

Rav Hildesheimer's Response to Ultra-Orthodoxy

By: GIL STUDENT

Rabbi Dr. Azriel¹ Hildesheimer was a Torah giant, a master of secular wisdom and a leader of Hungarian and German Jewry as it confronted modernity. His response to the pronouncements of the nascent Ultra-Orthodox/Chareidi movement offers an alternative approach to resisting deviationist trends.

R. Hildesheimer was born in Halberstadt, Germany in 1820 and studied under Chacham Isaac Bernays and R. Yaakov Ettlinger.² He also studied at the University of Berlin and then at the University of Halle, earning a doctorate in Jewish studies. In 1851, R. Hildesheimer was appointed chief rabbi of Eisenstadt, in what effectively was Hungary (although today it is part of Austria). In Eisenstadt, R. Hildesheimer opened the first yeshivah high school to include secular studies. In 1869, R. Hildesheimer left Hungary for Berlin, where he led a separatist congregation and established a rabbinical seminary that trained Orthodox rabbis who could compete with their Reform counterparts for the hearts and minds of German Jews. The seminary taught academic Jewish studies from an Orthodox

¹ Variant spellings on his first name include Esriel and Israel. I use Azriel, which more closely matches his Hebrew name.

² Chacham Isaac Bernays (1792–1849) was a child prodigy who served as chief rabbi of Hamburg. Learned in philosophy, arguably he was the first Modern Orthodox rabbi. R. Yaakov Ettlinger (1798–1871) served as chief rabbi of Altona and is now remembered most for his Talmudic commentary *Aruch La-Ner*. Both attended university, although R. Ettlinger was forced to leave before completing his studies due to anti-Semitic riots. For more on these two figures, see R. Shnayer Leiman, “Rabbinic Openness to General Culture in the Early Modern Period” in R. Jacob Schacter ed., *Judaism's Encounter with Other Cultures* (Northvale, NJ, 1997), pp. 166–179.

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perspective and required students to earn doctorates at the University of Berlin. R. Hildesheimer was a prodigious scholar, who was respected as a leading halachic authority in Germany as well as an academic Jewish scholar.³

Much like his contemporary, R. Samson Raphael Hirsch, R. Hildesheimer attempted to develop an Orthodoxy that could attract German Jews who were being drawn to the seemingly more sophisticated Reform. However, these two scholars took different paths. R. Hirsch reached out to the layman with the tools of preaching and writing. He emphasized German culture as playing a positive role in Jewish life, creating the model of an urbane Orthodox Jew. In contrast, R. Hildesheimer focused on Talmud and Jewish law, training rabbis who could reach out to a broad public. For him, German culture was, at most, a permitted pleasure. In particular, the two disagreed on the propriety of academic Jewish studies, which R. Hildesheimer championed and R. Hirsch dismissed.⁴

The two leaders also disagreed on attitudes toward the non-Orthodox. R. Hirsch advocated Orthodox separation from the Reform-dominated communal structure as a desired goal. R. Hildesheimer accepted separation as an unfortunate necessity in limited situations. Similarly, R. Hirsch opposed joining any combined effort with the non-Orthodox. In contrast, R. Hildesheimer was a member of the Berlin chapter of Bnai Brith and spoke at a meeting of the Alliance Israélite Universelle. About the latter, R. Hirsch sent R. Hildesheimer a critical letter, to which R. Hildesheimer responded in disagreement. Furthermore, in late 1872, R. Hildesheimer joined with Heinrich Graetz's call for establishing an orphanage in Jerusalem. Again, R. Hirsch wrote to R. Hildesheimer, criticizing him for joining efforts with a heretic. R. Hildesheimer replied that Graetz's heresies should not prevent people from working with him to assist impoverished orphans.⁵

³ For biographical information on R. Hildesheimer, see R. Shnayer Leiman, *ibid.*, pp. 201–211; David Ellenson, *Rabbi Esriel Hildesheimer and the Creation of a Modern Jewish Orthodoxy* (Tuscaloosa, AL, 1990).

⁴ Leiman, *ibid.*

⁵ For a Hebrew translation of these letters, see Dr. Azriel Hildesheimer (grandson), “An Exchange of Letters Between Rabbi A. Hildesheimer and Rabbi S.R. Hirsch on Matters of the Land of Israel” (Hebrew) in *Ha-Ma’ayan* 2 (Tishrei 5714), pp. 41–52. See also David Ellenson, “A Response by Modern Orthodoxy to Religious Pluralism: The Case of Esriel Hildesheimer” in *Tradition* 17:4 (Spring 1979), pp. 74–88. I believe these letters between R. Hildesheimer and R. Hirsch provide ample response to Yisrael Kashkin's critique in his “Austritt—A Tale of Two Cities” in *Hakirah* 22 (Spring 2017), pp. 247–264.

While R. Hildesheimer was in Hungary, events transpired that changed the course of Jewish history. In response to growing challenges by the Neologue community, which was roughly the Hungarian equivalent of Reform, Orthodox rabbis met to plan a few possible responses. Rather than uniting in opposition, the Orthodox leadership divided into three main groups. Among the leaders of the right were R. Hillel Lichtenstein and R. Chaim Halberstam; in the center were R. Moshe Schick and R. Avraham Shmuel Binyamin Sofer; and on the left was R. Hildesheimer. Generally speaking, the center and left lived in the urban Oberland while the right lived in rural Unterland. In an 1868 rabbinical meeting to plan strategy for the upcoming Jewish Congress, one group after another stormed out in protest until only the right wing remained. In some respects, this solidified the process of the beginning of Ultra-Orthodoxy,⁶ i.e., Chareidi Judaism. While the lifestyle and attitudes existed previously, the organization and advocacy of a distinct Ultra-Orthodox group seems to have begun in these few years, eventually spreading to Israel and elsewhere around the globe.⁷

In 1865, R. Hillel Lichtenstein circulated to Hungarian rabbis for their signature a judicial decision prohibiting a list of moderate synagogue innovations. Failing to achieve the desired number of signatures, he convened a conference in November in the town of Michalowitz. The 24 rabbis at the conference jointly issued the judicial decision, with more rabbis signing subsequently, reaching 71 and then well over 100.⁸ This judicial decision was directed at the left wing of Orthodoxy, which allowed moderate changes.⁹ Rabbis of the center, particularly R. Moshe Schick, refrained from endorsing the judicial decision. On the left, R. Hildesheimer

⁶ Some people find the term Ultra-Orthodoxy offensive. I use it here because it is a standard term. I do not understand why these critics find Ultra-Orthodox offensive but not Orthodox, which was originally coined as a derogatory term.

⁷ On the events surrounding the Jewish Congress, see Jacob Katz, *A House Divided: Orthodoxy and Schism in Nineteenth Century Central European Jewry* (Hanover, NH, 1998).

⁸ On this conference and judicial decision, see Katz, *A House Divided*, ch. 8; Michael K. Silber, "The Emergence of Ultra-Orthodoxy: The Invention of a Tradition" in Jack Wertheimer ed., *The Uses of Tradition: Jewish Continuity in the Modern Era* (New York, 1992), pp. 23–84.

⁹ In addition to R. Hildesheimer's response below, the full text of the judicial decision appears in R. Akiva Yosef Schlesinger, *Lev Ha-Ivri* (Jerusalem, 1924), vol. 2, pp. 62b–66a; idem., *Ma'aseh Avos: Kinus La-Tzadikim* (Jerusalem, 1901), pp. 1–5.

wrote a response explaining his disagreement. Initially, he planned on obtaining other rabbinic signatures, but he changed plans and published the response under his name alone.

