

## Biblical Arsonists and Sabbath Firemen: Matters of Public Safety

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For more than twenty years my research interests have focused on aspects of law enforcement and administration of criminal justice in Jewish sources.<sup>1</sup> These matters clearly fall under the general heading of public safety, a concept which does not, as a matter of fact, appear as a rubric in Jewish law. About two years ago another matter of public safety attracted my interest, the matter of firefighting and arson. I was in for a surprise. If the body of published research on law enforcement matters in Jewish sources is indeed miniscule, the bibliography on fire, firefighting, and related matters is non-existent.<sup>2</sup> To my knowledge, this paper is the first time that this particular subject has been broached.

The paper has a brief introduction and two substantive parts. The first (and shorter) one deals with arson, which appears in the Hebrew Bible. The second part examines the matter of firefighting, which poses a problem if the fire occurs on a Sabbath.

Before we take up these two topics, the matter of public safety itself deserves some comment. Granted that it is not a heading in Jewish law, Jewish sources do reflect directly or indirectly a concern for public safety. To begin with, there is an emphasis on the idea of “community”, in other words the group that constitutes the public traditional literature reiterates in many ways the importance of the community, the congregation, the group, all of which amount to “the public.”<sup>3</sup> The great sage Hillel set the tone early when he advised that one should not separate oneself from the community (*M. Avoth* 2:5.)

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- 1 The subjects addressed have been numerous. There are articles on excessive force by a peace officer, investigative profiling, reasonable cause arrest, entry and seizure, and various other studies in the area of law enforcement and administration of criminal justice. My interest began in 1976 and my several publications in the field began in 1980.
  - 2 For a brief review of the bibliography on law enforcement see Stephen M. Passamaneck, *Police Ethics and The Jewish Tradition* (Springfield, IL: Charles C. Thomas Publishers, 2003), 3 n 1. The content of the heading “Police” in the Rakover Indexes forms one of the shortest entries in two rather large volumes, and there is nothing on fire fighting. See Nachum Rakover, *Multi-Language Bibliography on Jewish Law* (Jerusalem: Jewish Legal Heritage Society, 1990); the same author’s catalog of materials in Hebrew, *Otzar Hamishpat* (Jerusalem: Harry Fischel Institute, 1975) and part two of his Hebrew catalog published by the Jewish Legal Heritage Society (Jerusalem, 1990). These works do not include my articles on law enforcement topics, which for the most part appear in *The Jewish Law Association Studies* series, beginning with volume I. Although the most recent Rakover catalog is now 15 years old, there has apparently been little or nothing new aside from my articles and a *responsum* by R. Hayyim David Halevi in part five of his collected responsa, *Ase Lekhah Rav* (Tel Aviv: 1983), 285-297. The absence of materials on fire fighting is curious since fire has been an ancient source of destruction in both rural and urban environments. A number of *responsa* mention fire but only as a backdrop to another question. The rabbis were well aware of fire and its destructive potential.
  - 3 Hebrew terms abound: the words *qahal*, *qehilah*, and *edah* may all be rendered as “community”. The word *tsibur* has the connotation of community and the adjective from it, *tsiburi*, means communal or public. Several other Hebrew words also suggest something like the notion of community: *am*, people; *klal*, collectivity; and *rabbim*, the many. There is also the phrase *bnai ha’ir*, “the people of the town”. Taken as a whole the terms reflect a clear understanding of the idea of community, a recognition of the larger group of which any given individual is a member.

A talmudic proverb expresses the idea that human companionship, i.e. the presence of other people, is crucial to human life: “either companionship or death” (*B.T. Ta’anit* 23a), Jewish worship is foremost a public worship traditionally requiring a quorum of at least ten adult men. Further, the traditional emphases on various public institutions, synagogues, schools, courts of law, and charitable enterprises obviously form a public infrastructure, and the Talmud even describes the communal resources, the public resources, that must be present in a community (at least in theory) before a scholar may reside in it.<sup>4</sup> The Talmud also specifies various communal enterprises and types of public works in which the residents of a town are to join; the tradition is very much aware that some kinds of work are performed for the benefit of “the public”.<sup>5</sup>

Just as a community, the public, is clearly a necessary basis for observing the manifold requirements of Judaism, so too there are concepts, rules, principles, which taken in the aggregate, point to a concern for the safety of members of that public. The most obvious of the group and the most important is the concept of *piquah nefesh*, the saving of an endangered human life.<sup>6</sup> Rabbinic law insists that a person is even duty bound to violate the sacrosanct rest of the Sabbath in order to save an endangered life.<sup>7</sup> Indeed, one is broadly speaking permitted to engage in any act, save homicide, certain biblically prohibited sexual taboos, and idolatry, in order to save oneself from mortal danger.<sup>8</sup>

On the basis of *piquah nefesh*, medicines may be compounded and food may be prepared for a person who is dangerously ill even on the Sabbath when productive work is biblically prohibited.<sup>9</sup> On this basis as well, people are required to remove the rubble of a collapsed roof or wall on the Sabbath in order to rescue a person trapped in the ruins, even if there is some doubt as to whether or not a person is really trapped beneath the rubble and whether or not that person is still alive. Similarly one may rescue a child who has fallen into the ocean even if the net that is used for the rescue also catches fish, a labor prohibited on the Sabbath, or one may break down a door in order to rescue a trapped child, or hastily dig a step in an open pit in order to save a child that has fallen in it.<sup>10</sup> *And one may extinguish a fire on the Sabbath in order to save a life*, even though extinguishing fire is a type of work specifically forbidden on the Sabbath.<sup>11</sup> In none of these cases is it necessary for a person to apply to a rabbinical court (which

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4 *B.T. Sanhedrin* 17b.

5 *B.T. Bava Bathra* 7b; *Moed Katan* 2a, 4b; *M. Shekalim* 1:1. No text, however, indicates who actually does this work for the community as a whole: townsmen providing service *gratis* perhaps or some other arrangement.

6 There are a good many concepts, rules, etc., in Jewish tradition that suggest a serious concern for the welfare and safety of individuals and it is no stretch at all to apply them to a larger group, the public. Here are a few of them: *Leviticus* 19:14 announces the rule that no stumbling block shall be put before the blind, and *Leviticus* 19:17 gives the admonition that one is to rebuke someone who is seen breaking the law. *Deuteronomy* 16:18 calls for the establishment of a system of courts which bespeaks an interest in public weal. The Talmud declares that “all Israel is responsible one for the other,” clearly a concern for public safety and welfare (*B.T. Shevuoth* 39a-b, *Sanhedrin* 27b) and also gives permission to save a person from a murderous pursuer (*B.T. Sanhedrin* 73a). Obviously if the pursuer was after more than one victim, the permission is all the more necessary. This permission is the basis for the law that allows the most severe penalties for the *moser*, the traitor, the informer, against an individual who would presumably endanger others even if he informed against only one person; the fully developed rules on this appear in *Shulhan Arukh Hoshen Mishpat* 338:9-11.

7 *B.T. Yoma* 83a and frequently.

8 *Ibid.* See also *B.T. Sanhedrin* 74a. The permission to save oneself is hedged about with restrictions, so that it really does not amount to permission in times of danger. The earliest promulgation of the permission may well have been far more comprehensive than the rule that emerged from the explanations and restrictions of the *gemara*.

9 *B.T. Pesahim* 25a-b, see also *B.T. Yoma* 83a-b and *M. Shabbat* 7:2. The *mishnah* in *Pesahim* specifies the types of “work” prohibited on the Sabbath.

10 *B.T. Yoma* 84b.

11 *M. Shabbat* 7:2. Obviously the prohibition against extinguishing a fire on the Sabbath will cause a problem with fire fighting on the Sabbath. Fire is no respecter of Jewish law. The permission to risk one’s own life to save another’s is at the heart of a rather broad category of subjects that may be characterized as voluntary self-endangerment. The items in this area range from physical intervention to prevent a homicide to volunteering to donate a kidney to save a desperately ill patient. Somewhere in that range we could easily place firefighting. Abraham Steinberg’s *Encyclopedia of Jewish Medical Ethics* (Jerusalem: The Falk Institute – Shaare Zedek Medical Centre, 1996), s.v. self-endangerment, provides an excellent review of the halakhic literature on this subject with respect to medical matters. Firefighting does not figure in the discussion. Although self-endangerment is obviously an aspect of fire-fighting — whether carried on as an amateur, voluntary or professional pursuit — that matter itself is after all not really in point here. The present focus is fire fighting as a matter of public safety, since fires were undoubtedly a common feature of

would have to be hastily and unlawfully convened since the court does not meet on the Sabbath!) for permission to transgress the Sabbath in order to save a life. There simply is no time for formalities; the mortal danger must be overcome immediately. The Talmud and the medieval codifications of the law make these rules perfectly clear. They are the law.

There is, however, a problem with *piquah nefesh* when it is applied in the case of fire. If the fire occurs on an ordinary weekday, then people may extinguish it in order to rescue all sorts of property in any amount, but on the Sabbath, a body of rules strictly governs (at least in theory) the amount and type of property that may be rescued from a fire.<sup>12</sup> In any event, putting the fire out to save mere property is forbidden. If property is saved or the fire extinguished in the process of saving a life, no transgression of the Sabbath has occurred. The difficulty here is that the rescue of a life and the rescue of property are not so easily separable. The fire that at first threatens only property will soon be a threat to life if it rages unchecked. Fire moves of itself, as the mishnah recognizes, and that puts it in a category of sources of damage by itself (*M. Bava Qamma 1:1*). Fire, by its very nature, poses a continuing threat unless quenched, no matter what day of the week the fire occurs. The importance of this practical consideration will be revisited in the section on Sabbath Firemen.

Beside *piquah nefesh*, the rules requiring the prosecution of serious offences, and the duty to come forward as a witness if one has important information for the court, reflect the interest in public safety.<sup>13</sup> Similarly the rules allowing self-help in Jewish law also require individuals to be proactive in rescuing a person from pursuit by a murderer or a rapist even if such a rescue perforce leads to the death of the attacker.<sup>14</sup> Finally, individuals and communities are entitled to deal harshly indeed with informers, traitors, and betrayers in their midst who would endanger their fellows by giving information to non-Jewish authorities and harm other Jews thereby.<sup>15</sup>

The tradition even employs the language of public safety. One is allowed to extinguish a burning piece of metal in a public area that the *public not be endangered*, but one may not extinguish a glowing chunk of wood (*B.T. Shabbat 42a*). The Hebrew is *shelo yizokeu harabbim*, clearly an expression that addresses public welfare. Extinguishing the hot metal is deemed a “rabbinic commandment”, for which the rabbis may make an exception with regard to extinguishing it on the Sabbath. Public safety is obviously the reason for the exception to the Sabbath law, but the matter under notice is the ritual law. The tradition does not explore the matter of public safety in this passage. Ritual concerns dominate the discussion.

The clearest example of a public safety ruling clearly based on a public safety consideration appears in the mishnah on *B.T. Sukkah 42b*. The mishnah relates that if the first day of the Sukkot festival fell on Sabbath, the people brought their individual *lulavim* to the Temple prior to the onset of the Sabbath. The ceremonial “taking of the *lulav*” was prohibited on the Sabbath. Temple officials received the *lulavim* and ranged them in order. The people recited the formula, “May my *lulav* be a gift for whoever takes possession of it” since it was most unlikely that anyone would receive his own, when they were distributed to the people on the Sunday, and the ceremony is not licit if performed with a *lulav* that is stolen or otherwise not one’s property. On the Sunday, the Temple officials simply threw the *lulavim* where the people could grab at them. Fights broke out; undoubtedly people were hurt in the melee. *And when the court saw that the people were in danger, the court ordained that each person would ceremonially take the lulav in his own home.* This act would of course have also occurred on the Sunday since the ritual may not be performed in the Sabbath. The performance of the ceremonial in one’s home was a matter of public safety.

In sum it is clear that the community, the public, is a matter of importance in Jewish tradition and similarly a variety of principles and rules, even though often addressed to individuals, reflect a concern

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ancient and medieval urban life. The interest here is on firefighting *per se*, and its treatment in halakhic sources, with a few additional references to the sort of problems fires caused for Jews and Jewish communities. Self-endangerment is an ancillary subject, of interest in its own right, but an unnecessary detour in this essay.

12 *B.T. Shabbat*, chapter 16 explores these matters in exquisite detail.

13 See, for instance, *Leviticus 5:1* and *M. Sanhedrin 4:5*, end.

14 *B.T. Sanhedrin 73a*.

15 This area of the law rests on the talmudic narratives about informers. The law on this matter is fully formulated in *Shulhan Arukh Hoshen Mishpat 388:9-16*. The informer, a traitor to the Jewish community, was a figure of contempt and horror in medieval Jewish life.

for the safety and welfare of members of that public.

With this background in mind, we turn to the matter of arson in Jewish sources.

## 1. *Biblical Arsonists*

Even a brief inspection of the Hebrew Bible discloses that it is well acquainted with what we today classify as major felonies. Both biblical legal sources and, in some instances, non-legal, narrative material, refer to murder, mayhem, rape, battery, robbery, kidnapping and burglary.<sup>16</sup> One major felony is curiously absent from this list: arson.

Arson is defined as wilful and malicious burning of any structure, forest, land or property.<sup>17</sup> This is a very basic definition, but it will suffice for the present purpose. If people are injured or die as a result of arson, the felony is compounded. The person setting the fire has also committed a homicide.

Roman law knows of arson and punishes it capitally. The *Institutes of Justinian* restate the *Lex Cornelia on Murderers and Poisoners* and prescribes a capital penalty for anyone “who kills any man or by whose malicious intent a fire is set...”<sup>18</sup> The capital penalty goes back to the XII Tables, which refer to burning the fire-setter — viewed either as *lex talionis* or a sacrifice to the fire god according to modern commentary on the code.<sup>19</sup> Just because a capital penalty is on the books, however, does not mean it was carried out in every case; people with high social rank could be sent into exile instead, or perhaps receive some lesser penalty.<sup>20</sup> A fire that was not the result of arson, perhaps an accidental fire or even a negligently started fire that did not injure or kill anyone, was a matter of civil penalties.

