

# The Use of Municipal City Water for a *Mikveh* and a Case Study of the Seattle Rabbinate in the 1950s

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The purpose of the following essay is twofold. First, we shall highlight an example of a lenient halakhic practice in America that had gained widespread acceptance among the Orthodox Jewish community throughout the first half of 20th century, and the subsequent opposition to this practice by leading Orthodox authorities in the 1950s who successfully challenged its legality, to the point where today it is generally considered beyond the bounds of accepted halakha. Second, we shall focus on a critical juncture in American Orthodox Jewish history wherein a noticeable shift occurred in the paradigm of halakhic authority, from initially residing primarily within the domain of the community rabbi into the hands of the country's leading *gedolei hador* and *roshei yeshiva*. The effects of this shift have laid the groundwork for a current trend in America that increasingly favors the authority of *gedolim* and *roshei yeshiva* over the local Orthodox rabbi.<sup>1</sup> As a backdrop to our analysis, we shall examine the circumstances surrounding the controversy that erupted over the *kashrut* of the Seattle *mikveh* in the 1950s. This little known story, long ago forgotten by but a very few who are still around to remember, represents a vivid moment in the history of the American Jewish experience when the forces of these two aforementioned sources of authority collided with one another. Though the in-depth, technical halakhic questions involved in using municipal city water to fill a *mikveh* are beyond the scope of this essay, it is hoped that it will provide both a historical overview, as well as a general summary of the halakhic issues surrounding the matter.

## Historical Background

In the late 1800s and into the first decades of the 20th century, a massive wave of migration brought scores of European Jewish immigrants and refugees to American shores. These new arrivals quickly spread out to localities throughout the Continent and established Jewish communities in American and Canadian cities that hitherto had no sizeable Jewish presence to speak of. The following statistic is illustrative of the rapid proliferation of such communities over a period of 40 years spanning the turn of the 20th century. In 1877, a survey published in the Jewish Encyclopedia identified 24 American cities with Jewish populations of 1,000 or more. By 1905, that number grew to 70.<sup>2</sup> In 1918, the Bureau of Jewish Statistics and Research revealed that this statistic had skyrocketed to include 161 cities.<sup>3</sup> With the creation of these new centers

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<sup>1</sup> For more on this trend, see R. Haym Soloveichik's essay, "Rupture and Reconstruction: the Transformation of Contemporary Orthodoxy", (Tradition Vol. 28, No. 4 [1994]). In R' Soloveichik's words, "If religion is now transmitted to the next generation by institutional education, small wonder that the influence of the educators has increased dramatically, especially the sway of the scholar, the one most deeply versed in the sacred texts. For the text is now the guarantor of instruction, as the written word is both the source and the touchstone of religious authenticity. This, in turn, has entailed a shift in political power in non-hasidic circles. Authority long associated in Eastern Europe with the city rabbi, who functioned as a quasi-religious mayor, has now passed, and dramatically so, to Talmudic sages, generally the heads of Talmudic academies—*roshei yeshivah*."

<sup>2</sup> "United States." Jewish Encyclopedia 1906 ed.

<sup>3</sup> "Statistics of Jews." American Jewish Year Book 21 (1919-1920): 608-609.

of Jewish life came the need to establish cultural and religious communal service institutions, among which included the building of *mikva'ot*, or ritual baths<sup>4</sup>. The burden of navigating the complex halakhic factors that determined the validity of these newly built *mikva'ot* rested upon the pioneering rabbis of these individual communities.

Among the issues that were often debated was the question of whether or not a *mikveh* could be filled with water from a municipal water system. Using tap water, if deemed permissible, would be the easiest and most cost effective method to fill a *mikveh*. Chief among the concerns regarding the use of city water is the requirement that *mikveh* water cannot be *she'uvvin*, or contained in a vessel,<sup>5</sup> and that its conveyance cannot be carried out via *tefisat yad adam*, or direct human involvement.<sup>6</sup>

While the original source of a municipal water system, be it a river, natural spring or a reservoir, may not pose a problem in and of itself, it is the conveyance through the various receptacles contained in the system that creates the challenges for its use in filling a *mikveh*. Specifically, the various pipes, pumps, holding tanks, and meters of a water system all pose concerns that may potentially invalidate a *mikveh*. We should note that many of today's widely accepted *mikva'ot* do contain *she'uvvin* water that is validated either through the method of *hashakah* (connection), where a rain water pool is connected through a hole in a wall with an adjacent *she'uvvin* pool, or through a process called *hamshacha* (allowing the *she'uvvin* water to flow along the ground). However, these two methods are only effective provided that *she'uvvin* water did not comprise the majority of the total water in a *mikveh* at the time the *mikveh* is initially filled. But the question addressed in these early years was whether or not municipal city water was considered *she'uvvin* to begin with, such that the aforementioned *hashaka/ hamshacha* methods were rendered unnecessary.