The judicial decision invokes prohibitions, particularly that of adopting gentile practices, in opposition to a wide array of synagogue changes. R. Hildesheimer disputes the application of this prohibition so broadly.¹⁰ However, he accepts that sometimes otherwise permissible practices must be prohibited as a matter of public policy, to protect the community from spiritual danger. The slippery slope from innovation to deviation cannot be ignored. In reaction to what he considered extreme conservatism, R. Hildesheimer does not say that anything technically permitted should be allowed. He expresses a realistic conservatism. While opposing synagogue changes and even encouraging actively blocking them, he recognizes that sometimes a rabbi can prevent deviations by allowing relatively minor changes that are not technically prohibited.

A rabbi has to know when to take a stand and when to redirect energy to a lesser project. For example, R. Samson Raphael Hirsch held weddings in the synagogue, wore canonicals for prayer and established a male choir to join the cantor.¹¹ Arguably, these are changes to customs, not violations of laws.¹² Apparently, he believed that those changes would prevent technical violations. R. Hildesheimer approves of moderate, technically permissible changes when they are concessions, when they are part of a larger agenda of refraining from change rather than a program of reform.

¹⁰ Although he accepts it in some cases. See below note 47 in which he sided with R. David Tzvi Hoffmann over R. Marcus Horovitz regarding the application of this prohibition to the use of organs in a synagogue during the week. In an 1879 responsum, R. Hildesheimer expresses stronger opposition to this judicial decision. In *Responsa Rabbi Azriel (Yoreh De'ah*, no. 133), he writes: "We drink from the waters of the well of Talmud, early authorities and later authorities, not from new laws created by an assembly in Michalowitz, with their extreme exaggeration and similar intimidation lacking any foundation."

¹¹ Marc Schapiro, "Book Review" in *Tradition* 25:1 (Fall 1989) pp. 97–99. For a description of the unstoppable pressures for synagogue change facing a traditionalist German rabbi and his consultation with R. Hirsch, see R. Binyamin Shlomo Hamburger, "Nesi Ha-Levi'im: Le-Toledos Rabbenu Ha-Rid" in Tzvi Bamberger ed., *Kisvei Rabbenu Yitzchak Dov Ha-Levi Mi-Wurzburg* (Bnei Brak, 1992), p. 534ff. For a defense of R. Hirsch's choir, see R. Joseph Breuer, *A Time to Build: Essays from the Writings of Rav Dr. Joseph Breuer* (New York, 1995), p. 20. I thank Dr. Judith Bleich for the latter two sources.

¹² See below, note 47, from R. Marcus Horovitz (although R. Horovitz and R. Hirsch clashed personally on the issue of separation from the Reform-dominated community).

Surprisingly, R. Hildesheimer invokes R. Moshe Sofer's saying that "the new is forbidden by the Torah everywhere." The leaders of Ultra-Orthodoxy adopted this saying as their motto, using it rhetorically to forbid any change. How could R. Hildesheimer invoke this saying while allowing multiple synagogue changes? He seems to take the saying as a slogan, a general conservative attitude rather than a wholesale prohibition.

Beginning in the 1860s, a battle ensued for the legacy of R. Moshe Sofer. The right wing took him literally, particularly via the writings of R. Akiva Yosef Schlesinger. His *Lev Ha-Ivri* polemic against moderates took the form of a commentary on R. Sofer's ethical will.¹³ The center, which included R. Sofer's son and some of his top students, saw nuance in R. Sofer's attitudes. While not a student of R. Sofer in any way, R. Hildesheimer seems to accept the centrist narrative of R. Sofer's views.

What follows is an English translation of R. Hildesheimer's response to the 1865 judicial decision. This was originally published as a Hebrew conclusion to an 1866 German article in the newspaper the *Israelit*, republished in R. Hildesheimer's *Gesammelte Aufsätze*¹⁴ and more recently in the journal *Ha-Ma'ayan*.¹⁵ Section headings are added by the translator. Because the literature on these subjects is extensive, footnotes are not comprehensive but cite rulings that highlight important ideas.

Response to Judicial Decision

A pamphlet, called a "Judicial Decision," came to our attention. It was signed by many rabbis from the Unterland of Hungary, including the rabbi of Sanz.¹⁶ After initial words of chastisement on the obligation of rabbis

¹³ *Lev Ha-Ivri* was originally published in 1864 (vol. 1) and 1868 (vol. 2). This article cites from the 1924 edition. For an anonymous critique of *Lev Ha-Ivri* emerging from Pressburg, see *Kesav Yosher Divrei Emese* (Pressburg, 1865), republished in Ephraim Deinard, *Shibolim Bodedim* (Jerusalem, 1915), pp. 49–57.

¹⁴ Israel Hildesheimer, *Gesammelte Aufsätze* (Frankfurt a. M.: Hermon, A. G. 1923), pp. 24–25.

¹⁵ *Ha-Ma'ayan* 39:4 (Tammuz 5759), pp. 2–3.

¹⁶ R. Chaim Halberstam of Sanz (d. 1876), Chassidic Rebbe, author of *Divrei Chaim* and progenitor of the Sanz-Klausenburg and Bobov Chassidic dynasties. At the end of the list of signatories, two names appear in large print, identified as Chassidic leaders, each with a personal inscription before his name. One is R. Yitzchak Isaac Eichenstein of Zidichov. The other is R. Chaim Halberstam of Sanz. Presumably R. Hildesheimer singled out R. Halberstam because of the latter's reputation as a leading halachist. R. Halberstam's inscription reads: "All these things are forbidden based on the *Code of Jewish Law* and the decisors. It is

to rebuke sinners, and that whoever fails to rebuke is cursed, they agreed on the following without citing sources or references.¹⁷

1. Preaching in local language: It is forbidden to preach in a gentile language.¹⁸ It is also forbidden to listen to a sermon in a gentile language.

forbidden to change any Jewish custom in the building of a synagogue or any ceremony or custom that was received from our ancestors and early generations. Whoever changes, has the lower hand.”

¹⁷ The lengthy introduction and conclusion are available in the version published in *Lev Ha-Ivri* and *Ma'aseh Avos*. See above note 9.