English law also recognizes arson as a capital crime very early on. Pollock and Maitland, in their *History of English law*, assert that arson goes back to the time of Cnut, and it is in the list of felonies punishable capitally presented by Bracton.<sup>21</sup> The punishment was death by burning. In the course of time, however, hanging became the accepted punishment.<sup>22</sup> This felony is also one of the first in which *mens rea* is a significant element of the crime; the importance of intent appears in Bracton.<sup>23</sup> Fires that are set without evil intent give rise to civil proceedings.<sup>24</sup> Prof. Holdsworth sums up the crime of arson as a crime against the sanctity of the homestead; a felony at common law committed maliciously and voluntarily.<sup>25</sup> Indeed the concepts of wilfulness and maliciousness are crucial to the corpus of arson. Today we are often inclined to think of arson as an attempt to defraud an insurer, arson for profit. But the profit motive is by no means necessary for arson. Arson may be prompted by hatred, vengeance or envy, to name several possible motives.

The views of arson found in both Roman and English law provide a general background for the crime, to indicate its elements and the severity of its punishment. The legal systems of the ancient Near East do not speak to the matter of arson although the crime certainly did exist, people doubtless did maliciously set fire to other people’s property during the time of the laws of Eshnunah and of Hammurabi. The Code of Hammurabi only speaks to the looting of burning buildings; the looter shall

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16 One need go no further than *Genesis* 4:1-8 to find a homicide in the story of Cain and Abel. The law of *Exodus* 21:12 (and its elaborations in *Deuteronomy* 19 and *Numbers* 35) show murder in the Bible. Mayhem is indicated in *Exodus* 21:22-27, and rape appears in *Deuteronomy* 22:25 and *II Samuel* 13:7-14. The woman who saves her husband by grabbing his assailant by the testicles (*Deuteronomy* 25:11-12) has certainly committed battery, as do the men who are fighting, *Exodus* 21:22. Robbery appears in the narrative of *Judges* 9:25 and in the law of *Leviticus* 19:13.

17 See California Penal Code, ss.451 and 452; *Oxford English Dictionary*, 467, based on the Statutes of Westminster, 1275.

18 T. Mommsen, P. Kreuger, A. Watson, *The Digest of Justinian*, vol. IV (Philadelphia: University of Pennsylvania Press, 1985), *Digest* 48:8:1.

19 J.L. Strachan-Davidson, *Problems of the Roman Criminal Law* (Oxford: Clarendon Press, 1912, 2 vols.), vol.1 p.2 and vol.2 p.22.

20 *Digest* 48:8:3, Marcian.

21 F. Pollock and F. W. Maitland, *the History of English Law* (Cambridge: Cambridge University Press, 1968, 2nd ed.), vol.2 p.492.

22 *Ibid.*

23 *Ibid.*

24 *Ibid.*

25 W. Holdsworth, *A History of English Law* (London: Melhaven and Co. Ltd., 1923, 17 vols.) vol.3, p.370. This *History* has been reprinted numerous times and remains the most comprehensive study of English legal history.

be thrown into that same fire.<sup>26</sup> Since the fire would hardly last long enough for a judicial process to occur, we are probably dealing with a sanction of brutal mob violence, or merely something the legislator would wish to see happen when a fire fighter or an onlooker helps himself to some of the building owner's property while the flames rage. This provision, whatever it may represent in terms of reality, would apparently apply to any sort of fire that gets out of control, not just to an arson fire.

One biblical law mentions fire in a legal context that might possibly be related to the question of arson: *Exodus 22:5*. That verse states that if a fire spreads, ignites tinder in the area, and moves on to destroy crops in someone's field, whether the crops are standing or harvested and heaped, the person setting the fire must make full restitution for the damage the fire caused. This verse does not really specify where or why or how the fire started. It may have been started by A on B's property for a perfectly legitimate reason. On the other hand, A may have started the fire on B's property with malicious intent. The fire may have been set intentionally on A's property and spread to B's property, or it may have started accidentally or as a result of negligence and spread from one property to another. The verse as written could cover any of these situations if necessary, but we are not told which is the primary focus, though one strongly suspects it is the fire innocently set that gets out of hand and spreads to adjacent property. That is the primary sense of the verse in the rabbinic law and in biblical commentary, both ancient and modern. It is the most straightforward meaning but certainly not the only possible one. At a stretch it could even include arson.

Although there is no explicit mention of arson in any legal passage of scripture, the Hebrew Bible presents two and perhaps three instances of arson. One story relates that a man named Abimelech exercised authority over Israel for three years (*Judges 9:22*). The rabbinic commentators *Rashi* (11<sup>th</sup> century) and *David Kimhi* (12<sup>th</sup>–13<sup>th</sup> centuries) both characterize Abimelech's rule negatively. *Rashi* in particular says that Abimelech ruled "against their (Israel's) will" and that he was arrogant; and Kimhi says he followed no good program and did not guide Israel toward the good.<sup>27</sup> In any event, Abimelech defeated the people of Shechem after relations between him and that city had deteriorated to the point of warfare. He scored a complete victory over the city. The "lords of the tower of Shechem" took refuge in the tower of the house of El Berith. When Abimelech heard that his enemies had concentrated in this one place, he led a party to Mt. Zalmon. He cut firewood and told others to do the same. He placed the firewood at the base of the tower, lit the wood, and burned the tower down killing "about a thousand men and women" (*Judg. 9:49*). One may stretch the imagination to see this as an act of war, but it is also an act of wanton cruelty and murder and clearly an arson fire. He wilfully and maliciously burned the refuge. He used arson to kill the last of his enemies at Shechem. There was no apparent military need for the fire; the enemy was at his mercy. The story fully comports with the definition of arson.

Abimelech's arson sounds like it involved a specific structure which may have been somewhat removed from others so that the fire might be contained. Alternatively, Abimelech probably did not care how much damage and bloodshed he caused, and the biblical author was primarily interested in Abimelech as a villain, not in all the details of his villainy. Abimelech did not have long to celebrate his bloody victory. He next attacked Thebez where there was also a tower in which the people took refuge. He attempted to burn down its door, but a woman threw a stone from the tower, smashing Abimelech's head. His armor bearer finished him off.

If one prefers to take story of Abimelech as an act of war rather than a clear case of arson, we have the tale of Samson (*Judges 15:1-8*). Samson was angry that his Philistine father-in-law had given Samson's wife to another man. The father-in-law tried to placate Samson with another of his daughters, but Samson would have none of it and issued a serious threat. He wanted revenge on the Philistines. He got it by tying torches to the tails of foxes (*The Anchor Bible* says they were jackals, not foxes)<sup>28</sup> and turning the animals with their flaming burdens loose in the Philistines' fields of ripe grain. The fire destroyed both harvested and unharvested grain and olive groves. Samson wilfully and maliciously (he had threatened to do some evil deed) set fire to the grain harvest. The elements of arson are surely present.

Yet one may also choose to see Samson's act as some sort of resistance to Philistine domination or

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26 Chilperic Edwards, *The Hammurabi Code and the Sianitic Legislation* (Port Washington: Kennukat Press, 1904, reissued 1971), p.31, law 35.

27 See *The Miqraot Gedolot* to this passage for both *Rashi* and *Kimhi*.

28 R.G. Boling, *The Anchor Bible, Judges* (Garden City: Doubleday Co., Inc, 1975), 234f.

one may simply be reluctant to label Samson as an arsonist. Or perhaps since the victim was a non-Jew, the example may be dismissed as inapplicable to internal Jewish matters. Samson was, however, quite content to marry a Philistine woman and to avenge himself on his duplicitous father-in-law; the element of national resistance is rather overshadowed by the clear expression of personal vengeance, a motive as good as any for arson. And the suggestion that this is no basis for a rule against arson because the victim was a non-Jew is really preposterous; one is not permitted to harm a non-Jew. There is, however, a third case of arson.

Absalom, King David's son, had contrived to kill Amnon, another princeling son of David, who had raped Absalom's sister Tamar (*II Samuel* 13). Absalom went into exile afterward, and his royal father missed him bitterly. David's confidant Joab skillfully maneuvered David to invite Absalom back to Jerusalem (*II Samuel* 14). But David did not consent to summon Absalom to the palace for an audience. Absalom waited two years for an invitation — none came. He then tried to get Joab to intervene on his behalf and get him an audience, but Joab did not want to get involved (*II Samuel* 14:28f). At this point Absalom orders his servants to burn a nearby barley field that belonged to Joab. The fire got Joab's attention, and Absalom told him to go to King David and secure the invitation, which Joab promptly did (*II Samuel* 14:30-33). Absalom himself did not do the burning. His people did. But it is a clear case of arson. The motive was intimidation, and it worked against Joab. This is as clear cut a case of arson as one could hope to find: wilful, malicious burning — to intimidate. In this case, the instigator of the arson is not engaged in any warfare nor is he a Judge of Israel. He turns out to be a rebellious prince. Since Absalom is hardly a heroic character in Scripture, there is no reason not to associate him with arson; he was after all clearly involved with a far more serious crime: a challenge to the throne (*II Samuel* 15:7-12).

Here, however, is the rub. No rabbinic commentator calls attention to any of these incidents of fire as any type of misdeed. Nor is there any hint of moral censure. Further, no modern commentator takes a moment to mention the resemblance of any of the three biblical cases to the crime of arson.

It is worth noting that the three biblical arsonists all died violent deaths, unrelated to their fire setting of course, but violent nonetheless. As we saw, Abimelech suffered a mortal wound and his armor bearer dispatched him.<sup>29</sup> Samson died a martyr/suicide when he pulled down the temple of Dagon, killing his captors and tormentors and avenging himself on the Philistines who had blinded him.<sup>30</sup> Absalom met a violent end as well: Joab's personal guardsmen killed him while he was hanging from a tree branch which had snagged his luxuriant head of hair.<sup>31</sup>

Any one of the three cases, but certainly the case of Absalom, could have served as the basis for development of a law against wilful destruction by fire, or at least a hint of one, just as there are laws for other wilful misdeeds. These verses surely cannot be dismissed as only "narrative" and no basis for a law. Narrative material serves as the basis for various rabbinic legal institutions in various contexts. Abraham's purchase of the cave of Machpelah is the basis for the rule that the "betrothal acquisition" by means of money consideration is a biblical institution.<sup>32</sup> Pinhas is the model for the *qanaim*, "the zealous ones" (*Numbers* 25:5-9).<sup>33</sup> Joshua's treatment of the Gibeonites seals their fate among the Jewish people as a perpetual lower caste (*Joshua* 9:3-27).<sup>34</sup> The incident of Amnon and Tamar to which allusion has already been made undergirds the rule against private association with an unmarried woman in private.<sup>35</sup> And surely the narrative of the biblical book of Esther is the basis for later regulations on the observance of Purim (*Esther* 9:27, 28).

Although there appears to be ample foundation in narrative material for a specific rule on arson in

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29 *Judges* 9:54.

30 *Judges* 16:28-31.

31 *II Samuel* 18:9-15.

32 *Genesis* 23:3-17; *B.T. Sanhedrin* 81b-82a.

33 *Numbers* 25:1-13, *B.T. Sanhedrin* 81b-82a.

34 *Joshua*, ch.9; *B.T. Yebamoth* 78b-79a, *M. Makkoth* 3:1. Joshua declared the Gibeonites, and their descendants, a despised caste of "hewers of wood and drawers of water". They could not intermarry with proper Jewish stock. Joshua used the verb, *n-th-n*, which means "to give" or "to place or set": Joshua "set" the Gibeonites in their low status. The descendants of those Gibeonites appear under the name of *Netheinitim*, from the root *n-th-n*, those who are set, given over to a particular status: see *Joshua* 9:27.

35 *B.T. Avodah Zarah* 36 b, *Shulhan Arukh Even Ha'ezer* 22:2.

Jewish law, that development did not occur. The elements of arson do in fact appear in Maimonides' *Mishneh Torah* (hereafter *M.T.*) *Hilkhot Shabbat* 12:1 with reference to *B.T. Shabbat* 106a. There the mishnah lays down that the people who "do damage" on the Sabbath are exempt from punishment for a Sabbath violation (though they will be liable for the pecuniary damages resulting from their acts). R Abbahu introduces a *baraita* in the *gemara* which modifies the rule by exempting from liability the person who inflicts a wound or a sets a destructive fire on the Sabbath. Even though their actions have no positive result — they only do damage of one sort or another that is usually *excluded* as a ground for culpability — they are nevertheless held culpable for a Sabbath violation. Maimonides frames the rule:

The one who sets any sort of fire is culpable provided that he has need of the ash (produced thereby). If, however, he set a (purely) destructive fire, he is exempt (from culpability for a Sabbath violation, because that act has no positive value) ... (However) the person who sets fire to a shock of grain or burns another's dwelling is (still) culpable even though (that act) is merely destructive. His intent is presumed to be vengeance against an enemy; he (now after the act) has a cooler disposition, and his anger has abated (so) he has become like a person who has torn his garment as a sign of mourning, or in anger (on the Sabbath) who is culpable for that act ...

This wilful and malicious act of burning) has a positive effect with respect to the fire setter's evil inclination (i.e., he has purged himself of his desire for vengeance and his feeling of anger, and that is something positive and therefore culpable!)

