillin* because of how afraid he was. Elisha' worked the miracle of keeping his *tefillin* clean when his bowels might have debased his situation. Zilberstein teaches:

לאור זאת נראה דאדם שהולך במקום סכנה, ויש חשש שמחמת  
הסכנה יצטרך לנקביו, לא יניח תפילין.

In light of this, it is appropriate that a person who walks in a place of danger – and there is concern that, on account of the danger, one may need to [attend to their bodily] orifices – one should not lay *tefillin*.

Behold, the voice of a cry of *Beney* (בני, “Children of”) *Yisra’el* in the state of Russia comes to us, that the ears of any listener may save them from the awful persecutions and terrifying decrees against the holy Torah and those who study it. Torah scrolls and books of the Talmud, *tefillin* and *mezuzot* are being given to burnings (because of our many iniquities) before the eyes of all, in the streets of cities! Houses of study are closing and turning (because of our many iniquities) into theatre-houses and house-taverns, [and ritual-]bath-houses have been closed—locked up—and they have annulled [the possibility of] *tohorat hammishpahah* (טהרת המשפחה, “the purity of [sexual relations between parents within] a family). So too, they have raised their hand against the holy Shabbat, and with all of their might, they are striving to wipe away the memory of the day of *Shabbat* and [of] *Adonai* (ה', “God”) from amidst our siblings *Beney Yisra’el*!<sup>59</sup>

In a homiletic turn that likely pleased few Russian Jews, the author whose claim to fame was his beseeching that nobody speak ill of each other opts to suspect that evil has befallen the people *Yisra’el* because of their own sins:

בימינו אלה, רואים אנו שהקב"ה נפרע מאתנו ח"ו מדה במדה...  
 לומדי התורה הולכים ומתמעטים מיום ליום, מפני שההורים  
 מחנכים את בניהם בבתי ספר, המלאים כפירה ומינות, וע"י כך  
 נעשים בנים כחשים לד' ותורתו, ובוועטים במצותיו...

In these days of ours, we see that the Holy Blessed One has punished us—Heaven forbid—measure for measure... Those who study *Torah* are waning and decreasing day by day, for parents educate their children in schools full of infidelity and sectarianism, and the children are thereby made weak before *Adonai* and *Adonai’s Torah*, kicking away God’s *mitzvot*...<sup>60</sup>

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<sup>59</sup> Rabbi Yisra’el Me’ir Kagan (HaKohen), *אגרות ומאמרים* (*Iggerot Uma’amrim*, “*Epistles and Discourses*”) #23.

<sup>60</sup> Rabbi Yisra’el Me’ir Kagan (HaKohen), *ibid.*.

Whether Kagan was reflecting on a historical reality of Jewish participation in emancipation and the formation of Communism (for Karl Marx was himself the matrilineal and patrilineal descendant of rabbis) or an antisemitic accusation that Jews were responsible for the founding of Communist Russia<sup>61</sup> – Kagan saw what he believed was a dire moment in Russian Jewish life. Public expressions of Jewish identity were being decimated, and it was the Jews' fault, he asserted:

מצות תפילין, שהיא האות שאנו מעידים על אחדות הבורא ית"ש, שהוא כל יכול ובורא העולם, שזוהי עיקר אמונתנו, נעשה כהפקר בעוה"ר להרבה מאחב"י. ונמצאים בתוך כלל ישראל הרבה אנשים שאינם מניחים תפילין, וממילא מבטלים מצות ק"ש ותפלה, ואינם מקבלים עליהם עול מלכות שמים ועול מצות... איך שהמתפללים בבתי הכנסיות ובבתי מדרשות הם רובם מהזקנים שלנו, ובני הנעורים מעטים מאד ההולכים להתפלל, ומהם יש הרבה ההולכים להתפלל שם כדי לומר "קדיש" על הוריהם שמתו, ולפי"ז בעבור שנעשית המצוה הזאת בטלה אצלנו, נפרע ג"כ הקב"ה מאתנו מדה כנגד מדה, בלקיחת התפילין מאתנו.