¹⁸ The reason to insist on speaking a uniquely Jewish language is the hurdle it poses to joining the general culture and assimilating even partly into it. The *Mechilta* (*Bo, Pesachim*, ch. 5) says that the Jews in Egypt were unworthy of redemption until G-d commanded them to engage in circumcision and the Pesach sacrifice. R. Eliezer Ha-Kapar objected that the Jews observed four commandments in Egypt: they did not engage in forbidden relations, gossip, change their names or change their language. All four seem to indicate communal unity. Alternately, the first two refer to internal unity while the last two indicate communal boundaries. This Midrash appears many times in various texts. See *Torah Sheleimah, She-mos* (vol. 8), ch. 1 n. 26 and the many sources cited there. A different text cited to justify this apparent prohibition to speak a non-Jewish language is Talmud Yerushalmi, *Shabbos* 1:4: “R. Shimon bar Yochai said: On that day, they decreed on [gentiles’] bread, their cheese, their wine, ... their language, ...” The *Korban Ha-Edab* (ad loc.) explains that “a person should not accustom himself or his children to speak a gentile language.” Other commentators offer different explanations of that passage, e.g. *Penei Moshe* explains it as referring to gentile testimony in court. However, later opponents of speaking the vernacular cite the *Korban Ha-Edab*’s interpretation. R. Akiva Yosef Schlesinger (*Lev Ha-Ivri* [Jerusalem, 1924], vol. 1 p. 24a) quotes R. Moshe of Coucy (*Semag*, prohibition 50) who writes that the Biblical prohibition of *Chukos Ha-Goyim* (*Vayikra* 20:23) means that “Jews must be distinct from the nations in clothing, practice and speech.” R. Schlesinger also quotes R. Moshe Sofer (*Responsa Chasam Sofer*, vol. 5 no. 197), who refers to those “who speak the vernacular, because it is forbidden to learn Torah from them.” The context of that quote is that after answering a question from a town, R. Sofer encourages the town to hire a rabbi. However, he cautions the townspeople not to hire a rabbi with reform leanings, who speaks disparagingly about the Torah, reads secular books and speaks the vernacular. Such a rabbi, with reform leanings, is unfit to lead the community. It is not clear that R. Sofer was making a general statement about speaking the vernacular. However, it does seem to apply to a rabbi in that time and place who preached in the vernacular, who generally had reform leanings. Similarly, R. Akiva Yosef Schlesinger (*Lev Ha-Ivri*, vol. 1 p. 21a n. 2) tells a story in which R. Sofer approved the hiring of a righteous, learned rabbi who preached in German. In R. Schlesinger’s telling, that rabbi ended up causing great aggravation

Therefore, every Jew who hears a rabbi or someone else preaching in a foreign language must leave the synagogue and go outside. A preacher must sermonize in the Jewish language spoken by observant Jews in that country.¹⁹

2. Synagogue platform: It is forbidden to enter a synagogue to pray if it does not have its platform in the center.²⁰

3. Synagogue steeple: It is forbidden to make a synagogue with a steeple.²¹

4. Special cantor's clothes: It is forbidden to make special clothes for a prayer leader and singers so they resemble other religions' practices.²²

to R. Sofer and eventually dying young. See also *Lev Ha-Ivri*, vol. 1 pp. 41b, 51b, 54b, 55a, 58a, 63a.

¹⁹ This seems to anticipate the objection that Sephardim do not speak Yiddish. Instead, the Judicial Decision insists on the language of local observant Jews, which would include Ladino and any other similar Jewish language.

²⁰ Four reasons are offered for insisting that the platform remain in the middle. 1) Maimonides, *Mishneh Torah (Hilchos Tefillah 11:3)*, writes that the platform in the center is a practical matter: "We place the platform in the center of the house so that someone can ascend to read from the Torah or speak words of inspiration to the people, and everyone can hear." Based on this, the *Kesef Mishneh* (ad loc.) writes that the platform can be moved from the center, depending on the circumstances. *Tur, Orach Chaim* 150 and Rema, ad loc., par. 5 write that the platform is placed in the center, without explaining why. 2) R. Moshe Sofer, *Responsa Chasam Sofer* (vol. 1 no. 28) compares the platform to the altar in the Temple. Just like the altar was in the center, so, too, the platform must be placed there. 3) R. Yechezkel Landau (*Noda Bi-Yehudah*, vol. 2 *Orach Chaim* no. 15) discusses building a synagogue in the shape of an octagon. He concludes that this is forbidden if the intent is to imitate gentile practices. However, it is permissible if the intent is to maximize space. This responsum is used to oppose moving the platform to the front of the synagogue, in imitation of churches. R. Moshe Schick (*Responsa Maharam Schick, Yoreh De'ah*, no. 165) invokes the prohibition against imitating other religions to forbid moving the platform from the center. 4) R. Avraham Shmuel Binyamin Sofer (*Responsa Kesav Sofer, Orach Chaim*, no. 19) also says that "*Minbag Yisrael Torah*, Jewish customs are Torah." See also R. Yosef Zechariah Stern, *Zeicher Yehosef, Orach Chaim*, no. 39.

²¹ A steeple is a direct imitation of church architecture. See the previous note about the prohibition of imitating gentile practices. The first Reform temple, built in 1810 in Seesen, had a steeple with a bell. See Leo Trepp, *A History of the Jewish Experience* (Springfield, NJ, 2001), p. 182. A picture is included in Michael A. Meyer, *Response to Modernity: A History of the Reform Movement in Judaism* (Detroit, MI, 1988), p. 41.

²² The Torah (Lev. 18:3) forbids following gentile practices. *Sefer Ha-Chinuch* (no. 262) says that this mitzvah means "that we should not act like them in our

5. Partition: It is forbidden to make the partition separating the men's and women's sections in a way that men can look at women.²³ Rather, they must be made as was practiced in the past. And if it was already done, people should not enter it.²⁴

clothes or our manners.” The most lenient view about this prohibition is that of the Maharik (Responsa, no. 88), who holds that as long as a practice is adopted by Jews for a reason other than imitation of gentiles, it is permissible. R. Moshe Isserles (*Shulchan Aruch, Yoreh De'ab* 178:1) seems to adopt the Maharik's approach. R. Chaim Palaggi (*Ruach Chaim, Yoreh De'ab* 178:2) argues that even according to the Maharik, it is still forbidden to wear clothes like a priest because the only reason to do so is imitation. R. David Tzvi Hoffmann (*Melamed Le-Ho'il*, no. 16) argues that according to Maharik, an idolatrous practice is forbidden even if it has a rational basis. R. Akiva Yosef Schlesinger (*Lev Ha-Ivri*, vol. 1 p. 73a) quotes *Shulchan Aruch (Orach Chaim* 53:18) which forbids letting someone lead prayers if he insists on wearing colored clothing, which in ancient times was a heretical practice. R. Schlesinger argues that this should be true for someone who insists on wearing Christian clothing in order to lead prayers.

²³ The Talmudic source for the requirement for a synagogue partition between men and women is *Succah* 51b–52a regarding the balcony built in the Temple to prevent frivolity between men and women. Maimonides (*Commentary to Mishnah, Succah* 5:2) writes that the balcony was intended to prevent men from seeing women. Elsewhere (*Commentary to Mishnah, Middos* 2:5; *Mishneh Torah, Hilchos Lulav* 8:12, *Hilchos Beis Ha-Bechirah* 5:9), Maimonides gives as the reason for the balcony the avoidance of intermingling. R. Yom Tom Lipman Heller (*Tosefos Yom Tov, Succah* 5:2 sv. *tikkun gadol*) emphasized the former reason, which impacted subsequent halachic literature. Famously, R. Yoel Teitelbaum and R. Moshe Feinstein disagreed on this point. R. Teitelbaum (*Responsa Divrei Yoel* 1:10:7) rules that a partition must prevent men from seeing women. R. Moshe Feinstein (*Iggeros Moshe, Orach Chaim* 1:39) requires a partition that prevents intermingling and frivolity but permits a partition that reaches women's shoulders. For more on the required synagogue partition, see my “The Mehitzah Controversy: Fifty Years Later” in *B.D.D.* 17 (Sep. 2006), pp. 7–43, reprinted in my *Posts Along the Way* (Brooklyn, NY, 2009), p. 192ff.

