Abstract

Cantor Yossele Rosenblatt was offered an opportunity that would make any performer swoon: a star role in the groundbreaking film *The Jazz Singer* (1927). Yet Rosenblatt refused this artistic opportunity of a lifetime. This paper contextualizes Rosenblatt’s baffling decision, by exploring one possible relationship between the arts and law; in this case—the art of storytelling and the Jewish legal system. The study demonstrates where the two pursuits tread separate, unlinked paths to a common end. This vector is refracted through the lens of liturgical performances outside the religious synagogue service; specifically the propriety of cantorial concerts featuring prayers from the High Holy Days. This issue is addressed in legal writing and in storytelling, each modality using its own tools to tackle the trend. It is noted that legal systems without effective enforcement mechanisms—such as Jewish law in the late modern period—could use arts as compensatory media for achieving societal order. More significantly, however, arts and law are not umbilically connected; each cultural creation independently strives to fashion society.

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Cantor Josef Rosenblatt (1882-1933)—“Yossele” as he was affectionately known—was offered a chance that would make any performer swoon: a role in the 1927 landmark film *The Jazz Singer*. Scholars have probed *The Jazz Singer*, though Yossele’s participation has yet to be considered from the perspective of Jewish law and the tradition of storytelling in Jewish culture.¹ This paper refracts Yossele’s participation through lenses of law, literature, music, and history. I will spotlight the intersections among different cultural...
creations, highlighting norm-generating media that operate alongside law, in a parallel, unlinked fashion.

_The Jazz Singer_ was a drama of Jewish acculturation in interwar America. It tells the tale of young Jakie Rabinowitz growing up in New York. Jakie’s father, Cantor Rabinowitz, is enraged when he discovers that his son sings in a saloon instead of following in the family cantorial tradition. After being chastised by his father for choosing to “debase the voice God gave him,” Jakie runs away. Years later, Jakie Rabinowitz—now going by the name Jack Robin—is a successful jazz performer. His career brings him back to New York where he is to star on Broadway. Opening night coincides with Yom Kippur, the Jewish Day of Atonement, and as Jack prepares for his performance he learns that his father is gravely ill and cannot lead prayer services. Jack is torn between his Broadway opportunity and his Jewish heritage. In the end, Jack decides to replace his father at Yom Kippur services.

According to Samuel—Yossele’s son and biographer—the great cantor was cast to play Cantor Rabinowitz. Yossele’s wide appeal made him an obvious choice; the entertainment-trade press had already noted that his vaudeville performances drew crowds from the “Hebrew population.” There was also sentimental value in casting Yossele. Sampson Raphaelson’s original 1922 short story, which was the basis of the film, had the synagogue rabbi praising Jack Robin’s cantorship, saying: “Even Rosenblatt, when I heard him in Moscow, didn’t give a ‘Yaaleh’ [a liturgical poem] like this. _Aza Singen nehmt by die Harz!_ [such singing grabs the heart]!” In a further allusion, “Yosele” is Cantor Rabinowitz’s given name in the short story.

Yossele refused. The lucrative offer of $100,000, which would have provided much-needed financial security, did not succeed in convincing the cantor.

In order to understand Yossele’s refusal, I will explore one vector of the multifaceted interface of law and storytelling: when the two media offer independent paths to a common end. As such, this study lies in the swampy area between legal centralism and legal

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2 Variety, Jan. 21, 1926, at 50; see also Variety, Jan. 13, 1926, at 50; Variety, Feb. 2, 1926, at 45; The Film Daily, Feb. 28, 1934, at 8.

3 Sampson Raphaelson, The Day of Atonement, 46 Everybody’s 44 (1922). Three years later the story was converted to a stage play that was directed and produced by Albert Lewis: Sampson Raphaelson, The Jazz Singer (1925). In the preface, Raphaelson declared: “Jazz is Irving Berlin, Al Jolson, George Gershwin, Sophie Tucker. These are Jews with roots in the synagogue.” Id. at 10. Al Jolson (born Asa Yoelson; 1886-1950) played Jack Robin in the film. Two years later, after the film’s opening, Raphaelson recalled that in 1916, when he saw Jolson perform in _Robinson Crusoe, Jr_., he commented, “[T]his isn’t a jazz singer. This as [sic] a cantor!” That encounter was the inspiration for the original short story (Sampson Raphaelson, The Birth of “The Jazz Singer,” American Hebrew, Oct. 14, 1927, at 812). Ironically, the lead article in that issue of _The American Hebrew_ announced “Dr. Kaplan Eliminates the Kol Nidrei on Yom Kippur Eve.” The Week in Review, American Hebrew, Oct. 14, 1927, at 809. Years later Raphaelson recalled that he was disappointed with film: “A dreadful picture. I’ve seen very few worse.” Columbia Oral History Transcription, in _The Jazz Singer_ 20 (Robert L. Carringer ed., 1979). On Yossele, see Di geshikhte fun khazones 188-89, 258 (Aaron H. Rosen ed., 1924); Samuel Rosenblatt, Yossele Rosenblatt: The Story of His Life as Told by His Son (1954). For a less flattering account of Yossele’s journey from Eastern Europe to America, see Pinhas Miller, ‘Olamo shel aba 60-61 (1984).
peripheralism. The possibility of separate paths to a common end is particularly significant where law is incapable of organizing society, and alternative media provide order; though—I will argue—this is not the sole reason to consider the legal impact of storytelling.