The *mitzvah* (מצוה, singular of *mitzvot*) of *tefillin*, which is the symbol [by] which we testify the Oneness of the Creator of blessed name, who is omnipotent and the creator of the universe – which is the foundation of our faith – is publicly disowned before many of our siblings *Beney Yisra'el*. And found among the assembly of *Yisra'el* are many people who do not lay *tefillin* and, in any case, annul [any relationship of commandedness to] *mitzvot* of reciting the [liturgy of the] *Shema'* (שמע) and prayer, and they do not accept upon themselves the yoke of the sovereignty of Heaven and the yoke of *mitzvot*... [Oh,] how those who pray in synagogues and houses of study are mostly among our elders, and very few are the youthful children who go to pray, and, of those [few], many go to pray there [merely] just to recite [the memo-

<sup>61</sup> This trope is indeed referenced in, e.g., Alfred A. Skerpan, "Aspects of Soviet Antisemitism" in *The Antioch Review* 12:3 (Autumn 1952), pp. 287-328.

rial liturgy of the] *Kaddish* (קדיש) for their parents who died, and because this *mitzvah* has been made null to us, the Holy Blessed One has punished us also measure for measure in taking *tefillin* away from us.<sup>62</sup>

In propounding that Jews inhabit societies that prevent them from performing their *mitzvot* – specifically, when Jews themselves have abandoned those particular *mitzvot* – Kagan effectively has nearly reworded in more modern terminology a primitive “vending machine theology” (whereby the performance of *mitzvot* automatically yield blessings and sins curses).<sup>63</sup> An economic theory of supply and demand would suggest that the Jewish resources necessary for the performance of particular *mitzvot* become depleted when the Jews intending to perform those particular *mitzvot* become depleted. Kagan’s logic, likely unknowingly, parallels this line of thought. But Kagan takes this one step further. He argues that emancipated Jews take the risk of abandoning *mitzvot* to which they cannot return – not because a lack of interest renders the fulfillment of these *mitzvot* impossible – but because the lack of interest has instated forces more powerful than Jews (*i.e.*, God and/or their secular rulers) who can prohibit access to the tools necessary for fulfilling under-appreciated *mitzvot*.

But Kagan does not despair, for he sees a solution:

בשעה ששמנו על לבנו מצבנו הנורא, ומחפשים אנו עצות ותחבולות, איך להקל מעלינו את חרון אף ד' השולט עלינו, מחוייבים אנו לשוב מדרכינו הרעים, ולקבל עלינו מהיום והלאה בקבלה גמורה, לחנך את בנינו על דרכי התורה והיראה, וללמדם בבתי ספר כשרים, שלומדים שם תורת ד' הקדושה, וגם להחזיק בידי לומדי תורה"ק, כדי שעל ידיהם תחזור העטרה ליושנה, וקול התורה ישמע בערינו.

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<sup>62</sup> Rabbi Yisra'el Me'ir Kagan (HaKohen), *ibid.*

<sup>63</sup> For one such written usage of “vending machine theology” (in a context external to Judaism) see, *e.g.*, Jude Huntz, “Vending Machine Theology” in *The Catholic Key Online* (October 3, 2013), as accessed at [www.catholickey.org/2013/10/03/vending-machine-theology/](http://www.catholickey.org/2013/10/03/vending-machine-theology/) on January 4, 2018. I am indebted to Rabbi Raysh Weiss for introducing this term to me.

וכן מחוייבים אנו לקבל על עצמנו, בנעורינו ובזקנינו, להיות זהירים מהיום והלאה במצות תפילין בכל יום, ולהתפלל תפלה בצבור ולעשות נדרים וסייגים לזה, ובפרט שלא להביא שום אוכל אל פינו קודם התפלה והנחת תפילין ח"ו.

וכן להזהר בקדושת הש"ק, וכל אחד ואחד יזהיר ג"כ וישגיח על בני ביתו, שישמרו את הש"ק, שלא לחלל אותו, וגם להיות זהירים בדיני טהרת המשפחה כדת וכדין. וכן בכל מצוה ומצוה, שהיא רפויה אצלנו, עלינו להתחזק בכל כחנו לקיימם, ובזכות זה יגאלנו ד' מצרותינו וישלח לנו משיח צדקנו בבי"א.

In the moment that we have placed on our hearts this awful situation and we look for counsel and strategy for alighting from upon us the wrath of *Adonai* that governs us—we are obligated to return from our wicked ways and to accept upon ourselves today and henceforth—with utter acceptance—[the obligation] to educate our children in ways of *Torah* and awe and to teach them in kosher schools whereat they learn the holy *Torah* of *Adonai* and also to strengthen those who study the holy *Torah*, so that, by way of them, the crown [of *Torah*] will return to its [greatness from] days of old, and the voice of *Torah* will be heard in our city.