²⁴ In mid-twentieth century United States, it was common for Orthodox rabbinic leaders and organizations to publish advertisements before the High Holidays, warning people that it is better to pray alone and fail to hear *shofar* than to pray in a synagogue with mixed seating. See Baruch Levine, *The Sanctity of the Synagogue*, 2nd edition (New York, 1962), p. 78ff. However, many of these statements refer to mixed seating, not separate seating without a partition or with an insufficient partition. For example, R. Joseph B. Soloveitchik refers to a synagogue that had “men and women sitting together” (p. 115). He explains his “stringent position regarding the mingling of men and women.” This is not to say that he permits a low partition but just that his admonition to leave the synagogue refers to those with mixed seating. In contrast, the Agudath Ha-Rabbanim issued a statement in which it says, “A synagogue which does not have a proper *mehitzab* is not a

6. Choir: It is forbidden to hear the prayers of a choir²⁵ and even more so to pray with them or to answer Amen after them, even if one is forced by this to fulfill, “Let him sit alone and keep silent” (Lam. 3:28).

7. Choir shul: It is forbidden to enter synagogues that are called “choir shul,” since they constitute a house of heresy.²⁶ As it says in the Talmud (*Shabbos* 116a): “Rabbi Tarfon... even if someone is chasing after him to kill him and a snake is running to bite him, he may enter a house of idolatry but not those houses...”²⁷

8. Wedding in synagogue: It is forbidden to conduct a wedding in a synagogue; [it is permitted] only under the sky.²⁸

kosher synagogue, and it is not permitted to pray there... He should pray without a *minyán* rather than attend services in a non-kosher synagogue” (pp. 92–93).

²⁵ R. Chaim Halberstam (*Divrei Chaim, Orach Chaim*, no. 18) offers two reasons for the prohibition. First, establishing a choir follows Christian practices, which is forbidden. Additionally, it deviates from Jewish custom.

²⁶ This paragraph may seem redundant with the prior but it adds something important. A “choir shul” was a moderate Orthodox synagogue, one that initiated minor reforms but remained traditional in general. By forbidding entrance into a “choir shul,” this judicial decision denounces moderates as heretics.

²⁷ “Those houses” refers to heretics’ houses of worship, as opposed to idolators’. The heretics under discussion were Jewish Christians during the time when they were being expelled (spiritually) from the Jewish community. See Lawrence Schiffman, *Who Was a Jew? Rabbinic and Halakic Perspectives on the Jewish-Christian Schism* (Hoboken, NJ, 1985), pp. 62–63.

²⁸ Rema, *Even Ha-Ezer* 61:1 says that some say to hold the *chuppah*, the primary wedding ceremony, under the sky to invoke the blessing that their descendants should be as numerous as the stars. R. Moshe Sofer (*Responsa Chasam Sofer* 3:98) explains that the old German custom, as described by R. Moshe Mintz (*Responsa*, no. 29), was to hold the ceremony outside and then enter the synagogue for the recitation of the seven blessings. R. Sofer notes that in Germany in his time, the entire ceremony with the blessings was held outdoors. According to R. Sofer, the impetus to move the entire wedding ceremony into the synagogue is the desire to imitate the practice of Christians, who marry in a church. R. Chizkiyahu Medini (*Sdei Chemed*, vol. 7, *Ma’areches Chassan Ve-Kallah*, no. 1) quotes R. Moshe Isserles (*Shulchan Aruch, Orach Chaim* 88:1) who says that the custom is that menstruating women do not enter a synagogue. R. Medini suggests that since inevitably a menstruating woman will attend a wedding, the ceremony should not be performed in a synagogue. R. Yehuda Aszod (*Yehudah Ya’aleh, Orach Chaim*, no. 38) adds the concern for men and women mingling. R. Yitzchak Herzog (*Heichal Yitzchak, Even Ha-Ezer* 2:27) amplifies this concern, pointing out that not only do the bride and groom kiss at many weddings, which is inappropriate in a synagogue, so do many male and female guests who are not married to each other. R. Aszod (*ibid.*) also forbids performing weddings in a

9. Changing customs: It is forbidden to change any Jewish custom or synagogue practice received from our ancestors.²⁹ Regarding those synagogues about which we wrote one is forbidden to enter, there is no difference between weekdays and Shabbos, Rosh Hashanah and Yom Kippur. [This is true] even if one must pray in private.^{30 31}

synagogue because it is a change to the custom. See also R. Yosef Zechariah Stern, *Responsa Zeicher Yehosef, Even Ha-Ezer*, no. 50 (which is a slightly different version of what is published in his name in *Sdei Chemed*, *ibid.*); R. David Katz, "Performing a Wedding in a Synagogue" in *Journal of Halacha and Contemporary Society* XVIII (Fall 1989/Succot 5750).

²⁹ The Talmudic source for the requirement to follow a custom is *Pesachim* 50b, based on Proverbs 1:8: "Listen, son, to the rebuke of your father and do not abandon the teaching of your mother." *Pri Chadash* (*Orach Chaim* 497, par. 5; followed by *Chayei Adam* 127:9) writes that you can annul a custom only if all or most of the people subject to the custom agree. R. Shlomo Luria (*Responsa Maharschal*, no. 6) adds that a custom can only be annulled by someone not bound by it. Therefore, a custom universally practiced by Jews cannot be removed. The *Shach* (*Yoreh De'ab* 214:4) follows this ruling, as does the *Pri Chadash* (*ibid.*, par. 6), who say that "this is clear." *Pri To'ar* (39:32) concludes that when someone accepts a practice with the intent that his descendants must follow in his footsteps, that custom is binding on them and not subject to annulment.

³⁰ R. Akiva Yosef Schlesinger (*Lev Ha-Ivri*, vol. 1 p. 72a–b) cites *Shabbos* (116a), quoted above in paragraph 7, that it is worse to enter a house of heresy than a house of idolatry. He considers synagogues that enact a variety of innovations to be houses of heresy. Therefore, it is forbidden to enter such a building and if you discover that you are in such a building, you must leave. The innovations he lists include: moving the platform from the center, allowing a choir to sing, and other changes. R. Moshe Schick (*Responsa Maharam Schick, Orach Chaim* 71) forbids praying in a synagogue where innovations are introduced based on the saying in *Makkos* 5b that those who join with sinners are considered sinners. He also quotes *Yoma* 70a that seeing a mitzvah is itself a mitzvah. Similarly, R. Moshe Schick deduces, seeing a sin is itself sinful. Therefore, you may not remain in a synagogue where people are acting sinfully even if you do nothing at all. Rather, you must leave the room. R. Yitzchak Dov Bamburgher (*Yad Ha-Levi*, vol. 3, no. 8) forbids praying in a synagogue that uses an organ on Shabbos and holidays, although he does not offer a specific reason.