Early on, this question had already received attention in Europe. In the late 19th century, Rabbi Yehiel Michel Epstein (1829-1908), author of *Arukh Hashulhan*, declared unequivocally that water supplied from a system of pipes that channel water from a river to houses throughout a city can be used for a *mikveh*, provided that either the tube that feeds into the *mikveh* is affixed to the ground, or that the final three handbreadths of that tube where it pours into the cistern is made out of a material that is not susceptible to *tumah*, such as wood.<sup>7</sup> In 1912, the first comprehensive treatment of the subject as it applied to a 20th century municipal water system was written by Rabbi Israel Hayim Daiches, of Leeds, UK.<sup>8</sup> His book *Mikveh Yisrael - An Halachic Discourse regarding the Fitness for Use of Ritual Baths Supplied by Modern Water-*

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<sup>4</sup> Some authorities went so far to say that the building of a communal *mikveh* even takes precedence over the building of a synagogue or the purchase of a Sefer Torah. (See Rav Yisrael Meir Hakohen [a.k.a. *Hafetz Hayim*] in *Sefer Bet Yisrael*, ch. 4 no. 8.

<sup>5</sup> See *Shulhan Arukh Y"D* 201:3.

<sup>6</sup> See *Shulhan Arukh Y"D* 201:15 and 39.

<sup>7</sup> *Y"D* 201, no. 169.

<sup>8</sup> Rabbi Daiches (1850-1934) was born near Kovno and became the *av bet din* in the town of Vilkovishk, Lithuania before moving to Leeds, UK in 1891. (See Gottlieb, S. N. *Ahole Shem*. Pinsk: M. M. Gluberman Press, 1912, 463). He was a founder of the Union of Orthodox Rabbis of England.

Works<sup>9</sup>, contains a 31 page analysis explaining why a *mikveh* can be filled exclusively with water from the tap.<sup>10</sup>

In America, the practice of using municipal city water to fill a *mikveh* evidently became very pervasive. Thus, for example, in 1957, Rabbi Isaac Esrig (Etrog) wrote that the majority of *mikva'ot* in the US were filled in this manner, where the rabbis who supervised the construction of such *mikva'ot* relied on legitimate opinions that allowed it.<sup>11</sup> Indeed, early American halakhists had written about the prevalence and permissibility of this practice. Among these included some leading American rabbis of the early 20th Century: Rabbi Zvi Hirsch Grodzinski of Omaha, NE,<sup>12</sup> Rabbi Yehoshua Siegel (Sherpser Rav) of New York<sup>13</sup>, Rabbi David Miller of Oakland, CA,<sup>14</sup> and Rabbi Yehuda Yudel Rosenberg, of Montreal<sup>15</sup>.

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<sup>9</sup> Leeds: J. Porton Press, 1912

<sup>10</sup> In the first half of the 20th century, filling *mikva'ot* exclusively from city-water was also commonplace in cities throughout the UK and enjoyed the support and backing of England's leading rabbis. Thus, for example, in 1947, the two leading members of the London Bet Din, R' Yechezkel Abramsky and R' Yehuda Leib Grosnass, permitted such a *mikveh* in the town of Leicester, per the testimony of Rabbi Dr. I. Rapaport who was rabbi of that community at the time. (See *Hama'or* 17.2 [Nov.-Dec. 1965] 25).

<sup>11</sup> Esrig, Isaac. *Peri Etz Hadar* 2. NY: Hadar Press, 1957, 26. Rabbi Esrig's extensive rabbinic career included pulpit positions in the communities of Colchester, CT, Portland, ME, Brooklyn, NY, Los Angeles, CA, and Utica, NY, so his survey of *mikva'ot* in the US ostensibly came from personal experience. He writes that when he accepted the position as rabbi in Portland, ME in 1918, he found that the *mikveh* there had been filled with city water, under the supervision of his predecessor who was a great Torah sage. (He was most likely referring to Rabbi Chaim Natan Shochet [d. 1920], originally *av bet din* in Obeliai, Lithuania and author of *Zecher Chaim* and *Divre Chen*. R' Shochet arrived in America in 1907 and shortly thereafter settled in Portland, ME). He adds that while he personally would have wanted to maintain a *mikveh* in his community that accounted for various stringencies (i.e. one that used only rain water and not city water), he opted not build a new *mikveh* in Portland because he was afraid that doing so might cast aspersions on his predecessor.

<sup>12</sup> *Mikve Israel*. Chicago: M. P. Ginzburg Press, 1898, 18 [3:6]. Rabbi Grodzinski was born in Minsk in 1857 and was the study partner of his famous younger cousin R' Chaim Ozer Grodzinski. In 1891 he moved to the US and settled in Omaha, NE where he served as the community rabbi until his death in 1948. *Sefer Mikve Israel* has an approbation from Rabbi Isaac Elchanan Spektor.

<sup>13</sup> *She'elot U'tshuvot Ozne Yehoshua*, Jerusalem: Moriah Press, 1913, 19. This book was published posthumously after the author's death in 1910. Rabbi Siegel, a native of Warsaw, immigrated to the US in 1883.