This interface will be refracted through the lens of liturgical performances outside the synagogue service; specifically, cantorial concerts of liturgy from the High Holy Days. To phrase the issue in artistic terms: Is cantorship site-specific? Site-specific art emerged in the 1970s, first as visual arts and later as performance art. Admittedly, use of the term for cantorship is chronologically misplaced and expands the parameters to art in sacred coordinates of time and space—High Holy Day services in the synagogue. Storytellers and jurists grappled with this phenomenon; each modality using its own tools to declare that cantorship was a site-specific art form.4

I. Jewish Law and Hasidic Tales

Storytelling is an aurally aesthetic and evocative art that has played important roles in many cultures. The craft was embraced by Hasidism—a Jewish religious movement that began to form in Eastern Europe in the second half of the eighteenth century, and continues as a vibrant community to this day. From 1814 onwards, orally transmitted hasidic tales were translated from Yiddish into Rabbinic Hebrew and published. This gave hasidic stories the additional form of literature (though they could hardly be considered great works of literature). Publishing compendia of hasidic tales expanded their audience, and in the second half of the nineteenth century was seen as a profitable venture.5 In the twentieth century, hasidic tales transcended their cultural origins, as Martin Buber’s renditions of hasidic tales offered access to this treasury for those unaligned with Hasidism.6

Hasidic storytelling has had a variety of purposes, which are apparent from incidental remarks of hasidic masters or outlined in introductions to compilations of tales. The goals may be categorized under three rubrics: religious-mystical, societal, and educational. Religious-mystical objectives include communion with the Divine through storytelling or recounting tales as a theurgic practice that affects natural or supernatural events. Societal objectives focus on narrative: constructing or fortifying group identity, fashioning collective memory, responding to criticism, and enshrining heroes’ escapades. Educational goals are more specific than societal objectives; they focus on inculcating particular values and beliefs, encouraging specific conduct, and possibly precipitating norms.7

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4 The sum of the hasidic tale, legal opinion, and cantorial legend also indicates the prevalence of defectors. I have not analyzed this perspective here; rather, I am focusing on actors attempting to regulate conduct.
6 Martin Buber, Die Chassidischen Bücher (1927); Martin Buber, Or ha-ganuz: Sippurei hasidim (1946); Martin Buber, Tales of the Hasidim (Olga Marx trans., 1947-48).
7 Gedalyah Nigal, The Hasidic Tale 50-76 (Edward Levin trans., 2008); Einav Ben-Dori, Ha-Sippur ha-hasidî ke-gorem mehanekh (http://www.daat.ac.il/daat/history/hasidut/hasipur3-2.htm). The tripartite division is my suggestion.
The pedagogical, andragogical, and norm-generating potential of hasidic tales is relevant to the present context, because this vector intersects with features of law. To be sure, hasidic tales are generally not sources of law. Nonetheless, both law and storytelling are paideic enterprises. In the words of Plutarch, Lycurgus “assigned the function of law-making wholly and entirely to education.”

II. The Mystic

The decentralized nature of Hasidism gave rise to a plethora of leaders, each ministering to a particular locale. These hasidic masters were often referred to by the Hebrew designation “tsaddik” [righteous person]. One such master was Rabbi Yitshak Eizik Taub (1751-1821), who was active in the Hungarian town of Nagykálló, or “Kaliv” in Yiddish. Historical information on the “Tsaddik of Kaliv” is scarce. Since at present we are focusing on the hasidic tale as a medium for inculcating behavior, the tale’s historicity is irrelevant. Hasidic lore describes Taub’s cantorial dexterity; one such tale was recounted in early twentieth-century Mukačevo, Czechoslovakia, by the hasidic master Rabbi Hayim Elazar Shapira (1871-1937):

There was once a certain wealthy person who would travel to Kaliv every Rosh Hashana [Jewish New Year] to be with the Tsaddik of Kaliv. The prayers of the Tsaddik were pleasant and holy . . . in particular the rendition of the poem U-netaneh tokef.

U-netaneh tokef is a liturgical poem that is central to High Holy Day services of Occidental Jewry. The prayer includes a spine-tingling description of the celestial sphere: “The great shofar [ram’s horn] is sounded; a gentle whisper is heard; the angels, quaking with fear, declare: ‘The Day of Judgment is here!’” The poem describes how all creations pass before God, who inscribes their destiny, “who shall live and who shall die; who shall come to a timely end, and who to an untimely end . . . who shall become poor and who shall become rich.”

The gripping liturgy is enhanced by the legend of its origins: in the eleventh century, Rabbi Amnon of Mainz was pressured to convert to Christianity. As a delaying

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10 Adler, supra note 9, at 55.


12 Id.
tactic he requested a three-day recess. Amnon was subsequently distraught that he had given the impression that he would consider apostasy. When he was brought before the ruler he asked that his tongue be cut out as penance. The ruler, however, ordered that Amnon’s fingers, hands, and legs be severed, joint by joint. As each limb was cut off, Amnon was offered the chance to convert. He remained steadfast. Soon after, as Amnon lay dying on Rosh Hashana, he asked to be brought to the synagogue where he composed U-netaneh tokef with his final breaths. Three days later, Amnon appeared in a dream to Rabbi Kalonymus ben Meshullam (d. 1096) and asked him to record the prayer.\textsuperscript{13}