And so too, we are obligated to accept upon ourselves, in our youth and in our old age, [the obligation] to be cautious from this day and onward in [the observance of] the *mitzvah* of *tefillin* every day, and to pray prayer communally and to make vows and fences for this (and also especially to bring no food to our mouth prior to the recitation of prayer and the laying of *tefillin*—God forbid!).

And so too, [we must accept that we are obligated] to be cautious around the sanctity of the holy *Shabbat*, and each and every individual should be cautious over others as well and should see to it that the children of their home will observe the holy *Shabbat*, not desecrating it, and that they should be cautious in the laws of *tohorat hammishpahah* in accordance with the religion and in accordance with the law. And so too, with each and every *mitzvah* in which we find ourselves weak, it is upon us to strengthen ourselves with all of our power so that we

may fulfill them. And on this merit, *Adonai* will redeem us from our sorrows and will send us the *Mashi'ah* (משיח, "Messiah"), our righteousness, speedily and in our days. Amen.

In Kagan's perception, bans on religious practice happen because the religious practitioners let them happen; host cultures limit the particular actions of hosted cultures when that subgroup gives up on those acts. Perhaps from a realist viewpoint, Kagan never says that, should Jews recommit themselves to pious acts, non-Jewish rulers will rescind their restrictions on Jewish life. Kagan urged, instead, that Jewish society redeem themselves solely – with no regard to how any secular government will treat them in the process – by reverting to the performance of *mitzvot* that Jews, God and gentiles have removed from Jewish practice.

Kagan, recalling the burning of Jewish identity as he reports that *tefillin* are being handed over to fire, passingly alludes – elsewhere in his Epistle – to the Jewish discarding of *tefillin* as a Jewish rejection of 'ol *malkhut shamayim ve'ol mitzvot* (עול מלכות שמים ועול מצות, "the yoke of the sovereignty of Heaven and the yoke of *mitzvot*"). As a matter of fact, Jewish ritual garb had long been clearly associated with Jewish servitude to Divine reign. The Talmud, for example, in a moment of dissecting a phrase from Genesis that intrigued the rabbinic collective, speculates on the meaning of the bluish colour that Numbers 15:38 commands *Beney Yisra'el* to attach along the edges of Jews' four-cornered garments:

אם מחוט ועד שרוך נעל, זכו בניו לשתי מצות לחוט של תכלת ורצועה של תפילין. בשלמא רצועה של תפילין, כתיב: וראו כל עמי הארץ כי שם ה' נקרא עליך. ותניא, ר' אליעזר הגדול אומר: אלו תפילין שבראש. אלא, חוט של תכלת מאי היא? דתניא, רבי מאיר אומר: מה נשתנה תכלת מכל הצבעונין? מפני שתכלת דומה לים, וים דומה לרקיע, ורקיע דומה לאבן ספיר, ואבן ספיר דומה לכסא הכבוד, דכתיב ויראו את אלהי ישראל ותחת רגליו וגו', וכתוב כמראה אבן ספיר דמות כסא.

"From either string or the lace of a shoe," (Genesis 14:23)

[*Avraham* (אברהם, "Abraham") said]. [This alludes to how] his children merited two *mitzvot*: a string of *tekhelet*

(תכלת, a “sky-blue” colour) and a strap of *tefillin*. The [conclusion that the children merited this] strap of *tefillin* is agreeable, [for] it is written, “the nations of the world will see that the name of *Adonai* is called upon you” (Deuteronomy 28:10). And it is taught by a *Tanna*: Rabbi Eli’ezer HaGadol says: These are the *tefillin* upon the head. But what is this string of *tekhelet*? And it is taught by a *Tanna*: Rabbi Me’ir says: How is *tekhelet* different from all of the colours? For *tekhelet* is similar to the sea, and the sea is similar to the firmament of heaven, and the firmament of heaven is akin to sapphire stone, and sapphire stone is akin to the throne of glory. For it is written, “They[–*Mosheh* (משה, “Moses”), *Aharon* (אהרן, “Aaron”), *Nadav* (נדב, “Nadab”), *Avihu* (אביהו, “Abihu”)] and 70 elders from *Beney Yisra’el* –]saw the God of *Yisra’el*, and beneath God’s feet [was as the making of sapphire brick and the essence of the luminescence of heavens]” (Exodus 24:10). And it is written, “[above their heads was] like the image of a stone, the likeness of the throne” (Ezekiel 1:26).<sup>64</sup>

