

Halakhah in Translation

The Chatam Sofer on Prayer in the Vernacular*

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Few rabbinic figures of the period of Jewish emancipation rival the stature of R. Moshe Schreiber/Sofer, the Chatam Sofer¹ (1762–1839). This is due in the main to his central role in the struggle against the nascent Reform Movement. The author of the slogan “everything new is forbidden by the Torah,”² Sofer is remembered by historians as the outstanding “reactionary” or “conservative revolutionary”³ of his period, the resolute opponent of the cultural and intellectual influences of the Enlightenment, and the spiritual leader of a new “unbending and militant orthodoxy” in which “even moderate religious innovation was anathema.”⁴ Given this image, it is hardly surprising that the historiography on the Chatam Sofer has been divided along essentially ideological lines.⁵ Early treatments of his life produced by his students, son, and grandson, are more hagiography than biography.⁶ Academic historians, while acknowledging the significance of his achievements, think of him as a religious obscurantist and rejectionist who ignored the challenges of the modern age.⁷ Writers influenced by the Jewish national movement are taken with Sofer’s devotion to the Hebrew language and his interest in Jewish settlement in the land of Israel, and they portray his opposition to enlightenment and reform in a more positive light, as a bulwark against assimilation.⁸

The most balanced critical treatment of the Chatam Sofer is clearly that of the late Jacob Katz, the eminent historian and sociologist of traditional and Orthodox Judaism,⁹ whose 1968 biographical essay carefully avoids the ideological pitfalls that ensnare previous efforts. Yet in at least one critical respect Katz follows in the footsteps of earlier scholars in his evaluation of Sofer’s legacy.¹⁰

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Along with them, Katz depicts Sofer primarily as the ideologue, organizer, and preacher—but not the legalist—of the new orthodoxy. He portrays a brilliant and energetic rabbinical leader who foresaw the destructive effects that modernity would wreak upon traditional Jewish society,¹¹ whose opposition to enlightenment, restructuring of the *yeshivah* curriculum, and strengthening of the rabbinate as a communal institution helped produce nothing less than a Jewish counterreformation. Like other researchers, Katz pays little attention to Moshe Sofer's *halakhic* writings, to his Jewish legal arguments against the innovations proposed by the reformers.

This would appear to be a remarkable scholarly oversight. Sofer's enduring reputation, certainly within the orthodox world, rests as much upon his prestige as a legal authority (*poseq*) as it does upon his achievements as a theologian and communal activist. As his output of more than twelve hundred halakhic responsa amply attests, he devoted a major share of his intellectual energy to legal thought. And since some of these responsa are, in fact, devoted to the battle over religious reform, it is odd that the scholarship tends to overlook them in determining its estimation of the man and his work. The glib, easy—and therefore incorrect—explanation for this tendency is that those who specialize in the field lack the skills to comprehend halakhic literature and/or the interest to follow the subtleties and nuances of Jewish legal analysis. This claim can be made of some scholars,¹² but it was most certainly *not* true of Jacob Katz, who possessed the skills and the interest in abundance and who famously criticized historians who attempt to “look through” the halakhic arguments of rabbis in an effort to discover their “real” motivations. *Halakhah*, he reminded us, is real to these rabbis, and we need to take it seriously if we wish to understand them.¹³

So why did Professor Katz not concentrate upon Sofer's halakhic writings? The reason may lie in his perception of orthodoxy as a primarily social and cultural, rather than halakhic phenomenon. In Katz's view,¹⁴ the rise of reform, particularly among the Jewish intellectual and social elites of Central Europe, posed a challenge with which traditionalist rabbis could not cope according to accepted halakhic procedures. On the one hand, the loss of Jewish juridical autonomy meant that rabbis could no longer enforce halakhic or communal discipline upon members of their communities. And on the other hand, although these rabbis regarded the reformers as heretics (*apiqorsim*), as rebels against halakhic Judaism, the vehemence of their reaction could not be adequately conveyed in hala-

khic language. The reformers themselves, after all, tended to utilize halakhic texts to justify their religious and ritual innovations. It was not easy for their opponents to prove them “wrong,” nor could they establish by means of traditional halakhic argumentation that those who introduced these halakhically defensible changes into their religious practice were apostates who deserved to be excluded from the community of Israel. For Katz, the real issue in the reform-orthodox battle was thus one not of law but of doctrine and dogma. Since halakhic language deals more effectively with concrete questions of practice than with broader and more abstract considerations of religious worldview, it was unsuited to the struggle at hand. That contest was, therefore, carried on almost entirely in theological and ideological terms. The responsa that these rabbis—and especially the Chatam Sofer—aimed against religious reform, Katz writes, were essentially doctrinal as opposed to legal documents, using the language of *halakhah* to communicate what are, in fact, statements of religious policy rather than law.¹⁵ It is this ideological battle, and not the halakhic language with which it was sometimes conveyed, that occupies the center of Katz’s analysis.

My purpose here is to offer a gentle corrective to this assessment. Katz is surely right that the birth of the Reform movement and the rise of a self-conscious orthodox Judaism are significant events of social, cultural, and intellectual history that ought to be studied as such. But to study them *solely* as such is to overlook the fact that they are also *halakhic* events and that rabbis like Moshe Sofer, whatever else they may have done, reacted to them in halakhic terms.¹⁶ I suggest that we should see these rabbis as they perceived themselves and their role: *as* rabbis, as scholars of Jewish law, for whom the legal literature of halakhic commentary, codes, and responsa constituted the primary mode of religious expression. We should, therefore, take their halakhic writings seriously and not dismiss the arguments contained therein as a smokescreen that hides their “true” motivations. *Halakhah*, I would contend, cannot be marginal or irrelevant to rabbis, for halakhic language, the complex of linguistic and literary tools with which they enunciate their core values and shape the contours of their religious universe, is the very discourse that distinguishes them as rabbis. Whatever the social and ideological factors impelled them to action, the rabbis who took part in the struggle both for and against religious reform framed their positions in halakhic language. It was in this language that they made claims for the Judaic legitimacy or illegitimacy of the innovations

introduced into ritual practice. In the process, they transformed that language, creating what amounted to an “orthodox *halakhah*” and bequeathing that *halakhah* to future generations of rabbis who would continue the debate. The halakhic expression of the struggle, accordingly, was central to that struggle, and it deserves to be considered on its own terms.