The historicity of the Amnon account is dubious: there is no evidence of a scholar of that name and the story is not corroborated by contemporary sources. Moreover, fragments from the Cairo Geniza attest to the existence of the poem from the eighth century, in a different geographic area.\textsuperscript{14} Nonetheless, the moving tale of the poem’s origin has added to its gravitas in Jewish collective memory, making its rendition a highlight of the service. Returning to the man who was impressed by Taub’s cantorship:

\begin{quote}
And that man constantly had an exceedingly strong desire to take his wife with him to Kaliv for Rosh Hashana, so that she too would hear the pleasant, awesome rendition of the U-netaneh tokef prayer from the mouth of the Tsaddik, for [the man] would constantly rave about [the Tsaddik] before her. Alas, each time, there was a hindrance—one time she was pregnant, one time she gave birth, one time she was nursing—at the very time [of the High Holy Days]. And it was not ordained that she should be able to travel to Kaliv for Rosh Hashana.\textsuperscript{15}
\end{quote}

Having depicted the background, the tale turned to Taub, who set out in the middle of winter in order to raise money for a needy bride. Taub arrived in the wealthy man’s town and came to his home to collect a donation. It was then that the man had an idea:

\begin{quote}
Since he had merited that this Tsaddik had come to lodge in his house, it would be good to suggest and to request from him that he would now recite the poem U-netaneh tokef—just as on Rosh Hashana—and [the man’s] wife would be able to hear the melody and the prayer, and satisfy her soul with spiritual clarity. And she would see how [the man’s] description had always been right, that it was worthwhile and appropriate to travel distances to hear the utterances from [the Tsaddik’s] mouth during his holy prayers with his powerful voice.\textsuperscript{16}
\end{quote}

At this stage of the tale we are privy to marital tension: while the man had his annual spiritual nourishment in Kaliv, his wife was cynical. Taub’s winter visit provided an opportunity to settle the matter.

\textsuperscript{13} Yitshak of Vienna, Or zaru’a 63b (1862); for a translation, see Ivan G. Marcus, A Pious Community and Doubt, in Essays on Hebrew Literature in Honor of Avraham Holtz 21, 35-37 (Zvia Ben-Yosef Ginor ed., 2003).

\textsuperscript{14} 1 Daniel Goldschmidt, Mahzor le-yamim ha-nora’im 42 (1970); J. Yahalom, Piyut u-metsi’ut 237, 243-44 (1999).

\textsuperscript{15} Adler, supra note 9, at 55.

\textsuperscript{16} Id. at 56.
Alas, how would he dare set forth this request of his before the Tsaddik—that suddenly in [the middle of winter] he should indeed say “And let us proclaim the mighty holiness of this day” [the opening line of U-netaneh tokef]—like on Rosh Hashana. Would not [the man] be considered a laughing stock! And by what [right] would a mortal such as himself merit [that the Tsaddik] should do this for him?17

The man came up with a plan: he would offer to provide Taub with the entire sum, and in exchange the Tsaddik would perform the liturgy. When he proposed the idea, Taub tarried, saying that he would consider the offer and give his answer in the morning. Like Amnon of Mainz, Taub had created an expectation and the man was overjoyed.

Next morning, Taub acknowledged how good it would be to have the entire sum and be able to return home. Alas, he declined the offer, explaining:

When Eizik [referring to himself] says U-netaneh tokef etc. the Heavenly Court gathers together. And when [I say the words] “and the angels scurry” etc.—the angels really tremble.18

The notion of humans deciding when the Heavenly Court should convene has antecedents in rabbinic literature. In rabbinic sources, the sages’ authority over calendric intercalation is considered to affect human physiology and supernatural phenomena, and to have legal consequences. But this power is vested in the highest legal authority in the Land of Israel that can decide between a few select days on the basis of astronomical observations, mathematical calculations, or magical indicators.19 In the hasidic tale, it is a lone master who has jurisdiction, which can be exercised in an anonymous Hungarian village, in the dead of winter, for the specific—albeit laudable—purpose of helping a needy bride. Indeed, hasidic master as replacement of recognized legal authority is a theme in hasidic lore. In this case, however, Taub chose not to exercise this power:

But now—when I will trouble the Heavenly Court on a regular weekday, and the angels will shake when I say U-netaneh tokef—they will ask one another: “What is this, and what is this commotion and trembling now?” And they will say: “Eizik needs money and for this he is saying U-netaneh tokef as if it is Rosh Hashana.” And the angels will say: “Oy, for money he troubles us and causes us to tremble so much.” And I too will be embarrassed before them. So for three hundred coins will I trouble the entire Heav-

17 Id.

18 Id.

19 Mishna, Rosh ha-shana § 2:8-9 (court’s jurisdiction to declare which day will be Yom Kippur); Pesikta de-rav kahana § 5:13; Midrash tehillim 43-44 (Solomon Buber ed., 1891) (court’s jurisdiction to declare which day will be Rosh Hashana and hence dictate the Heavenly Day of Judgment); Pirkei de-rabbi el’czer § 51 (impact in Heaven of the earthly declaration of the onset of Sabbath or the New Month); Tosefta, Rosh ha-shana § 1:12 (the manna would last for an extra day if the court declared that Rosh Hashana was delayed by a day); Jerusalem Talmud, Ketubot 4a; Nedarim 23b; Sanhedrin 6a (regarding the understanding that a girl’s hymen grows again if it was broken when she was younger than three years old); Rema, even ha-‘ezer § 20:1; Shakh, yoreh de’ah § 189:13 (calculation of the day of the month that a woman should assume she will menstruate). For a limitation on this jurisdiction, see Sifra, emor § 9:10:5 (unlike declaring a leap year, the court may not extend the month even if it has cause). The rabbinic approach can be contrasted with the Qumran stance that was vexed by the notion of human ability to determine festivals; see Daniel Schwartz, Law and Truth: On Qumran-Sadducean and Rabbinic Views of Law, in The Dead Sea Scrolls: Forty Years of Research 229, 234-35, 237-38 (Deborah Dimant & Uriel Rappaport eds., 1992).
Taub could have stirred the angels. Such a choice would have ensured the achievement of his charitable objective, with the boon of avoiding the travails of a fundraising journey. Amnon of Mainz had not composed U-netaneh tokef from his home on a nondescript day; rather, he had been brought to the synagogue on Rosh Hashana to compose the moving passage. Taub decided that U-netaneh tokef was to remain site-specific. Taub’s decision was driven by an approach that took stock of the impact of human actions on celestial beings. Thus, Taub’s mystical perception and his ability to affect Heavenly affairs led him to declare that the High Holy Day liturgy should be recited in situ.

