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REVIEW ESSAY

RESPONSA: LITERARY HISTORY AND BASIC LITERACY

by

HAYM SOLOVEITCHIK

Peter J. Haas. *Responsa: The Literary History of a Rabbinic Genre*. Society of Biblical Literature Semeia Studies. Atlanta: Scholars Press, 1996. 320 pp.

I have read good books and I have read bad books, and now I have read a book by Peter J. Haas. It has been a singular experience, and I would like to share it with others.

The author, a disciple of Jacob Neusner and currently a professor of religion at Vanderbilt University, opens with a survey of the “academic study of responsa” and bemoans the neglect of this important genre. Responsa, he claims, have been studied from two vantage points only, and by precious few scholars at that. Several scholars, such as Isidore Epstein and Irving Agus, have mined it for historical data or for the mental universe of a single author. Others, such as David Feldman, have used it to trace the development of a foundational set of values. Both of these approaches suffer from the same fatal flaw: They “shared and perpetuated a conception taken over from traditional rabbinism, namely, that Jewish legal tradition is a rather stable ahistoric ‘thing’ that can be comprehended altogether . . . and that subsequent rabbinic law was simply the unfolding and ramification of the system along essentially predetermined lines” (pp. 17–18). There have been, of course, Haas adds, notable exceptions, such as Jacob Katz’s *Exclusiveness and Tolerance*, and this writer’s article on usury in the *Proceedings of the American Academy for Jewish Research*. The “turning point” in the study of responsa, Haas announces, was Jacob Lauterbach’s entry on “responsa” in the

Jewish Encyclopedia in 1905 (pp. 18–19). Our author is apparently unaware of the writings of Yitzhak Baer, Salo Baron, Eliezer Bashan, H. H. Ben-Sasson, Menahem Ben-Sasson, Reuven Bonfil, and Mordechai Breuer, to mention only historians whose names begin with *B*. He is equally innocent of the works of Menahem Elon, Shmuel Shilo, Gideon Lebson, and Nahum Rackover, to list but a few figures of the *mishpat 'ivri* school.

Even the choice of works of the two authors he singles out for their innovative treatment of responsa is strange. Katz's *Exclusiveness and Tolerance* is cited, though it scarcely uses responsa, but not his *Goy shel Shabbat* or his *Halakhah ve-Qabbalah*, both of which are based primarily on responsa, and a far more sophisticated use of them, at that. Indeed, inconceivable as it might sound, these works are never cited in the entire book. My article in *PAAJR* is cited, but not *She'elot u-Teshuvot ke-Maqor Histori (Responsa as an Historical Source)*, a subject certainly closer to Haas's concerns than is the topic of usury. There is not a single reference in the entire book to any article in *Zion*, *Tarbiz*, *Sinai*, *Mishpat 'Ivri*, or *Dinei Yisrael*. Lest the reader suspect that the author has some difficulties with modern Hebrew, a thought that might cross the mind of the less charitably inclined, I should point out that there is also no reference to any article in the *AJS Review*, the *Jewish Quarterly Review*, or the *Journal of Jewish Studies*. Needless to say, references to the *Revue des Etudes Juives*, the *Jahrbuch der juedisch-literarischen Gesellschaft*, and the *Monatschrift fuer Geschichte und Wissenschaft der Juden* are not to be found. The author cites one chapter from Simhah Assaf's posthumous survey of 1955, *Tequfat ha-Geonim ve-Sifrutah*, but nothing else of that scholar's voluminous writings. He betrays no cognizance of the works of B. M. Lewin, Shraga Abramson, Moshe Gil, Robert Brody, and Neil Danzig. Indeed, he knows nothing of the vast literature of geonica of the last fifty years, other than Zvi Groner's *The Legal Methodology of Hai Gaon* and I. Ta-Shema's article on responsa in the *Encyclopaedia Judaica*. He informs the reader of the existence of Urbach's *Ba'alei ha-Tosafot* (p. 140), but never uses it, though he sorely needs to. He writes, or at least thinks he is writing (see below), on R. Eliezer ben Joel ha-Levi, commonly known as Ravyah, but is unaware of Aptowizer's great *Mavo le-Sefer Ravyah*. He discusses the rabbinate in eighteenth-century Central Europe, but hasn't read Schochet's *'Im Hillufei ha-Tequfot*. He writes of Hatam Sofer and "modern orthodoxy," but hasn't read Katz's *Ha-Halakhah be-Mezar*, not even his famed biographical study of *Hatam Sofer*.¹