This approach is informed by insights emerging out of the so-called “Law and Literature” movement in contemporary jurisprudence. Although I cannot summarize the movement in detail here,¹⁷ suffice it to say that its adherents see the “literary” aspects of law, its interpretive, narrative, and rhetorical elements, as crucial to the understanding of the nature of the legal enterprise. Regarding law as a literary discourse and an act of text-creation and construction, the movement serves as a counterweight to other theoretical approaches, most notably Critical Legal Studies and Law and Economics, which view law as a body of policy choices masked by a seemingly objective (“legal”) terminology and which, therefore, read legal language skeptically. By contrast, Law and Literature scholars assert that law is a discrete intellectual enterprise that enjoys its own integrity; there is something in legal texts and discourse that is uniquely “law,” that is not “really” something else, that cannot be reduced to the vernacular of economic or political analysis. Put differently, such “scientific” or “normative” languages as economics, politics, and ethics are crucial factors in the development of a legal system, but the law itself is not identical with any of them. To properly understand the law, one must read its texts as they are meant to be read: as *legal* texts, as statements and arguments in an ongoing conversation, carried out among members of a self-identified legal community, directed toward the determination of how the members of that community should live in accordance with the values that determine the structure and conduct of their social world.

In our case, when we read the responsa of rabbis engaged in the struggle over religious reform, we find that they are, in fact, “doing” *halakhah* at least as much as they are “doing” ideology or cultural politics. This is certainly the case with the Chatam Sofer, the leading halakhic spokesman of the orthodox camp. As an example, I want to examine Sofer’s *teshuvah* (responsum) on the question of vernacular prayer. I choose this particular issue for several reasons. First, the institution of a synagogue liturgy recited in German was one of the reforms that lay at the center of the Hamburg Temple Contro-

versy of 1818–21,¹⁸ which led the Hamburg *beit din* (rabbinical court) to appeal to prominent European rabbis for help in opposing the reforms. The responses to their appeal were included in the pamphlet *Eleh divrey haberit* (Altona, 1819), which includes three separate contributions from Sofer.¹⁹ Second, as we shall see, the halakhic literature apparently offers firm support for vernacular prayer, and the reformers cited that literature extensively in vigorous defense of their innovation.²⁰ Finally, academic scholars who recount the history of the early Reform movement have generally declared the reformers as the “winners” of this halakhic debate, judging the orthodox critique of vernacular prayer to be forced and unpersuasive on legal grounds.²¹ In particular, Sofer’s statements on the subject are dismissed as political, theological, or mystical rather than halakhic in nature.²² Even an observer sympathetic to Sofer concedes that “while the other rabbis fought the reformers on the basis of Torah and *halakhah*, the bulk of the Chatam Sofer’s argument proceeds from a national-historical perspective.”²³ Once again, Sofer in his putatively halakhic responsa is engaged in an activity other than *halakhah*; unable to combat the reformers successfully in terms of Jewish law, he resorts to a different and more relevant kind of nonlegal argumentation to frustrate their designs.

Against this evaluation, I want to argue that Sofer’s position on prayer in the vernacular is, indeed, halakhic, that *halakhah* comprises the pivotal and decisive aspect of his response, and that his words constitute an innovative and creative contribution to the corpus of Jewish legal literature. That is to say, when we study the Chatam Sofer’s responsa we find a halakhist at work, doing what halakhists traditionally do. In this case, we see a master of halakhic discourse who transforms the inherited legal material from a collection of rules and principles that do not necessarily prohibit the suggested religious reforms into a truly “orthodox” legal doctrine that does. As to whether the academic scholars are right, that Sofer’s halakhic argument is weak, unpersuasive, and unsuccessful, the answer to that question rests upon one’s conception of the nature and purpose of halakhic discourse, a subject that I shall touch upon in the final part of this essay.

It was, as indicated above, no simple matter to demonstrate that Jewish law disapproves of a vernacular liturgy. The Mishnah explicitly declares that the recitation of the *Sh’ma* (*qeri’at sh’ma*) and the *tefilah*, the two central rubrics of the daily worship service, may be “in any language.”²⁴ The Talmud explains that the word *shema*,

“hear” or “hearken,” implies that one may recite this biblical passage in “any language you understand (*shome’a*).”²⁵ As for the *tefilah*, the “prayer” *par excellence*, the Talmud explains that since “prayer” is a matter of *rahamey*, a heartfelt supplication before God, one may pray in any language in which one is able to communicate with intention and sincerity.²⁶ The halakhic authorities, following the Talmud’s evident conclusion, rule consistently that these liturgical passages may be recited in any language.²⁷ One authoritative commentator to the *Shulḥan Arukh* cites the thirteenth-century German pietistic work *Sefer Ḥasidim* to the effect that, should one not understand Hebrew, it is preferable to recite the *tefilah* in a language that one does comprehend.²⁸ To be sure, most individuals and communities recited the *tefilah* according to its Hebrew text, but others did not: women, in particular, tended to pray in the vernacular, and that practice was regarded as sufficient to fulfill their ritual obligation.²⁹ Taken together, these texts declare as clearly as one could expect that *halakhah* accepts vernacular prayer as a legitimate Jewish ritual option. It is no wonder that they were cited at length by writers such as R. Aharon Chorin and Eliezer Liebermann, who had issued responsa in defense of a similar innovation introduced several years earlier in Berlin.³⁰ And they would seem to pose an insuperable obstacle to one who wishes to prove the opposite: namely, that Jewish law *requires* that prayer be recited in Hebrew.

Sofer’s initial comments to this challenge are brief, contained in but one paragraph of his first response to the appeal of the Hamburg *beit din*.³¹ He recalls the tradition, preserved in the *Mishneh Torah* of Maimonides, that our text of the *tefilah*, the central “prayer” of Jewish liturgy, is the product of the members of the Great Assembly.³² These sages composed the *tefilah* in a clear and pure Hebrew because the majority of the Jews of that period, the return from the Babylonian Exile, had lost the ability to speak proper Hebrew. Their dialect was a patois of “many languages,” and they were consequently unable to recite their prayer in a tongue that was free from linguistic defect. The text of the composed *tefilah* would allow all persons, regardless of linguistic knowledge and skill, to recite an acceptable prayer and thereby to approach God on an equal basis.³³ Concerning this remedy, Sofer asks the obvious question: if the people did not understand Hebrew, why was the *tefilah* not composed in Aramaic, the vernacular of the time? One must conclude, he writes, that the members of the Great Assembly determined upon *this* text, the precise combination of Hebrew words that

comprise the *tefilah*, as the proper expression of the meanings (*kavanot*) that they felt should be included in prayer. Only in this way could the *tefilah*-text serve as a suitable substitute for the sacrificial service after the Temple was destroyed. Moreover, "it is impossible to translate their intended meaning into any other language." For this reason, if we recite this ordained prayer-text, even if we do not understand its language, we have fulfilled our ritual obligation, for we have performed the act that the rabbis have required of us; if we recite it in any other language, we cannot capture the entire sense of the original and, therefore, do not fulfill that obligation. Therefore, those halakhic texts that tell us that prayer may be recited in any language perforce must refer to the case of an individual worshiper under extraordinary conditions;³⁴ "it is absolutely forbidden to institute public prayer in any language other than Hebrew."