Lest we misinterpret the genre: the hasidic allegiant hearing or reading the tale would not have thought that only Taub’s prayers must be reserved for the appropriate context, and that a layperson can perform the liturgy without regard for the forum. Such a reading reflects a misunderstanding of the internal assumptions of hasidic tales. Recounting Taub’s adventure—as it was recounted by Shapira in early twentieth century Mukačevo—may have had a number of objectives. First, the story enhanced Taub’s image, reminding the audience of the mystical prowess of hasidic masters. Second, the act of storytelling served to link disciples to their hasidic predecessors, while binding them as a community with a shared narrative. Third—and most significant for our discussion—the tale served as an educational tool. Shapira the storyteller was censuring cantorial performances in non-sacred settings. He reminded his listeners of the sanctity of prayer houses, and emphasized the efficacy and the authenticity of cantorship in the synagogue on High Holy Days. The hasidic adherent living in the early twentieth century—the golden age of cantors and the heyday of commercial cantorial recordings—would have understood the norm: High Holy Day liturgy was site-specific.

**III. The Jurist**

In collective memory and in scholarly historiography, hasidic masters are remembered for their charismatic leadership or innovative philosophy. Even when early masters served as official town rabbis or in juridical roles, and even when they authored legal tomes, their lasting mark was generally not in the realm of law.

The nineteenth century saw a change in balance in the vocation of many hasidic masters: some leaders were recognized as first-rate jurists and others penned responsa, commentaries on earlier legal works, or even codes of law. These jurists stood at the crossroads between responsibility for normative Jewish law and commitment to the reli-

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20 Adler, supra note 9, at 57.

The writings of this hybrid model of leadership—the hasidic master who also served as a jurist—are, therefore, of particular interest.

One example of this phenomenon was Rabbi Meir Horowitz (1819-1877)—hasidic master and official rabbi of Dzików, Galicia. In an undated responsa, Horowitz was asked “about the custom of Israel on Rosh Hodesh [new Jewish month], to sing the psalm Barkhi nafshi and the song Hadesh ‘aleinu at the festive meal.” Barkhi nafshi, the opening words of Psalm 104, includes the verse “He made the moon to mark the seasons.” Jewish months follow the lunar cycle; hence the psalm is included in the new month liturgy. Hadesh ‘aleinu is a liturgical poem from the Babylonian Talmud, recited on Sabbath before a new month.

The anonymous questioner stated that singing songs at a meal was in contravention of Jewish law, unless those songs were specifically mandated by tradition. The questioner understood that since the destruction of the Second Temple in the first century, Jewish law forbade singing at meals as a public expression of mourning. The only songs allowed at mealtimes were those that had already been instituted; “other poems” were forbidden.

Horowitz’s response was definitive: no such prohibition exists and singing in praise of God is laudable. The questioner had based the enquiry on earlier authorities who had written that “other poems”—which the questioner understood to mean songs besides those from time immemorial—were not to be sung at festive meals, even if they extolled God. How did Horowitz contend with these legal sources?

Before answering this question, a contextual note is imperative. Since Classical antiquity, Jewish law recognized singing prohibitions. These restrictions clashed with Hasidism’s emphasis on music. Hasidism cast singing as a spiritual pursuit and religious act with mystical import and curative properties. Any hasidic gathering—including Rosh Hodesh festive meals—would have included song. Thus the stakes were high, for the question was a legal challenge to a pillar of Hasidism. What was the response of Horo-

22 Levi Cooper, Bitter Herbs in Hasidic Galicia, 12 Jewish Stud., an Internet J. 1, 16-30 (2013). “Antinomianism” is perhaps too harsh given the Christian and Sabbatean uses of the term; yet in a culture where law is sacred, the slightest deviation may be considered antinomian, even when it is not an attempt to undermine the foundations of the legal system. Magid termed this “soft antinomianism.” Shaul Magid, Hasidism on the Margin 215-16 (2003).

23 The aforementioned Hayim Elazar Shapira was also an exemplar of this model.

24 Avraham ben Natan Ha-Yarbi, Sefer ha-manhig 107 (Yitshak Raphael ed., 1978); 1 Zohar 97b.


26 Meir Horowitz, 2 Imrei no’am ‘al mo’adim 87-88 (1886); see Mishna, Sotah § 9:11; Avraham Abele Gombiner, Magen avraham, gloss to Yosef Karo, Shulhan ’arukh, orah hayim § 560:10. The term “piyutim aheirim,” translated here as “other poems,” appears in Horowitz’s recapitulation of the question. As is common in the responsa literature, the original wording of the question has not been preserved.
Horowitz responded with a decidedly legal approach that delineated two prohibitions: First, songs unconnected to God, such as ballads about physical beauty, love songs, or epics. Second, “other poems” at meals, meaning acceptable songs that were out of their appropriate context. Horowitz explained that the “other poems” restriction was not defined solely by context (any song at a meal). Rather, the prohibition focused on the text/context interplay: songs that did not fall under the first category (that is, they were not forbidden because of their text, as per secular songs), but were nonetheless forbidden because they were not suitable for the meal. Horowitz illustrated what might be termed the “out-of-context” prohibition with a germane scenario:

As the cantors do, that they sing the words of U-netaneh tokef and the like, at various festive meals—for this is forbidden, because this is like regular singing for enjoyment and not to praise the Omnipresent. But those songs that are connected to the particular day [like Psalm 104 on Rosh Hodesh], in order to praise [and] to remember the kindnesses of the Omnipresent—this is certainly of great religious value.