1. In the *Gershom Scholem Jubilee Volume*, edited by R. Z. W. Werblowsky et al.

This is not to say that Haas hasn't read anything. He has, indeed; and much of what he has read, not to speak of what it has enabled him to see, will come as a revelation to most scholars. For works on "the difference between early French and Spanish Jewry," we are referred to a tome issued by the Pickwick Press of Pittsburgh, authored by Philip Sigal, entitled *The Emergence of Contemporary Judaism* (p. 135); for information on Rashi, we are referred to a work by one Samuel Blumenthal, entitled *The Master of Troyes: A Study of Rashi the Educator* (p. 140). Our author has read one book on the Middle Ages, Norman Cantor's *Medieval History: The Life and Death of a Civilization*. From Cantor's six pages on the revival of jurisprudence in the twelfth century, Haas is able to detect the influence of German legal scholars on Ravyah (p. 164). He has read several articles in English on rhetoric in the Middle Ages, and this has enabled him to discern Ciceronian (yes, Ciceronian) influences on Rashi (p. 149). Readers will also discover that the Jewish community of Troyes was devastated in the First Crusade and that "Ravyah succeeded his father around 1200 as chief rabbi of Berlin" (pp. 141, 165). All this is but a small sample of the rich surprises that await the reader.

Our author might well contend that the reason he has not read much in the writings of others is that he has a different agenda. He seeks to bring a new mode of analysis to bear upon the responsa literature—that of communication theory. Indeed, the entire second chapter of the book is taken up with the presentation of this theory. And there is little that any of the above works could contribute to such a discourse. There may be some merit to this claim. What may be legitimately demanded of Haas, or of anyone else who chooses responsa as the subject of his or her book, is a basic literacy in Rabbinics, that is to say, competence in Talmud, a command of halakhic technique, and, needless to say, a knowledge of Rabbinic Hebrew. Let us see how well our author meets these requirements.

Let us begin with a rather simple responsum of the great Rabbenu Tam, the founder of the Tosafist movement and one of the most influential talmudists of the past millennium.

Haas presents the question posed to Rabbenu Tam as being: Must children who are no longer infants fast on Yom Kippur? (p. 155). This never was the question, never could have been the question, posed to Rabbenu Tam. It had

(Jerusalem, 1968), Hebrew sec., pp. 115–148, and reprinted in Jacob Katz, *Halakhah ve-Qabbalah* (Jerusalem, 1984), pp. 353–387.

been settled close to a thousand years earlier by the Mishnah (Yoma 82a) when it stated that children must begin fasting two years before adulthood—ten in the instances of girls, eleven, in the case of boys. Before they attain that age there is no prohibition whatsoever against their eating. The issue at bar in the responsum is whether adults may actively feed children on Yom Kippur. Despite the facts that adult feeding is repeatedly stated both in the query and in the reply, and that every proof-text cited deals with adult feeding, Haas still construes the responsum as dealing with the permissibility of children's eating, that is to say, the entire responsum deals with a non-issue. This, of course, renders much of his discussion meaningless. As if this weren't sufficient, Haas proceeds to invent a controversy in the responsum that does not exist—even in his own translation—and then contributes his own novel interpretation of the Talmud. As it will give the reader some sense of Haas's exegetical skills, the passage bears citation. But first a word of introduction.