This rule clearly states the elements of the classic crime of arson. This discussion does not, however, appear in either *Tur* or *Shulhan Arukh*, nor is there any talmudic or post-talmudic incident or case which applies the Maimonidean perspective that clearly indicates the element of *mens rea* in arson. Indeed references to setting a fire which might be interpreted as arson are very rare; one such mentions a fire setter, whom witnesses saw, but goes on to clarify whether the fire setter may make a certain declaration. There is no hint of arson as such and the question may only have been a theoretical one.<sup>36</sup> The halakhah beginning with *mishnah* and *gemara*, right through to codified material, shows no interest in the motive behind a fire. The liability for the damage it causes will be imposed (at least theoretically) no matter how it started.<sup>37</sup>

The obvious question is why arson does not appear as a specific offense in either biblical or rabbinic law. There are various factors which taken together may account for the absence of a specific rule on arson in Jewish law. The first one is the manner in which the Rabbis expounded *Exodus* 22:5; this verse addresses the element of restitution — and nothing else. The fire contemplated in the biblical verse would probably have been a blaze set to clear land or to burn off stubble, perfectly legitimate undertakings. The fire unfortunately spreads, presumably it gets beyond the point where the people on the scene can control it, and damage is caused. The fire may have spread from one property to another, as much of the rabbinic amplification of the verse posits, but that is not necessarily the case. In any event the focus of the verse is restitution. The rabbinic material also considers the fire that spreads to, or is set in, a building,<sup>38</sup> but the point of the rule on that remains restitution. There is always the obvious implication that the malicious burning of another's property is a grave transgression of the law, but this type of fire is not distinguished from other transgressions involving destruction of property by fire. The ancient rabbis found no scriptural cue that prompted them to examine what we know as arson *per se* and absent such cue later generations did not strike out on their own to distinguish arson as much from other cases of fire.

A second factor that probably contributes to the silence on arson in Jewish tradition is that it, like homicide and burglary, would certainly be committed in such places and under such circumstances that there would be no witnesses to the deed and no victim who can observe and identify anyone as the offender. The sheer difficulty of finding and identifying a suspect is probably sufficient at least to contribute to the absence of case material either from the talmudic era or any other of the post-talmudic

36 *Responsa of Solomon B.T. Adret* (ed. Jerusalem: Or Hamizrah, 1996), book 4, no. 195.

37 The most concise presentation of the rabbinic rules on liability for fire damage, based of course on talmudic rulings and discussions, appears in Maimonides *M.T. Nizqe Mammon* 14:12; see also *Tur Hoshen Mishpat* 4: 418, and *Shulhan Arukh Hoshen Mishpat* 418:13.

38 *M.T. Nizqe Mammon* 18:12 and *Shulhan Arukh Hoshen Mishpat* 418:13.

periods. Arsonists are very secretive about what they are doing and how they do it. It will often reflect more calculation than manifest emotion.

All the rabbinic material on liability for fire damage (based on *Exodus 22:5*) presumes that the fire-setter is known or that the one who mishandled fires is known, because the ideal of liability does not make much sense unless there is a person who may properly be held liable. This material also mentions the hypothetical case of a person who allows himself to be burned to death, a situation which is both virtually impossible to imagine as ever having been a real event, and the *absence* of capital culpability in that case.<sup>39</sup> There is also a discussion on how and when a person may indeed be culpable in the death of another by fire.<sup>40</sup> In each case a specific suspect is presumed. Even though it is quite absurd to suggest that the absence of cases in the Talmud and elsewhere means that no Jew ever committed arson, the problems surrounding the task of identifying the specific suspect or suspects renders prosecution of arson far more than difficult; they make it all but impossible. If the motive for the act were powerful enough, a person might risk identification and commit the arson. Conceivably, if a person were in another town so that the arsonist would not be known, or if he attacked property or structures remote from other buildings in his own town, then in either case the arsonist's property would not be at risk. Risk is a separate factor we shall consider shortly. Or the person may simply have been mentally unstable and inclined to set fires.

We should also recognize in this regard that arson for profit, that is defrauding an insurer, did not exist until fire insurance became common, certainly not earlier than the 19<sup>th</sup> century. Thus in the ancient and medieval periods there was no "money trail" that led to the identification of those responsible for an arson. The modern fire insurance policy is a product of the period when the rabbinic law on commercial and criminal matters was falling more and more into desuetude. Even with the most modern techniques of analyzing a fire scene, tying a particular person to that scene as the arsonist is a most complex and delicate process.<sup>41</sup>

A third possible contributing factor is the enormous danger that fire, no matter its origin, posed for ancient and medieval communities of any size and indeed for urban areas well into the twentieth century. The great destructive fires of history have become the stuff of legend: Rome burned at the time of Augustus and at the time of Nero, Vienna in 1406, London in 1666 (an event which prompted the creation of the first fire insurance company), Chicago in 1871, San Francisco in 1906 and many more. As for the ancient period, archaeologists have unearthed abundant evidence of cities and towns laid waste by fire.<sup>42</sup>

Cities and towns built of wood, with thatched roofs, fabric canopies, and other flammable materials, where cooking fires and open flame lamps and workmen's forges were scattered throughout the town, were easily set alight with the most serious consequences for all concerned. Cities and towns like these were virtually helpless in the face of fire. Cities of brick appeared to fare no better. They had wooden beams and roofs. The stories of large fires in medieval towns and cities are perhaps better chronicled than those of the ancient world, and they stood up no better against the violence of destructive fires. A historian of fire fighting relates the story of a fire from early medieval England. No doubt what occurred in that crowded town was not substantially different from what happened in other such towns both in centuries before and for centuries after.

Houses built of mud, timber and wattle burned well and they were jammed so close together that once a fire started it spread with alarming speed. Unfortunately the residents of these cities and towns made no

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39 *B.T. Baba Kamma 27a; Shulḥan Arukh Hoshen Mishpat 418:18.*

40 *B.T. Baba Kamma, ibid., and M.T. Hilkhoh Rozeah 3:9; see also B.T. Sanhedrin 76b-77a.*

41 My personal experience with the men and women of the Bureau of Alcohol, Tobacco, Firearms, and Explosives has made me very much aware of the highly technical nature of modern arson investigation. Fire investigation involves the physics of fire and the chemistry of the materials burned. Forensic accountancy attempts to find evidence of fraud. Altogether, a fire, particularly an arson fire, presents a most complex task for skilled technicians and investigators.

42 See for instance E. Stern, ed., *The New Encyclopedia of Archeological Excavations in the Holy Land* (New York: Simon and Schuster, 1993, 4 vols.). This massive work describes in detail the archeological discoveries in the Holy Land and routinely mentions fire and conflagration. The Hebrew Bible occasionally mentions the burning of cities: *Joshua 8:19, Judges 1:8*, not to mention the fire destruction of Sodom and Gomorrah, *Genesis 19:1-25*. These citations deal only with the Holy Land. The evidence for ancient fires would be included many fold if one were to take the time to look into the records of archeological work in other parts of the Middle East.

## Biblical Arsonists and Sabbath Firemen:

attempt to form an organized fire-fighting force but they did equip themselves with a few primitive items ... aimed at creating fire breaks between the buildings ... the scene was one of awful confusion, people would rush everywhere trying to salvage possessions and find missing relatives while a few men would, independently of each other, be trying to throw buckets of water at the blaze or would be trying to pull down the burning debris ...<sup>43</sup>

Until modern times there were no building materials manufactured to be fire retardant, and the equipment and technique for combating fires are similarly modern. The buckets, hooks, and pumps of the ancient Roman, medieval and pre-modern periods were rather feeble weapons against a large fire.<sup>44</sup> The Talmud does mention a damp goatskin that may be placed over a burning box or trunk on the Sabbath in order to keep the fire from destroying the whole box or trunk.<sup>45</sup> That appears to be the only material which is clearly on the subject of fire retardance. It is however, clear from rabbinic sources that some people did fight fire when the alarm went up, but the most others might do was protect their own goods as best they could, which was a perfectly legitimate reaction. Times of danger have always brought about both the best and the less than best in people.

Another reason that arson does not seem to appear in the responsa or in any other Jewish materials may be as simple as the proposition that non-Jewish authorities did not allow rabbinic courts jurisdiction in cases of arson. The risk of being hauled before an unfriendly non-Jewish tribunal on a serious charge would have made arson an unattractive method for avenging oneself for any Jew. Further, a fire set in the Jewish quarter of a town rapidly became a concern for all the townspeople regardless of religion, and the individual tragedies caused by fires were not the exclusive fate of any one group.<sup>46</sup> We have also had occasion to note that the mob was at times prepared *to pitch the Jew, in whose building the fire started, into the flames.*<sup>47</sup> An arsonist in this case would also have been a murderer. Fires “of a suspicious origin” were certainly serious matters to non-Jewish authorities and would doubtless come to their attention; probably they were too serious for them to relinquish jurisdiction over such fires, no matter the part of town where they started.

There is one final suggestion that may bear on the matter of absence of arson in Jewish law. First, the panic and confusion surrounding a fire may easily obscure any recollections of its cause or causes. The difficulty of conducting an effective investigation into a suspicious fire to find a culprit become all but impossible absent a confession. Arson investigations today are highly technical processes that require experts in such fields as forensic accounting, physics and police interviewing.<sup>48</sup>

In sum, a crowded town of narrow streets and alleys was always in danger of burning down. The turmoil that the outbreaks of fire caused impeded fire fighting and the creation of a fire break to stop the spread of the flames, an undertaking requiring quick teamwork that would have been very difficult to organize in the chaotic circumstances surrounding a raging fire. The actual point of origin of the fire might be determinable, if anyone cared to determine it, but the identity of an arsonist was difficult, perhaps impossible, to prove. Fire was as much a danger to the property of an arsonist as to the property of his victim, if both lived in the same area. Nevertheless, if the arsonist was strongly motivated to destroy a neighbor's property, he could set his fire with great stealth, probably at night. An arsonist in ancient and medieval times could not hope for any economic benefit from an insurance policy to make the offence attractive; there was no fire insurance in ancient and medieval times. Further, the agricultural fire posed the same risks as the urban blaze: if one neighbor lighted the field of another, the fire could easily get out of control and do as much damage to the fire-setter as to his intended victim. One strong gust of wind is all it takes to push flames right where the arsonist might not want them to go; sparks and flaming debris can not be controlled. Finally, there was the matter of jurisdiction. Non-Jewish authorities doubtless pursued the investigation of suspicious fires, to the exclusion of the

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43 Evan Green-Hughes, *A History of Firefighting* (Ashbourne: Moorland Publishing Co. Ltd., 1979), 14. This small book is really the only work that makes a serious attempt to trace the history of firefighting. It is a most important source for this study.

44 *Ibid.*, 11ff.

45 *M. Shabbat* 16:5.

46 This point will be explored fully in the section on Sabbath firemen.

47 See below, p.19.

48 See n.41.

rabbinical court.

Upon reflection it is not at all surprising that cases of arson do not appear in the responsa literature. Only one significant case, and that from the 17<sup>th</sup> century or early 18<sup>th</sup> century, even cites the laws on liability for fire damage (*nizqe mammon*), and that case is clearly a case of a fire caused by negligence.<sup>49</sup> It is impossible to prove a negative — why something is *not* present — but on balance there seem to be enough elements to account for the absence of cases on arson in rabbinic literature. Reason dictates that Jews committed what we would consider arson sometime, somewhere. Traces of every other sort of criminal activity exist in Jewish legal literature, so why not arson? The fact of the matter, however, remains that despite the arsons in the Hebrew Bible the offence has left no imprint in Jewish legal materials.

The next, and longer, portion of this paper takes us into the laws governing Sabbath rest and its relation to fighting fire. Some sort of fire fighting work, whether by individuals or groups, certainly occurred in antiquity, but the first regular organized fire fighting group that left a mark on the historical record arose in ancient Rome. We shall presently take a closer look at that organization.

## 2. Sabbath Firemen

Although fire appears in several contexts in Jewish legal materials, only one discussion of a fire-related topic was more than scholastic debate or a recitation of traditional rules. This is the problem of fighting fire that occurs on the Sabbath when it is, as we have already noted, unlawful to extinguish a fire except to save a life in mortal danger.

In fact the law on permissibility of such fire fighting reflects a pattern of change and development over a period of approximately 1600 years. Public safety obviously includes fire fighting on any day of the week, including Sabbath and holidays.

In addition to the material on fire fighting, there are several *responsa* on cases that discuss legal questions arising from the effects of destructive fires on the lives of real people. These cases are not part of the development of the law on Sabbath firefighting, but simply to ignore them, because they do not fit into that discussion, would be to ignore the larger context of fire-related problems of which Sabbath firefighting was only one. These *responsa* add detail, and a greater sense of reality, by illuminating the problems fires actually caused. The cases not only deal with damages, but they also concern, e.g., a sale of real estate and even describe an example of medieval firefighting. These other *responsa* are cited as “bridges”, so to speak, between some of the major sections of the developing law on Sabbath firefighting, that is *responsa* from the period between the first and second stages of the development, noted after the discussion of the first stage and before the discussion of the second. The second and third stages do not have a “bridge” between them because they are the turning point in the development of the law, and it is best to discuss them sequentially. There is another bridge between the third and fourth stages.

Before we turn to the Jewish material, a brief look at the history of firefighting will be useful to see a historical context for the first stage of the Jewish law. The bibliography on organized firefighting (unorganized or haphazard firefighting is, as has been suggested, as old as humanity’s discovery of fire’s many dangers) makes it rather clear that no society prior to the Roman republic left any real documented traces of organized firefighting activity, though one unsubstantiated source places its beginning in ancient Egypt.<sup>50</sup> During the Roman republican period, crews of slaves, called *familia publica*, were used to fight fires in the city of Rome, where fire was a constant threat and an ever-present danger.<sup>51</sup> These slave crews were reluctant to take too many risks in firefighting, but for centuries citizen protests over the poor quality of the slaves’ efforts were silenced by the reply that such crews

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49 *Responsa of R. Jacob Reischer, Shevut Ya'akov*, ed. Halle, 709 part 1, no. 136. This case is characterized as significant because it seems to be the only case on these rules which came before a Rabbi for adjudication. Surely the case is significant on that basis alone. The significance is of course that cases on *nizqe mammon* with respect to fire hardly arose at all and never with respect to what we would call arson. Why this is so is an inquiry for another time.