Horowitz added that history and common practice attest to the fact that there never was a ban on adding songs to meals. With no canonized repertory of mealtime songs, there was ample precedent for selecting appropriate songs from the liturgical treasury, or for singing new musical compositions. Thus both sub-categories of the prohibition applied to inappropriate songs—textually inappropriate because they did not praise God, or contextually inappropriate because the song did not suit the forum.

Like Shapira’s account of Taub, Horowitz understood that cantorial recitals were site-specific. Yet unlike Shapira’s tale of trembling angels, Horowitz’s position was based on legal analysis.

Lest we assume that Horowitz was unaware of the notion of mystical impact of out-of-context songs: In an obiter dictum, Horowitz referenced a 1593 work that condemned singing liturgy that requires a quorum according to Jewish law. These liturgical passages have particular mystical valence, for heavenly angels are gripped with fear and trembling when they are recited. Hence they must be recited with a quorum. Horowitz made no claim to being privy to angels’ reactions, nor did those reactions form the basis of his ruling. Horowitz’s opinion was the product of legal analysis; angels were mentioned for their persuasive value.

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27 As Horowitz noted, this prohibition was recorded in Jewish legal literature. See, e.g., Teshuvot ha-ge’onim 27-28 (Alexander Harkavy ed., 1887); Yaakov ben Asher, Arba‘ah turim, orah hayim § 560:3.

28 Horowitz did not cite earlier sources for this, though it could be argued that his reading was not without precedent; see Yaakov Moelin, Maharil: Minhagim 612 (Shelomo Y. Spitzer ed., 1989); Yehudah He-hasid, Sefer hasidim (Bologna edition) 211, 241 (Reuven Margulies ed., 1957); Ruth HaCohen, The Music Libel Against the Jews 25-26 (2011).

29 Horowitz, supra note 26, at 87.

30 Hayim ben Betsalel, Sefer ha-hayim § 4:3:6 (1593). A similar condemnation appears in a legal work, albeit with no mention of the mystical impact; see David Segal, Turei zahav, gloss to Yosef Karo, Shulhan ‘arukh,
Horowitz then chastised the questioner: “One should not cast doubts on custom, particularly a time-honored custom” —Horowitz understood that his interlocutor had not just posed a theoretical legal question; he was challenging Horowitz’s hasidic community and heritage.31

Horowitz concluded the responsum by referencing other precedents, and once again mentioned the folly of cantors. Thus—in the nineteenth century, before the cantors’ heyday—Horowitz ruled against liturgical performances in inappropriate forums. While he was cognizant of the notion of mystical impact of maverick prayer recitals, Horowitz’s position was grounded in earthly law, not heavenly esotericism. His used the tools of a jurist, not those of a storyteller.

IV. The Cantor

*The Jazz Singer* was the first feature-length motion picture with synchronized dialogue, signalling the arrival of the “talkies.”32 Legend has it that Yossele was asked to play the role of Cantor Rabinowitz, who berates his wayward son on the eve of Yom Kippur. Jakie runs away, and as Cantor Rabinowitz stands at the synagogue lectern, he says: “My son was to stand at my side and sing tonight—but now I have no son.” He then launches into a soulful rendition of Kol nidrei—the prayer that opens Yom Kippur services by canceling promissory undertakings. From the perspective of Jewish law the juxtaposition is noteworthy: Cantor Rabinowitz disowns his son and then annuls his own words, paving the way for Jack’s return years later.33

In his 1954 biography, Rabbi Dr. Samuel Rosenblatt (1902-1983)—Yossele’s son, a renowned scholar, and longtime rabbi of Beth Tfiloh Congregation in Baltimore34—
recalled that his father rebuffed the offer. According to Samuel, Yossele explained to the Warner Brothers’ agents that he was against acting “whether it be on the screen or the stage,” noting that “in order that my face might be photographed well, I would have to use some make-up, and that is definitely out.” The agents tried a different tack: “We see that we can’t make even a bit of an actor out of you, Mr. Rosenblatt. But how about just letting us have the use of your voice, without your being seen, in selections like let us say, ‘Kol Nidrei’ . . . ?” Samuel recorded his father’s response:

Did you say ‘Kol Nidrei,’ that hallowed prayer that is chanted by the cantor at the inauguration of the holiest day of the year? Under no circumstances would I permit that to pass my mouth anywhere except in a house of God.35

Samuel’s account is often cited, though scholars have noted that it is flawed.36 Yossele’s piety was legendary; the press repeatedly noted his refusal to perform on Friday night or Saturday, and the papers trumpeted his professional sacrifice for his religious scruples. As one local newspaper reported in 1928: “The coming of Rev. Rosenblatt will bring to Syracuse an artist who has been acclaimed as a great singer but who, because of his strict religious beliefs, has sacrificed his art to his religious convictions.”37 But Yossele’s strident declaration against singing Kol nidrei “anywhere except in the house of God” is an exaggeration. Like other cantors of his era, Yossele made sound recordings of prayers. Despite being thrice removed from their original context—space, time, and intent—these records were widely hailed. Yossele was no exception, repeatedly recording Kol nidrei before and after The Jazz Singer.38

The Jazz Singer’s producers managed to sign Yossele for the film; but here too, Samuel was confused: “My father agreed, provided he was not photographed, to sing Rachem

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35 Rosenblatt, supra note 3, at 287-90. According to Samuel, the agents also asked whether Yossele would perform U-mi-pnei hata‘einu [“And because of our sins”]—another liturgical passage favored by cantors.