Hanging from worn corners attached to Jews’ persons, these sacred strings couples the wearer to the heavenly throne above, upon which the ruler who ought to matter most to the Jews (*i.e.*, God) sits. As for Kagan’s encouraging Russian Jewry to ignore any secular law that attempted to eradicate Jewish practice, Jewish tradition has long claimed that human rulers and human rules come and go, but something far more pressing typifies God and God’s law:

בנוהג שבעולם מלך בשר ודם גוזר גזירה. רצה מקיימה רצו אחרים  
מקיימים אותה. אבל הקב"ה אינו כן אלא גוזר גזירה ומקיימה  
תחילה.

In the way of the world, a king of flesh and blood may decree a decree. If one wants, one fulfills it. If others [also] want, they fulfill it. But the Holy Blessed One is not

<sup>64</sup> Babylonian Talmud, Ḥullin 89a.

as such. Rather, [God] decrees a decree, and one fulfills it *ab initio*.<sup>65</sup>

Because the king's word only matters if people care to make it matter—this teaching, rendering monarchic societies anarchic societies, rejects any need for human subservience to humans. Early modern Judaism, inheriting such suspicious attitudes about human law, contrasted this rejection of human legislature with praise for God's judgments. This proved true to such an extent that halakhic codes accepted that the words of *halakhah* comprised effectively a charter between God the supreme ruler and God's chosen constituents, the Jews. And the language of halakhic and aggadic exploration itself was often conflated with—as God's revelation—God's self.<sup>66</sup> As such, the royalty's words were themselves royalty. Thus we know of the Land-of-Israel-native bibliophile Rabbi Ḥayyim Yosef David Azulai (חיים יוסף דוד אזולאי) (c. 1724-1806), who traveled the Mediterranean and collected rare sacred books he held in high esteem. In his commentary *Birkhey Yosef* (ברכי יוסף, "Yosef's Knees") on the classic compendium of Jewish law by Rabbi Yosef Karo (יוסף קארו), the *Shulḥan 'Arukh* (שולחן ערוך), Azulai decreed that those committed to Jewish life ought to adorn regally their holy writings:

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<sup>65</sup> In addition to its appearance in the Jerusalem Talmud, Rosh HaShanah 1:3, this particular teaching appears in many rabbinic and medieval midrashic texts.

For an accessible and informed introduction to the trope of this rabbinic analogy between human and Divine rulers, see Burton L. Visotzky, *Aphrodite and the Rabbis: How Roman the Jews Adapted Roman Culture to Create Judaism as We Know It* (New York, NY: St. Martin's Press 2016), ch. V, esp. pp. 106ff.. Visotzky calls to mind here the work of Ignaz Ziegler's *Die Königsgleichnisse des Midrasch, beleuchtet durch die römische Kaiserzeit* (Breslau, Poland: 1903).

<sup>66</sup> Thus, Louis Finkelstein—not particularly deviant in his theological outlook—is often said to have eloquently stated the rather simple rabbinic truism: "When I pray, I talk to God; when I study, God talks to me." See, e.g., Burton L. Visotzky, *Reading the Book: Making the Bible a Timeless Text* (Philadelphia, PA: Jewish Publication Society 2005), p. 228.

צריך להנאות ספריו ויניחם ויצניעם במקום נבחר, ויכסה בטלית  
חשובה וישמרם מעכברים. ויטלטלם דרך כבוד וצניעות, כמטלטל  
בגדי המלך לפני המלך.

One needs to make [*i.e.*, aesthetically] pleasurable their books<sup>67</sup> and to lay them and to dignify them in a [specially] selected place. One should cover [them] with an important shawl and protect them from mice. And one should handle them in a way of honour and dignity, just as one handles the garbs of a king before the king.<sup>68</sup>

But the Jews in Kagan's eyes, stripping themselves of their sacred straps, had dethroned their heavenly ruler. In this particular spurning of sacred symbols, emancipated Jews threw off the ties that bound them to supreme sovereignty and sent to the furnace parchments embedded with the written word of the law of God—burning down God's empire and that for which it stood. Kagan understood Russian Jewry, *sans tefillin*, pledging their allegiance instead to the secular state and its governance of the sacred, the profane and the profaned.