<sup>14</sup> *Sefer Mikve Israel*. Oakland, CA: David Miller, 1920. This book, written in Yiddish, contains instructions on how to construct a home *mikveh* through the use of tap water and has approbations from Rabbis Shalom Elchanan Jaffe and Moses S. Margolies (RaMaZ), both leading Orthodox rabbis in New York, as well as Rabbi Zvi Shimon Album, *av bet din* of Chicago. Rabbi Miller (1869-1939) also published an English version of this book entitled "The Secret of the Jew: His Life--His Family". Oakland: David Miller, 1938, which contains a forward by Rabbi Dr. Bernard Drachman, who served as president of the OU, and an introduction by Rabbi Dr. Bernard Revel, president and Rosh Yeshiva of R' Isaac Elchanan Theological Seminary in NY. Rabbi Miller was also a carpenter by trade and utilized his expertise in the combined areas of Jewish law and carpentry to produce these works, which came complete with diagrams and other technical specifications for the actual construction of a home *mikveh*. He produced eleven editions of this book, at his own expense.

<sup>15</sup> *Sefer Mikve Yehuda* (first published in Lodz in 1909 and again in Toronto in 1914), an instruction book on how to construct a home *mikveh* through the use of tap water. Rabbi Yehudah Yudel Rosenberg (1859-1935) moved from Lodz, Poland to Toronto in 1913 and then later to Montreal. He was a prolific author of over 25 books. *Mikve Yehuda* contains an approbation from Rabbi Pesachya Hornblass of Warsaw, who encouraged the author not to pay heed to his detractors who allege that his instructions "follow the way of the Reform movement. For 'It is time to do work [for the Lord]' (Psalms 119). May G-d be your aid".

At this point I would like to point out what I consider to be an egregious error. Years later it was claimed by Rabbi Yitzchak Ya'akov Weiss, *ABD* of Manchester, England and head of the *Eidah Chareidis* in Jerusalem, that Rabbi Hornblass later retracted his support for Rabbi Rosenberg and the use of tap water for *mikva'ot*. In a postscript of a letter to Rabbi Chanania Yomtov Lipa Deutsch in 1962 (*Minchat Yitzchak* vol. 5, no. 96, also published in *Sefer*

## Early Seattle *Mikveh*

Soon after his appointment in 1905 as rabbi of Congregation Bikur Cholim, Seattle's first orthodox synagogue, Rabbi Gedalyah Halpern<sup>16</sup> oversaw the construction of the community's *mikveh* and permitted the use of municipal city water to fill its cistern.<sup>17</sup> In 1909, a prominent rabbi from St. Louis named R' Zecharia Yosef Rosenfeld<sup>18</sup> took issue with the permissibility of using city water for a *mikveh* and sent a letter to R' Halpern stating that, in his opinion, it was disqualified. Instead, he suggested that R' Halpern utilize a method proposed by Rabbi David Friedman of Karlin (1828-1917) of transporting snow into the cistern and allowing it to melt into water<sup>19</sup>. R' Halpern sent back a rebuttal to R' Rosenfeld defending his ruling and stating that, in any case, the relative lack of snow in Seattle precluded his ability to use Rabbi Friedman's method even if he had wished to do so. Thereupon R' Halpern asked Rabbi Hayim Jacob Widrewitz of New York for his opinion. Rabbi Widrewitz had served as rabbi in Moscow before immigrating to America in 1892, where he was unofficially deemed "Chief Rabbi of America", and was considered among the more prominent halakhic authorities in America at that time.<sup>20</sup> His expertise in the laws of *mikva'ot* was evident in that he oversaw the reconstruction of the

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*Taharat Yom Tov* vol. 16, p. 338) Rabbi Weiss replied to R' Deutsch after the latter had sent R' Weiss a copy of R' Rosenberg's *Mikveh Yehuda* asking him to critique it. R' Weiss pointed to a letter from Rabbi Hornblass published in the rabbinic journal *Sha'arei Torah* (Vol. 4, No. 10, Ch. 78) asking the editor to retract an earlier letter (Vol. 4, No. 6, Ch. 43, p 83) wherein R' Hornblass considered the possibility (with the consent of his colleagues) of allowing women who lived in towns without a kosher *mikveh* to ritually immerse themselves in thermal spas, even though the waters are considered *she'uvim*. The impetus of the first letter was a visit by R' Hornblass to the Bavarian spa resort of Carlsbad (Karlovy Vary), where he encountered married Jewish women who told him that they would consider immersing themselves in a spa after the proscribed, seven clean day waiting period for menstruants, thus reducing their transgression to a rabbinic level (according to the Rambam and others who hold that the disqualification of *she'uvim* is only rabbinic in nature), whereas under the status quo they did nothing and lived with their husbands as *niddot* under the Biblical penalty of *karet*. In the follow up letter, R' Hornblass regretted the suggestion, after consultation with his colleagues, since permitting this might lead to other women who otherwise have access to a kosher *mikveh* to unnecessarily take advantage of such a leniency. R' Weiss uses this source to attempt to show that R' Hornblass later retracted his support for the use of tap water for a *mikveh*.

In fact, a simple reading of both of R' Hornblass' letters shows clearly that he was dealing with much more serious concerns of rendering a standard European thermal spa into a quasi-valid *mikveh* than the potential concerns involving tap water. Furthermore, R' Weiss inexplicably gives the year of publication of the quoted issue of *Sha'arei Torah* as 1910 (after R' Hornblass' had already written his approbation for R' Rosenberg), when in fact it should be dated 1893, many years before R' Hornblass penned his approbation to *Mikveh Yehuda*.