Rabbenu Tam cites a passage in Eruvin (40b) which states that we do not make Kiddush on wine in the synagogue on Yom Kippur because someone must drink it, and it is forbidden to do so. Giving the wine to a child is also out of the question, as it would be uneducational: the child might conclude that drinking on Yom Kippur is permitted. Haas writes (p. 156):

According to the simple meaning of the text [in Eruvin], a child may not be given wine on Yom Kippur lest he come to think that drinking wine on Yom Kippur is generally permitted. Under debate is what the Talmud is afraid he will get used to. One possibility is that the child will get used to having something to drink after Yom Kippur officially begins. The assumption is that the child must learn to fast. Rabbenu Tam (following Rashi's interpretation of this passage) holds that at issue is the child's addiction to wine. On this view, the child may drink (and by extension, eat) on Yom Kippur, but ought not be given *wine* [emphasis in the original].

No such debate is found in the responsum, nor is it found in Haas's own translation a page or two before (pp. 153–154). Rashi never offered, never could have offered, such an interpretation, nor did Rabbenu Tam ever “follow him” in this. How can a child possibly become addicted to wine from sipping it once a year? Let us assume, for Haas's sake, that there was “crack-wine” in talmudic times. Why then did the Talmud allow children to sip wine—fifty-two times a year—on Friday nights?

What happened, apparently, is that Haas looked up the word *sarakh* in a Hebrew dictionary and found “to be dragged, to adhere, to clutch,” which in

our context, he decided, must mean “hooked on,” and so he created talmudic “crack-wine.” That he did not look at Rashi (a frequent omission of his) is understandable, given the difficulties that he has, as we shall soon see, in understanding him.² What is astonishing is that he did not even look at the Soncino translation, which renders the passage accurately. This is a pattern that repeats itself throughout the book: Haas mistranslates and misconstrues passages that are accurately rendered in Soncino and, as we shall see further on, mistranslates words and phrases found in Jastrow’s dictionary. A second pattern instantiated in this passage is that of fictitious reference (here to Rashi). Again and again, citations are given to both rabbinic and general sources that simply do not exist. For example, eight pages later, Haas writes (p. 164 n. 25):

Eliezer’s form may reflect some of the developments in law of the twelfth century. German scholars in particular were interested in collating and arranging the mass of German common law in their realm, an effort probably inspired by the example of Justinian’s code. In fact one of the initiators of this process was the Bishop of Worms. . . . Cf. Cantor, *Medieval [sic] History* 340.

There is nothing whatsoever of this in Norman Cantor’s *Medieval History*, nor could there be. German “common law” began to be committed to writing only in the course of the thirteenth century, so it would be surprising to find scholars collating it in the twelfth. Nor, I should add, is there any mention in Cantor’s work of any bishop of Worms involved in such an enterprise.

A stray sentence, however strange, may yet be a regrettable lapse, an inadvertence of no significance. And while it is true that Haas has gotten the entire responsum wrong, one bad mistake should, perhaps, not be held against him. Let us turn then to another responsum, that of R. Meir of Rothenburg, another mighty name in rabbinics, and use it to examine Haas’s scholarship.

The query is: whether one may lend the charity moneys at interest, and if not, whether one could insist on the restitution of interest that has been paid. The inquirer informs R. Meir of Rothenburg that someone told him that Rashi had explicitly stated that even if such restitution is owed, the courts were not empowered to enforce it. The inquirer informs R. Meir of Rashi’s position in a paragraph of six sentences. We will first cite Haas’s translation of the passage (p. 169) and then comment on it, sentence by sentence. (For

2. The word סרך does, indeed, mean “to adhere.” In our context, it means, as Rashi explains, “to adhere to the practice of eating on Yom Kippur.”

the reader's convenience, the sentences of the translation and the parallel ones of the comments are numbered.)

(1) I found it explicitly in Rashi's comments to *b. B. Mes.* 91a: "The Torah forbids the hire of a harlot even if one had relations with his mother . . . (Deut. 23:19)." (2) The point, according to Rashi, is that one who brings a harlot into the Temple must pay her fee, even though bringing her [there] was illicit to begin with. (3) This does not contradict *b. San.* 72a, which reports, "Rabbi had some sheep stolen by one who broke into the house through a tunnel. (4) Later, they wanted to return the sheep, but he would not accept them, saying, 'I go according to Rava [who ruled that because of mortal danger to which such thieves exposed themselves, the stolen goods are deemed to be theirs.]" (5) Further, by turning the capital offense into a kind of purchase, we allow them to clear their names before heaven, even if they do not want to come clear before heaven. (6) This is shown in *b. B. Qam* 70b.