But Kagan did not despair. He believed that the obstacles to Jewish living in his time were most possible when Jews rejected their peoplehood. When Jews accepted their peoplehood, the obstacles became surmountable—or perhaps easier to ignore. After all, Kagan had claimed that Divine omnipotence was core to Jewish faith; should a Jew who believes in Divine omnipotence really stop practicing Judaism in the face of antisemitic tyranny that God could technically stop? Kagan believed that the path to resisting Jewish repression was simply Jewish expression.

Had Kagan personally been prohibited from wearing markers of Jewish identity in public, his response—should he have remained consistent with his written self—would be to wear his Jewish ritual uniform with pride. Neither elected officials nor heirs to monarchies could measure up to the Eternal Throne. Kagan was first and foremost a citizen of God's universe.

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<sup>67</sup> Despite the ambiguity, the context might indeed limit these particular “books” to Torah scrolls.

<sup>68</sup> Ḥayyim Yosef David Azulai, *Birkhey Yosef, Yoreh De'ah* (יררה דעה) 267:2.

## The Paris Kippot Agreement

In March of 2004, France passed a law that banned the wearing of religious symbols – including, but not specifying, *kippot*, *tefillin*, and *tzitzit* (as well as all religious Muslim garb) – in public primary and secondary schools. The 21<sup>st</sup> century has hosted, aside from this grievance, a variety of attacks on Jews and Jewish identity in France, leading to record-breaking exoduses of Jews from France.<sup>69</sup> *Kippot* and the like have not *per se* been banned throughout all public spaces in France (though Marine Le Pen called for a ban on *kippot* in both 2012<sup>70</sup> and 2017<sup>71</sup>), but the unwelcomeness of such head-coverings manifests itself in incidents of antisemitic attacks.

After one attack on a *kippah*-wearing Jew in 2016, Zvi Ammar, the president of Marseille’s Consistoire israélite, called upon the Jews of his locale to refrain from wearing *kippot* in public.<sup>72</sup> With attacks on the expression of Jewish identity felt in France, French Jews are divided as to whether it is best to continue to wear *kippot*, to wear *kip-*

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<sup>69</sup> See, e.g., Tamara Zieve, “200 French Olim Arrive Aboard Summer’s Largest Aliya Flight From Europe” in *The Jerusalem Post* (July 10, 2017), as accessed at [www.jpost.com/Diaspora/200-French-olim-arrive-aboard-summers-largest-aliya-flight-from-Europe-499299](http://www.jpost.com/Diaspora/200-French-olim-arrive-aboard-summers-largest-aliya-flight-from-Europe-499299) on January 4, 2018.

<sup>70</sup> See Jennifer Lipman “Jean-Marie Le Pen Backs Marine on kippah ban” in *The Jewish Chronicle* (October 5, 2012), as accessed at <https://www.thejc.com/news/world/jean-marie-le-pen-backs-marine-on-kippah-ban-1.36864> on January 4, 2018.

<sup>71</sup> See Yifa Yaakov and the Jewish Telegraphic Agency, “France: Right-wing politician advocates kippa ban” in *The Times of Israel* (September 21, 2012), as accessed at <https://www.timesofisrael.com/france-right-wing-politician-promotes-kippah-ban/> on January 4, 2018.

<sup>72</sup> See, e.g., Eleanor Beardsley, “After Attack, An Uproar Over A Call For French Jews To Quit Wearing Yarmulkes” (January 14, 2016) for *National Public Radio*, as accessed at <https://www.npr.org/sections/parallels/2016/01/14/463010103/after-attack-an-uproar-over-a-call-for-french-jews-to-quit-wearing-yarmulkes> on January 5, 2018.

pot covered by yet another head covering or to appear with no head covering whatsoever.<sup>73</sup>

Although French rabbinic authorities have been hesitant to follow Ammar's lead (and have even opposed his proposition), Rabbi Moshe Sabag reports that the French former Chief Rabbi Joseph Sitruk had himself reasoned