<sup>16</sup> Rabbi Gedalyah Halpern was born in 1862 in the small village of Kazlouscyna, north of Slonim, in modern-day Belarus. He studied at the Yeshiva in Volozhin and received his rabbinic ordination from the heads of the rabbinical court in Slonim, Rabbis Yosef Roizen and Yosef Schlufer. Around the turn of the 20th century, he immigrated to America and served as rabbi in the cities of Toledo, OH, Fort Worth, TX and Portland, OR, before settling in Seattle, in 1905. (Gottlieb, S. N. *Ahole Shem*. Pinsk: M. M. Gluberman Press, 1912, 309) From Seattle, he moved to Utica and then to Mount Vernon, NY, where he died in 1927.

<sup>17</sup> It should be noted that by January, 1901, Seattle's water was supplied from the Cedar River watershed, from where it was carried by gravity for 28 miles through a woodstave pipeline, into two reservoirs located at high points in the city: one in Volunteer Park on Capitol Hill and the other at Lincoln Park in the Central District. From there it flowed down via a network of underground pipes to businesses and residences throughout the city. (See Dorpat, Paul and McCoy, Gisselle. *A History of Washington State Public Works*, Seattle, WA : Tartu Publications, 1998, 282).

<sup>18</sup> Zechariah Yosef Rosenfeld (1847-1915) was born in Turisk, Ukraine and immigrated to the US in 1893. He settled in St. Louis and was a leading posek and author of legal works in America in the early 1900s. He was perhaps most famous for establishing America's first community eruv in St. Louis. (See the doctoral thesis of Mintz, Adam. *Halakhah in America: The History of City Eruvin, 1894-1962*. New York University, September 2011, 180-181).

<sup>19</sup> *Piske Halakhot* 1, *Hil. Mikva'ot* no. 3.

<sup>20</sup> Eisenstein, Y. D. *Otzar Zikhronotai*. N.Y.: Y.D. Eisenstein, 1929, 77.

*mikveh* in the Russian village of Lubavitch in 1883-1884.<sup>21</sup> He wrote back a letter supporting R' Halpern's opinion, as did another eminent *posek* from New York, Rabbi Aaron Gordon.<sup>22</sup> The entire exchange of letters was reprinted later in R' Halpern's *Sefer Mei Gava*.<sup>23</sup>

### **Rabbi Nissan Telushkin and *Sefer Taharat Hamayim***

Of all available sources that discuss the matter, perhaps no other authority before or since more thoroughly analyzed the issue of utilizing city water for a *mikveh*, both from a halakhic and a technical perspective, than Rabbi Nissan Telushkin of East New York (1881-1970). His book on the laws of *mikva'ot*, *Sefer Taharat Hamayim*, demonstrated his proficiency of these laws, and it seems that the great Torah giants of his generation, including Rabbi Moshe Feinstein, consulted with him when the *kashrut* of *mikva'ot* were called into question.<sup>24</sup> His writeup on the subject first appeared as an article in the January 1937 issue of the Torah journal *Hamsiloh* (*Hamesilah*), of which he was the editor.<sup>25</sup> Using the New York City water system as a basis for his analysis, he consulted with hydraulic engineers from the NYC Dept. of Water Supply to gain a good understanding of the mechanics involved in the transportation of water through the system and the potential halakhic problems they might pose in the construction of a *mikveh*.

In his treatment, Rabbi Telushkin first described in detail the workings of the NYC water supply system. He then identified four potential areas of concern with the use of city water:

1) The pipes: The concerns with the pipes are further broken down into four subdivisions: a) the water might be conveyed through material that is susceptible to *tum'ah*, b) the pipes might be curved in certain locations, rendering them into a *bet kibbul* (receptacle), c) the valves affixed to the pipes might render the pipes into a *keli* (vessel) and thus susceptible to *tum'ah*, d) since the valves are made to be opened and closed, there might be a problem of *tefisa yad adam*, namely that the conveyance of the water is carried out through human intervention.

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<sup>21</sup> Levin, Sholom D. *Tikune Mikvaot Lefi Takanat Rabenu*. N.Y.: Otzar Hachasidim, 1997, 38.

<sup>22</sup> R' Aaron Gordon authored the four-volume *Minhat Aaron* (Jerusalem: Zuckerman Press, 1918-1921), and other works.

<sup>23</sup> New York: Zunser Press, 1914, 50-54.