On its face, this is a curious argument for a halakhist to make. It is, on the one hand, weak and dubious from a technical point of view: the talmudic and halakhic sources say quite plainly that prayer may be recited in any language, and none of them supports Sofer's theory that the vernacular is permissible only under extraordinary conditions. It is, in addition, hardly "halakhic" at all. The core of the responsum, after all, is a story, a narrative account of the origins of the *tefilah*. Its well-nigh total lack of technical halakhic terminology leads one scholarly observer to dismiss the piece as "a recourse to mystical doctrines," an admission that the reformers could not be refuted by means of conventional legal argumentation.³⁵ Professor Katz, as we have seen, perceives Sofer's essay as a discourse in theology and religious ideology, an attempt to justify the authority of Jewish tradition and of its rabbinical interpreters in a manner that many readers, including those who were not specialists in technical halakhic argument, could understand. It was in this sense radically different from the customary rabbinical responsum, further evidence that the early "orthodox" rabbis could not develop persuasive legal objections against liturgical reform and were, therefore, forced to express their opposition to it in non-halakhic terms. Again, however, I would suggest that this evaluation of Sofer's work is one-sided and inaccurate. The responsum may draw upon theology and doctrine, but it is no less "halakhic" on that account. It is, indeed, an example of halakhic argumentation, an effort to ground the orthodox position in the language of law that governs traditional rabbinic discourse.

I base this suggestion, first of all, upon the insight of Law and Literature scholars who remind us that there is no essential opposition between law and narrative.³⁶ Narrative or story-telling is not something “other” than law; on the contrary, it plays a crucial (if usually implicit) role in the interpretation of legal texts, primarily by serving as the framework of meaning within which formal legal reasoning takes place and ultimately makes sense. Robert Cover, a renowned exponent of this idea, thus describes in narrative terms the relationship between a community’s positive law—its *corpus juris*—and its wider vision of justice and right.³⁷

No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning.... In this normative world, law and narrative are inseparably related. Every prescription is insistent in its demand to be located in discourse, to be supplied with history and destiny, beginning and end, explanation and purpose.... The narratives that any particular group associates with the law bespeak the range of the group’s commitments. Those narratives also provide the resources for justification, condemnation, and argument by actors within the group, who must struggle to live their law.

All legal reasoning is carried out within the narrative structures by which a community defines itself, its sense of purpose, and its perception of the ends that its law is supposed to serve. For the Chatam Sofer, the “master narrative” of Jewish religious law is located in the commitment of the people of Israel to live their lives in accordance with the *halakhah* as transmitted and interpreted by recognized rabbinic authority and as defined by the traditional observance of the community. The formal argumentation offered by a halakhist in support of a particular statement of Jewish law is directed and governed by this “master narrative,” the “sanctification of the tradition,”³⁸ and ultimately affirms it. Sofer’s narrative language, his retelling of the history of Jewish prayer, makes explicit his own conception of the ultimate ends and purpose of *halakhah*, serving notice that no formal legal argument, however sophisticated, is acceptable if it leads to a conclusion that transgresses the normative boundaries set by the master narrative.³⁹ In this way he renders irrelevant the considerable body of textual citation that the reformers cite on behalf of vernacular prayer. This, therefore, is a *legal* statement. Sofer’s expression of the self-awareness of the legal

community and of the limits within which halakhic discourse is permitted to take place forms a critical element in the *legal* argument he offers in defense of tradition.

The narrative element, moreover, is absolutely central to the traditional halakhic discussion of prayer, for it is from the sacred history of the *tefilah* that the rabbis derive much of the detail that defines its *legal* nature, as a rubric of ritual observance. Maimonides, the great legalist himself, begins the “Laws of Prayer” section of his *Mishneh Torah* with a narrative recounting of that sacred history.⁴⁰ In the beginning, he tells us, the requirement of daily prayer was a Toraitic commandment⁴¹ to “serve” God “with all your heart.” This prayer had no definitive time, text, or length. The only requirement was that it convey the worshiper’s supplications of God, that these be preceded by appropriate words of praise and that they be followed by an expression of gratitude for the goodness that God has bestowed upon him or her.⁴² Later, as we have seen, this free-form prayer was replaced by a determinate Hebrew text, to be recited at particular times of the day. This was done through the “rabbinic” intervention of Ezra and his court, who took this action in order to address the linguistic difficulties that Maimonides describes. In this case, therefore, narrative *is* law: the *halakhah* of *tefilah*, the details that govern its structure as a fixed and formal liturgical rubric, emerge directly from the rabbinic story of its origins.

It is understandable, therefore, that the conflicting interpretations of this narrative lie at the heart of the halakhic debate over vernacular prayer. The leading rabbinic champion of the reform cause, R. Aharon Chorin, had already staked out his reading of the story in the responsum he had written in defense of the Berlin reforms several years earlier.⁴³ His argument on behalf of vernacular prayer rested upon a powerful combination of halakhic fact and theory. The “fact” consisted of the clearly stated rule—amply attested in the sources—that prayer may be recited in any language that one comprehends.⁴⁴ The “theory” was the principle by which Chorin explained and justified the rule: namely, that Jewish tradition regards *kavanah*, the element of intentionality, as the decisive factor in the determination of a proper and acceptable *tefilah*. If the Talmud defines prayer as *rahamey*, as heartfelt supplication, then the most important requirement of *tefilah* is that the one who recites it understands what he is saying before God. Yet the sacred history of the *tefilah* presents a serious challenge to this theory. For if *kavanah* and understanding are essential prerequisites for prayer, why did

the members of the Great Assembly compose a fixed *tefilah* in Hebrew, a language that, we are told, many of the Jews of their day did not command? Chorin answers that, according to Maimonides' account, the Jews were unable to speak *any* language in its pure form. The sages chose to create a text in simple Hebrew as a means of helping all, the unlearned as well as the scholar, to fulfill on an equal basis their Toraitic obligation to pray. This decision, however, implied that the people actually learn Hebrew so as to comprehend the words they spoke before God. This, indeed, happened; but the situation has now changed dramatically. In a time when so many are sadly ignorant of Hebrew, Chorin argues, it is surely no transgression against the enactment of the Great Assembly for such persons to recite the *tefilah* in a language they can speak and understand.