37 Noted Cantor Sings Here, Syracuse J., Feb. 1, 1928, at 8. For another expression of Yossele’s piety, see Variety, May 12, 1926, at 24. In 2014-15, a Hebrew play about Yossele’s life was put on at the Habima Theatre in Tel Aviv. The play, entitled Rosenblatt Express, recounted the episode of Yossele’s refusal to play the cantor in The Jazz Singer.

and several other such non-liturgical Jewish melodies.” Yossele’s cameo shows him—as himself—singing the Yiddish song Yartzeit licht [Memorial candle] in a concert setting.

This was not Yossele’s only screen or stage appearance: he appeared in concert, vaudeville, and philanthropic performances, as well as short films. 9 Yossele’s final performance was in Dream of My People (1934), where he was filmed singing in the Land of Israel. After filming a scene at the Dead Sea, Yossele suffered a heart attack and died shortly afterwards. Thus, Samuel’s account of Yossele’s protest against “the screen or the stage” is unconvincing. 40

Delineating the boundaries of Yossele’s approach to performance is not simple. In 1919, he declined an offer to sing the role of Elèazar in the opera La Juive, despite assurances that he would not have to compromise his Judaism. Unlike the legend of his later refusal to star in The Jazz Singer, which was not covered by the press, his refusal to sing opera was reported in The New York Times, the Yiddish press (including satirical publications), and the Anglo-Jewish press. 41

If—as Samuel suggests—Yossele did refuse a role in The Jazz Singer, his decision may have been connected to the character he was to play. Cantor Rabinowitz represented the Old World; Yossele positioned himself as a New World paradigm who retained fidelity to Tradition. As Musical America described him in 1918: “Tenor Who Combines His Ancient Ecclesiastical Calling with That of the Modern Concert Artist.” 42 This may explain why Yossele agreed to a role in The Jazz Singer that showed him singing on a stage. Another possibility is that the holiness of the liturgy was the impetus for his decision not to play the cantor. Alas, these approaches do not account for his refusal to sing opera.

Perhaps Yossele was not opposed to stage and screen; rather, he may have been hesitant about acting. In his vaudeville performances, Yossele walked on stage as Cantor

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40 It is also difficult to imagine that Yossele was offered $100,000, as his son claimed. George Jessel, who was originally slated to star as Jack Robin, was contracted to get that amount. Jolson, who played the role, was contracted to receive $75,000. Carringer, supra note 3, at 18; Brownlow, supra note 38, at 419.

41 Rabbi Rejects $1,000 Fee to Sing in Opera, N.Y. Times, Apr. 15, 1918, at 13; Cantor’s First Concert: Josef Rosenblatt Pleases Great Audience at Carnegie Hall, N.Y. Times, May 20, 1918, at 13 (debut as a concert singer); Y. Kirshenboym, Der omed iz im tayerer vi $1000 a nakht in der opera [The lectern is worth more to him than $1000 a night at the opera], Der Morgen Zhournal, Apr. 18, 1918, at 4; Cantor Rosenblatt Not Tempted by $1,000 a Performance, American Jewish Chronicle, Apr. 18, 1918, at 690; [S.M. Melamed,] Editorial Notes, American Jewish Chronicle, Apr. 26, 1918, at 699 (in praise of Yossele’s decision); B. Borwinik, Bay Yosele dem khazn in shitub [At home with Yossele the Cantor], Forverts, Apr. 28, 1918, at 4; Lola [Leon Israel], Yosele khapt dem makhzer un loyft in shul arayn! [Yossele grabs the festival prayer book and runs into the synagogue], Der Groyser Kundes, May 3, 1918, at 9 (cartoon depicting Yossele fleeing from female personification of opera); Jewish Monitor (Fort Worth-Dallas), Jan. 30, 1920, at 4; Feb. 13, 1920, at 14; Feb. 27, 1920, at 10 (articles written during Yossele’s Texas tour); Golden-voiced Josef Rosenblatt Moved Jews by Simple Dignity, Jewish Telegraphic Agency, June 25, 1933 (http://www.jta.org/1933/06/25/archive/golden-voiced-josef-rosenblatt-moved-jews-by-simple-dignity) (obituary). Another offer from the Chicago Opera in 1922 was also apparently rebuffed; see Rosenblatt, supra note 3, at 215-16.

42 Musical America, Oct. 12, 1918, at 1; see also Knapp, supra note 38, at 322-27.
Josef Rosenblatt; so too in his philanthropic concerts and film appearances. Gypsy Rose Lee gave a fascinating account of Yossele’s vaudeville act in Cincinnati. Because Yossele received top billing and her sister was relegated to second, Gypsy Rose Lee recalled that the sign announced “Cantor J. Rosenblatt,” and remembered that “when he finished his act that night he walked straight across the stage and out the stage door . . . . [T]he Cantor had gone back to his Synagogue.”

Yossele was not against make-up or being photographed; rather, he was opposed to appearing as a fictional character, as someone besides himself. Yossele’s acting reticence is understandable: Lest congregants perceive the cantor’s synagogue prayers as just another performance, just more showmanship. This may be the thrust of the press report after Yossele signed with Warner Brothers, that the cantor was “to appear as a singer—not as an actor.”