50 The reference to ancient Egypt appears in the *Wikipedia Encyclopedia* (<http://en.wikipedia.org/wiki/firefighting>). It is merely an assertion, without support. Reliance on such online materials for academic work is not yet entirely prudent.

51 Green-Hughes, *supra* n.43, at 10-14, gives the most thorough account of firefighting in Rome, and the online materials all emphasize the Roman experience as the first well documented case of organized firefighting.

were cheap and cost no additional taxes!<sup>52</sup>

In the year 6 C.E., in the early period of the Empire, a particularly destructive conflagration in the city of Rome moved Augustus Caesar to found the first trained and professional firefighting force, the corps of *Vigiles*.<sup>53</sup> These firemen also had police powers to enforce fire safety regulations.<sup>54</sup> *Vigiles* were a fixture in Roman society for 500 years.<sup>55</sup> The *Vigiles* were stationed in each of fourteen fire prone areas of the city.<sup>56</sup> They were well organized to set up a chain of fire bucket passers, who rushed water, hand to hand, from a pool or a spring to the site of the fire.<sup>57</sup> Two types of primitive but effective jet pumps were used by the *Vigiles*; these Roman firemen were apparently able to direct an effective jet of water for a good distance.<sup>58</sup> They were also skilled in creating fire breaks in urban areas. Over time the Romans grew to admire this para-military fire service, and eventually young men of the Roman aristocracy could choose to serve in the command structure of the *Vigiles* for their military service obligation.<sup>59</sup> Contingents of these firefighters were posted to other towns in Italy.<sup>60</sup> It is also possible that they saw service in other parts of the vast Roman Empire as military units of trained firefighters.<sup>61</sup>

It is hardly likely that anyone who traveled to Rome could have remained unaware of the *Vigiles* and what they did. Fire was a frequent event in ancient Rome, always breaking out somewhere in that crowded city. Certainly Romans who went to Judea brought along knowledge of the organized and trained Roman fire service. We shall find that the Roman experience in organized firefighting provides a most interesting backdrop to an anecdote concerning fire and firefighting in first century Judea, the time of our initial stage of the law on Sabbath fire fighting. A fuller understanding of the background of that stage also requires a brief look at two aspects of Jewish tradition: the role of community in Jewish life and the high value placed on a general duty to save human life in mortal danger.

It was no doubt as obvious to people in ancient days as it is today that effective firefighting required organization and teamwork. It is highly unlikely that groups of capable volunteers were available every time a fire broke out. Firefighting was surely a community effort. Moreover, the Jews of that time and place were very well aware of the significance of a stable community for Jewish life.

As we have noted, fighting a fire on the Sabbath is explicitly prohibited unless a life is mortally threatened by the blaze.<sup>62</sup> If property is also saved in that process, no violation of the Sabbath has occurred. When a fire occurs on the Sabbath, but no lives are in danger from it, a body of rabbinic regulations strictly governs (at least in theory) the amount and type of property that one may rescue. In any event, putting out a fire for the purpose of saving property alone is forbidden. This rule however raises a difficulty. Saving lives and saving property are not too easily separable. The fire that at first threatens only property will soon be a threat to life if it rages unchecked. We have also noted the significant fact that fire moves, as the mishnah recognizes, and that characteristic puts it in a category of

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52 Green-Hughes, *supra* n.43, at 9.

53 *Ibid.*, 9f.

54 Arthur Ingram in his copiously illustrated history of firefighting equipment describes a Roman fire prevention regulation: householders had to keep buckets, syringes (primitive pumps), hooks, and mops at the ready. Undoubtedly people practiced such prudent measures in many places and long after the fall of the Roman Empire. Ingram, however, finds notation of a similar regulation in continental Europe only in 1371 — people had to keep a barrel of water near their doors. Such activity was probably so commonplace that no one considered it important enough to record. In any event such precautionary measures could have done little to reduce the risk of serious fires. See Arthur Ingram, *A History of Firefighting and Equipment* (London: The New English Library, 1978), 7, 105.

55 Green-Hughes, *supra* n.43, at 10f.

56 *Ibid.*

57 Ingram, *supra* n.54, at 7, also details the standard Roman firefighting tools: hooks, hammers (for knocking down walls), ladders, and of course buckets.

58 Green-Hughes, *supra* n.43, at 11f. Vitruvius, a first century Roman engineer, credits the invention of the brass fire engine pump to Ctesibius, a Greek inventor of the second century B.C.E. This machine may have been the first to use an enclosed air chamber to produce a continuous flow of water propelled by the alternating motion of two pistons. Ctesibius's pupil, Hero of Alexandria, improved upon his teacher's design by developing a pump with two vertical cylinders and a small air vessel that produced a steady stream. See Ingram, *supra* n.54, at 7f.

59 Green-Hughes, *supra* n.43, at 13.

60 *Ibid.*

61 *Ibid.*

62 See above n.11.

its own (*M. Bava Qamma* 1:1). Further, we have pointed out that fire, by its very nature, remains a danger unless extinguished, and that holds good for every day of the week. Therefore, if the law precludes Jews from fighting, and extinguishing, fire on the Sabbath in order to save property when no lives are in immediate danger, those Jews will soon face a more serious blaze that *does* endanger lives. Given that most Jews have been town or city dwellers over the last millennium and that fires were not an unusual danger in such places, a rigorous application of the law against Sabbath firefighting when only property is at risk at first will obviously put Jews at serious risk to life as well before very long. This risk appears to run counter to the rabbinic concept that the commandments are given to foster life and not to expose people to mortal danger.<sup>63</sup>

*M. Shabbat* 16 discusses the amounts and types of goods that one may rescue from a Sabbath fire. The chapter begins with a permission to save holy scriptures from fire and proceeds to specify amounts of food and clothing that may be rescued. *Mishnah* 8 allows for the setting of a fire break wall using containers (even if the containers are full of water) which will break because of the heat and spill the water, which extinguishes the fire. *Mishnah* 9 directly addresses the matter of fire fighting: if a non-Jew comes to put the fire out, one neither encourages nor discourages him to do so, since Jews are not responsible for the non-Jew's observance of the Sabbath.

Further, *Mishnah* 9 provides that if a Jewish boy, less than 13 years of age, comes to put the fire out, Jews do *not* allow him to do so, since they are responsible for the boy's observance of the Sabbath. The *gemara* on this *mishnah* (*B.T. Shabbat* 121a) introduces a statement by the Amora, R. Ammi to the effect that, regarding a fire occurring on the Sabbath, the Rabbis allowed one to declare, in the hearing of a non-Jew, "Anyone who extinguishes the fire is at no disadvantage." The statement obviously has to be directed toward a non-Jew since a Jew who puts out a fire on the Sabbath is indeed at a disadvantage: he has sinned grievously. This utterance is at odds with the strict neutrality of the mishnaic rule: neither encouragement nor discouragement may be offered. The codificatory material restates the rule: if a non-Jew comes to extinguish the fire, it is not necessary to discourage him. Over time R. Ammi's statement became part of the law,<sup>64</sup> and it is amplified to allow one to summon a non-Jew to the fire scene even though it is certain he will put the fire out when he arrives.<sup>65</sup>

### a. *The First Stage*

The talmudic passages that present both the provision that requires strict neutrality toward a non-Jew who may put out the fire — neither encouraging or discouraging — and the provision that in effect allows encouragement to be given (*one is not at a disadvantage!*) introduce an anecdote, which appeared first in the *tosefta* (*Shabbat* 13:9) and is repeated in all three of the talmudic citations (*B.T. Shabbat* 121a, *P.T. Shabbat* 16:15d and *P.T. Nedarim* 4:38d). This anecdote illustrates the first of the four stages in the law about fighting fire on the Sabbath. It indicates an absolute refusal to fight a fire on (or have non-Jews fight it on) the Sabbath unless of course human life is in danger. This refusal is the starting point for the slow changes that occurred.

The talmudic material is adapted from the *tosefta* and cited as a *baraita*. The story goes that a fire once occurred in the courtyard of one Joseph b. Simai in the town of Shihin. The Roman troops garrisoned at Sepphoris (Shihin was visible from Sepphoris) came to extinguish it, because Joseph b. Simai was a royal officer. He did not allow them to do so, because of the honor of the Sabbath. A miracle occurred. Rain fell and put out the fire. In the evening (when the Sabbath had ended) he sent two *selā'* to each man and fifty to their officer! When the sages heard of this, they declared that it had not been necessary (to prevent the Roman troops from putting out the fire), because we have learned that when a non-Jew comes to put out a fire on the Sabbath, we neither encourage nor discourage him. The sages had to be referring to his refusal to let the Romans fight the fire, because the justification for their view is the mishnaic statement that one need not encourage nor discourage the non-Jew who comes to

63 See *Leviticus* 18:5. The Rabbis use this verse to rule that the commandments are to enhance life and only in three cases is one to suffer death rather than transgress negative commandments: the commandment against idolatry, against certain sexual taboos, and against murder. The concept of "live by them" appears in several places: *B.T. Yoma* 85b, *B.T. Sanhedrin* 74a, *B.T. Makkot* 23b and *B.T. Avodah Zarah* 72b.

64 See, e.g., *M.T. Hilkhot Shabbat* 6:4, 12:7.

65 *Shulhan Arukh Orach Hayyim* 334:26.

fight the fire and Joseph b. Simai chose to discourage them. Perhaps from an excess of piety?

The *tosefta* version is less detailed: Joseph did not allow the men from the camp to extinguish the fire. Rain fell and extinguished the fire. The sages said no compensation was necessary, nevertheless he sent a *sela'* to each man and 50 *dinar* to the officer. The Palestinian Talmud versions have Joseph telling the troops not to put out the fire saying, "let the collector collect his debt." This is doubtless an allusion to a divine act: God was collecting his due from Joseph. Again the story relates that he sent each man two *sela'* and the officer 50 *dinar* when the Sabbath had ended. There is no mention of the Sages' opinion that he did not have to stop the Romans from fighting the fire. Fire fighting was moot anyway, since apparently divine intervention took care of the blaze.

All versions of the story make one clear point: Sages are quite content to have the non-Jew do whatever they wish to do, but the Jew does not fight the fire on Sabbath unless lives are in danger, an emphasis strongly made in the Palestinian Talmud material. The version in the Palestinian Talmud, *Shabbat* 16:15d and *Nedarim* 4:38d, give additional detail. It seems that in R. Ammi's time a fire occurred in the village of Aphik (on a Sabbath of course). R. Ammi announced in the market place of the non-Jews, asserting that, whoever works (to put out the fire) is not at a disadvantage. Rabbi Elazar said before Rabbi Jose, "(It) was (a case of) danger (to life). (The rejoinder): if it was a case of danger to human life even R. Ammi should help put it out! Wherever there is danger to human life, one does not say, 'let the matter be done by women and children'" (the *Nedarim* version has "non-Jew").

Clearly, the duty to fight fire becomes the duty of everyone when life is in danger, and thus, as has been suggested, implicitly a duty of any given community of individuals, since one person with a bucket or a blanket is no match for a roaring fire that poses mortal danger. There is, however, no discussion of what that "mortal danger" might be — is it from the fire, or from something else related to the fire?

The *tosefta* and the *baraitot* parallel to it present some intriguing possibilities if we reflect on the fact that in Joseph b. Simai's time the Roman fire fighting corps, a para-military unit, was a well-established institution.<sup>66</sup> Further, Joseph b. Simai has been identified as an official in the service of Agrippa II, who was a puppet "monarch" under the Romans in the mid-first century C.E., well before the revolt of 66.<sup>67</sup> The Roman Emperor Claudius awarded him the office of Supervisor of the Jerusalem Temple. Although he took the title of king, he was never actually a king of Judea. Part of Galilee was under his control, however, and Sepphoris was the capital of Galilee. It was also the site of a Roman military base.<sup>68</sup>

The town of Shihin had a pottery industry, and it is claimed that a fire that started among the kilns was visible from Sepphoris.<sup>69</sup> There is certainly no reason to identify the fire in Joseph b. Simai's "courtyard" with the fire at the kilns, but it is possible that in the course of time — our texts were all committed to writing long after the mid-first century C.E. — the fire in the kiln and the fire in the courtyard might have become recollected as a single event. Whatever the case may be, Joseph b. Simai, with his connection to the seats of power, was just the sort of personage whom the Romans would have aided. It is doubtful that the Romans would have stirred themselves for any ordinary householder.

It is not too much of a stretch to place the story of Joseph b. Simai's fire in the context of what we have noted about the fire fighters of ancient Rome. The record shows that these firefighters usually served in the city of Rome itself, but some units of well-trained and professional fire fighters served at other locations in Italy.<sup>70</sup> Thus it is possible that the troops (or perhaps a para-military unit, a distinction that would hardly interest the talmudic editor) who came down to put out the fire may have been a unit of Roman professional firemen posted to the Sepphoris military base. This is only a possibility of course, but it is an interesting one, because it would then suggest that firefighters were sent to the eastern regions of the empire as well as the western regions, and rather early in imperial history at that.<sup>71</sup>

At any rate it is quite clear that Joseph b. Simai refused the services of the firefighters (one can

66 Green-Hughes, *supra* n.43, at 13.

67 See Abraham Schalit, "Agrippa II", *Encyclopedia Judaica* (Jerusalem: Keter Publishing House, 1971), II.417. The *gemara*, *B.T. Shabbat* 121a, identifies Joseph b. Simai as an official of the "king". See H. Freedman in *The Soncino Talmud, Shabbat* (London: Soncino Press, 1938, 2 vols.) 559 n.6.