³¹ The version in *Lev Ha-Ivri* and *Ma'aseh Avos* (see above, note 9) includes a tenth paragraph: "There was another that is as important as all of them, the opening of sin, the source of all evil, may God have mercy. The rabbis did not want to publicize it because of their government's decree. It is that it is forbidden to learn or to transmit to your son any subject except Torah and a profession that is labor and not knowledge or writing or speaking a foreign language. This already emerges from a ruling of R. Akiva Eiger that it is included in the rule that one must accept martyrdom rather than violating it. This is more strict than changing one's shoe strap, like the Gemara in *Avodah Zarah* (17a, 27b), and this

Behold, just like it is not allowed to permit that which is forbidden, similarly it is not allowed to forbid that which is permitted, as explained in the *Shach* (Y.D. 242).³² However, as a preventive measure, it is permissible even to be lenient against a Biblical prohibition, as explained in *Yevamos* (90b)³³ and Rambam (*Yesodei Ha-Torah* 9:3),³⁴ and even more so to be strict. Rambam (*Mamrim* ch. 2) explained all this well. Without a doubt, the aforementioned great rabbis knew that in their region it is appropriate to establish a protective measure even on something for which there is no prohibition in the Talmud and codes.³⁵ Even though we do not issue decrees on the community unless most of the public can abide by them, explained in the Talmud (*Avodah Zarah* 36a) and Rambam (*Mamrim* 2:5), they undoubtedly know that in their region most of the public can abide by these enactments³⁶ and a judge can only rule based on what he sees.³⁷ However, the prohibitions that the aforementioned rabbis issued have standing only in their communities and on those who live under their authority. But in other places and regions, they have no power or permission to issue preventive measures, decrees or enactments. Only the Great

has been published many times in the words of the Medieval scholars. Whoever cannot abide this must leave the country to save himself and his children, as described in *Mishneh Torah, Hilchos Dei'os* 6:1; *Hilchos Yesodei Ha-Torah* 5:1 and in *Yoreh De'ab* 157." R. Hildesheimer clearly disagreed with this ruling, since the school he established in Halberstadt included secular studies (which initially he taught himself, in addition to all the Torah classes) and the seminary he established in Berlin required enrollment in the University of Berlin.

³² Summary of how to rule on forbidden items, par. 9

³³ The Talmud (*Yevamos* 90b) offers a number of attempted proofs that the Sages can uproot a Torah law. The conclusion is that this is only allowed as a preventive measure, *le-migdar milsa*.

³⁴ This passage refers specifically to prophets. It seems that a more appropriate passage is *Mishneh Torah, Hilchos Mamrim* 2:4, which is quoted in the next sentence.

³⁵ R. Hildesheimer states that the strict rulings are a preventive measure. Implicit in this statement is the assumption that the rabbis who issued these rulings used exaggerated language. Rather than state their public policy concerns, they invoked strict legal positions that R. Hildesheimer believes are overstated.

³⁶ If these are public policy decisions, then there is room to set them aside if the public cannot abide by them. However, if they are rulings, the rabbis must rule according to the law even if the public will not follow it, except for a preventive measure, as discussed above.

³⁷ *Bava Basra* 131a; *Sanhedrin* 6b; *Niddah* 20b.

Court can do this, as explained by the Rambam (*Mamrim*).³⁸ Someone who violates these prohibitions has not committed any sin, without any doubt in the world.³⁹ Those of us signed below,⁴⁰ when we saw that in our regions not only can the public not abide by these prohibitions, but they will lead to much, much greater loss than reward⁴¹—as you can see for yourself,⁴² and these matters are too extensive to describe—we found ourselves obligated to say which rulings are technically permitted and which are forbidden:

1. Preaching in local language: This cannot be found in any legal authority. Of the proofs brought for support, some are inconclusive and

³⁸ *Mishneh Torah (Hilchos Mamrim 1:1)*: “The Great Court in Jerusalem is a fundamental principle of the Oral Torah. Its members are the pillars of ruling; from it law and order emanate to all of Israel.”

³⁹ R. Hildesheimer seems to exaggerate here. Below, as he proceeds to analyze the judicial decision paragraph by paragraph, he agrees with some of the judicial decision’s prohibitions.

⁴⁰ As mentioned above, R. Hildesheimer initially intended to publish this with others signed at the bottom, similar to the original judicial decision. He changed his mind and published this alone.

⁴¹ When something is prohibited by law, there is limited (albeit some) room to consider whether people will follow the ruling. However, when addressing issues whose permissibility is driven by public policy, the public reaction has to be part of the decision.

⁴² For example, R. Moshe Schick (*Responsa Maharam Schick, Orach Chaim*, no. 70) addresses whether a rabbi whose community only understands the local language must still speak in Yiddish. According to the judicial decision, he must preach in a language his community does not understand.

others can be conclusively disproven.⁴³ It is clear that there is no hint anywhere that listeners must go outside.⁴⁴

⁴³ R. Tzvi Hirsch Chajes, in his 1847 book *Minchas Kena'os* (p. 992f), writes that sermonizing in the secular language is a positive development. Earlier, Chacham Isaac Bernays and R. Yaakov Ettlinger had begun preaching in German (see R. Shnayer Leiman, "Rabbinic Openness," p. 171 n. 57, p. 176). R. Moshe Schick (*Responsa Maharam Schick, Orach Chaim*, no. 70) expresses concern that speaking in the secular language is often a gateway to leaving traditional Judaism. Even if the individual is safe from such concerns, his speaking the language might give others false confidence in themselves. However, he is willing theoretically to permit the practice for someone attempting to counter the forces of secular influence. In the end, he defers to the authors of the judicial decision, despite disagreeing with them. R. Yechiel Yaakov Weinberg (*Seridei Eish*, vol. 2 no. 53 sec. 7 [vol. 2 no. 149 in old editions]) distinguishes between prior generations, in which sermons were given in German in order to draw people toward the German Enlightenment, and his generation in which German sermons are used to draw people to traditional Judaism. He even says that if R. Moshe Sofer had been alive at the time of the writing of R. Weinberg's responsum, he would be very happy to see traditionalist rabbis preaching in German in order to fight foreign influences. R. Moshe Feinstein (*Iggeros Moshe, Orach Chaim*, vol. 4, no. 66) asserts that Jews did not change their names in Egypt because they had not yet received the Torah. The Jewish people had only their culture to bind them as a nation. Once the Torah was given, it binds the nation. Therefore, there is no longer a need to retain Jewish names and, presumably, to avoid speaking in the vernacular.

⁴⁴ R. Hildesheimer (*Responsa Rabbi Azriel, Yoreh De'ah*, no. 187) was asked whether a kosher slaughterer may serve as the cantor and Torah reader in a synagogue that uses an organ on Shabbos and holidays. He responds:

It is true that it is correct and very proper not to enter a synagogue in which they disdain the prohibition against playing music [on Shabbos] and imitating gentile ways. If there was only the second concern [that they would fire him and hire a less worthy slaughterer who will feed them non-kosher], there would be no issue. "What is your concern with G-d's secrets?" (*Berachos* 10a). If they could take another slaughterer who is among the disgusting slaughterers, we would not be concerned with this because, "Let [the wicked] stuff themselves [and die]" (*Bava Kama* 69a). However, regarding the first concern [the slaughterer needs to support his family], we certainly must be concerned for it because there is no explicit prohibition not to attend a synagogue where they play an organ. Even though everyone is obligated to avoid this coercion, until G-d releases this slaughterer from the coercion, he is obligated to show mercy on the members of his household. May G-d free him from all affliction, trouble and distress.

See also *Responsa Rabbi Azriel (Yoreh De'ah, no. 133)*.

2. Synagogue platform: Even though we are obligated to place the platform in the synagogue's center,⁴⁵ as explained in *Shulchan Aruch* to whose rulings we are subject,⁴⁶ there is no hint that it is forbidden to enter a synagogue whose platform is not in its center. What should we do with most of the Sephardic synagogues whose platform is in the west side?

3. Synagogue steeple: It is true that it is forbidden to build a synagogue with a steeple on it. What is forbidden includes not just a steeple, which is difficult to distinguish always between a steeple and a large building as mentioned in *Shulchan Aruch* (*Orach Chaim* 150:3), but only that which is made in imitation of gentile prayerhouse architecture. It is appropriate to remove it after it was made. However, we do not find any legal source forbidding entrance to such a synagogue.