Comments:

1. (a) There is no such verse in Deuteronomy. (b) Why the "even"? If the whore with whom you had intercourse happens to be your mother, does this make the offense less grave? Perhaps we are misconstruing Haas's translation. The verse or dictum given us may equally mean: Even one who has had relations with his mother may not hire a harlot. If this be the intent, had anyone heretofore suggested that committing incest permits consorting with harlots, that one needs a verse (or a talmudic dictum) to specifically enjoin it?

2. (a) There is no such statement of Rashi at the cited place or anywhere else in the Talmud. Nor could there be. There is no law against paying a prostitute to go with you to the Temple. It is hardly the best of company, but there's no law whatsoever against it. (b) Let us grant Haas his fictitious citation, how does an injunction against bringing harlots into the Temple prove anything about the restitution of usury?

3-4. This passage certainly does not "contradict" the previous sentence; it has nothing to do with it. What does stealing sheep through a tunnel have to do with bringing prostitutes to the Temple? Furthermore, how can "Rabbi" cite a ruling of "Rava," who lived four generations later?

5. What does this sentence, in itself, mean? What does it mean in context; what does it have to do with the whores in the Temple? (The text is not responsible. The sentence is Haas's creation. He has added no less than thirteen words that are not found in the original.)

6. There is nothing in *B. Qam.* that is even vaguely reminiscent of these statements; and if Haas had difficulties with the text in the original, a simple glance in Soncino would have revealed this to him.

Two final questions: (1) What does this whole paragraph about sheep and whores mean? It's an agglomeration of meaningless sentences. (2) How is this paragraph, whatever it may mean, connected to what precedes and follows it? This paragraph is brought as "explicit proof" for inability to compel restitution of the interest obtained by charity from its loans. What do sheep, whores, and incest have to do with usury?

To unravel the errors in this one brief paragraph would require several pages. Let us content ourselves with simply saying that Haas's troubles here begin not with Rashi, not with the Talmud, nor even with Rabbinic Hebrew and Aramaic (all of which cause problems for him), but with the English Bible, with the King James version of the Good Book. The verse "Thou shalt not bring the hire of a whore into the house of the Lord thy God" (Deut. 23:18) does not mean, as Haas thinks, "Thou shalt not hire a whore to come with you into the house of the Lord," but "Thou shalt not bring into the house of the Lord [i.e., offer as sacrifice] the hire [i.e., the payment] given to the whore (for her services)."³ "Hire" in this verse is a noun (and preceded by "the"), not a verb. And building on his misconstruction of the Bible, our author proceeds to further misconstrue the Talmud and Rashi, inventing new verses, new laws, and entirely new passages in the Talmud as he makes his way.

This passage, and the numerous others like it, are but an extension of another, yet more frequent problem; indeed, one that plagues the entire book, namely, literal translation of technical terms without any explanation, and often without any comprehension of their legal meaning. Any court decision will invoke five or ten basic concepts of the system, almost inadvertently—which is why teaching American law in a foreign country by the case method is so difficult. The large number of terms, even in an abridged decision, that need to be explained to the foreign student, to whom such basic notions as grand jury, due process, and judicial review are alien, proves a formidable obstacle. Translation of a rabbinic decision is no different. To translate a phrase in a responsum literally and leave it at that, with no intimation to the reader that

3. Haas's reading of the verse is characteristic of his approach to texts. The verse reads "Thou shalt not bring the hire of a whore . . . into the house of the Lord thy God for any vow." The last three words make it clear that we are dealing with a sacrifice offered in payment of a vow, not with the hiring of an escort service. Haas simply ignored the ending.

this is a technical term and with no explanation of the term's meaning, is to reduce the translation to incomprehensibility. It is equivalent to translating verbatim into French "separate but equal," but not inform the French reader that this deals with segregation in public places and services. Or rendering "contrary to the commerce clause" as "*contraire à l'article de commerce*," without explaining to the reader that it refers to the constitutional inability of the states in a federal system to pass laws that affect interstate commerce. The translation, even if accurate, would make no sense. And if the translator himself did not know the technical meaning of these phrases, as is generally the case with Haas, he would soon be compelled to add words, phrases, and whole sentences to the decision in an attempt to have the decision make, at least, some surface sense.