68 Michael Avi-Yonah, "Sepphoris", *Encyclopedia Judaica* (Jerusalem: Keter Publishing House, 1971), XIV.1177f.

69 Michael Avi-Yonah, "Shihin", *Encyclopedia Judaica* (Jerusalem: Keter Publishing House, 1971), XIV.1398.

70 Green-Hughes, *supra* n.43, at 13.

71 This possibility, as intriguing as it is for Roman history, remains only a possibility until other indications of the presence of Roman firefighters in the East come to light.

imagine their incredulity at this Jew's strange behavior), but he obviously smoothed any ruffled feelings with handsome gratuities for all hands. Joseph apparently knew how to keep his Roman friends happy.

The *baraita* on *B.T. Shabbat* 12a and parallels present the first stage of the law on Sabbath fire fighting. The matter is perceived as a serious violation of the Sabbath, unless human life is in mortal danger. There is no attempt to examine the implications of an "endangered" life, and no indication that anyone grasped the idea that a fire which may first destroy only property will, probably sooner rather than later, endanger lives as well, when the fire is out of control and has become more than the people can effectively handle.

Before we move to the second stage, which comes on the scene at least a thousand years after Joseph b. Simai's time, let us look at two *responsa* that form our first "bridge" between stages. The long years of silence on Sabbath fire fighting certainly do not suggest that fire was not a problem for the Jews, disrupting their lives and destroying their property. These two *responsa* suffice to suggest the sort of problems that were encountered, and the first one even describes a mode of rough and ready fire fighting, right out of the tenth century. The fire probably occurred on a weekday, because there are no references to the *'eruv* or possible Sabbath violations.

The text comes from a responsum of Rabbenu Gershom, the Light of the Exile, Rhineland, 10<sup>th</sup> century.<sup>72</sup> The question presented the following facts: R. and S. lived in the same town (they were probably neighbors). A fire started on S.'s premises. R.'s premises were apparently threatened, so R. moved a barrel of wine out of his house to a place where it would be safe from fire. Some non-Jews seized the barrel of wine and used it (only that one barrel?) to put out the fire on S.'s premises. Question: Does S. then have to pay R. for the wine that was used on his behalf? R. Gershom argues that he does, using arguments based on talmudic texts in which A destroys his property to rescue the property of B: A pours out his wine and catches the honey from B's broken cask in the now empty wine barrel. By rights, the non-Jews should have been liable, but for various reasons it was impossible to collect from them. S. must pay for R.'s wine.

The situation as reported does not picture R. as assisting in combating the fire, only lugging his wine barrel out of harm's way. He may have rushed back to the fire scene to assist S., but we do not know that. What we do know is that his first instinct was apparently to save his property, not to help S. The non-Jews had no compunctions about breaching the barrel and dousing the fire with its contents. If that dousing was to achieve its purpose, the barrel must have been rather large so that there was enough liquid for effective work. If that is a reasonable inference, then R. must have had quite a job moving a barrel of wine to a safe place; it is no small feat to move such a heavy load. Alternatively, the fire may not have been very large, and the barrel of wine was sufficient, perhaps with some other liquids that were available, to quench it. But in that case, why was R. so worried? The fire was a threat, but it could be successfully fought by quick action. The non-Jews used a primitive method of fire fighting, which is effective if done promptly and thoroughly. In fact, bringing a sufficient amount of liquid to douse the fire had been the principal method of firefighting for centuries past and was to remain so for centuries to come.

Another *responsum*, this time from the 13th century, demonstrates a different sort of problem. The events of the case also probably occurred on a weekday since again no questions of Sabbath violation were raised. The case came before the great German authority, R. Meir of Rothenburg.<sup>73</sup> The text also appears in the Mordecai to *Bava Mezia*, no. 376. Matters stand as follows:

R. borrowed a book from S. for a period of one hour, not more or less. He said, you may send after it or I could bring it to you when that hour should expire. During that hour, a fire occurred in R.'s house, and the book was destroyed. As soon as the fire started, R. had to flee lest non-Jews (looters? fire-fighters?) throw him into the fire. He was not able to save the book. R. Meir first suggests a line of reasoning, based on a talmudic source (Rafram in the name of R. H̄isda, *B.T. Bava Mezia* 80b), that would relieve R. of liability even though R. had borrowed the book for one hour only and the book had been destroyed in his house, apparently before that time had expired. He then rejects that argument (which in fact posits liability when the object was already *en route* to its owner within the time limit at the time it perished, but not after the time limit) in favor of another one that does not support R.'s position. Simply put, the argument is: granted that R. had to flee in fear of his life from the non-Jews who throw

72 S. Eidelberg, *The Responsa of Rabbenu Gershom Me'or Hagolah* (New York: Yeshivah University, 1955), no.75.

73 *Responsa of R. Meir of Rothenburg*, ed. Prague 1608, no.140.

the Jew on whose property it had started into the fire, he could have hired other non-Jews or Jews who might rescue the volume. He did not do so and thus is liable for the loss since, on the basis of another talmudic argument, R. became in effect a paid bailee (*sokher*) for the book once the stipulated period of the loan had concluded and the book was not returned. And even though the standard expected of such a paid bailee is less than that of a *sho'el* (R's apparent original status), he would still then have been obligated to hire helpers to save the property entrusted to his care (in the absence of proof that it already perished during the contractual hour), again a matter of talmudic law.<sup>74</sup>

It is noteworthy that R. Meir refers to the hire of Jews to brave the fire and rescue the property (or perhaps to rescue the property by extinguishing the fire). Perhaps there were Jews who would indeed take a hand in fighting fire, at least in the Jewish neighborhoods. One did not, therefore, have to rely exclusively on the skill and bravery of non-Jews. The possibility of fire fighting is certainly there.

### **b. *The Second Stage***

The next text, Mordecai to tractate *Shabbat*, no.393, presents the second stage of the law on fire fighting on the Sabbath. This second stage is articulated in 13<sup>th</sup> Century Germany. This text comes from R. Mordecai b. Hillel, the younger contemporary and pupil of R. Meir of Rothenburg. It is a technical discussion of Sabbath fire fighting, but not apparently a responsum dealing with a specific set of facts. The text begins with the observation that the Babylonian Talmud implies that rescue on the Sabbath is allowed, but not the extinguishing of flames. Even according to R. Simeon, who holds that a person who performs “work”, which is not in and of itself necessary “work” on the Sabbath, is not liable thereby for the violation of the Sabbath (the violation involves *useful* work); and the prohibition with respect to such unnecessary work is a rabbinical prohibition, protecting Sabbath rest. Even here, writes R. Mordecai, we do not set aside a rabbinical prohibition in order to effect rescue (of property). The Palestinian Talmud explains the basic text in this matter as following R. Judah, who held that extinguishing fire is a transgression of a biblically based law, one is also *held liable* for a transgression with respect to work *which is not necessary in and of itself*. According to R. Simeon, we may set aside a rabbinical prohibition only in order to rescue sacred scriptures from a fire on the Sabbath. Even according to the Palestinian Talmud, however, this permission is limited to the rescue of sacred scriptures, but it does not apply to other classes of property — even according to R. Simeon. Even though one may extinguish a fragment of red-hot metal on the Sabbath, so that the public will not be endangered by it, one has by so doing violated a rabbinical prohibition (see *B.T. Shabbat* 42a). The violation is permitted because there is concern for physical injury just as one may put a bowl over a scorpion that it not bite. But the loss of property alone is no permission to extinguish fire on the Sabbath.

The language and the context of public safety are evident in the passage, but that path is not traveled. Public safety does not become a prime consideration. Mordecai continues:

In many lands it has now become the practice to extinguish fire on the Sabbath. They (who do or permit this) have nothing on which to base (themselves in the legal tradition). They say, however, that (they do this because) they are apprehensive that young children who cannot flee the blaze will die in the fire. Further, there is the fear of possible danger to life, because of the ill-will of the civil authorities and the non-Jewish population if they see us leaving the fire to burn unchecked. Therefore, they fight fire according to the view of R. Simeon. This is not a clear basis of permissibility, however. This is rather like what the talmudic sages said: ‘Leave the Jewish people alone (i.e. let them do what they are doing although it is unlawful); it is better they sin in error than by a wanton and calculated disregard for the law.’

One might paraphrase the opinion as: what they do not know will not hurt them.

The first stage of the law was reflected in the versions of the talmudic anecdotes about R. Ammi and Joseph b. Simai. In that stage fire fighting on the Sabbath was permissible, indeed demanded, only if the fire endangered a life. Rescuing property alone was not reason enough to violate the Sabbath. The Mordecai text reflects a different view of matters that grows from the popular awareness that “danger to life” may include the risk of harm from non-Jews if the Jews simply let the fire burn on a Sabbath. They

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74 See *B.T. Baba Metsia* 93b.

are also concerned for young children who might be too terrified or too confused to flee the danger. (The same may be said of the ill and elderly.) Both these ideas, or popular justifications, suggest that a fire which originally had threatened only property may become even more dangerous if they simply let it burn. The concept of *piquah nefesh* now includes more than imminent danger from flame. The non-Jews are not interested in the fine points of Jewish law, when the flames are rising on a Sabbath and threatening their property; a fire unchecked poses a serious danger to people of all ages and backgrounds no matter what day of the week it starts. The vicious practice of throwing the Jew into the flames of his own house if the fire started in it, which R. Meir had mentioned, was certainly enough to make Sabbath fire fighters out of the Jews. R. Mordecai thought their halakhic justification, that the effort is permissible according to R. Simeon's opinion, was weak and certainly unconvincing for him. It is really no halakhic justification at all, as is clear from the first part of the comment: only holy scriptures may be rescued. The people have on a practical level, however, opted for "good public policy" justifying it as best they could.<sup>75</sup> We have moved from a strict attitude of "let it burn" as long as no lives were in danger. In the older, stricter attitude, the danger appears to be understood only as the danger of the flames themselves. This attitude also countenanced turning away the help of non-Jews to fight the fire, or alternatively, asserting in the hearing of the non-Jew the neutral statement — he will be at no disadvantage (for fighting the fire — and perhaps he will be remunerated for the effort?). But apparently rabbinic opinion, which is clearly aware of an expanded version of "danger to life", implicitly acknowledges the idea that a fire left unfought will become a danger to life in more ways than one. Rabbinic authority, however, appears very reluctant to grant permission to fight fire on the Sabbath. The people should be left alone, hands off, since it is better they sin in ignorance than wantonly break the law. That is as far as the rabbis would apparently go.

### c. *The Third Stage*

The third stage is the crucial turning point in the development of this law. This stage comes in the 15<sup>th</sup> century, roughly 200 years after the Mordecai's comment. The authority who authored this further development is R. Israel Isserlein of Wiener-Neustadt, although there is no indication that he saw himself as a genuine innovator in this matter.

Prof. Shlomo Eidelberg in his study of Jewish life in Austria in the 15<sup>th</sup> century, based largely on the writings of R. Israel Isserlein, refers to texts which he claims show the state of opinion on firefighting on the Sabbath and allude to the Jewish law on the subject.<sup>76</sup> Prof. Eidelberg writes that fire was a communal problem for both Jews and non-Jews.<sup>77</sup> The public safety concern raised by fire, no matter where or when it started, therefore transcended any parochial consideration. Fire did not care what was in its path. Death and destruction were indiscriminate.

Prof. Eidelberg cites *Terumat Hadeshen* extensively, both the sections of *responsa* and the *Pesaqim U'Ketavim* from the hand of R. Israel Isserlein, and the *Leqet Yosher*, written by Isserlein's devoted pupil R. Joseph Moses (Joslein), as sources for a number of statements about Jews and firefighting on the Sabbath.<sup>78</sup> Between the two, we have a glimpse into this phase of Jewish life in Austria in the 15<sup>th</sup> century, but unfortunately those sources do not really support some of the assertions Prof. Eidelberg makes with respect to firefighting.

Prof. Eidelberg for instance writes that when a fire broke out, both Jews and non-Jews rushed to the fire scene to extinguish it. He cites *Pesaqim U'Ketavim* 55, 60, 158, and *Leqet Yosher* I, 62, which parallels *Pesaqim U'Ketavim* 156. Those texts simply address the matter of fighting fire on the Sabbath when serious violations of Sabbath rest would result from any fire fighting efforts. The texts only assert an unqualified permission for Jews to pitch in and fight the fire since, according to *Pesaqim U'Ketavim* 156, if Jews do not help out the non-Jews might kill them — or at least plunder their property. Matters

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75 Fighting the fire on the Sabbath was what the people actually seem to have done. Obviously they recognized what had to be done and simply proceeded to do it.

76 S. Eidelberg, *Jewish Life in Austria in the XV Century* (Philadelphia: Dropsie College, 1962), 3ff. See *Terumat Hadeshen Pesaqim UKetavim* (New York, 1957) and *Leqet Yosher*, ed. Freimann (Berlin 1903, reprinted Jerusalem 1963).

77 *Ibid.*

78 *Ibid.*

had apparently not changed much in this regard since the days of R. Meir and R. Mordecai b. Hillel. But no one is described as rushing to extinguish the fire.

The permission to fight fire was, however, publicly preached. Prof. Eidelberg suggests that an address which the sources quote in part was delivered at the time of the fire of 1406, which started in the Jewish quarter of Vienna on a Friday night.<sup>79</sup> The sermon was quite unequivocal. Both *Pesaqim U'Ketavim*, no.156 and *Leqet Yosher* (pp. 62f ) relate that R. Aaron Blumlein, R. Isserlein's uncle and teacher, made it very clear that fighting the fire and doing one's share of the work involved was a religious duty because danger to life was present.<sup>80</sup> Such danger overrides the rules on Sabbath rest. The texts also say that a rabbi who is asked about such a matter is blameworthy because he had not already made clear to his people that fire must be fought even on the Sabbath.