4. Special cantor's clothes: We also agree that there is a strict prohibition against making special clothes for a prayer leader and singers *in order to imitate gentile practices*. However, [it is wrong] to issue immediately a prohibition like this. From this remote comparison, do we place within this strict prohibition [of imitating gentile practices] every synagogue practice, on which even the observant often find themselves forced to compromise for the sake of peace and their intent desirable to remove a great obstacle?⁴⁷

⁴⁵ The *Kesef Mishneh* (*Hilchos Tefillah* 11:3) says that the platform does not have to be in the center, depending on the circumstances. R. Tzvi Hirsch Grodzinski (*Mikra'ei Kodesh*, 1:1 and in the addenda for vol. 1) defends the *Kesef Mishneh*. R. Moshe Feinstein, *Iggeros Moshe* (*Orach Chaim*, vol. 2 no. 42), references the judicial decision, what he calls a Hungarian prohibition on praying in a synagogue in which the platform is not in the center. He writes that this only refers to Reform synagogues. However, if the platform is moved in order to increase the space for prayers, one may pray in such a synagogue. R. Feinstein (*ibid.*, and in the prior responsum) writes that R. Sofer has no source for his view, so while we should be strict and not move the platform from the center, we may pray in a synagogue in which it was moved.

R. Hildesheimer, in a responsum (*Responsa Rabbi Azriel, Orach Chaim*, no. 20), argues that this is an established custom and therefore must be preserved. He encourages his correspondent to fight against the attempt to move the platform, even if all he can do is rebuke the congregation.

⁴⁶ Michael K. Silber ("The Emergence of Ultra-Orthodoxy," p. 49) writes that "the canonization of *Shulchan Aruch* is the hallmark of Hungarian Orthodoxy... a quality which set the ultra-Orthodox apart from the general mainstream Orthodox." However, we see here that R. Hildesheimer also accepts *Shulchan Aruch* as part of his canon.

⁴⁷ Two of R. Hildesheimer's top students disagreed about this. R. David Tzvi Hoffmann wrote a long responsum regarding the use of an organ in a synagogue

5. Partition: On this we agree completely with the judicial decision. The source for this law is the Mishnah and Gemara in *Succah* (52a)⁴⁸ and *Berachos* (24), and *Shulchan Aruch* (*Orach Chaim* 75:1–2).⁴⁹

6. and 7. Choir: There are many types of choirs. The worst is one in which women sing and men answer, or vice versa.⁵⁰ Heaven forbid to enter such a building, and whoever enters it will not return.⁵¹ The second type consists of just men but with repetitions of G-d's name or the word "One" in the *Mussaf Kedushah*. Honestly, there is a third type in which no prohibitions of this or any type are violated.⁵² Heaven forbid to call a

during the week (not on Shabbos). In his responsum (*Melamed Le-Ho'il, Orach Chaim*, no. 16), he invoked the prohibition against imitating gentile practices. He showed this responsum to R. Hildesheimer (who concurred) and to R. Marcus Horowitz. With R. Hildesheimer's permission, R. Horowitz wrote a responsum in disagreement (*Responsa Mateh Levi*, vol. 2, *Orach Chaim*, no. 6). R. Horowitz argues that the prohibition does not apply because the practice is worthy even if the gentiles had not established it first. He asks pointedly, how else can they justify wearing a *taler*, clerical canonicals? R. Horowitz still prohibited using an organ during the week because it is the practice of the reformers who attempted to destroy Judaism. R. Shnayer Leiman ("Rabbinic Openness," pp. 170–171 n. 56) shows that Chacham Isaac Bernays, R. Yaakov Ettlinger and R. Samson Raphael Hirsch wore canonicals.

⁴⁸ This passage discusses the women's gallery implemented in the Temple. See above note 23.

⁴⁹ *Berachos* 24a and *Shulchan Aruch* 75 discuss the parts of a woman which, when uncovered, prohibit a man from praying, reciting a blessing or learning Torah. The implication is that if women dress immodestly in synagogue then men may not pray unless the partition is high enough to preclude men from seeing women. See above note 23 that in this regard, R. Hildesheimer ruled like R. Yoel Teitelbaum, and not like R. Moshe Feinstein, that a synagogue partition must prevent men from seeing women.

⁵⁰ *Sotah* 48a: "When men sing and women respond, it is licentiousness. When women sing and men respond, it is like fire on kindling." R. Tzvi Hirsch Chajes (*Minchas Kena'os*, p. 993) writes that people who pray in a synagogue with a mixed-sex choir violate a Biblical prohibition and fail to fulfill their obligation to pray.

⁵¹ Proverbs 2:19. The Gemara (*Avodah Zarah* 17a) applies this verse to heresy.

⁵² R. Chajes (*ibid.*, p. 992) writes that a choir in a synagogue does not invoke the concern of imitating gentile practice because it is an ancient Jewish practice. He says that gentiles took the practice from Jews, and not vice versa. The following is the translation of an 1859 responsum regarding choirs written by R. Hildesheimer and published in *Responsa Rabbi Azriel*, vol. 2, no. 246. (Emphasis included in the original. Three introductory and concluding paragraphs about personal matters are omitted from this translation.):

Regarding what your request for me to comment on your community's intention to sing in choirs (called a *chor*) which is a big sin, you asked a difficult question. Who is greater than the genius from Zolkiev [R. Tzvi Hirsch Chajes], whom the great Chasam Sofer [R. Moshe Sofer] praised in the last responsum of his *Responsa Chasam Sofer (Orach Chaim)*. This is what he [R. Chajes] wrote at the end of his *Imrei Binah (Minchas Kena'os*, p. 7a): "Singing with a choir, even though it is practiced among them [Christians], we still had singing with a choir already in the times of the prophets and the priests, who served in the holy [Temple]. We hold that the primary aspect of song [in the Temple] is by mouth. They [the Christians] learned it all from us. Therefore, there is no concern of 'and you shall not walk in their customs.'" Even though I am not at all comfortable permitting this with a wave of the hand, and the heavens can attest that I always refused even the possibility of attending a synagogue where they sing with a choir, they certainly can rely on this great scholar [R. Chajes]. Without a doubt, he will find agreement with other rabbis who, due to our great sins, are among those who attempt to find favor with the government.

Believe me, dear respondent, I was surprised many times that the great leaders of the generation, R. Moshe Sofer and the chief rabbi of Mehren [Czech] did not oppose the group of reformers who instituted this in Vienna, Prague, Pest and from there the plague spread throughout the land, as is well known. They certainly saw the future, that they [the rabbis] would not be able to fight them [the reformers] on this issue. Therefore, they stood afar and said neither that it is permitted nor forbidden.

Another proof from the source of the reforms, the lawless in Hamburg who instituted reforms opposed by all the great Torah scholars of the generation in the book, *Eileh Divrei Ha-Bris*. [These reforms include] playing an organ on Shabbos and holidays, changing the prayer service, and praying in the local language. This group also instituted singing with a choir, immediately on establishment [of the Temple]. They [the great rabbis] did not object, from which we can infer that they could not do anything about it.

Not only that, now a new idea has arisen in Hamburg which, due to our sins, has spread *among most of the religious community* in which everyone sings together with the choir (which they call congregational singing). They built a new synagogue there and do not want singing of just a few people in the choir because they oppose this practice. Rather, their intent is to have *the entire congregation* sing together. The rabbi is not able to oppose them since they include the majority of upright religious individuals. But what difference is there between a choir of ten people and a choir of the entire congregation?