Chorin thus constructs a narrative of his own, a story based upon the existing narrative of Maimonides, and interprets the history of the *tefilah* in a way that supports his halakhic theory. The Chatam Sofer, on the other hand, adopts a different reading of that narrative, which he includes in a point-by-point critique of Chorin's responsum published as the second of his contributions to *Eleh divorey haberit*.⁴⁵ He does not challenge Chorin's presentation of halakhic "fact," the legal texts that pronounce in all evident clarity that prayer may be recited "in any language." His goal is rather to rewrite Chorin's narrative, to disprove his halakhic "theory" that *kavanah* and comprehension are indispensable requirements for prayer.

To do this, Sofer proceeds indirectly. He begins his analysis not with the question of vernacular prayer but with the practice instituted by the Berlin reformers to read the Torah without its traditional cantillation. Chorin, in his responsum, had endorsed this measure. He declared that he personally had never cantillated the Torah because the noisy and undignified chant confuses the listeners and interferes with their *kavanah* and understanding of the text. Predictably, Sofer chides Chorin for this departure from ancestral tradition, but he is chiefly interested in his opponent's implication that comprehension is a vital ritual requirement of the Torah reading. If this is, in fact, the case, Sofer suggests, then Chorin's real complaint is not with the trope but with Ezra the scribe,⁴⁶ who ordained that the Torah be read in Hebrew, even though the vernacular of the day was Aramaic and even though this necessitated that a translator (*meturgeman*) be present at the reading to explain it to the people. Why, if comprehension of the text is so important, did Ezra adopt such a cumbersome procedure? Why did he not simply

require that the translation (*targum*) be read in place of the Hebrew original, especially given that the *halakhah* permits the recitation of passages of Scripture “in any language”?⁴⁷ The answer, Sofer suggests, is that *qeri’at hatorah*, the public reading of the Torah, cannot be accomplished successfully in translation. The language of the Torah is unique (*mesugal*), comprising a treasury of meaning, nuance, and emphasis that is impossible to render with complete accuracy into any other tongue. Like a commentary, a translation corresponds at best to one possible meaning of the text, but it does not substitute for that text, because it cannot reproduce in another language *all* the meanings that might adhere in the original. One is certainly permitted to study the Torah in translation, just as one is encouraged to study the Torah with the aid of proper commentaries. But this is a matter for personal, individual learning. The *mitzvah* of *qeri’at hatorah*, by contrast, can be performed only by the recitation of the original Hebrew, for it is only that text that *is* the Torah and that conveys the Torah’s full range of meaning. Therefore, “one who performs the public Torah reading by means of a translation, which cannot correspond to the whole truth of the original, is the one of whom it is said: ‘he who speaks falsely shall not stand in My sight’” (Psalms 101:7).

The same standards, Sofer argues, apply to *tefilah*. Had the members of the Great Assembly been concerned primarily with comprehension, they “would have composed a *tefilah* in the Aramaic spoken by the people of their day.” Since, however, they created a prayer-text in Hebrew, their primary intent was that the worshiper recite *these* particular words, with or without comprehension. This can be accomplished in practice only by reciting the original text, for just as we cannot translate the Hebrew text of the Torah with complete accuracy, we face the same impossibility with the Hebrew text of the *tefilah*. Thus, if the Talmud and the codes state that “prayer” may be recited “in any language,” this instruction cannot be taken to apply to the regular synagogue service. It must refer, as indicated above, to “the case of an individual worshiper under extraordinary conditions.”⁴⁸

The question of *qeri’at hatorah*, to be sure, is extraneous to the reform-orthodox debate. None of the reformers, and certainly not their scholarly defender R. Aharon Chorin, had ever suggested that the public Torah reading be carried out in the vernacular. Yet by comparing *tefilah* to the Torah reading, Sofer can argue that the rules governing the former are similar to those that define the latter: that

is to say, a *mitzvah* that involves the recitation of a fixed text cannot be successfully performed through the use of a translation. It bears emphasis that this point is, indeed, a *legal* one, framed in halakhic terminology and reminiscent of other legal conversations that preceded the controversy over liturgical reform. Consider, for example, the centuries-old rabbinic discussion of *miqra megilah*, the reading of the scroll of Esther at Purim. The sources tell us that this *mitzvah*, too, can be fulfilled by means of translation, that those who do not understand Hebrew are allowed to hear the reading from a scroll written in their vernacular. On the other hand, such persons can also fulfill their obligation by hearing the reading in Hebrew, even though they do not comprehend what is being read. The authorities note that the essence of this particular *mitzvah* is not comprehension at all but rather the act of *reading*, the recitation (*miqra*) of the fixed text known as *megilat esther*. The *megilah* may therefore be recited in another language only when it is translated with precise accuracy into that tongue, so that it can be said that the translated text is, indeed, the scroll of Esther. And since talmudic tradition has already declared that there are words in *megilat esther* whose meaning we simply do not know, some scholars argue that it is impossible in practice to “recite” the scroll in any language other than its original.⁴⁹

The impossibility of translation, in other words, has been a topic of halakhic discussion for centuries. Sofer’s treatment of *qeri’ at hatorah* closely parallels the rabbinic discussion of *miqra megilah*, and the thrust of his remarks would have been quite familiar to the halakhists of his day. To this extent, his argument is nothing “new.” His reasoning, like that of any good conservative jurist, hews faithfully to the well-worn paths of precedent; it is hardly a radical break with the legal past. What *is* new in his responsum is the comparison he draws between *tefilah* and the reading of the Torah. Until his time, the halakhic sources had tended to speak of prayer in the terminology of the Talmud: as *rahamey*, a supplication that proceeds from the heart, which requires *kavanah* and understanding and which therefore may be offered “in any language” the worshiper comprehends. By insisting that the public Torah reading serves as a paradigm for prayer, Sofer transforms the liturgical rubric called the *tefilah* from the sincere outpouring of the individual soul into a formal ritual act, the recitation of a fixed text, an exercise in which comprehension is not an indispensable component. Significantly, Sofer uses the Hebrew root *k-v-n*, from which the word *kavanah* (“intention”) is de-

rived, in the sense of “meaning.” The Torah is read in Hebrew because a translation cannot capture “the literal meaning of Scripture” (*pashṭut kavanat haqera*). Similarly, a translation of the *tefilah* cannot reproduce the meanings (*kavanot*) that its authors placed in their text. Sofer therefore does not deny the importance of *kavanah* in prayer. But where Chorin sees “*kavanah*” as the sincere intention of the worshiper’s heart, Sofer means it in its other sense, as the “meaning” that inheres in a text and that cannot be placed there by the one who reads or recites it. This interpretation of a concept so pivotal to the very notion of *tefilah* is quite new and unprecedented in the halakhic discussions of the topic.