There is nothing in either text, however, that really supports the specific date of 1406, except for the comment in *Leqet Yosher* that the fire destroyed two-thirds of the city, which the 1406 fire did. This comment about the two-thirds clearly suggests the 1406 fire, and indeed that may be enough to establish a post-1406 date for the text in *Leqet Yosher*, a text which seeks guidance on the matter of the people who had excavated a vault on the Sabbath in order to protect their property, the problem we consider next.

Prof. Eidelberg refers to *Terumat Hadeshen Pesaqim U'Ketavim* no.60 and *Leqet Yosher* pp.62f. as reflecting methods of fire extinguishing at that time.<sup>81</sup> This is incorrect. The texts refer to an underground vault (or a "cellar") that the Jews excavated in order to hide their valuables. They filled the holes with dirt up to the ground level, tamped it down and plastered stones and dirt together over it in order to protect the vault door, which was underground and made of wood, from fire. This entire procedure, which certainly took some time, was admittedly conducted on the Sabbath. In the confusion and alarm they forgot it was the Sabbath. (Had they not been to synagogue?)

The rabbinic response to the question was entirely negative. These people had violated the Sabbath for the sole purpose of securing their property; danger to life was in no way alleviated — indeed, it may have increased. The non-Jews finding no ready plunder may well start killing Jews if they cannot carry off any loot. These passages also say nothing of fire fighting methods, unless the construction of the underground vault is taken in that light. The vault was obviously a means of protecting property, not fighting fire. In fact they suggest a negative picture: the Jews mentioned in responsum no.60 seem to have worked furiously only to protect their valuables. They were doubtless too busy to fight the fire that threatened them and appeared to have no thought for the danger of their neighbors.

Prof. Eidelberg also writes that a conviction for arson carried a death penalty, and that this was an added incentive for Jews to fight fire on the Sabbath.<sup>82</sup> The same texts that were supposed to reflect modes of fire fighting are referenced for this assertion. The material, however, does not mention arson, or a conviction for arson, or a death penalty for such a conviction. Arson was indeed a capital offence in Roman law, which was doubtless the basis for the civil code in effect in R. Isserlein's time in the Austrian territories where he lived. *Pesaqim U'Ketavim* 156 and *Leqet Yosher* I.62 clearly do say that non-Jews are wont to throw a Jew into the flames of his own house when the fires started there. Isserlein notes that this is the same sort of violence that R. Meir of Rothenburg mentioned (and, for that matter, R. Mordecai b. Hillel as well). This is murderous brutality, not a conviction for arson. There is no hint here of legal process, just the cruelty of going out to kill the Jew and to plunder what is available. The only hint of legal process at all, and it is only a hint, occurs in responsum no.58, the next text to be examined.

The fullest single statement on the question of fighting fire on the Sabbath is found in *Terumat Hadeshen*, no.58. Although much of the same material appears in other parts of *Terumat Hadeshen*, *Pesaqim U'Ketavim* and *Leqet Yosher*, this responsum presents the more orderly and clearer statement. It omits only one element, which will be noted at the end of the rendering of it presented here in its entirety (but not however word for word). Where the text cites another source, that source is reviewed in its own right; the source may not always be precisely as Isserlein cites it. The *responsum* is, however, substantially accurate in all its citations.

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79 Eidelberg, *Jewish Life in Austria*, *supra* n.76, at 35ff.

80 See *Pesaqim UKetavim*, no.156 and *Leqet Yosher*, I pp.62f.

81 Eidelberg, *Jewish Life in Austria*, *supra* n.76, at 35 n.107.

*Question:* (Re:) A fire that has occurred on the Sabbath: Is it permissible for a Jew at this time to extinguish the fire or not (since the work involved clearly violates the Sabbath)?

*Answer:* It would appear that there is a difference (of opinion) on this matter as I shall explain. The notes on *Hagahot 'Asheri* to tractate *'Eruvin* (4:6 re: Palestinian 45a) based on *Or Zarua* to the fourth chapter of tractate *Eruvin* read as follows: At the present time if brigands come to plunder property (we) go out against them with arms and violate the Sabbath because of them. Similarly it is permissible to extinguish a fire at the present time because we live among non-Jews. When there is a fire, they come to plunder and to kill, (and this situation is) not of a lesser (degree of seriousness) than that of an Israelite town which is adjacent to the border (and a protective outpost for the rest of Jewish territory which stands in continuing danger from armed brigands whom the Jewish residents may resist with armed force even on the Sabbath, cp. *B.T. 'Eruvin* 45a).

This statement is identified as a citation from the *Or Zarua*, the 13<sup>th</sup> century compilation of R. Isaac b. Moses of Vienna. The most recent scholarly edition of this work says something rather different.<sup>83</sup> In the section on the Laws of Sabbath Eve, no.36:3, there is a brief discussion of R. Ammi's assertion that the rabbis permitted a person to say (in the presence of a non-Jew, in a Sabbath fire emergency) anyone who extinguishes the fire is not at a disadvantage, a provision which is by now very familiar. *Or Zarua*, then makes several points:

First as a practical matter of the law *Or Zarua* writes that there is no differentiation between the work required for fire fighting as a Sabbath violation and other types of Sabbath violations. He adduces support for this opinion from Palestinian *Shabbat* 15c. He suggests that if fire is comparable to armed incursion or flood, with respect to physically saving threatened property, how much more are they all comparable in the matter of permissibility merely to utter (in the presence of a non-Jew) "anyone who saves ... is not at any disadvantage," which is not physical activity but mere utterance (in any event not a sinful violation of the Sabbath: Jews are not responsible for a non-Jew's observances). There is no reference to living among gentiles who come to plunder during a fire emergency, etc. in section 36 or any adjacent section.

The citation of the notes on Rabbenu Asher is substantially accurate. The reason for fighting the fire is apparently to preclude a predatory raid that could cost Jewish lives as well as property. R. Isserlein continues to cite *Or Zarua*.

In *Or Zarua*, Laws of Sabbath Eve (Sec. 38) (the author) wrote as follows: "Even in the case where there is only possible danger to life, even the great men of Israel extinguish the fire (on the Sabbath) even though it is possible for a non-Jew to do the work." (This is of course an echo of the talmudic dictum we have already noted.)

The next portion of the Isserlein responsum is not taken from *Or Zarua*. Isserlein writes:

I have found that one of the great ones copied sermons of R. Hayyim *Or Zarua* (the son of R. Isaac *Or Zarua*) to the following effect: In a fire emergency in which there is danger, lest they should come to shed Jewish blood, do not tell a non-Jew to extinguish the fire. Rather it is a religious duty for the Jew to extinguish it himself. And one of the great ones preached publicly that it is permitted to extinguish a fire on the Sabbath at the present time; and he says that therefore he preached publicly that he not be termed negligent with respect to lives, as one says in this sort of matter, 'the person asked is ashamed' (if he delayed conveying his message): he should already have made (the permissibility) public knowledge ... "

The sense of this statement is made clear in *Tur 'Orah Hayyim* 328. When a person is ill and there is possible danger to life, one should not delay treating the patient, even if a Sabbath violation is involved, in order to ask whether such and such an act is permitted or not. In *P.T. Yoma* 8:45b, it says "the one questioned is ashamed (to receive such an inquiry, the answer to which is so well-known) and the questioner is a murderer" (see *Bet Yosef* to *Tur* thereon. Isserlein continues:

## Biblical Arsonists and Sabbath Firemen:

I have heard (men suggest) unconvincing and awkward (arguments) to add greater strictness in this matter on the basis of their personal reasoning, saying (the permission to fight fire applies) only when the fire first occurs in a Jewish dwelling. There is (then) danger, because the non-Jewish rule was such: when they would find him (the Jew) from whose house the fire spread, they throw him into the fire.

This is the implication of the Mordecai to chapter eight of *Bava Mesia*, that the non-Jewish rule was such (cp. also Mordecai to *Bava Mesia*, no.376.) The word rendered here as a “rule” is the Hebrew “*mishpat*”, which usually means judgment or law in this sort of context. The use of this word stretches its meaning to cover what appears to be a fairly common barbarity, a practice that Jews understood as tantamount to a “law.” The word does not, however, appear in either the responsum of R. Meir of Rothenburg or the version of the responsum in the Mordecai. Isserlein himself (or perhaps Joseph b. Moses) interpolated it. In Isserlein’s responsum no.156 the same matter is described as “the way of the non-Jew.” Isserlein continues:

In this situation (where non-Jews would throw Jews into the fire) it is permitted to extinguish the fire. If, however, the fire began in a non-Jewish dwelling, one need not have this apprehension (about such immolation), and there is no danger. We have seen that (in) many major cities, in which large fires have occurred, they (the non-Jews) did not harm the Jews physically at all. And not even a threat (of such brutality) was heard when the fire did not erupt in a Jewish dwelling.

It seems, however, that on the basis of the language of the *Hagahot Asheri*, there is no such implication that a distinction should be made according to the fire’s place of origin, because the reason there (in the *Hagahot Asheri*) depends on the proposition that, because they plunder and kill, (the situation) is not of a lesser (seriousness) than that of an Israelite town which is adjacent to the border. The implication of this language is that because one engages in the seizing of property, one may eventually engage in murder. By this reasoning one should be apprehensive about plunder and murder even when the fire originally spread from the dwelling of a non-Jew. They are always accustomed to pillage and plunder (and thus to murder) when the fire develops destructive power. Even if we observe that there are cities where no threat of this kind is ever heard of, one should not rely on that fact since on some few occasions, one does need to be apprehensive (of the possibility of plunder and murder), because the rule is established in chapter two of tractate *Yoma* (in fact, the citation should be to chapter eight: *B.T. Yoma* 84b) that we do not follow a majority in matters where an immediate danger to life is concerned (see *B.T. Ketubot* 15b: one searches through the rubble of a collapsed building on the Sabbath even though only one person in ten buried there might be a Jew) and just so do we find matters in *Tosafot* to *Niddah* 44a, s.v. *'ihu*, that we do violate the Sabbath even (to care) for a moribund person even though most such people do die. And (we) adduce proof for this from chapter two (i.e. eight) of *Yoma*, as above.

The permission to fight a fire that begins on non-Jewish property clearly suggests that R. Isserlein understood that a fire left to rage would soon be a general threat to lives and property. The distinction between saving a life, even if only doubtfully in danger, and saving only property, is now really quite blurred. Isserlein resumes:

It would appear, however, that one should give careful consideration in any (specific) matter to the view of the (Jewish) sages of that city. For instance, if the civil authority in the city promises to rescue Jews (from depredations in, e.g., a fire situation) and in this wise it seems that there is no danger at all, they should not violate the Sabbath at all (by fighting the fire or rescuing property contrary to the rules of Sabbath rest, but they certainly would save lives).

This is a somewhat obscure statement. Granted that the non-Jewish civil authority would be quite able to protect Jews from mobs of looters if a fire occurred in a Jewish area, there would still be the danger to life and property from the fire itself. One should not imagine that the civil authority could call out a fire brigade to fight fire in the Jewish neighborhood while the Jews merely stood by. Firefighting in R. Isserlein’s era was primitive and rather unorganized at best, and if the Jews would not have lifted a finger to help fight such a common threat, the non-Jews would simply turn their attention to protecting themselves. Isserlein continues:

The language of R. Ḥayyim (noted) above implies that there are times when there is no danger, since it is written in a fire emergency in which there is danger lest they should come to shed (Jewish) blood, which intimates that without further information (to the contrary) we do not argue (or conclude, decide) that there is danger (that is, the phrasing “a fire emergency in which there is danger to Jewish lives” bespeaks a circumstance in which there is no such danger. When that is the case, one need not reason that there is in fact danger to Jewish lives and property without good reason to do so).

But how trustworthy would past assurances of safety really be in the fear and confusion of a fire that is out of control? There are two problems. First, control of the fire, and second, the control of mob looting and violence. Without some effective means of fighting the fire, looting is an excellent possibility, perhaps an inevitability. Even with the best of intentions, it may still be doubted whether or not any civil authority can absolutely control elements who are bent on plunder and murder. R. Isserlein suggests that such a serious matter as Sabbath violation be left to the competent rabbinic authority on the scene. Even here, however, one is hard put to imagine how a court would have time to convene, deliberate and decide while the flames grow higher in the absence of firefighters.

R. Isserlein’s opinion also appears in *Bet Yosef to Tur Orah Ḥayyim* 334. *Bet Yosef* repeats the *Or Zarua* material, the *Hagahot Asheri* and much of the substance of the Isserlein responsum. R. Moses Isserles in *Darkhe Moshe to Tur Orah Ḥayyim* 334 cites more of the *Or Zarua* noting, *inter alia*, that any permission to extinguish a fire on the Sabbath is only for the purpose of saving lives, but to desecrate the Sabbath for the purpose of saving property alone is still forbidden.

R. Isserles includes the Isserlein responsum in his gloss (the *Mappah*) to *Shulḥan Arukh Orah Ḥayyim* 334:26, mentioning *Or Zarua* and the notes on *Hagahoth ’Asheri* with their respective opinions. He concludes by saying that fighting the fire is only permissible on the Sabbath when lives are at stake, not just property. Further, if a person did transgress the Sabbath by fighting fire to save property alone, he must fast for forty days, on Mondays and Thursdays (therein), drink no wine and eat no meat (Sabbath and festivals excepted); he must also give a prescribed amount to charity. He may choose to “redeem” the fast and obviate its observance by giving a fixed amount to charity for each day of the fast (cp. *Darkhe Moshe to Bet Yosef* on *’Orah Ḥayyim* 334.) *Or Zarua* had also discussed fasting; he mentioned a practice of encouraging men to fight fire on the Sabbath and then imposing the fasting regimen on them for the Sabbath violation performed for a good and worthy cause (*Or Zarua*, Laws of Sabbath Eve, sec. 38). He does not, happily, accept this approach as a practical procedure. He holds that one should not do anything that might make men reluctant to fight fires in the future. This latter idea is most important in the fourth stage of this law’s development, which we shall presently encounter.