<sup>24</sup> See *Taharat Yom Tov* 18, 12, and "*Pesak Din Agudat Harabanim*" *Hapardes* 10.37 (July, 1963) 33, concerning a solicitation of R' Moshe Feinstein's opinion after the status of the *mikveh* in Rochester, NY had been called into question by a young rabbi who had recently accepted a position in the community. This rabbi wrote a letter to Rabbi C.Y.L. Deutsch outlining his problems with the *mikveh* and R' Deutsch forwarded this letter to R' Feinstein. In a reply dated June 27, 1962 (subsequently published in *Iggerot Moshe Y"D* 3, no. 63), R' Feinstein answered R' Deutsch, that, given the facts presented by the rabbi, the *mikveh* was *pasul* and he provided recommendations on how to fix it. Subsequently, some rabbis who defended the validity of the Rochester *mikveh* claimed that the facts of the case were originally presented incorrectly. In a follow-up letter to R' Deutsch dated Jan. 8, 1963 (and published in *Taharat Yom Tov* 18, 12), R' Feinstein wrote that he had reviewed the opinions of both sides of the issue, and he had consulted with R' Nissan Telushkin who was invited to inspect the *mikveh*, but the facts on the ground were not clear enough to issue a ruling. (Interestingly, the same letter appears in *Hama'or* 14.3 [Jan 1963], but the line referring to R' Feinstein's consultation with R' Telushkin was curiously omitted). Later that spring, a *din Torah* that included R' Feinstein and R' Yosef Elijah Henkin was convened, where R' Deutsch and R' Telushkin presented their arguments pro and con, as well as R' Baruch Faskowitz who had overseen the original construction of the Rochester *mikveh*. On April 3, 1963, this *bet din* issued a ruling, published in *Hapardes* (*ibid*), that the *mikveh* was 100% kosher as is, and that the instigators were incorrect in their claims. That issue of *Hapardes* also contains a letter from R' Henkin (pp 6-7) castigating those who sought to disqualify the Rochester *mikveh*, and that one should never attempt to impose his personal stringencies upon the practices of an entire community that have solid grounding in halakha.

<sup>25</sup> "*Kuntres Hamayim*". 1:12, (January 1937) 9-13. An updated and expanded version of the article was subsequently published as a separate chapter in R' Telushkin's *Sefer Taharat Hamayim*. (NY: Telushkin, 1947, 122-146)

2) The pumps: Two different types of pumps exist in the NYC water system: a) centrifugal, b) suction lift, and the concern with both is the human intervention involved.

3) Underground pressurized holding tanks: Rabbi Telushkin identified three such tanks in the NYC water system, that served the neighborhoods of Forest Hills, Riverdale and the Highland Park section of East New York. He conceded that *mikva'ot* should not be filled with water fed from such tanks and even listed the streets that marked the borders between where city water was fed from these tanks and those from water from upstate reservoirs.

4) Water meters used to measure water flow and the potential that they may be considered *kelim* (vessels) that are susceptible to *tu'mah*.

Using a vast array of halakhic sources, Rabbi Telushkin then systematically and methodically explained why none of these potential concerns, with the exception of the underground tanks, pose a problem when filling a *mikveh*.<sup>26</sup> He concluded that, in practice, a *mikveh* can be constructed in such a manner but included some caveats and recommendations for those who wished to do so.

In summary, we thus far have pointed to the writings and approbations (see accompanying footnotes to the above sources) of at least a dozen of the most highly regarded halakhic authorities in America prior to WWII, who all signed on to the permissibility of using tap water for a *mikveh*. In addition, we have seen evidence that indeed most *mikva'ot* in America were originally constructed in this manner. But all that was about to change with the arrival of a new wave of Torah scholars to America, after the Holocaust. Among these post-WWII immigrants, no single person was more responsible for abolishing the utilization of city water to fill a *mikveh* than Rabbi Chanania Yomtov Lipa Deutsch.

### **The Helmetzer Rebbe**

Rabbi C.Y.L. Deutsch, commonly known as the Helmetzer Rebbe, was affiliated with the Satmar Hassidic sect and had been serving as rabbi of Helmetz, Hungary in the years following WWII.<sup>27</sup> An erudite scholar, he had a particular expertise in the laws of *mikva'ot*. Upon arriving in the US in 1949, he established a congregation and *bet midrash* in Cleveland, OH and shortly thereafter went on a veritable campaign by touring Jewish communities around the country and identifying community *mikva'ot* that he deemed were not in accordance with halakha. Thereupon he sought to convince those communities to make improvements that would bring their *mikva'ot* in line with

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<sup>26</sup> In a nutshell, among the arguments he presents are: 1) pipes that are permanently affixed to the ground (*mehubar lekarka*) are halakhically considered part of the ground and thus not susceptible to *tum'ah*, even if they are made of material that normally conveys *tum'ah*. 2) The curves in the pipes are not considered a *bet kibbul* since they were not fashioned to function as receptacles, but rather to allow water to flow through them. 3) The opening of a valve is not considered human power, because it is merely removing an obstacle that prevents from the water from taking its natural course. 4) The electric pumps do not pose a problem because the human element is too far removed from the actual mechanism and thus is too indirect (a principle known as *geramma*). 5) The meters are not problematic since they do not have a hollow area or receptacle in which water is contained, and hence an absence of a *bet kibbul*.

<sup>27</sup> Ostensibly, he was named after Rabbi Chanania Yom Tov Lipa Teitelbaum (d. 1904), Grand Rabbi of Sighet and father of the Satmar Rebbe, Rabbi Yoel Teitelbaum.

higher standards of *kashrut*.<sup>28</sup> By 1954, he had repaired or helped build more than 40 *mikva'ot*.<sup>29</sup> By 1956 it was reported that he had helped repair or construct 59 *mikva'ot*.<sup>30</sup> By the end of his life in 1990, that number grew to nearly 200 *mikva'ot* throughout Europe, North and South America, Australia, and South Africa.<sup>31</sup> It can be safely said that he devoted his entire life to this endeavor. In particular, one of the issues he railed against was the practice of using municipal city water to fill *mikva'ot*. Eventually he went on to write his 20 volume magnum opus called *Taharat Yom Tov*. In volumes 6 and 7 of this work, which he published in 1954 and 1955, respectively, he devoted many pages to argue for the disqualification of city water *mikva'ot* and compiled a robust list of letters from leading Torah sages who agreed with him. This list included letters from the Satmar Rebbe - R' Yoel Teitlebaum, Rabbi Eliezer Silver, president of the Agudat Harabonim, Rabbi Eliyahu Meir Bloch, rosh yeshiva of Telshe Yeshiva in Cleveland, as well as a half dozen others.