From all this, I see and understand that, in our great sins, we are not able to stand against the lawless on this matter. [Therefore, we cannot take an inflexible stand] so that we will not be, heaven forbid, distant from reward and near to...

building like this a house of heresy or to compare it to that discussed in *Shabbos* (116). Yet, the new is forbidden by the Torah everywhere,⁵³ and not only is it wrong to institute this last type but we should try to stop it as much as we can without causing greater harm than good through the fire of controversy. However, there is no basis to say that it is forbidden to enter a synagogue like this and that one should rather sit alone quietly on the holy Shabbos, Rosh Hashanah and Yom Kippur.

8. Wedding in synagogue: Nowhere in the *Shulchan Aruch* do we find that conducting a wedding in a synagogue is called forbidden. Only the Rema brings an opinion to conduct a wedding under the sky.⁵⁴ For this reason, some congregations and countries long ago never accepted this custom. Those who accepted this custom should refrain from changing it, like with all customs. However, we should not blame those [rabbis] who are pressured [by their congregants] to agree to this because many great and righteous [rabbis] found that it is better not to stoke the fire of controversy over this issue [of conducting a wedding in a synagogue].

9. Changing customs: This is explicit in the Talmud Yerushalmi, quoted in the *Magen Avraham (Hilchos Tefillah)*.⁵⁵ We find ourselves obligated to

⁵³ R. Hildesheimer invokes R. Moshe Sofer's famous statement prohibiting innovations. On this statement, see Moshe Samet, "Innovations in Synagogue Ritual: The Rabbis' Stand Against the Reform 'Innovators,'" (Hebrew) *Assufos* 5 (1991), pp. 400–402 (cited in Adam Ferziger, *Exclusion and Hierarchy: Orthodoxy, Nonobservance, and the Emergence of Modern Jewish Identity* (Philadelphia, PA, 2005), p. 227 n. 16).

⁵⁴ R. Moshe Isserles, *Shulchan Aruch (Even Ha-Ezer 61:1)*. Elsewhere, R. Isserles (*Shulchan Aruch, Yoreh De'ah 391:3*) refers without disapproval to places where weddings are conducted inside a synagogue. R. Yisrael Lifschitz, in his introduction to his *Tiferes Yisrael* commentary to Mishnah *Mo'ed (Kelalei Semachos, Sheloshim, no. 2)*, points out that R. Isserles' source does not say synagogue (*beis ha-knesses*) but rather the married couple's house (*beis ha-nissu'in*). He suggests that a copyist mistook the Rema's abbreviation *b"b* for synagogue.

⁵⁵ *Magen Avraham* is a commentary on *Shulchan Aruch, Orach Chaim* by R. Avraham Gombiner (d. 1682). The passage quoted by R. Hildesheimer is actually in the laws of *Shema* and not the laws of prayer – ch. 68, introduction. *Magen Avraham* quotes a passage from the Talmud Yerushalmi in *Erwin* (3:9) that, according to his version, says that the Sages of the Land of Israel sent a message to the Jews of Alexandria, saying, "Even though we sent you the order [i.e. text] of the prayers, do not change from your ancestral custom [i.e., the prayer text of your ancestors]." However, the standard texts refer to the second day of the holiday, which is observed outside of Israel due to uncertainty about the calendar. According to this version, the message to Alexandria said, "Even though we sent

bring awareness to our Jewish brethren about this prohibition because even changing from Nusach Ashkenaz, which was transmitted to us from our ancestors, to Nusach Sephard [is forbidden].⁵⁶ There is no legal permission to institute this in public prayer.

We, the undersigned, agree to all this.⁵⁷ Our prayer to the living G-d is that He make peace between the believers in G-d and His holy Torah, and they do not split daily into two camps.⁵⁸ G-d will give strength to His people and bless His people with peace.⁵⁹ ❧

The original Hebrew text follows.

you the order [i.e., the days] of the holidays, do not change from your ancestral custom [of observing two days of holidays out of doubt].”

⁵⁶ R. Hildesheimer intended this as a clever jab at the signers of the judicial decision, many of whom were Chassidic rabbis who themselves or their ancestors switched from Nusach Ashkenaz to Nusach Sephard, and encouraged others to do so. See *Responsa Chasam Sofer, Orach Chaim*, nos. 15–16 forbidding this change.

⁵⁷ This language refers to R. Hildesheimer’s plan to obtain other rabbinic signatures for this response. As already mentioned, he changed plans and published it under his name. However, he neglected to change the conclusion.

⁵⁸ See Genesis 32:8.

⁵⁹ Psalms 29:11.

מודעה

הנה האיר לנגד עינינו עלה אחד, אשר בשם 'פסק דין' יכונה, ואשר רבים וגם שלמים ורבנים מגליל התחתון באונגארן, וגם הרב אבדק"ק צאנז נר"י, חתומים תחתיו; ואחר פתיחת הדברים בעניני מוסר על חיוב המוטל על רבני ארץ למחות בעוברי עבירה, וכי מי שלא ימחה הוא בארור – הסכימו בדברים ברורים בלי העתקת מקור מוצא הדין:

א': אסור לדרוש דרשה בלשון אומה"ע. וכן אסור לשמוע דרשה האמורה בלשון אומה"ע – ע"כ צריך כל בר ישראל, אשר ישמע לרב או לאחר דורש בלשון נכריה לעזוב בהכ"נ ולצאת חוצה; והדורש צריך לדרוש בלשון יהודית שמדברים בו ישראלים הכשרים אנשי מדינה הזאת.

ב': אסור לכנוס [צ"ל ליכנס] לבהכ"נ להתפלל אשר אין לו בימה באמצע.

ג': אסור לעשות בהכ"נ במגדל.

ד': אסור לעשות מלבושים מיוחדים לש"ץ ולמשוררים באופן שיהיו דומים לשאר נימוסי דתות.

ה': אסור לעשות המחיצה המבדלת בין עזרת נשים ואנשים באופן שיוכלו להסתכל אנשים בנשים, רק יעשו כנהוג מימי קדם; וכן אם כבר נעשה, לא יכנסו בו.

ו': אסור לשמוע תפילת קאהר קו"ח להתפלל עמהם או לענות אמן אחריהם אף אם הוא מוכרח לקיים עי"ז ישב בדד וידום וכו'.

ז': בתי כנסיות הנקראים קאהר שוהל (קאהר שילען), מאחר שהוא בית אפיקורסות אסור לכנוס [צ"ל ליכנס] לתוכה, כדאיתא בגמ' שבת דף קט"ז ע"א, אמר ר' טרפון וכו' שאפילו אדם רודף אחריו להורגו ונחש רץ להכישו נכנס לבית ע"ז ואל יכנס לבתייהם של אלו וכו'.

ח': אסור לעשות החופה בבהכ"נ רק [תהיה] תחת השמים.

ט': אסור לשנות שום מנהג יהודית או שום נימוס בהכ"נ מאשר מקובל מאבותינו ומאבות אבותינו. – אלו בתי כנסיות אשר כתבנו שאסור לכנוס [צ"ל ליכנס] לתוכם אין חילוק בין שאר ימים, לשבת ור"ה ויוה"כ; ואף אם צריך להתפלל עי"כ ביחידות.