The matter of fasting is not mentioned in responsum no.58, but Isserlein does raise the matter in *Pesaqim U’Ketavim* nos. 55 and 60 (see also *Leqet Yosher* Palestinian 63), where it seems the atonement in question there applies to types of work that were clearly transgressions of biblical rules.

The Isserlein *responsum*, no.58 (and the summary of it in *Shulḥan ’Arukh ’Orah Ḥayyim*) expresses the third stage of development of the law on Sabbath firefighting. This third stage asserts that there is indeed justification in the Jewish tradition for Jews to become firefighters on the Sabbath. Saving lives is a religious duty, and the expanded definition of what constitutes danger to life is fully accepted. The danger may be from hostile mobs who will kill the Jew on whose property the fire started — or who declined to fight the fire, because it was a desecration of the Sabbath. A pragmatic public safety point of view becomes the accepted view. Danger need not be only from the flames *per se*. Authorities now appear to understand that unless the Jews take a hand in firefighting, even on the holy Sabbath, not only can they not expect any aid from non-Jewish neighbors or authorities, but they may continue to face mob violence for their extreme piety, a sad fact of German–Jewish life for a long time. Fighting fire when lives are at stake directly or indirectly, so it appears, is now lauded as a classic religious duty. But fasting may still be necessary.

The Isserles gloss is a summation of the state of the law up to the close of the 16<sup>th</sup> century. But the gloss does not tell us what actually happened at times of emergency. It is possible, as we gather from *Or Zarua*, R. Meir of Rothenburg and Mordecai, that Jews had as a matter of fact fought fires on the Sabbath; others, as one might gather from the story of the underground “vault”, took measures to protect their property rather than fight the common danger. Presumably “firefighters” who saved only property humbly accepted whatever fasting and penitential requirements were laid upon them. That is the most

charitable presumption; yet they might also have refused to do so, claiming that they had done a great public service and had saved lives.<sup>84</sup> We do not know whether or not matters were really resolved that way. There are no responsa that reflect such a decision in an actual case.

The one Jewish legal element that still acts as a possible barrier to full permissibility for Sabbath firefighting is this matter of a transgression of the Sabbath which, even if performed for a good and worthy cause, still requires expiation. This is clear in the major texts on the matter up to the end of the 16<sup>th</sup> century: *Or Zarua*, R. Isserlein, R. Isserles. The tradition holds that even if the danger to life is perhaps doubtful — is it or is it not a genuine danger? — the fire may be fought and no fast or other expiation is called for. But should it be quite clear that the firefighting saved only property — and lives were never really in danger — the expiation is in order. The fourth stage will presently allow another assessment of the matter, but we now come to our second bridge.

One such case was handled by R. Moses Isserles himself.<sup>85</sup> The matter concerned a paid bailee who placed the object in his care in a chest with some of his own property; the chest and its contents were destroyed in a fire. The bailee saved other items which were in the room, but not that chest. The question is whether or not the bailee is liable to indemnify the owner of the bailment under these circumstances. Isserles undertakes a detailed review of the rules governing paid bailees and the rules governing their liability when the bailment in their care is destroyed or stolen. He looks into the matter of negligence, and what is and what is not an unavoidable accident. His decision, which he describes as the essential answer, is that the bailee is liable to make the loss good by reason of his negligence. He saved other property while negligently allowing the fire to destroy the bailment.

Another sixteenth century master, R. Samuel de Medina of Salonika, relates a case in which fire seriously disrupted lives.<sup>86</sup> The problem concerns a rental property and a fire. It seems that R. rented a house to the widow Leah. The precise amount of the rental was not specified. Leah lived on the property some months, during which time Leah paid several months of rent to R. R. accepted the tendered amounts without saying a word. He did not seek more money from her. After a few months R. asked Leah to vacate the property, and she agreed to do so. Just after that time, a fire occurred in the city, and much housing was destroyed; so much so that the townspeople were hard put to find shelter. Leah was one of the people who could not find a place to live (assuming she would vacate R.'s property), R. argues that Leah should vacate since she agreed to do so, and that she should also pay (additional) rent for the past months, about 50 silver pieces, since he had not originally specified the actual amount of the rent. Leah pleads that she did pay rent for the property: about the same amount of rent that the neighbors paid; and R.'s silence indicates his satisfaction with what she paid. And why should she pay more than the neighbors for similar housing? With respect to the future she pleads that since the fire, she cannot find a new place. Therefore, she is unavoidably forced by this unusual circumstance, and R. does not have the power to evict her. The questioner seeks an opinion: who is correct, R. or the widow? The fire is not the subject under notice. The fire is the circumstance that made decent housing scarce and has prompted R. to threaten eviction and seek more rental money. For various reasons Rashdam sides with the widow, but this entire case is a microcosm of the misery and disruption fire brought and continued to bring to many communities.

#### **d. *The Fourth Stage***

We turn now to the fourth, and last, stage of development of this law. This is the final stage of the law which had a long slow progression, from the bare permission to save a life endangered by fire on the Sabbath and the willingness to let the fire burn if only property were involved, to this fourth stage which is a rather comprehensive public safety stance, that in effect protected both lives and property. The responsum that demonstrates the fourth stage appeared about a century after the careers of R. Isserles and R. De Medina had ended. Someone finally asked the vital question about sin and expiation with respect to fighting fire on the Sabbath.

The 17<sup>th</sup> century German authority, R. Yair Hayyim Bacharach, speaks to the matter of desecration

83 The edition produced by Machon Torani in Jerusalem (Yeshivat Or Etzion: 2001).

84 Unfortunately the sources do not include the reactions of such firefighters, how they might have justified their acts in general or how they argued their case before a rabbinic court, assuming the matter was heard by such a tribunal.

85 *Responsa of Moses Isserles*, ed. Asher Siev (Jerusalem: Feldheim, 1971), no.106.

of the Sabbath by firefighting to save only property, in Responsa *Hawwoth Ya'ir* sec. 1, no.236.<sup>87</sup> His response to the question shines a light on a matter that none of the previous authorities had really analyzed. Here is the question he was asked to resolve:

You asked me about the matter of profanation of the Sabbath committed by reason of a fire (doubtless firefighting and fire rescue from the nature of the answer): Is it proper (in that circumstance) to decree a public fast, because it was a sin of the congregation (i.e. apparently many men of the community took part). Certainly (this fire-fighting effort on the Sabbath) is a duty; there is no question about that (i.e., when life is in danger.) You are aware of the (opinions) of *Hagahot Asheri* to *Eruvin*, ch. 4 and R. Israel Isserlein *Terumath Hadeshen* no.58 and *Pesaqim U'Ketavim* no.60, which hold that there is no prohibition (against such activity) at all. On the contrary, a person diligent in this work is praiseworthy.

If your question concerns a profanation of the Sabbath in order to save property when there was no danger at all to life, the plain truth of the matter is that atonement is necessary (for so doing).<sup>88</sup> If it is your sense of the matter that there (remains) some apprehension that (some aspect of) a prohibition (is still involved here), because even though the situation concerned saving life, the saving of property was also effected by extinguishing the fire; this matter does not require careful examination, because there is *no* apprehension (that there is some transgression when property is saved in the process of saving a life). (This is clear from) *B.T. Yoma* 84b (where a person saved a drowning child by catching it in a fish net) even though fish were also caught in the process.

Your wish may be (to receive guidance in the matter of) a mere stringency (of the law), because we find that there can be a religious duty, the performance of which requires expiation, cp. *Tosafot* to *Ta'anit* 11a s.v. 'amar ... and similarly in the *gemara* of *B.T. Sanhedrin* 26b, end, "they reasoned that they had performed a religious duty (yet they had to have an expiation)."

This is the same ground that *Or Zarua* traversed centuries before, and it requires a closer inspection. In this *Sanhedrin* citation, some gravediggers had buried a corpse on the first day of the Feast of Weeks, an act which was meritorious but a desecration of the festival. One rabbi excommunicated them as wicked men. Another rabbi lifted the excommunication: the gravediggers may have reasoned that they did indeed transgress, and the time spent in excommunication was the penance the rabbis imposed on them. The parallel to the act of fire fighting as a "meritorious transgression" is clear. R. Bacharach continues:

In *B.T. Mo'ed Qatan* 9a the expression, 'All the goodness shown to the people Israel' (*II Kings* 8:66) indicates to the rabbis that the sin of non-observance of the Day of Atonement had been graciously forgiven the people.<sup>89</sup> Even though the rabbis employed an *a fortiori* argument to allow the sacrifices of individuals to be offered at the Temple, and an *a fortiori* argument has the force of a biblical provision, one gathers (nonetheless) that pardon was (nevertheless) necessary (i.e., they had been pardoned for the non-observance of the Day of Atonement, yet it was still necessary to seek forgiveness).<sup>89</sup>

The argument *a fortiori* is intricate. What the respondent contemplates is a complex matter of sacrificial ritual. In the case of the desert Tabernacle, whose sanctity was not eternal, *individual* sacrificial gifts were offered at the time of its dedication even on the Sabbath day. Ordinarily the offering of *individual* sacrifices on the Sabbath is a capital offence. The Solomonic Temple, whose sanctity is eternal, was celebrated at its dedication with "public" offerings that ordinary people, not just priests, could eat; and these were offered even on the Day of Atonement, the desecration of which is punishable by extirpation, a lesser degree of punishment than capital punishment. Thus, if the individual gifts were

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86 *Responsa of R. Samuel de Medina, Hoshen Mishpat* (New York 1958-59), based on the Salonika edition, 1797-98, no.245.

87 Frankfurt am Main: J. Wust, 1699.

88 This is also made clear in the *Pesaqim U'Ketavim* no. 60 cited above as well as in the gloss to *Shulhan ?Arukh, 'Orah Haim*, 334. R. Bacharach restates the law as R. Isserles and his predecessors put it: rescue of property alone entails expiation. Presently he will take a much closer look at the transgression.

89 *B.T. Sanhedrin* 26b gives the clearest expression of the matter.

allowed at the dedication of the Tabernacle and the imposition of the capital punishment (i.e. the more severe penalty) did not apply, how much more, *a fortiori*, were the public offerings (which were eaten on that fast day) permissible at the Temple on the Day of Atonement during the Temple's dedicatory celebration (cp. *Leviticus* 23:29, 30 a matter calling for extirpation, *karet*, which is deemed a lesser level of punishment). The rabbis take the verse in *II Kings* to mean that the people were forgiven the sin of the non-observance of the Day of Atonement — and yet expiation and forgiveness were still necessary. That was of course a special exception for the dedication; there obviously could be no permanent permissibility. The text resumes:

We find a disagreement along these lines concerning uncleanness caused by a corpse (with respect to the High Priest on the Day of Atonement, who must be absolutely ritually pure): is such uncleanness — if contracted — rendered permitted (i.e. rescinded so that the High Priest may offer public sacrifices) or is it only suspended?<sup>90</sup> The *Bet Yosef to Tur 'Orah Hayyim* ch. 328 examines the matter of saving life on the Sabbath along these lines (“permission or only suspension”), and concludes that the Sabbath is (only) *suspended for the purpose of saving a life*. If so (i.e., if this reasoning is correct) it appears that there is a (valid) line of reasoning that expiation is required (*for saving the life on the Sabbath* — there was only a *suspension* not a cancellation of the strict law of Sabbath observance).

Thus, to my humble way of thinking, wherever the rabbis have said: Great is the honor due to humankind for it suspends a negative commandment of Scripture (*B.T. Berakot* 19b *et passim*), expiation is required. I say that, with respect to profanation of the Sabbath (because of an acceptable reason), granted it is good and proper for the individual to fast, that it not be only a matter of choice (for him to do so): and R. Huna once got the strap of his *tefillin* somehow reversed, and he fasted forty days (because of it): *B.T. Mo'ed Qatan* 25a; and *B.T. Hagigah* 22b (relates the story) that R. Joshua was ashamed (for having spoken somewhat harshly of Shammai, the great sage of generations before); and R. Joshua's teeth were black from fasting. (The point of these anecdotes is that rabbis undertook to fast for even the most minor lapses in ritual or etiquette...) In any event since we have seen that our sages of blessed memory were very sensitive about this matter of saving a life (on the Sabbath, by means of a Sabbath violation); and they said, the person asked (about such permission) is blameworthy that he had not already made clear the importance of saving a life (on the Sabbath, by means of a Sabbath violation). And (they said) we do not do these things (i.e. save lives) by using women or slaves (to do so): *B.T. Yoma* 84b, to which R. Nissim (Rabbenu Nissim to Alfasi *Yoma* 4b, at *W'ein*) commented: so that people would not say that they gave the permission (to save a life on the Sabbath) only with difficulty (i.e. this permission to save a life by violating the Sabbath was only allowed despairingly, in disappointment, and permitted only as a last resort, so to speak). How much more (should this last notion that the permission was despairing appear correct) if the teacher should respond to the inquirer that he should fast; and how much more (should this last notion appear correct) if they were to decree a public fast for saving a life by transgressing the Sabbath — because one should be apprehensive lest (by so doing) you would cause (potential rescuers) to stumble in the future: that people would refrain and not perform (rescues), because they would stop fighting fires on the Sabbath!

Even though this argument was clearly on the record for a long time (*Or Zarua* had made it), Isserlein did not include it in his presentations of his legal opinion nor did R. Bacharach. Therefore, one has to assume that the fourth stage did not fully emerge until the 17<sup>th</sup> century. As far as I can tell no major authority has reopened the matter as a live issue. The text resumes:

Therefore, one should not instruct in this wise (to require the rescuer who violated the Sabbath to fast etc.) and all the more not to decree a public fast. And the one who is more stringent (in this — by requiring a fast) is (really) being lenient; he is a person who causes others to wonder at his strange behavior! (He thinks he is being strict, but really he gives people an excuse to shirk a clear duty.)