Any *mikveh* that was deemed to require reconstruction, and in many cases outright replacement, undoubtedly created hitherto unforeseen financial burdens on the Jewish community in which the *mikveh* was located, where its members would then have to find a way to raise money for these improvements. Nevertheless, in most instances, the rabbinate of the cities in which R' Deutsch identified *mikva'ot* that he considered problematic embraced this challenge and were willing to make the necessary fixes to deem them worthy of his approval. The reasoning for this attitude, in my opinion, was twofold. Either the rabbinate of a particular community lacked the knowledge, wherewithal or will to openly oppose an expert in the laws of *mikva'ot* such as R' Deutsch, or they sincerely believed that in any area of *kashrut* affecting the entire community, one must strive for the highest common denominator. Since these community services are designed to cater to members that include an entire array of levels of observance, then one must strive to accommodate even the most stringent opinions.<sup>32</sup> With the exception of the handful of cities with large Jewish populations, the community *mikveh* was the only one available (often for hundreds of miles around), and thus represented the sole option for the residents of a given town. Over the span of his career, R' Deutsch was invited and travelled to literally hundreds of Jewish communities to inspect and recommend upgrades to their *mikva'ot*.<sup>33</sup>

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<sup>28</sup> By April 1953, two of the *mikva'ot* he had already been credited with converting from tap water into rain water based systems were those in Atlanta, GA and New Haven, CT. (See *Hama'or* 4.7 (Apr. 1953), 20. It should be noted that prior to the 1950s, while these communities were still utilizing city water *mikva'ot*, two of the more prominent Orthodox rabbis in America resided there, apparently without complaint over their *mikva'ot*: Rabbi Tobias Geffen, head of the southern division of the Agudat Harabonim in Atlanta, and Rabbi Yehuda Levenberg, founder and Rosh Yeshiva of Beis Medrash leRabbonim, in New Haven.

<sup>29</sup> *Hama'or* 5.10 (Dec. 1954), 27.

<sup>30</sup> *Hama'or* 6.5 (June 1956), 29.

<sup>31</sup> *Hama'or* 43.2 (Mar-Apr. 1990), 37.

<sup>32</sup> The same is true of the governing principles of most of today's kosher food supervision organizations, where, despite the numerous leniencies found in the *Shulhan Arukh* of R' Yosef Karo and normative halakha, these organizations try to accommodate those who adopt stringencies beyond the letter of the law. The history of the controversy that erupted over the *kashrut* of gelatin in the US in the 1950s is a good parallel to our matter at hand.

<sup>33</sup> To give a small sample of the prolific career of R' Deutsch, the following is a partial list of locations to which he travelled to inspect *mikva'ot* between the years 1955 and 1960 (taken from letters and correspondences that were published in *Hama'or* during those years): Indianapolis, IN, St. Paul, MN, Columbus, OH, Baltimore, MD, Atlanta, GA,

## Rabbi Baruch Shapiro and the Seattle *Mikveh*

As previously mentioned, Seattle had been one of those cities where the rabbinate, headed by Rabbi Baruch Shapiro<sup>34</sup>, permitted city water for their *mikveh*. The community *mikveh* at the time was located in a private house on East 18th Avenue between Alder and Spruce Streets.<sup>35</sup> In early 1957, R' Deutsch was invited by individuals in the Seattle community to inspect their *mikveh*. When R' Deutsch discovered that it was filled with tap water, he promptly appealed to R' Shapiro to fix the *mikveh*. However, in spite of this, R' Shapiro remained defiant and refused to accede to any changes to the *mikveh*. For his part, R' Deutsch produced a collection of approbations from leading halakhic authorities of the time who stated their objections to city water *mikva'ot* including those of the Satmar Rebbe, and Rabbi Eliezer Silver. But Rabbi Shapiro still refused.

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Youngstown, OH, Charleston, SC, Louisville, KY, Utica, NY, Albany, NY, Vancouver, BC, Dayton, OH, Pittsburgh, PA, Toronto, ON, Tulsa, OK, Norwich, CT, Hartford, CT, Wichita, KS, Winnipeg, AL, Hamilton, ON, San Antonio, TX and Monterrey, Mexico. Also, the following itinerary lists the 18 cities that R' Deutsch visited during a whirlwind *mikveh* inspection tour in the Summer of 1965: 1) Portland, OR, 2) Halifax, 3) Bogota, Columbia, 4) Barancabermeja, Columbia, 5) Caracas, 6) Sao Paulo, 7) Buenos Aires, 8) Rosario, Argentina, 9) Montevideo, 10) Santiago, Chile, 11) Lima, Peru, 12) La Paz, 13) Maracaibo, 14) Curaçao, 15) Memphis, 16) Omaha, 17) Sioux City, 18) Miami, FL. (See *Hama'or* 16.10 [Sept. 1965] 29).