Yet if his argument is in this sense a *hidush*, an innovation, it is no less “legal” for that. Sofer bases his conclusion, first of all, upon an argument from analogy, the contention that one legal institution (in this case, the reading of the Torah) is sufficiently like another (*tefilah*) to serve as a precedent or guiding paradigm for the latter. And analogy, as we know, is the predominant method of legal reasoning in general and of halakhic reasoning in particular.⁵⁰ Secondly, this particular analogy is grounded in narrative, in an interpretive reading of the story that recounts the origins of the *tefilah*. It is important to note that the halakhic arguments of *both* sides in this dispute rely upon such narrative strategies. Chorin, for example, must show that the existence of a fixed Hebrew *tefilah* does not weaken his case that prayer may be recited in any language. He therefore reads the story of the *tefilah*’s origins as the well-intentioned effort of the members of the Great Assembly to help the people pray with comprehension. Sofer, by contrast, sees the decisive element of the story as the sages’ composition of a determinate Hebrew text for prayer. This reading allows Sofer the halakhist to argue that the act of prayer as conceived by Jewish tradition is not so much the expression of the heart as the recitation of a text. And to the extent that prayer is, indeed, regarded as a formal, ritual observance, it becomes more plausible to contend that the rules governing the act of prayer ought to be derived through analogy to other such formal, ritual *mitzvot*.

To repeat: the Chatam Sofer has developed a *legal* theory that forbids vernacular prayer. His argument, especially as set forth in his second response to the Hamburg *beit din*, is neither “theological” nor “mystical,” but structured according to the form and language of traditional halakhic discourse. With respect to this issue, therefore, and with respect to other innovations that lay at the heart of the controversy over religious reform,⁵¹ it is simply wrong to assert that

the *halakhah* is somehow marginal to his position and that his halakhic responsa served as mere smokescreens to disguise his “real” objections. This is certainly not to say that Sofer did not oppose the reformers on the basis of “general religious policy” or that he did not combat them on doctrinal, political, and other nonlegal grounds. My point is that here, in his responsa, Sofer expresses himself in solidly *halakhic* language. He does not attack vernacular prayer with arguments founded upon esoteric speculation or simply by invoking the sacred tradition. He may well be convinced of the literal truth of his slogan “everything new is forbidden by the Torah,” but that slogan is not a halakhic argument and Sofer does not use it in his analysis. He provides rather a *halakhic* critique of vernacular prayer, backed with reasoning that allows his “orthodox” allies to claim that it is forbidden as a matter of Jewish law to recite the formal, public *tefilah* in any language other than its Hebrew original.

Given the centrality of *halakhah* to any plausible conception of Rabbinic Judaism, Sofer’s creation of a halakhic language in defense of orthodoxy is as significant as any of his other contributions to the struggle against religious reform. The academic scholars may be correct in dismissing Sofer’s argument against vernacular prayer as a weak one.⁵² It may be the case that the reformers, who base their position upon unequivocal statements in the Talmud and the codes, have a stronger case than his, which ignores those statements in favor of a newly invented and seemingly forced analogy between prayer and Torah reading. Yet the fact is that his responsa do become a rallying point for Jews disturbed at the tendencies and motivations of the reformers. These “orthodox” Jews are now able to claim that the proposed changes in liturgy and ritual are more than merely transgressions against traditionalist sensibilities. They are now proven to be violations of Jewish law as well, and this constitutes the critical line that allows the “orthodox” to define the reformers as apostates and heretics. It is no wonder, then, that whatever its logical and analytical deficiencies, subsequent orthodox halakhic authorities adopt Sofer’s argument as central to their strictures against reciting the *tefilah* “in any language.”⁵³

And this leads to a concluding observation, drawn from the insights of Law and Literature scholarship, about the nature of legal argument in general and of halakhic argument in particular.⁵⁴ The success of a legal argument lies not in the measurement of its objective validity, if, indeed, such a formal criterion can any more be said to exist, but precisely in its ability to persuade an intended audience

to share its understanding of the law. The endeavor we call law is not a precise science, an attempt to deduce correct conclusions from legal sources through the application of rigorous method. Law falls much more properly into the realm of rhetoric, the activity of persuasion aimed at eliciting agreement to propositions when such agreement cannot be arrived at by resort to logical demonstration. The law is therefore much more than the effort to govern human conduct through the enforcement of rules. It is a culture of argument, the “constitutive rhetoric” of a community, the language by which that self-identified group of human beings works out its definitions of the good life. This language, the material from which that ongoing argument is constructed, is a heritage of text, and each new argument is itself a text constructed out of a combination of the old texts that constitute that heritage. As the creation of text, law is an eminently literary experience. And, like the literary text, the legal text “works” not so much by conveying “accurate” information about outside reality but by means of *performance*, by creating a world of meaning through the use of language and through the invitation to its readers to understand themselves and their world in new and different ways.

In this sense, the Chatam Sofer’s responsa on vernacular prayer are a powerful achievement of literature and of law. He has created texts that recast the material of the halakhic past into a radically new assertion of meaning. Precedents that were never before read as forbidding *tefilah* “in any language” are now understood to say precisely that. A narrative history whose literal meaning seems to support the reformers’ innovations now becomes evidence against them. A legal tradition that is either supportive or neutral toward the ritual and liturgical platform of the new Reform movement is transformed into a truly “orthodox” *halakhah* that sanctifies the existing forms of ritual experience as eternally valid. Whether he “proves” the correctness of his arguments to the satisfaction of academic observers, let alone to the satisfaction of his reform opponents, is both highly debatable and ultimately irrelevant, for law is not really about that sort of proof. What counts is that he has in effect translated the texts that define his community’s culture of argument into a new arrangement of meaning. What counts is that a group of Jews from within that community has accepted his invitation to understand their religious world in accordance with his vision and has constituted itself around this particular interpretation of Torah. Through this act of translation, set forth ironically by a ruling that

denies the efficacy of liturgical translation, a halakhic scholar has created a new legal language that becomes the culture of argument for a new community.