This is what happens throughout the book. In the eighteen responsa that I checked, I found sixty-four talmudic passages that went unrecognized by our author and were mistranslated or literally translated as if they were the words of the respondent himself. I further found over ninety legal terms⁴ that were either mistranslated or translated literally with no explanation (generally, with no comprehension) of what they meant, and the resultant product is, at best, a pale reflection of the respondent's argument, at worst, a senseless or contradictory concatenation of sentences. Haas's technique for dealing with such contradictions is to invent whatever is necessary, to his thinking, to sustain his mistranslations, be they talmudic passages and statements by Rashi, as here, or new religious requirements, as in the responsa of *Nod'a be-Yehudah* (see below). In the case under discussion, Haas doesn't know what *din shamayyim* means *legally*. He may know what the words mean literally and that the term has something to do with unenforceable collection. However, he is unaware of its legal nature—its much-disputed legal nature, which plays a central role in the discussion—and is wholly ignorant of the principle's scope. As a result, stolen sheep and whores start prancing about a discussion on "coming clean before heaven" (Haas's inimitable translation of *din shamayyim*), without the astonished reader having a clue as to how they ever got there.

Given Haas's skills, one does not expect much in the way of identification of authorship. However, if a responsum is found in the work of R. Eliezer ben Joel Halevi (more commonly known as Ravyah), and at the beginning

4. I say "over ninety" because I stopped counting when I reached that number. The actual count is considerably higher.

of the responsum, at the top of the page, in big black letters it says, "THIS IS A RESPONSUM OF MY GRANDFATHER," one does not expect to see it presented as a responsum of Ravyah. Yet this is what Haas does (p. 158). (Perhaps he took the heading *זו חשיבת זקני* as meaning "This is a Responsum of My Beard," and judged it a scribal error.) The editor of the Hebrew text, Avigdor Aptowizer, footnotes the heading and provides the reference where this responsum is found in the grandfather's work (*Sefer Ravan*, #108). Not having noticed or not having understood the heading, Haas never checked the reference. He then begins to draw various inferences (p. 163) from the somewhat truncated beginning, unaware that this is but a section of a larger discussion found in the original source.

Haas has further thoughts about the responsum (pp. 163–164):

This argument of this text is structured in a way we have not seen before. . . . [T]he body of the text arranges its material according to the historical evolution of the halakhah, not the logic of the argument. Thus Eliezer's discourse begins with the talmudic literature, in this case, the Talmud of the Land of Israel. This basic statement of facts is then expanded by examining it in light of other talmudic statements. All these statements are then expounded in light of the interpretations of later rabbinic authorities, including the author's own father. The discussion is concluded by the author setting forth his own view. We end up with a historical overview of the law as it emerged in the Talmud, reaches clarity under the rabbis, and is applied by today's authorities.

Haas, indeed, has not seen this structure before; however, anyone familiar with responsa will have encountered it hundreds, if not thousands, of times. In fact, Haas has described admirably one of the standard structures of responsa literature. The reply opens with citation of the most plausible precedent, usually a talmudic passage, then examines the commentaries upon this passage, often in chronological sequence, as one halakhist is usually commenting upon or reacting to the position of his predecessors. (This is almost invariably so, if one is citing the scholars of a single culture, as here.) And occasionally, and more than occasionally in medieval times, the writer offers his own understanding of the talmudic precedent. He then explores whether this precedent (in one or several of its interpretations) is applicable to the case at hand.