<sup>34</sup> The following is a brief biographical sketch of Rabbi Baruch Shapiro. Born in Dvinsk (in present day Latvia) in 1883, he belonged to a family of rabbis who served in Russia. In his youth he studied under the famed Rabbi Meir Simcha of Dvinsk, author of *Meshekh Hokhma*, and Rabbi Yosef Rosen, the Rogatshover Gaon. A letter from R' Baruch's older brother Avraham, who served as rabbi in Canton, OH, Utica, NY and New Brunswick, NJ, provides a glimpse of the great intellectual promise that young Baruch displayed at an early age (quoted in the Feb. 1958 edition of *Hama'or*; translation mine):

*"Who better than I knows about your greatness and your outstanding expertise in Torah, your fear of G-d, your wisdom, your preaching talent, your broad and deep knowledge, your pure and exceedingly refined heart, and your poetic and ideological soul? How when you were yet a child of fifteen years, you served in Dvinsk in the great beis midrash as the rebbe of the Chevre Shas of the Torah-learned laymen? And you delivered wonderful expositions for many hours at a time, many of which were heard by the great sage Rabbi Meir Simcha, may he continue to live a long and good life, and he was exceedingly amazed by them. And while still in your youth, you wrote wonderful novellae and you exchanged responsa with the great Rabbi Chaim Berlin, of blessed memory. And the greatest sages of our generation sang your praises and thought highly of you, and crowned you with the title of masmid [diligent one] and illuy [prodigy], and they conferred ordination upon you to decide law."*

Shapiro received ordination at age 18 and then arrived in New York around 1905. He enrolled in the Yeshiva Rabbi Isaac Elchanan (RIETS), from where he later graduated. He then began touring the country as a fundraiser for the Mizhachi movement in America and in 1913, made his way to Seattle, where he eventually settled. For ten years, he served various emissarial functions for Mizhachi, as well as for the Rabbinical College of America, forerunner to Yeshiva University. (Rabbi Shapiro attended RIETS at the same time as Rabbi Dr. Bernard Revel, who was two years his junior, and must have been well acquainted with him. In 1915, R' Dr. Revel became president of the Rabbinical College of America, and later Yeshiva University, and so Rabbi Shapiro ostensibly became an eager advocate and fundraiser for this institution. [See "Rabbinical College of America", *The Advocate: America's Jewish Journal* 54 (Dec. 29, 1917) 501]. In 1923, he was appointed as Rabbi of the Herzl Congregation and served in that position until he resigned in 1929 when Herzl voted to remove their mechitza and later align with the Conservative Movement. Thereupon he established a new congregation called *Machzikay Hadath*, serving as that synagogue's only rabbi for nearly forty years until its merger in 1970 with Congregation *Bikur Cholim*. By the 1940s, Rabbi Shapiro was considered the senior member of the Seattle rabbinate. Rabbi Shapiro died on November 12, 1970, in Seattle.

<sup>35</sup> This home was occupied by a Mrs. Goren. I thank my father, Hazzan Isaac Azose, for providing this piece of information.

At this point, Rabbi Deutsch turned to his colleague and friend, Rabbi Meir Amsel of Brooklyn, editor and publisher of the widely read monthly Torah journal *Hama'or*. Early on, Rabbi Amsel was an ardent supporter of the Helmetzer Rebbe and he frequently included some details of the Helmezer's travels and efforts in fixing *mikva'ot* in the pages of his journal. Perhaps a threat to publicize the matter might persuade Rabbi Shapiro to give in. Rabbi Amsel enthusiastically obliged and placed the issue as the lead item in the June 1957 edition of *Hama'or*. Without revealing any names or localities, Rabbi Amsel penned an article entitled, "Regarding the Disqualification of *Mikva'ot* Constructed with Water Pipes (*Wasserleitung*)". The article begins:

*In recent times, Orthodox Jews here began to devote themselves to building ritual baths throughout the United States, and here and there they settled and established mikva'ot that were majestic and beautiful. One cannot deny that there were times when circumstances required that they could not build mikva'ot based upon accepted halakha and traditions. And so they built what they could, in many instances, according to novel leniencies of rabbis who were not experts in these matters. In particular, a great misfortune has occurred in that many congregations were lenient in building their mikva'ot using municipal water pipes...*

*Let us pay tribute to Rabbi Chanania Yomtov Lipa Deutsch, the Helmetzer Rebbe of Cleveland, who has devoted his time and his life to this important cause, with the support of the great Torah sages here. He is one of a kind throughout the US, and he has no peer in his holy work of fixing and building mikva'ot throughout America and Canada, even in the very remote [communities]. He has already compiled a list of almost sixty mikva'ot that were built or fixed as a result of his efforts. In particular, the aforementioned rabbi concentrated his efforts on fixing mikva'ot from water pipes, a fundamental disqualification. He has already collected responsa from our greatest sages who have unanimously offered the opinion that these types of mikva'ot are disqualified and that it is forbidden to immerse in them...*