Liberal Jews who read his words today may rightly object that Sofer's translation of the *halakhah* from the language of *Jewish* argument into a more narrowly sectarian dialect represents a fateful break with the Jewish legal tradition. Our critical perception of the history of Jewish law, a perception backed by much good research, tells us that until the dawn of orthodoxy Jewish law had always been capable of flexibility, development, and creative response to the challenges of the times. Sofer's transformation of that heritage into an "orthodox" *halakhah* is, therefore, a radical, even revolutionary step, a much more "creative" re-reading of the Jewish legal past than that offered by the reformers of his day. Yet perhaps the fault lies at least partly with us, too, for our complicity in allowing Sofer and the orthodox authorities who followed him a virtual monopoly over serious halakhic thought. It is, after all, a truism that those who speak a language will be the ones who determine its vocabulary, syntax, grammar, and usage. And no matter *who* is "at fault," we ought not lose sight of the brilliance of his achievement in creating a new halakhic language and with its help a new halakhic community. Such, in the end, is what law at its best is able to do. And it is for this reason that R. Moshe Sofer, the ideologue, preacher, and organizer of the new orthodoxy, deserves to be recognized as its lawyer as well.

Notes

- * To A. Stanley Dreyfus, my teacher and my colleague, whose erudition, wit, and eminent good sense combine to render him the very model of the scholarly rabbi.
- 1. "Sofer" is the Hebraicized form for "Schreiber"; "Chatam" (Hebrew for "seal" or "signature") is an acronym of the first letters of the words *hidushey torat moshe*, "novellae on the Torah of Moses." See the introduction by Sofer's son Shimeon to *Resp. Chatam Sofer, Yoreh De'ah*, Pressburg, 1841.
- 2. *Chadash asur min hatorah*, a pun on *M. Orlah* 3:9.
- 3. Terms applied by Moshe Samet, "Ma'avako shel chatam sofer bachadshanim," in M. E. Gonda, I. I. Cohen, and I. Marton, *Yehudey hungariah: mechkarim histori'im* (Tel Aviv: Association for Research into the History of Hungarian Jewry, 1980), 92–103 at p. 92.
- 4. Michael A. Meyer, *Response to Modernity: A History of the Reform Movement in Judaism* (New York: Oxford U. Press, 1988), 157–58. This judg-

ment was already delivered by the great Heinrich Graetz, *Geschichte der Juden* (ed. Leipzig, 1900), v. 11, 385; Sofer was a rabbi who condemned even the slightest departure from tradition as heresy. And see below, note 7.

5. For a review of the literature, see Jacob Katz, *Halakhah vekabalah* (Jerusalem: Magnes, 1984), 353ff. A translation of Katz's article by David Ellenson is available in Frances Malino and David Sorkin, eds., *East and West* (Cambridge, Mass.: Basil Blackwell, 1990), 233–66.
6. On the other hand, these works do provide important information and details concerning Sofer's life. The biography by Sofer's son, Shimeon, is included in S. Weiss, *Avney beit hayotzer* (Paks, 1900), 48–55. The grandson is Shelomo Sofer, whose work is *Chut hameshulash* (Paks, 1887, reprinted several times). See also the work of Chizkiah Feivel Plaut, a student of the Chatam Sofer, *Likutey chaver ben chayim* (Munkacs, 1879), introduction to Part II. In this category we should include the devotional "biographies" that have appeared in recent years: Moses J. Burak, *The Hatam Sofer: His Life and Times* (Toronto: Beth Jacob Congregation, 1967); S. Schachnowitz, *The Light from the West: The Story of the Life and Times of the Chassam Sofer* (Jerusalem: Feldheim, 1969); Yehudah Nachshoni, *Rabbenu Moshe Sofer* (Jerusalem: Mishavim, 1981); and Yaakov Dovid Shulman, *The Chassam Sofer: The Story of Rabbi Moshe Sofer* (Lakewood, N.J.: CIS Publishers, 1992).
7. Graetz, op. cit., 380, describes Sofer as "bold and resolute," "a fanatical zealot and tireless hunter of heretics." Simon Dubnov, *History of the Jews*, translated by Moshe Spiegel (Cranbury, N.J.: Thomas Yoseloff, 1973), v. 5, 78, refers to "Moses Sofer, the ardent persecutor of the Enlightenment." Ismar Elbogen, *A Century of Jewish Life*, translated by Moses Hadas (Philadelphia: Jewish Publication Society of America, 1944), 93: "The opposition (to religious reform) was insignificant; it was limited to a few intransigents, like Rabbi Moses Sofer, who were scarcely able to justify their position on theoretical grounds." See also Isaac Hirsch Weiss, "Letoldot haga'on rabbi moshe sofer," in *Mimizrach umima'arav* 2:3 (1895), 17–29.
8. See, for example, Shimeon Bernfeld, *Toledot hareformatzion hadatit beyisrael* (Warsaw, 1908), 85. As he describes it, most of the early "orthodox" rabbinic opposition to religious reform was built upon rigid conservatism and expressed in terms of abstract and empty talmudic dialectic (*pilpul*)—on all this, see below—and the Chatam Sofer was no exception to this rule. Yet Bernfeld does note with approval that Sofer and others decry the reformers' elimination from their *sidurim* of any mention of the traditional hope for the return to Zion. See also Shmuel Hakohen Weingarten, *Hechatam sofer vetalmidav: yachasam le'erezt yisrael* (Jerusalem: Hahistadrut Hatziyonit/Mosad Harav Kook, 1944), part of a series entitled *Demuyot betziyonut uvetoledot hayishuv* ("Leading Figures in the History of Zionism and the Jewish Community in the Land of Israel").