5. Haas is on a first-name basis with many of the great halakhic figures of the past.

Haas, however, believes that there is profound significance to the structure that he has discerned. He immediately continues (p. 164):

The literary form adopted here suggests that Eliezer ben Joel Halevi is working with a theory of law different from the ones we have examined. He seems to view the law not as a predetermined given waiting to be discovered through talmudic logic, but as the result of historical development from generation to generation. On this theory, the rabbi exercises discretionary legislative authority much as did the Geonim. We do not have to do with a revealed or “natural” law, but with a law of human making, albeit one guided by the precepts of the received tradition. That is, to discuss the law as a historical process places emphasis on the human element in Jewish law, rather than on the divine or the eternal. This is, of course, precisely why this form enjoys a new popularity in the modern world. But it is somewhat out of place in the Judaism of Medieval Europe.

The last sentence is an understatement. But if there is any truth to the rest of the paragraph, then one can safely state that much of the halakhic writing of the past millennium has been very, very modern.

This mode of inference is a recurrent one in the book. Haas “discovers” an instance of some fairly common phenomenon in the responsa literature. Having little familiarity with this genre of halakhic writing, he assumes that the case in which he encounters it constitutes a “first,” and proceeds to build on it castles in the air. For example, R. Yehezkel Landau, the author of the *Nod’a be-Yehudah*, writes (in a responsum that we shall discuss) that hunting wild game is halakhically permissible, but an inappropriate pursuit for a Jew. This distinction between permissibility and appropriateness, the assessment of licit but religiously abhorrent conduct, is a commonplace in rabbinic literature. (It finds its most pungent expression in the famous phrase of Nahmanides, נבל ברשות התורה). All this is news to our author. He sees this distinction as a superb example “of the active legal discretion that this new rhetoric [i.e. *pilpul*] now allows the rabbi. . . . Jewish law, in other words, no longer stands solely within the bounds of the written text of the Talmud, but is a product of the legislative initiative of the rabbinic estate” (p. 195).

Again, Haas discovered in a responsum of R. Yekutiel Teitelbaum (1808–1883) the phrase “כל זה להלכה ולא למעשה”. This too is news to him, though he realizes that it *might* (!) have been used in previous eras. Haas links this “new” phenomenon “to the changes in the conception of the rabbinate in modern times” (p. 244). No more and no less. He is further

“tempted to see this new discursive role of the responsa writer as teacher rather than decisor as a function of the Hasidic community from within which Teitelbaum writes.” In fact, this phrase has been common currency in halakhic literature for well over seven hundred years, ever since the days of R. Solomon Ibn Aderet (Rashba, d. 1315). How ubiquitous it is may be seen from the Bar-Ilan Responsa Project. The project’s data bank yields no less than eighty-seven instances of its use in the sixteenth century alone.

And, finally, to Haas’s discussion of a responsum of Rashi, one treating a claim to a share in a partnership on the basis of a dowry. Haas writes in an authoritative tone (pp. 150–151):

What the responsum [of Rashi] does not do is the one thing that we might expect, namely, to frame matters explicitly around talmudic precedents. . . . This is so despite the fact, as we have noted, that the general nature of its discourse—its vocabulary, syntax and language—are all in the talmudic mode.

It seems to me, that we can make sense of these facts by understanding the source of the responsum’s authority to be, then, not the talmudic text per se, but the language and reasoning that make up the Oral Torah in general. That is, the rabbi’s virtue is not to know and cite the Talmud as much as it is to be able to “do” Talmud afresh. . . . Rashi sees the rabbi as one who carries forth the talmudic enterprise in his own work. That is, Rashi locates himself not as an outsider to and interpreter of the Talmud [*sic*], but as one still working within that tradition.

This is a novel understanding of Rashi’s life work and self-perception, to say the least. And the thought that rabbinic virtue does not lie in knowing the Talmud is understandably a consoling one to our author. There is nothing in the responsum, however, which indicates that Rashi shared these views. Rashi’s responsum is, in fact, shot through with talmudic proof-texts, only Haas has not recognized them. Throughout the book, Haas is unaware that respondents often do not cite the source of well-known and apposite quotations (much as we might write, “However, ‘there is a tide in the affairs of men,’ ” rather than “However, as Shakespeare wrote in *Julius Caesar* [Act IV, scene 3], ‘There is a tide in the affairs of men’”). Indeed, many of these passages in responsa make little sense unless one is aware that segments of them are citations. For example, Haas translates a passage in this responsum thus (pp. 145–146):

But if . . . [he suddenly] appears . . . with a writ that says he is to get such and such a dowry; and he married and acquired it, and then said, “I have earned

this from the moment of marriage and I am your partner whether you like it or not.”