שיש להצניע את הציציות ולהכניסן פנימה כדי לא לבלוש בין הגויים, אבל את הכיפה אין להסיר.  
that there is [reason] to hide one's *tzitziyot* [plural of *tzitzit*] and to tuck them in so that they do not protrude amidst gentiles, but – as for the *kippah* – one is not to remove [it].<sup>74</sup>

Beyond the second-hand reporting of the late Rabbi Sitruk's own position, few French rabbis have made few public statements about the necessity of wearing a *kippah*. Rabbi Reuven Ohana, the chief rabbi of Marseille, concedes that, when one's life is endangered by wearing a *kippah*, one should remove one's *kippah*; however, in 2016, he claimed not to see life-threatening danger for French *kippah*-wearers but nonetheless was in the habit of telling youth to wear casquettes over their *kippot* to prevent any provocations of antisemitism.

From the outside, the occasional rabbinic voice has attempted to weigh in on the proper behaviour for French Jews. When Israel's Sephardic Chief Rabbi Yitzhak Yosef (יצחק יוסף) visited Toulouse in 2016, some time after Ammar's call for Jews to refrain from wearing *kippot*, Yosef told a crowd French Jews and Jewish leaders from across Europe that moving to Israel out of fear is not the answer.<sup>75</sup> Rabbi

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<sup>73</sup> See צרפת מבולבלים: להוריד או לא (Yoel Bitelman), "להוריד את הכיפה מהראש" ("Flummoxed Jews of France: To Remove or Not To Remove the *Kippah* From One's Head") at בחדרי חרדים (*Be-ḥadrey Ḥaredim*, "In The Rooms of Tremblers") (January 13, 2016) (in Hebrew), as accessed at [www.bhol.co.il/95053/-יהודי-צרפת-מבולבלים-להוריד-או-לא-להוריד-את-הכיפה-מהראש.html](http://www.bhol.co.il/95053/-יהודי-צרפת-מבולבלים-להוריד-או-לא-להוריד-את-הכיפה-מהראש.html) on January 5, 2018.

<sup>74</sup> *Ibid.*.

<sup>75</sup> See הרב יוסף סופר (Rabbi Yosef Sofer), "ביקור בצרפת: נסיעה עם כיפה" ("A Visit To France: A Journey With a *Kippah*") from אתר היהודות.

Shlomo Aviner (born in France, but now living in Israel) has stated that he cannot render halakhic decisions for Jews who are not his neighbours. Having admitted the inappropriateness of his counsel, he nonetheless has cited the Shulḥan 'Arukh's internal disagreement between its author and the interrupting commentary of Rabbi Mosheh Isserles (משה איסרליש) on whether and how Jews may alter their dress (but, fortunately, both Karo and Isserles agree that Jews, in a time when Jews are persecuted, may alter their appearance just enough to avoid getting killed but may not falsely or truthfully—in dress or in speech—declare themselves idolaters).<sup>76</sup> Aviner, likely considering still more commentators than just Isserles, sees this particular section of the Shulḥan 'Arukh in the end unclear in its applicability to the Jews of France. When pressured to offer a halakhic solution to the Jews of France who have to decide each day whether or not to wear any sorts of head-coverings, Aviner has articulated that there is deep value in picking up one's belongings and moving to Israel.<sup>77</sup>

The signifiers of Jewish identity for the Jews of France have been given a few options in a situation that Rabbi Ohana says is not life-threatening, so long as Jews don't visibly wear their *kippot*. Foregoing the *kippah* altogether would only be a halakhic option if the situation were truly life-threatening (but Rabbi Ohana's aforementioned reservation seems to bespeak such a suspicion). Wearing a

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הגדול בעולם (*Hidabberut: Atar HaYhadut HaGadol Ba'Olam*, "Dialogue: The World's Largest Jewish Site") (June 2, 2016) (in Hebrew), as accessed at <https://www.hidabroot.org/article/128348> on January 5, 2018. In an alarmist message one year earlier in Toulouse though, Yosef encouraged a mass emigration of French Jews to Israel. See Yoni Kempinski, "Chief Rabbi Urges Mass French Aliyah At Toulouse Attack Memorial" (May 14, 2015) from *Arutz Sheva: Israel National News*, as accessed at [www.israelnationalnews.com/News/News.aspx/195421](http://www.israelnationalnews.com/News/News.aspx/195421) on January 5, 2018.