How much more should there not be any fasting imposed if one's “profanation” is not a type of work forbidden by scripture, but (merely) the moving of fire fighting implements (this is the only reasonable meaning of *k'lei s'refah*) and the like). How much more (is there no violation worthy of

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90 In the matter under notice, is the sin of desecration of the Sabbath by reason of firefighting erased entirely or is it merely “suspended” — and thus pardon is necessary?

fasting) if he has only given them (the implements) to the water-drawers, and he gives (them) to his non-Jewish colleague (in this work) and that one to another one (and so on down the line), because there is (in this) only the most minor violation of Sabbath rest, and it requires no repentance at all.

So it appears to me, Yair H̄ayyim Bacharach.

R. Bacharach has cleverly eliminated virtually the last explicit element of difficulty in the way of a complete public safety perspective. He could not simply erase the matter of fasting, but he does the next best thing. He minimizes the transgression involved in firefighting on the Sabbath until it all but vanishes. The process runs like this. Since the weight of tradition has clearly dismissed the necessity for expiation where there is a life threatening situation or even a possible threat to life, the only profanation still in question concerns a profanation for the sake of saving property alone. R. Bacharach begins by reasserting the necessity for expiation for this sort of transgression, although he is surely aware that the distinction between a life-threatening fire and fire endangering only property is too rigid to maintain in practice, a point which is implicit in the justification of firefighting when there is *possible* danger to life. Second, the expiatory regimen, therefore, applies only where mere property is at stake. Third, R. Bacharach finally devalues the actual act of profanation: working the bucket brigade, i.e. helping to fight the fire, is only a *minor violation of Sabbath rest*. Expiation is thus an unnecessary burden to place on firefighters — lest they become reluctant to answer the call in the future. Therefore, since the distinction between a life threatening emergency and a non-life threatening emergency in an urban setting is all but impossible to maintain, the minor infraction that would occur in the latter case is no cause for expiation. There was always danger to life from fire in the sorts of urban settings where Jews lived. As long as there was the potential for some life saving effort, a religious duty was involved and atonement and expiation are no longer a problem. R. Bacharach has deftly all but removed the matter of atonement and expiation from Sabbath firefighting.

There is conceivably still a problem with actually throwing water on a fire. That is more than mere passing water buckets to the scene of the blaze. But it would be extremely difficult to prove that throwing the water on a fire was *only* for the purpose of saving property. The point is always well taken that any fire may easily become a possible mortal danger. R. Bacharach has for all intents and purposes achieved a view of firefighting that accords entirely with the perspective of public safety. The fourth stage has finally been achieved.

### 3. *Review and Conclusions*

To review briefly: the first stage is the most rigid, characterized by Joseph b. Simai's refusal of non-Jewish aid and the rule that the most one may do is to inform a non-Jew somehow that if he fights the fire he will be at no disadvantage. Fire is to be fought only if a human being is endangered by it — that is, by the flames; if property is also saved, that is acceptable under the law. The first stage emphasizes the seriousness of violating the Sabbath. The second stage acknowledges an implicit expansion of the idea of "danger to life"; yet there is reluctance to approve the arguments that some Jews used to justify what they in fact did. The third stage is approval of Sabbath firefighting to save endangered lives — however those lives may be endangered by the fire: directly by flames or indirectly through mob violence, plunder and murder at a time of fire emergency. There is also a reiteration of the ancient talmudic principle that to engage in saving a life from destruction is a religious duty incumbent upon all Jews. Yet there remains the problem of performing a religious duty by breaking a religious prohibition, even if that religious duty is saving a life endangered by fire. In this situation, the violation, though in this case excused, may still require atonement and forgiveness. The final stage implicitly rejects the necessity for fasting and expiation — in virtually every case. Participation in the bucket brigade of firefighters involves only the most minor sort of infraction, and fire is in practical terms always a danger to life. If the firefighters' efforts could be proven to be wholly a matter of saving property, then the expiatory regimen might possibly apply, but that would be extremely difficult to prove. Further, if the firemen who (as it turned out) saved only property had to fast, would they continue to fight fires that might occur on the Sabbath. Arguably some sorts of firefighting tasks could still constitute a violation if the work involved were of a different nature: perhaps actually throwing the water on the fire to extinguish it, surely a more serious level of violation; or perhaps destroying property to clear a fire break. No authority was called upon to analyze these matters. We should, however, keep in mind that

those acts would become violations of the Sabbath only if it were proven that the fire in fact threatened only property, a rather tall order. If the law has not moved through a 180 degree arc, it has moved at least 175 degrees in a four stage process.

R. Ḥayyim Benveniste, a Sefardi and an older contemporary of R. Bacharach, comes to the same conclusion, but he still harbors reluctance about making this decision public (*Keneset Hagedolah to Orah Hayyim* 334, *Bet Yosef*, no.11).<sup>91</sup> R. Benveniste also records the rule on fasting, and charitable giving stated by Isserles in his gloss noted above. R. Benveniste draws attention to R. Isserles's reference to permissibility of Sabbath firefighting even if there is only possible mortal danger to people. He then asserts that on the basis of this view, we now have permission to fight fires on the Sabbath in any circumstances.

Obviously the author subscribes to the idea that the fire will sooner or later represent possible danger to life. The permission he propounds applies whether or not there is danger from civil authority (or a mob?) if the Jews do not fight the fire. The ill and the elderly will be endangered if the fire is unchecked.

Further, suggests R. Benveniste, most of the time people's property is prey to plunder at the time of a fire emergency, and a person is much concerned for his goods. If he rescues his property, the mob will kill him. R. Benveniste concludes his comment with the remark that in his view, it is not proper to make the permissibility of firefighting on the Sabbath well known. On the one hand, he acknowledges that Sabbath firefighting is permitted for two reasons. On the other, he is reluctant to make this a matter of public knowledge. We recall that in the time of R. Isserlein, R. Blumlein passionately urged Jews to fight the Sabbath fire. The permission to fight the fire on the Sabbath arguably becomes acceptable from a *halakhic* perspective (the distinction between lives and property notwithstanding), and R. Bacharach disposes of the need to fast and atone for Sabbath firefighting. The only question is whether this permissibility shall become well known in Jewish communities, a matter that R. Bacharach did not raise and very likely would have answered in the positive, contrary to R. Benveniste.

Even though the two men were contemporaries, there is no reason to believe that they knew of each other's work. Certainly, R. Benveniste was dead long before R. Bacharach's work appeared, and R. Bacharach does not mention R. Benveniste's conclusion, which would have strengthened his own halakhic opinion. He could have either omitted R. Benveniste's problem with publicity in the matter, or reasoned it away on the basis of R. Isserlein or *Leqet Yosher*. After all the permission itself was not in doubt, only its publicity.

The *halakhah* shifted, very slowly but very surely, from the rigidity of the ancient talmudic discussions that looked on Sabbath firefighting as a purely ritual matter to a public policy view that took the realities of life very much into account. Reluctance and refusal to act lest property alone be at stake were eventually superseded by the necessity to do what had to be done when fires occurred. Rabbinic authorities of the most impeccable orthodoxy adapted the law to the demands of life.

Rabbinic authority from the 13<sup>th</sup> century explicitly states that Jews did indeed fight fires on the Sabbath. *Or Zarua*, R. Meir of Rothenburg and the Mordecai all make that quite clear. Undoubtedly they fought fires on other days of the week as well. But there are no sources that actually describe Jews on the fire line except perhaps for R. Bacharach's reference to a bucket brigade. That reference, however, may merely be describing something R. Bacharach has seen, that may or may not have involved Jews at all. But that is not the entire story. Some Jews obviously fled for their lives, terrified that an angry mob might pitch them into the flames of their own houses. Some saw to their property first (perhaps later joining the firefighters?). People react to the danger of fire in different ways, and the material we do have suggests the range of such reactions. The clear tone of strong encouragement and support for firefighting in the 15<sup>th</sup> century sermon cited in R. Isserlein's responsum may reflect a reluctance on the part of at least some of the community to get involved with it. Some people seem to have needed powerful persuading that it was the right thing to do. What is clear is that at no time did fire prevention or fire fighting become a Jewish communal enterprise. It remained a matter of individuals who stepped up when the occasion demanded. Although saving lives was and is a major desideratum in Jewish law, the task of doing so rested on individuals as individuals. No general public duty seems to have emerged.

We have unfortunately no questions raised by those who fought the fires. No one, so it seems, was ever injured while fighting a fire and tried to collect medical expenses from the householder whose

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91 *Keneset Hagedolah* (Jerusalem: Haktav Institute, 1995).

family (and property) he had helped to save. Nor do we have a case in which the property of a fire victim suddenly appears in the possession of a volunteer fire fighter. Nor do we have a case in which one householder bribed fire fighters to save endangered goods in one building (on a week day of course) rather than continue to battle real flames in another building. It is very difficult to imagine that over 2,000 years no Jew who voluntarily fought fire was ever involved in a complaint, occasioned by his firefighting, for rabbinic adjudication. That is too much to believe. Perhaps such claims were quickly settled without rabbinic participation in the matter. Perhaps. The absence of such cases remains a very minor mystery.

Finally, R. Bacharach's responsum indicates the primitive techniques of fire fighting used in his day and for thousands of years before and indeed up to the late 19<sup>th</sup> century: the bucket brigade, a human chain passing buckets of water to the fire line and passing the empties back to the well or the river. This most fleeting glimpse of fire fighters at work in the 17<sup>th</sup> century is one of those striking passages in the responsa literature that remind us vividly of what Jewish life was like in a long past age.

There are a few references to firefighting in general in some later halakhic works. They are offered for the sake of completeness, but they are entirely unrelated to the four-stage development of Sabbath firefighting. The 18<sup>th</sup> century encyclopedia of halakhic material, *Paḥad Yitzhak* by the Italian rabbi, Isaac Lampronti, preserves a curious story about a conflagration that harks back to the story of Joseph b. Simai.<sup>92</sup> R. Lampronti relates that on 26 Kislev in the year 1686 at approximately eight o'clock in the evening, a fire started in the house of a non-Jew in the city of Reggio.<sup>93</sup> The fire grew so large that the sparks and burning debris almost reached the Jewish area, and the Jews became very fearful; they made a *segulah* (perhaps some amulet or incantation or even some magical practice) and immediately witnessed a miracle (a wind shift? a rain storm?).<sup>94</sup> Obviously the Jewish quarter was not destroyed by the fire. The people saw it as divine intervention. This recalls the miraculous cloudburst that quenched the fire in the days of Joseph b. Simai. R. Lampronti also includes a word of fire fighting advice that reflects the superstitions of Jews in his day: "When there is a fire and people fear that it will spread to their houses, they should take the garment of a menstruant with menstrual blood on it and place it on the fire endangered dwelling. This is a most effective means of warding off the fire from the house." Lampronti does not say if there is any empirical evidence to support the claim made for this procedure. Clearly fire remained a serious threat and anything at all that anyone thought might be of help in fighting fire was worth a try, even if it were manifestly bizarre.

This paper has looked into the question of arson in the Hebrew Bible and the question of firefighting on the Sabbath as a problem in the traditional *halakhah*, when rabbinic opinion did in fact weigh heavily on what Jews might or might not do in a given situation. The weight of that opinion is not as pervasive in the life of Jewish communities today. In modern societies firefighting is a service provided by a governmental agency which would as a rule be disinclined to attend to the requirements of Jewish law when a fire emergency arises. This is no less true in Israel, albeit rabbinic opinion is important there in some areas of the law.<sup>95</sup> With respect to rules and regulations governing firefighting however, the *halakah*, as one would expect, has had no substantive effect on Israeli rules and regulations in this matter. The Fire Services Act of 1959 (as amended) specifies the the duties of the fire service, which, in

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92 See above, pp.13f.

93 This material appears in the *Paḥad Yitzhak*, ed. Venice, 1750, see under *deleqah*. The Reggio mentioned by Lampronti cannot be the Reggio Calabria of Southern Italy, since Jews were not permitted to reside there in the seventeenth century. The town in question is surely Reggio Emilia between Parma and Modena. Lampronti's home was Ferrara, somewhat further east. Although Reggio Emilia and Ferrara were in different political subdivisions in Lampronti's time, he doubtless knew of events among Jews and Jewish communities in the general area of the present day Emilia-Romagna. I am most grateful to Dr. Ephraim Nissan for clarifying the differences between the Reggios and pointing out that Reggio Calabria could not be the Reggio Lampronti mentions.

94 The term *segulah* (or *segullah* in some Italo-Hebraic pronunciations) is a biblical term meaning something precious and dear. The people of Israel is characterized as God's own dear and precious people, the *am segulah*, e.g., *Exodus* 19:5 and *Deuteronomy* 7:6, 14:2. In time, the term came to mean something special and wonderful, endowed perhaps with magical powers: a remedy of some sort, an amulet or perhaps an incantation. We are not informed exactly what the frightened Jews of Reggio did or made by way of a *segulah*, but for them it was something, some special device or act, that they believed marshaled divine power to their aid. See Eliezer b. Yehudah, *A Complete Dictionary of Ancient and Modern Hebrew* (Jerusalem-Berlin: Schoeneberg, undated), vol. viii, pp.3951-3954 (Hebrew).

95 Mr. Adi Moncaz, Head of Training for the Israel Fire and Rescue Commission, and Mr. Michael Wygoda of the Israel Ministry of Justice kindly supplied me with information. Mr. Wygoda sent copies of the statutes mentioned here.

## Biblical Arsonists and Sabbath Firemen:

part and from a secular perspective, amount to an affirmation of the general rabbinic principle of *piquah nefesh*, which applies to all Jews, and the Hours of Work and Rest Statute (1951, as amended) details the emergent circumstances in which firefighters — and others — may be required to work on Sabbaths. *Piquah nefesh* continues to be a guiding principle in Jewish life.