9. See Katz, *Halakhah vekabalah*, at note 5. The other studies collected in that volume are representative samples of Katz's research into the complex relationships between Jewish law and its varying historical and social contexts. His subsequent collection, *Hahalakhah bameitzar* (Jerusalem: Magnes, 1992), contains valuable essays into the early history of Orthodoxy as a self-conscious Jewish "sect." Among his monographs, every one of them a classic work in the field: *Goy shel shabbat* (Jerusalem: Merkaz Shazar, 1984) / *The "Shabbes Goy"* (Philadelphia: Jewish Publication Society, 1989); *Exclusiveness and Tolerance* (New York: Schocken, 1962); and *Masoret umashber* (Jerusalem: Mosad Bialik, 1958) / *Tradition and Crisis* (New York: Free Press of Glencoe, 1961). For a comprehensive posthumous evaluation of Katz's research by leading scholars, see Jay M. Harris, ed., *The Pride of Jacob: Essays on Jacob Katz and His Work* (Cambridge, Mass.: Harvard University Center for Jewish Studies, 2002).
10. As we shall see, much the same can be said for the work of Katz's student Moshe Samet (see note 3).
11. A society whose disintegration is recounted in the latter part of Katz's *Masoret umashber* (note 9, above).
12. "The scholars of *Chochmat Yisrael* [*die Wissenschaft des Judentums*] did not spend time studying the pilpulistic novellae of Nachmanides and Aderet. They had more interesting things to attend to." Haym Soloveitchik, "Rabad of Posquieres: A Programmatic Essay," in *Studies in the History of Jewish Society... Presented to Professor Jacob Katz* (Jerusalem: Magnes, 1980), 18.
13. See Katz, *Halakhah vekabalah* (note 5, above), 213–14, on Graetz's treatment of the ordination controversy in Safed during the sixteenth century. And see, in general, Mark Washofsky, "Medieval Halakhic Literature and the Reform Rabbi: A Neglected Relationship," *CCAR Journal* 40:4 (Fall, 1993), 61–74.
14. See Katz, *Hahalakhah bameitzar*, Introduction.
15. See, for example, *Resp. Chatam Sofer* Orach Chayim 122, Sofer's ruling on the controversy over the permit issued by Israel Jacobson's Westphalian consistory in 1810 for the consumption of rice and legumes on Passover. Katz tells us that for Sofer, this question had less to do with the substance of the *halakhah* than with "guarding the walls of traditional observance" against the reformers. Sofer, in fact, supported the customary prohibition by inventing "a completely new" intellectual foundation for it, transforming the practice into an enactment adopted by the sages of old...binding upon all Ashkenazic Jews as a sort of vow that no rabbinical authority is entitle to release" (*Halakhah vekabalah*, 377–78). But see the following note.
16. See the previous note. The "completely new" intellectual foundation that Sofer invents for the prohibition against rice and legumes is not, in fact, completely new at all. The idea that a customary observance might over the course of centuries take on the status of a vow is already present in the *Tur* and the *Shulchan Arukh Yoreh De'ah* 214:1; see *Beit*

Yosef ad loc. for talmudic sources. What is new with Sofer is that this concept had never before been explicitly applied in defense of this particular prohibition (although the Gaon of Vilna hints at it in *Bi'ur Hagra, Orach Chayim* 453:1). What we have, in other words, is a case of halakhic translation, just as we have with respect to the question of vernacular prayer: the linkage between two issues that had not previously been connected in halakhic discourse, in order to create a new halakhic basis for an existing practice. The Chatam Sofer, in other words, is very much “doing” halakhah as well as ideology in his defense of prevailing minhagim.

17. For a fuller discussion and an example of the “literary” approach to the responsa literature, see Mark Washofsky, “Responsa and Rhetoric: On Law, Literature, and the Rabbinic Decision,” in John C. Reeves and John Kampen, *Pursuing the Text: Studies in Honor of Ben Zion Wacholder on the Occasion of His Seventieth Birthday* (Sheffield, U.K.: Sheffield Academic Press, 1994), 360–409. See as well Mark Washofsky, “Responsa and the Art of Writing: Three Examples from the *Teshuvot* of Rabbi Moshe Feinstein,” in Peter S. Knobel and Mark N. Staitman, eds., *An American Rabbinate: A Festschrift for Walter Jacob* (Pittsburgh: Rodef Shalom Press, 2000), 149–204 (also available at <http://huc.edu/faculty/faculty/washofsky/ResponsaandtheArtofWriting.pdf>).
18. On the Hamburg Temple Controversy, see Meyer (note 4), 53–61.
19. At pages 6–11, 30–45 (in which he responds to many of the points raised in defense of liturgical reform in Liebermann’s *Nogah hatzedek* and *Or nogah*), and 97–99 (containing a retraction by R. Aharon Chorin of his support of the Berlin reforms, published in *Nogah hatzedek*). See Samet (note 3, above) for a detailed description of Sofer’s participation in the Hamburg controversy.
20. Many of these arguments were collected by Eliezer Liebermann in the wake of the earlier reform controversy in Berlin and published in the books *Nogah hatzedek* and *Or Nogah* (Dessau, 1818).
21. In this, they follow the verdict of Graetz (*Geschichte*, 11:425) that “most of the arguments with which the rabbis criticized the Hamburg Temple service were irrelevant; some were even foolish. The sources contradicted them.” Bernfeld, 84, describes the attack on vernacular prayer as simply a *pesaq din*, a prohibitory declaration supported not by convincing legal reasoning but by “tortured arguments and *pilpul*” that cannot stand against centuries of halakhic interpretation to the contrary. Meyer, 58, finds the halakhic case against vernacular prayer to be one of the “weaker” contentions of the Orthodox, who were motivated primarily by the desire to preserve ancestral ritual custom regardless of its halakhic pedigree. For Ismar Elbogen’s judgment, see note 7.
22. See Samet (note 3), 97–98: while Sofer as a legal theorist was intrigued by the halakhic challenge posed by the reformers, especially Chorin and Liebermann, in the main he ignored the arguments marshaled from text and tradition and responded in “a polemical and ideological fashion, explicitly basing his words upon philosophical differences in