<sup>76</sup> See *Shulḥan 'Arukh, Yoreh De'ah* 157:2.

<sup>77</sup> See שו"ת: האם פיקוח נפש (Rabbi Mordokhai Tziyyon), "Question & Answer: Does Saving a Soul Override [the Obligation of Wearing] a Kippah?" in סרוגים: אתר הבית של המגור הדתי (in *Serugim: Atar HaBayit Shel HaMigzar HaDati*, "Knitted [Kippot]: The Home Site of the Religious Sector") (January 14, 2016), as accessed at <https://tinyurl.com/y85vaeor> on January 5, 2018.

clearly visible *kippah* in fact is only permitted if doing so proves not to be life-threatening. A covering in lieu of or covering the *kippah* is a halakhically sound solution, but to suppress one's expression of selfhood might taste spiritually sour. *Halakhah* makes no demand of hiding altogether in a time of not-quite-persecution, and, no French Jewish authority has made any case that Jews ought to seize control of French culture. French Jews are often reminded of the Zionist alternative to fighting: flighting.

### When Appearing Jewish Becomes Illegal

Upon considering the temporal or philosophical distances between violence against those who look Jewish and legislation against looking Jewish, I submit that these are hard times for Jews—and not only for Jews, but also for Muslims and all othered groups.

We opened our conversation with reflecting on the status of Muslims in Québec to recognize that religious discrimination is not only possible but actual. Just as such an injustice can be legislated against Muslims, anti-Semitism is not and has not been impervious from being penned into law.<sup>78</sup> We do not hope for such a time, but we might anticipate a time when wearing Jewish garb may be banned in lands that much of the world recognizes today as champions of freedom.

In reviewing Jewish responses to bans on visible expressions of Judaism, we have seen few viable solutions. The Maccabees—to rabbinic chagrin—fought back with brute force. The Mishnah prescribed that any discarded expression of Jewish identity be restored—even if it takes several folks to get the signifiers back to where they belong. The Babylonian Talmud entertained us with inimitable magic—praying that *tefillin* will save us if nothing else will. The Ḥafetz Ḥayyim proposed that order can be restored to Jewish society suffering from in-

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<sup>78</sup> This article has been focused on exclusively Jewish appearance to the sense of sight. That Jewish ritual slaughter has been banned in various parts of Asia, Europe and Australia constitutes a separate but related tragedy. Similarly, that Jewish memory recalls times of persecution affecting norms of how and when a *shofar* (שופר, “ram’s horn”) would be blown relates to secular law governing aural manifestation of Jewish identity, a subject worthy of a study separate from this article.

sufficiently expressing itself by expanding its efforts in signifying the Jewish faith. And, as for the Jews of France — *c'est la vie*: some wear *kip-pot* uncovered, some cover worn *kip-pot*, some cover otherwise, some do not cover, and some just leave.

These answers, like the answers to many a halakhic question, highlight Jewish multivocality in attempting to respond to any difficult question. The struggle to preserve Jewish identity has presented unique challenges throughout all generations, and different eras and communities have answered their identity crises in their own ways. But one rather basic theme that all of these answers share — almost too obviously — is the commitment to forge ahead in protecting Jewish identity for a time and place beyond what any Jews might see in their own lifetimes.<sup>79</sup>

When Jews see their identities jeopardized — or the identities of any of their neighbours jeopardized — Jewish history beckons its heirs to do what they can to preserve the peaceful ways such religions bring; to protect the right of all peoples to engage in peaceful religious practices; and to honour the dignity due to the sacred good of humanity.

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<sup>79</sup> I believe it can be argued that even the French decision not to wear a *kip-pah* or any head-covering whatsoever, when chosen as a survival strategy, serves specifically the purpose of Jewish continuity (even when certain halakhic authorities could beg to differ, given the circumstances).

*to be made available online via [www.opensiddur.org](http://www.opensiddur.org) and, in a printed form of the first edition, via [Dimus Parrhesia Press](#) (Cincinnati, OH: 2018). Rank's writings have been published in the Journal of Synagogue Music, the journal Conservative Judaism, Sh'ma Journal: A Journal of Jewish Ideas, The Canadian Jewish News and elsewhere (including this journal).*