While details of what led to Yossele’s appearance in The Jazz Singer are hazy, Samuel’s captivating account has nonetheless been etched in collective memory. It is my contention that Samuel should be read as storyteller, rather than historian; a modern, American, acculturated “hasidic” storyteller. Samuel related the master’s feats—not the hasidic master, but the cantorial master: In concert with Yossele’s celebrated piety, he refused a financially and artistically lucrative offer. Samuel’s message was clear: Kol nidrei belongs in the synagogue, not on the silver screen!

V. Three Musketeers

Two storytellers and a jurist: three musketeers who never rode together. Unbeknownst to each other, they presented a united front as they critiqued out-of-context cantorship. The critiques were voiced in different timbres: a captivating hasidic tale and cantorial lore depicting principled refusals to perform, and a reasoned legal opinion which serves as a counterpoint to the stories.

Cantorial critique was not uncommon. The most famous Yiddish jab was “kha-azonim zaynen naronim”—cantors are fools; a sneer that derided cantors who forced the liturgy to fit the music and butchered the meaning. Critics condemned cantorship and its practitioners, yet these musketeers sought the opposite end: by declaring cantorship site-specific, they raised the art’s status. Just as an opera should be performed in an opera house; liturgy was to be performed on the stage for which it was composed: the synagogue service.

In Shapira’s tale, Taub’s ability to perceive celestial spheres and convene the Heavenly Court resulted in his refraining from performing the liturgy out of its High Holy

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45 G. Edward White, The American Judicial Tradition 163 (3d ed. 2007), referring to Justices Louis Brandeis, Benjamin N. Cardozo, and Harlan Fiske Stone of the U.S. Supreme Court who would meet to coordinate their liberal positions in response to the “Four Horsemen.”
Day synagogue context. Hasidic allegiants who heard the tale understood the critique of out-of-context cantorial recitals. In contrast, Horowitz provides us with a counterimage to storytelling as he based his decision on legal analysis. Readers of Horowitz’s responsum understood that while there was no censure for hasidic song, liturgy that belonged in the synagogue was not to be performed out-of-context.

Given the groundbreaking nature of The Jazz Singer, there was no precedent for liturgical performances on the silver screen. Was Yossele aware of the Dzików responsum or the Kaliv tale? Yossele imbibed hasidic tradition in his youth; thus the hasidic common denominator makes such a link a theoretical possibility. Moreover, the Kaliv tale had been recounted in Mukačevo—Yossele’s first place of employment as a cantor. Alas, there is no indication of a connection, and any such suggestion is mere conjecture. It is more likely that Yossele’s decision was based on his own intuition, religious sensitivities, and sense of propriety.47

Yet the flaws in Samuel’s famed account lead to the ineluctable conclusion that we are not reading history but narrative; we should not be focusing on Yossele’s purported decision, but on Samuel’s tale. Yossele’s indignant declaration is mediated by his son, who serves as storyteller as he regales readers with cantorial adventures. Indeed, Samuel seamlessly relates episodes that occurred years before he was born and that he could not possibly have witnessed.48 A court would dismiss Samuel’s testimony as hearsay, and biographers may not contrive dialogue to dramatize events. Samuel the storyteller was not bound by such rules.

It may be significant that on the issue of sacred music in non-sacred settings, Samuel’s 1954 biography was part of a broader American conversation. In December of that same year, Ray Charles released the single “I’ve Got a Woman”—a gospel-style song built on “It Must Be Jesus.” The single was a turning point in Charles’ career, but he came under criticism for sacrilegiously using church music and for mixing sacred with profane.49 To be sure, the issues were not identical: Charles had not only taken gospel music out of its sacred context; he had also secularized the lyrics. In Samuel’s narrative the issue was solely a question of forum; altering the sacred words was never a consideration. Nonetheless, Samuel’s story dovetails with contemporary sacred music discourse.


48 For instance, young Yossele impressed Viennese Jews who raised the possibility of professional training. In response, Yossele’s father stridently proclaimed: “Never! Never! Under no circumstances will I permit my child to be sent to the conservatory. He was born for the Amud [the synagogue lectern], and at the Amud he will remain.” Rosenblatt, supra note 3, at 47.

Thus, in mid-twentieth century America, cantorial master replaced hasidic master: dilemmas of propriety, opportunities to further popularity, financial temptation . . . and choosing fidelity over fortune and fame.

VI. Law and Arts

Bringing the threads together, we can consider the relationship between different cultural creations: legal responsa, hasidic tales, and modern narratives. Shapira’s tale, Horowitz’s responsum, and Samuel’s legend tread different paths, yet they reach the same destination: denunciation of out-of-context liturgical performance. I have co-opted these musketeers to ride together because such a journey contributes to our understanding of the relationship between storytelling and Jewish law. Casting a wider net, we may be able to generalize about an aspect of the arts/law relationship.

Modern Jewish law lacks effective enforcement mechanisms. Certainly in late modern Europe, no writ of execution could be issued for litigants who chose to ignore an award against them in Jewish law. We can expect that Jewish societies employed alternative mechanisms for achieving social order. In consideration of a variety of factors, communities would have opted for different mechanisms. In regions where Hasidism was the religious affiliation of a significant portion of Jews, hasidic tales offered an avenue for inculcating norms. Armed with malleability and accessibility, and spiced with colorful imagery, tales may have had a greater impact than learned legal opinions.

With that in mind, we can understand why Shapira—himself a renowned jurist who was familiar with Horowitz’s responsa—chose to censure out-of-context cantorship by relating a hasidic tale. Similarly in twentieth-century America: the tale of a hero who straddled the Old World and the New World might move hearts more than a rabbinic directive. The evocative element of the arts—in this case, tales of hasidic masters and cantorial virtuosos—provided an alternative to law. It is therefore possible that storytelling served as a compensatory counterpart to the weakened state of Jewish law.