והנה כשם שאסור להתיר את האסור, כך אסור לאסור את המותר, כמבואר בש"ך י.ד סוף סי' רמ"ב, ואעפ"כ למיגדר מילתא מותר אפילו להקל נגד איסור דאורייתא, כמבואר יבמות דף צ' ע"ב וברמב"ם פ"ט מהל' יסודי התורה הלכה ג', ומכש"כ להחמיר. וכבר ביאר הכל כראוי הרמב"ם פ"ב מהל' ממרים; ובלי ספק ידעו הרבנים המופלגים הנ"ל כי בגליל שלהם נכון לגדור גדר אף בדבר שלא נמצא האיסור בש"ס ופוסקים, ואף שאין גוזרים גזירה על הציבור אא"כ רוב הציבור יכולים לעמוד בה, כמבואר בפ' אין מעמידין וברמב"ם פ"ב מהל' ממרים הל' ה'; בלתי ספק הם יודעים כי בגליל שלהם באמת רוב הציבור יכולים לעמוד באלו התקנות, ואין לדיין אלא מה

שעיניו רואות. אכן כל האיסורים שאסרו הרבנים הנ"ל, אין להם שום קיום רק בקהלתם ולהשוכנים תחת דגלם לבד, אבל לשאר מקומות והגלילים אין להם שום כח ורשות למיגדר מילתא ולגזור גזירות ולתקן תקנות; כי רק לב"ד הגדול לבד יש זה, כמבואר ברמב"ם הלכות ממרים. והעובר על איסורים לא נכשל בשום דבר איסור, והוא בלי שום פקפוק שבעולם. ואנחנו החתומים מלמטה, בראותנו כי לא לבד במדינות שלנו אין רוב הציבור יכולים לעמוד בה, רק גם יצמח מזה הפסד גדול יותר ויותר מן השכר אשר המבין יבין בעצמו – והדברים ארוכים מלהרחיב זה בדיבור, – ע"כ מצאנו את עצמינו מחויבים להודיע איזה מן הפסקים מותרים מצד הדין, ואיזהו אסורים:

א': לא נמצא בשום פוסק – והראיות אשר מביאים לסמוך יסודותם עליהם קצתם אינם מכריחות וקצתם יש לדחות תשובה נצחת. ומובן מעצמו כי לא נמצא שום רמז בשום מקום שהשומעים מחויבים לצאת חוצה.

ב': אף כי חובה עלינו להעמיד הבימה באמצע ביהכ"נ, כמבואר בש"ע אשר אנחנו כפופים לכל הלכותיו, ע"כ לא נמצא שום רמז שאסור לכנוס לביהכ"נ אשר הבימה איננה באמצעה; ומה נעשה לרוב בתי הכנסיות של הספרדים אשר הבימה שלהם במקצוע מערבית.

ג': אמת שאסור לעשות ביהכ"נ ומגדל עליו ולא לבד מגדל אשר קשה לסיים בכל פעם מה זה נקרא מגדל ומה בנין גבוה הנזכר באו"ח (סי' ק"ן סע' ג). רק כל מה שנעשה להתדמות בזה לצורת בית תפילת העמים. וראוי להסירו אחר שנעשה: אכן שלא לכנוס לביהכ"נ כזה לא נמצא שום מקור עפ"י דת והלכה.

ד': גם אנו מסכימים שיש בזה איסור חמור לעשות מלבושים מיוחדים לש"ץ ומשוררים להדמות בזה לחוקות הגויים. אמנם להחליט מיד איסור כזה; וכי כל הנהגה בביהכ"נ אשר פעמים רבות גם הכשרים מוצאים את עצמם מוכרחים לתווך השלום להנ"ל וכוונתם רצויה להסיר ע"כ מכשלה גדולה מזה יפול ח"ו ע"י דמיון רחוק הנ"ל תחת איסור החמור הנ"ל?

ה': בזה אנו מסכימים בכל וכל עם פסק ב"ד הנ"ל ומקור דין זה במשנה ובגמ' פ' החליל ובברכות דף כ"ד ש"ע א"ח ע"ב סע' א' וב'.

ו' וז': הרבה מיני קאהר יש, המכוער שבהם הוא ע"י זמרי נשי ועני גברי או להיפך וח"ו ליכנס לבית כזה וכל באיה לא ישובון. – המין הב' ע"י אנשים לבד אבל בהכפלת אמירות השם ב"ה או מלת "אחד" ב"פ בקדושת מוסף. – ובאמת עוד יש מין ג' אשר לא נעשה שום איסור מאיסורים האלה או שאר איסורים על ידי זה ובית כזה חלילה לתוארו לבית אפיקורסות וח"ו לדמותו להמדובר בשבת קט"ז. ואף שהחדש אסור מן התורה בכל מקום, ולא לבד שנכון שלא להנהיג גם המין האחרון, רק יש למנוע עד מקום שידינו מגעת אם לא נגרום הפסד יותר מרובה משכרו ע"י אש המחלוקת וכו' אבל עכ"פ שיהא אסור לכנוס לביהכ"נ כזה ולשבת בדד ולדום בשבת קדש ור"ה ויוה"כ לדברים כאלה אין שום יסוד מצד הדין.

ח': להעמיד חופה בביהכ"נ לא יכונה בשום מקום בש"ע בשם "איסור" רק הרמ"א מביא שיש אומרים להעמיד חופה תחת השמים. ומטעם זה מקדמת דנא לא קבלו עליהם המנהג הזה כמה קהילות ומדינות קדושות. ואם כי לאותם שקבלו יש למנוע השנוי כמו בכל מנהג אכן אין להאשים על אותם שמתוך ההכרח מסכימים לזה אשר כמה גדולים וצדיקים מצאו טוב יותר שלא להבעיר עי"ז אש המחלוקת.

ט': זה מפורש בירושלמי והובא במ"א ה"ל תפילה. אכן מוצאים אנחנו מחויבים לעורר אהב"י באזהרה זו כי גם השנוי מנוסח אשכנזי המסורה לנו מאבותינו ואבות אבותינו לנוסח הספרדי אין למצוא היתר עפ"י הדין להנהיג כזאת בתפילת ציבור.⁶⁰

כל הנ"ל עלו לנו בהסכמה לנו ח"מ ותפילתנו לאלקים חיים שיעשה שלום בין המאמינים בה' ובתורתו הקדושה, ולא יחצו עוד בכל יום ויום לשני מחנות. וה' עוז לעמו יתן ויברך את עמו בשלום.

⁶⁰ בנוסח פסק הדין בספר לב העיברי ובספר מעשה אבות נמצא עוד סעיף בסוגריים וז"ל: (עוד אחרת היתה שהיא כנגד כולם פתח חטאת מקור כל הרעות ה"י, ולא רצו חכמים לגלותה מפני גזירת מלכות דשם, והיא, אסור ללמד או למסור בנו לשום למוד חוץ תורה או אומנות שהיא מלאכה ולא חכמה, ולא כתב ולשון כשדים, וכבר יצא ע"ז הורא"ה ממרן הגאון הר"ר עקיבא איגר זיע"א, שהוא בכלל יהרג ועל יעבור חמור יותר מערקתא דמסאנא בגמ' ע"ז ו"ז וכ"ז, ונדפס גם בזה דברי ראשונים נוחי נפש זיע"א כמה פעמים, ומי שאינו יכול לעמוד על נפשו מחויב לצאת מן המדינה, ולהציל נפשו וזרעו, כמבואר רמב"ם פ"י הלכות דעות ופ"ה מה' יסודי התורה וביו"ד סי' קנ"ז וכו').