This is a free translation by Haas (and one of the much better ones). The actual passage, however, cites the Talmud in *Kiddushin* (9b) that states that an oral commitment about wedding gifts and dowry is binding if the marriage took place on the basis of that commitment, and addresses the attempt to collect on the basis of the citation.⁶ In the responsum under discussion, Rashi invokes and incorporates, without explicit attribution, no less than six talmudic texts. All six passed over Haas’s head. He failed, consequently, to recognize, and naturally mistranslated, such basic terms as “surety,” “power of attorney,” “writ of dowry,” “binding oral commitments,” “lack of standing,” “derivative rights,” and “court proceedings with fraudulent claims,”⁷ with all the attendant confusion. Indeed, large segments of Haas’s translation bears little semblance to the arguments actually advanced by Rashi in the Hebrew text. At times, it states the exact opposite.⁸

What is most striking is not simply Haas’s ignorance but also his approach. Most of the above terms are found in Jastrow, but Haas makes no use of that scholar’s work. When confronted with a word or phrase or even a technical

6. The passage in Rashi’s responsum reads (and I italicize where the actual text differs from Haas’s rendition): “But if . . . [he suddenly] appears with a writ of dowry [based] on (the passage in Kiddushin 9b which reads:) ‘How much do you give [as a wedding gift] for your son?’ ‘Such and such a sum [i.e., an oral commitment]. If they proceeded to marry [on that basis], she [the bride] acquired [the gift].’” (end quote) [i.e., the plaintiff’s writ attests that such an oral commitment was made] and he says, “I acquired [the share in the partnership] from the moment [of marriage] and [therefore] I am your partner whether you wish it or not.”

7. ערב קבלן, הרשאה, שטר פסיקתא, הן הן הדברים הנקנין באמירה, לאו בעל דברים דידי את, גבראי דאחיה. References: B. Batra 173b, Shevu’ot 31b, Kiddushin 9b (for both שטר פסיקתא and שטר באמירה, הן הן הדברים הנקנין באמירה, B. Mesi’a 14a, B. Mesi’a 101b, Sanhedrin 32b. Examples of mistranslations: הרשאה does not mean “right,” but “power of attorney”; דין מרומה does not mean “too much litigation,” but “court proceedings with fraudulent claims”; אצל הקבלנים שנעטרבו עליה does not mean “from those against whom she holds liens” (p. 144), but “from those sureties who have guaranteed her [commitment].” No securities have been mentioned in the responsum, nor is there any mention of such a weird arrangement as that of the debtor (i.e., the widow) taking a lien against her own sureties to ensure the latter’s payment should the debtor herself default! The defendant, in this responsum, simply replies to the plaintiff that his remedy lies with the sureties.

8. For example, in the continuation of the above-cited passage, Haas’s translation reads: “He has no authority to place others under her obligation because of her gift such that their claim is stronger than hers.” The Hebrew reads: “She [the widow] cannot, by gift, empower others [i.e., derivative claimants] with rights greater than her own.”

term that is unknown to him, our author does not turn to a Hebrew or Aramaic dictionary, but makes up whatever seems appropriate to him in the context—with all the resultant confusion.

To our author's credit, it must be noted, he did realize that there is a great deal of Talmudic Aramaic in Rashi's responsum, indeed, far more than he, Peter J. Haas, deems necessary. Why all the Aramaic mumbo jumbo on Rashi's part? "The discussion is much more complex, that is, much more 'Talmudic' than it need be," he writes. And his conclusion: "The nature of the discourse is such as to discourage secular adjudication by invoking technical, one might say, holy discourse of the rabbinate" (p. 151). There are, as we have seen, reasonable doubts as to this conclusion. There is, however, little doubt that the nature of Rashi's discourse, and that of other medieval halakhists, is such that it should discourage Dr. Haas from writing about them.