Jurists affiliated with Hasidism might buttress legal opinions with hair-raising hasidic tales. Indeed, we have examples of responsa with tales as obiter dicta; presumably an attempt to coax litigants to act in accordance with the judgment. While this is an interesting phenomenon, the case under discussion differs in that the responsum and the tales never intersect. Jurist and storytellers sought the same end: the jurist was hamstrung by a lack of enforcement mechanisms; storytellers never entertained enforcement. Each medium used its own tools for encouraging site-specific performance. The responsum marshalled legal arguments, while the tales appealed to the heart; the hasidic tale invoked mystical valence and the cantorial story offered a useable paradigm of American acculturation. We might say that it was not just cantorship that was deemed site-specific, but the idiom for inculcating norms was also site-specific.

50 See, e.g., Cooper, supra note 22, at 11-12, 21-22; Cooper, supra note 9, at 192-97, 245-47.
Shulamit Almog has described the “literature alongside law” phenomenon, where the two cultural creations “complement and supplement each other,” such that they are “linked, but devoid of hierarchical value.”\(^{51}\) The present analysis adds two further angles to Almog’s paradigm. First, I suggest expanding Almog’s paradigm to storytelling. Second, I complement Almog’s description by highlighting a significant function of storytelling.

**A. Arts Alongside Law**

Almog’s paradigm of “literature alongside law”—an important addition to the “law as literature” and “law in literature” discourse—might be expanded beyond the Gutenberg mindset of the printed word to other art forms. Amnon Reichman applied the paradigm to cinema,\(^{52}\) and the present analysis offers the possibility of “storytelling alongside law.” To be sure, access to hasidic tales might be via their later literary forms—as in the case under discussion—but their original and most captivating medium was as an oral craft; not as a work of literature.

In every society, there is an array of systems that strive to achieve social order. The parallel paths described here may have broad implications in that art forms could be a salve when legal enforcement mechanisms are stymied. Societies where the arts are seriously considered may be able to solve disputes while avoiding certain costs, such as those that executions of judgment impose. The hasidic milieu may have embraced the intracommunal cultural medium of storytelling in a bid to guide behavior and fashion their communities. Catalysts for this move may have varied: perhaps the hasidic community was bereft of effective enforcement powers; perhaps the tales addressed matters that were beyond the reach of law; perhaps it was a utilitarian decision to opt for tales over judgment. As long as storytelling was an effective fashioning agent, then other tools that were more drastic, coercive, violent, or less effective could be avoided.

So too the post-World War Two American Orthodox rabbinate: the useable myth of Yossele’s refusal, presented as a biographic narrative of a cantorial hero, could reach a wide audience. The tale with its Hollywood allure had greater potential than rabbinic instructions delivered by Rabbi Samuel Rosenblatt from the pulpit of his Baltimore synagogue.\(^{53}\) Indeed, the legend of Yossele’s refusal continues to echo, yet we would be hard pressed to identify Rabbi Rosenblatt’s directives to his congregants.

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Almog poetically stated: “In the place where law holds no sway, literature unfurls its wings.” The evocative nature of storytelling unfurling its eye-catching wings makes it a viable path for steering society.

B. Arts. Law.

Alas, the compensatory or supplementary model of law and arts does not tell the full tale. Art is not necessarily law’s partner; it does not sit docilely on the sidelines, waiting to be called upon to fill legal lacunae. Rather, art is an active participant in the enterprise of ordering society. It does not work in tandem with law, and it does not perceive itself as subordinate to law. Hayim Elazar Shapira and Samuel Rosenblatt did not necessarily glance at law, before unfurling the wings of their tales.

Robert Ellickson outlined three conditions for what he termed “order without law” that develops within a close-knit community: “[P]eople must have continuing relationships, reliable information about past behavior, and effective countervailing power.” Ellickson demonstrated how societal order might be achieved without reference to prevailing legal regimes, without knowledge of existing laws, and despite legal rules to the contrary. Building on Ellickson’s work, my reading of the tale of the mystic and the legend of the cantor suggests that order without law can be grounded in the social sway of art in a close-knit community with shared values and norms; also without any link to the prevailing legal regime.

Thus besides Almog’s “literature alongside law,” there is also “literature. law.”—both cultural creations strive for similar goals, but with no preposition defining the relationship. Though literature is generally not a source of law in the strict jurisprudential sense, it may nonetheless dictate norms and act as a form of authority.

Of course, art is culture-specific and different societies favor different forms. Music in the second half of the twentieth century, for instance, was often associated with protest, and had an antinomian spirit; in the 1968 words of the Beatles: “You say you want a revolution / well, you know / we all want to change the world.”

At times the path of art runs parallel to that of law; never intersecting, never in conversation, but ultimately driving at the same goal. In other cases, law and art may intersect in some type of relationship that may be symbiotic, compensatory, or supplementary. And at times the two media will seek to encourage different types of behavior; perhaps competing for hearts and minds, perhaps colliding.

Besides law, there are other forces that are also earnestly trying to guide individuals’ conduct and society’s direction. Those other forces may inhabit the same nomos, subscribe to the same metanarrative; but they are not umbilically connected to law. Art—including the craft of storytelling—is one of those forces.

54 Almog, Literature Alongside Law, supra note 51, at 61.
55 Robert C. Ellickson, Order Without Law: How Neighbors Settle Disputes 284 (1991); see at greater length id. at 177-82.