- historical, political, and rabbinic outlook." Samet essentially follows Katz, *Halakhah bameitzar* (note 9, above), who asserts that while the other essays included in *Eleh divrei haberit* speak the technical and formal language of the *halakhah*, Sofer's is couched in the foundational principles of Jewish religious thought. See also the comment of Jakob J. Petuchowski, *Prayerbook Reform in Europe* (New York: World Union for Progressive Judaism, 1968), 91, referring to Sofer's criticism of vernacular prayer: "it is only by recourse to mystical doctrines that the Reformers' interpretation of the Rabbinic sources could be gainsaid."
23. Weingarten (note 8, above), 32. See also Bernfeld (note 8, above), 85.
 24. *M. Sotah* 7:1.
 25. *B. Sotah* 32b; *Berakhot* 13a; *Megilah* 17a. See also *Y. Sotah* 7:1 (21b).
 26. *B. Sotah* 33a and Rashi, s.v. *tefilah*. The Talmud ad loc. makes an exception of Aramaic, which is unacceptable as a language of prayer because the angels charged with transcribing the words of prayer do not understand it. This applies, however, only to a person reciting the *tefilah* as an individual. The congregation, whose power is such that it does not require the intervention of the ministering angels, may pray even in Aramaic.
 27. For the *shema* see *Yad, Keri'at Shema* 2:10; Alfasi, beginning of *Berachot*, ch. 2; R. Asher b. Yechiel, *Hilkhot Harosh, Berakhot* 2:2; *Tur Orach Chayim* (OC) 62 and *Shulchan Arukh* OC 62:2. On the *tefilah*, see Alfasi and R. Asher loc. cit.; *Tur* and *SA* OC 101:4. The position of Maimonides on the *tefilah* is a bit complicated, since he does not cite the Mishnah's rule as *halakhah*. In his *Commentary* to *M. Sotah* 7:1, he writes that while the *tefilah* may be said in any language, the individual (*yahid*, one who prays without a *minyan*) should try to recite it in Hebrew. Essentially, the more stringent requirement for individuals is already noted at *B. Sotah* 33a and cited by Alfasi (*Berakhot*, loc. cit.). Yet those passages state only that the individual should not pray in Aramaic and are silent as to a Hebrew requirement. Rambam, too, does not require Hebrew, although he clearly prefers it, for reasons that perhaps stem from his narrative reconstruction of the history of the *tefilah*; see below in the text.
 28. *Magen Avraham*, OC 101, no. 5. See *Sefer Chasidim* ch. 588 (ed. Bologna; ch. 11, ed. Parma).
 29. See the commentary by the students of R. Yonah Gerondi to Alfasi (loc. cit.), cited as well in *Hil. Harosh, Berakhot* 2:2). On the obligation of women to pray see *M. Berakhot* 3:3, *B. Berakhot* 20b (again, prayer is defined as *rahamey*, supplication before God, the need for which is as appropriate for women as it is for men), and *Yad, Tefilah* 1:2.
 30. Chorin's responsum is entitled *Kin'at ha'emet* and appears on pp. 14–26 of Liebermann's collection *Nogah hatzedek*. Liebermann's own contribution is contained in his *Or nogah*; the sections relevant to vernacular prayer are at pp. 2–9.
 31. *Eleh divrey haberit*, at p. 10 (= *Resp. Chatam Sofer*, 6:84).

32. *Yad, Tefilah* 1:4, based upon *B. Berakhot* 33a and *Megilah* 17b, although Maimonides ascribes this particular act to Ezra and his *beit din*.
33. This description, upon which Sofer relies, is found in *Yad, Tefilah* 1:4. Rambam cites *Neh13:24*, concerning the speech of the children of the returnees from exile who had taken foreign wives.
34. *Yachid be'akra'i*. Sofer does not specify what these conditions might be.
35. See Petuchowski, note 22.
36. See, in general, Washofsky, "Responsa and Rhetoric (note 17, above)," 373–75, and the literature cited there.
37. Robert Cover, "Nomos and Narrative," *Harvard Law Review* 97 (1984), 4–5, 46.
38. *Kidush hamasoret*; the term is coined by Katz, *Halakhah vekabalah* (note 5, above), 378.
39. A more explicit formulation of this idea, in more strictly halakhic (and Lithuanian) terminology, is found in R. Yosef Dov Soloveitchik, *Shi'urim lezecher abba mari z"l* (ed. Isadore Twersky) (Jerusalem, 1983), 420–39, especially at 328ff.
40. *Yad, Tefilah*, chapter 1. On the function of historical narrative in Rambam's description of the laws of *tefilah* see Gerald Blidstein, *Hatefilah bemishnato hahilkhatit shel harambam* (Jerusalem: Mosad Bialik, 1994), 34–47.
41. The "Toraitic" provenance of the requirement to pray is a notion that appears as well in the Rambam's *Sefer Hamitzvot*, Pos. Comm. no. 5. Nachmanides, ad loc., critiques this position, arguing that *tefilah* originated as a rabbinic ordinance.
42. See *Kesef Mishneh* to *Tefilah* 1:2: Maimonides learns this threefold structure, which is maintained by the later rabbinic *tefilah*-text, from *B. Berakhot* 32a, where it is attributed to Moses.
43. *Resp. Kin'at ha'emet*; see especially at 15–17.
44. See above at notes 24–29.
45. *Eleh divrei haberit*, 30–45 (= *Resp. Chatam Sofer* 6:86, with minor variants). This essay was originally a private communication to his father-in-law, R. Akiva Eiger of Posen. In the time between the writing of his first and second letters, Sofer had obtained copies of the books *Nogah hatzedek* and *Or nogah*. He was now in a position to respond to the traditional argumentation that the reformers had adduced in support of their liturgical innovations.
46. The tradition attributes the institution of the Torah reading to both Moses and Ezra; see *B. Bava Kama* 82a for the varying traditions, which Rambam codifies in *Yad, Tefilah* 12:1. Although he does mention Moses in connection with the ritual, Sofer emphasizes the role of Ezra because the latter is associated with the *targum*.
47. Sofer indicates *M. Sotah* 7:1 and *M. Megilah* 2:1 on this point.
48. See at note 34.

49. See *BT Megilah* 18a and the halakhic record summarized in *SA OC* 690:8–11 and the commentaries ad loc. The “untranslatable” words are the final three words in *Esth* 8:10. The opinion that the *megilah* cannot, in practice, be read in translation can be traced to the fourteenth-century R. Nissim b. Gerondi (*Resp. Haran*, no. 79) and his student R. Yitzchak b. Sheshet (*Resp. Rivash*, no. 388). As their responsa indicate, these rabbis struggled against an actual communal custom to read the *megilah* in Spanish for women and others who did not understand Hebrew.
50. The literature on legal reasoning is vast, but one could profitably begin with Edward Levi, *An Introduction to Legal Reasoning* (Chicago: U. of Chicago Press, 1947); Steven J. Burton, *An Introduction to Law and Legal Reasoning* (Boston: Little, Brown, 1985), 25–40; and Cass R. Sunstein, *Legal Reasoning and Political Conflict* (New York: Oxford U. Press, 1996), 62–100. On the importance of analogy (*dimu’i milta lemilta*) in Jewish law, see *B. Bava Batra* 130a.
51. See, for example, notes 15 and 16, above.
52. See at notes 21 and 22, above.
53. *Mishnah Berurah* 101, no. 13, and 62, no. 3 (the latter comment, which relates to the recitation of the *Shema*, is a restatement of Sofer’s “impossibility of translation” argument); *Arukh Hashulchan*, *OC* 101, par. 9, and 62, par. 4.
54. The following necessarily abbreviated account relies especially upon the insights developed by James Boyd White, one of the leading figures of the Law and Literature movement, in his *Justice as Translation: An Essay in Cultural and Legal Criticism* (Chicago: U. of Chicago Press, 1990), and *Heracles’ Bow: Essays on the Rhetoric and Poetics of Law* (Madison: U. of Wisconsin Press, 1985). On the subject of law and rhetoric, see the sources cited in note 17, above.