Fearing that medieval responsa may not be Haas's strong point (though they do constitute a full half of the responsa analyzed), and wishing to avoid any rush to judgment, I read on. Haas's next chapter deals with the seventeenth to mid-nineteenth century, a period characterized by what he calls Classical Rabbinism. Let us take Haas's analysis of a responsum of R. Ezekiel Landau, the author of the *Noda' be-Yehudah*, one of the towering figures of the responsa literature, and see whether his handling of medieval literature, which we treated in extenso, was typical or not.

Haas has chosen a very simple responsum (*Tinyana, Yoreh Deah* 10). R. Landau was asked whether it was permissible for a Jew to hunt wild animals. He replies that though hunting is an inappropriate pursuit for a Jew, there is nothing halakhically wrong per se. However, as hunting needlessly exposes the aficionado to danger, it should be discouraged, if not forbidden outright. The argument from needless peril is introduced thus: ועוד בו ... שעל כל פנים מוכירין עונותיו, שאין זה פחות מקיר נטוי. This is a reference to Berakhot 53a: "Three things cause the sins of man to be remembered [i.e., invite adverse divine judgment; in idiomatic English, 'tempt fate'] . . . [one who walks needlessly under] a crumbling wall, etc." Haas, however, translates מוכירין עונותיו as "he must confess his sins" (p. 192). That he did not recognize the talmudic passage is understandable. That he did not use Jastrow's dictionary is less understandable but wholly in character. Had he done so, he would have found (under the entry זכר) both the meaning of this common rabbinic idiom and the reference to the above passage in Berakhot. Haas's problems, however, have just begun. Who has ever heard of an obligation to confess one's sins when in peril? Our author is equal to the challenge. He handles

this problem, as he regularly handles similar problems throughout the book, by fabrication. “It is,” he announces, “a general principal [*sic*] that when one walks in a dangerous place one must confess one’s sins” (p. 194). But if this is so, the text makes no sense. The respondent introduced מוכירין עוונותיו as an argument against hunting and views it as a transgression, whereas confession is clearly a virtue. This gives Haas no pause. The fact that the argument makes no sense never suggests to him that he may have misunderstood it. Apparently, concludes Haas, Landau (as he calls *Nod’a be-Yehudah*) was not at his best in this section of the responsum.

Haas then proceeds to analyze the responsum in light of the movement of *pilpul* to which he devote several pages (pp. 177–178).

I choose [the seventeenth through the nineteenth century] because responsa of this period reflect a new and distinct style of rabbinic rhetoric: *pilpul*. . . . As I shall show below, this style [i.e. *pilpul*] represents a particular epistemology, which developed out of the neo-Aristotelian speculations of the renaissance during the late Middle Ages [*sic*]. . . . In essence, the method declared that the overt language of the text must be seen as a reflection of the mental language of the author.

After dilating on this for several pages, Haas goes on to apply all this concretely to the responsum at hand (pp. 193–197).

Let us grant Haas all his pronouncements on the epistemology and rhetoric of *pilpul*; we are, nevertheless, confronted with one small problem: this responsum is not *pilpul* at all. Indeed, it is the very antithesis of *pilpul*, as are all the responsa of *Nod’a be-Yehudah*. If Haas had actually read the article by Dimitrovsky that he cites,⁹ he would have known that *pilpul* has a fixed, almost formulaic structure together with a very distinctive technical vocabulary, none of which is present in the responsum. Had he read about *pilpul*, other than Boyarin’s brief English summary of his Hebrew book, he would have known that—with one sixteenth-century exception—*pilpul* was never used in Ashkenaz in responsa, only in *hiddushim*. Its leading advocates took care not to use it in legal decisions and severely castigated those who had initially attempted to do so. *Pilpul* is used in novellae, and in novellae alone.

9. Pp. 178–180. In the space of three pages, the article is cited as “Al derekh ha-pilpul” (n. 3), “Al Kerekh [*sic*] Ha-Pilpul” (n. 4), and “derekh Ha-pilpul” (n. 9).

Haas's analyses were of the same piece. I put the book down, not knowing whether to laugh or to cry.

That Haas writes as he does is understandable. He apparently doesn't know any better. But scholarly presses, one thought, had readers.

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