Then, as a salvo across Rabbi Shapiro's bow in a veiled threat to call him out publicly, he writes:

*To our great chagrin there still exist some rabbis who are stubborn, whose nature prevents them from admitting the clear truth of the matter. They care not about peace and truth – to fix their flawed mikva'ot, despite the fact that the great Rabbi Aaron Kotler has already proved in his letter that we published in Hama'or that the prohibition of slander does not apply in these types of efforts to rectify. And all those who quickly do so have removed from themselves the great liability of causing the public to sin...*

Rabbi Amsel then proceeded to republish the letters of contemporary Torah sages that originally appeared in R' Deutsch's *Taharat Yom Tov*, who all ruled against the use of municipal water for a *mikveh*. At the end of the article he writes:

*We are confident that those who read these fiery words... of our contemporary sages, will be moved to abandon their stubbornness and work immediately toward fixing their mikva'ot according to the law...*

But far from capitulating, Rabbi Shapiro remained obstinate. On August 8, 1957, he sent a letter to Rabbi Amsel explaining why he was well within halakhic rights to maintain his *mikveh* as-is without any modifications.

In the October 1957 edition of *Hama'or*, Rabbi Amsel ran an angry article under the heading, "An Open Letter Initially Intended to be Confidential – Regarding the Disqualified *Mikveh* in Seattle", which was filled with heated words and sarcastic insults toward his opponent. In submitting his letter to *Hama'or*, Rabbi Shapiro had hoped that he would have been given the fair opportunity to have his message published in full. Instead, Rabbi Amsel published only a small excerpt, and attached a long tirade offering his own version of facts. Rabbi Amsel writes:<sup>36</sup>

*In recent years, many God-fearing yeshiva students have joined the community in Seattle and are sickened on account of their disqualified mikveh. So they arranged to bring out Rabbi C.Y.T.L. Deutsch, the Helmetzer Rebbe of Cleveland, about whom all the great rabbis and hassidic leaders agree is currently the foremost expert in building mikva'ot and family purity laws. In particular, Rabbi G[ersion] Appel expressed his desire to fix the mikveh, since it is located in his synagogue, and he wished to see the mikveh brought in line with all the halakhic improvements and stringencies. However, the grand rabbi there, who is the elder sage of his group, made up his mind to not allow any improvements to the mikveh, since in his mind there is no one more scholarly and God-fearing than he, and what was done has been done, and no one has the right to question his character and decisions. Based on what we have been told, Rabbi Appel turned to the president of the Agudath Harabbanim, the famed Rabbi Eliezer Silver, and asked him whether the mikveh should be fixed. Rabbi Silver adamantly and emphatically ordered that the mikveh be fixed immediately. However, out fear of Rabbi Shapiro, nothing has been done till now.*

Rabbi Amsel then published in full his reply to Rabbi Shapiro's letter, from which we get a glimpse of the outline of the arguments Rabbi Shapiro set forth as follows:

- 1) There are many great authorities who allow a *mikveh* to be built in such a fashion, and as such the leniency has solid grounding in halakha.
- 2) There are other stringencies held by authorities to which few if any *mikva'ot* currently conform. If we were to account for all these stringencies, then one would be forced to disqualify most *mikva'ot*.<sup>37</sup>

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<sup>36</sup> p. 13.

<sup>37</sup> For example, many authorities, Rashi included (see Shabbat 65b s.v. *vesavar shema yirbu notefin*), hold that a natural spring (*mayim hayim*) is required for a *zava*, a woman who has suffered a discharge. Since today, all menstruant women are treated as a *zava*, then a natural spring would be required as the mechanism of purification.

- 3) Over the years, there have been hundreds of thousands of G-d-fearing Jews who have used these types of *mikva'ot*, so to claim that they are disqualified constitutes slander against these people.
- 4) Likewise, many rabbis approved of these *mikva'ot*, and so to claim that they are disqualified constitutes slander against them.
- 5) Using the more lenient standards for building a *mikveh* will lead to a greater level of observance of family purity laws.

Rabbi Amsel's letter, dated August 19, 1957, included a point-by-point rebuttal to Rabbi Shapiro's letter, and the article ended by reiterating that the matter would never have entered the public arena were it not for the fact that Rabbi Shapiro had forced his hand, and that he still expressed hope that Rabbi Shapiro would change his mind.

In the following issue of *Hama'or*<sup>38</sup>, an irate Rabbi Gersion Appel, rabbi of Bikur Cholim, the congregation under whose auspices the care and upkeep of the *mikveh* fell, submitted a letter, dated Dec. 3, 1957 to clear up some misinformation presented in the previous issue. First, he wanted to make clear that he was not the one who invited the Helmetzer Rebbe to inspect the Seattle *mikveh*. Also, the *mikveh* was not located in R. Appel's synagogue, as misstated by R' Amsel. Though he did agree that making improvements to the *mikveh* might be a good thing, the Seattle rabbinate had a competent leader in Rabbi Shapiro who gave his stamp of approval upon the *mikveh* for more than 30 years, and there was no justification to saying that it is disqualified. Moreover, many of Europe's great *roshei yeshiva* passed through Seattle by way of the Far East during and after WWII, often staying over for weeks at a time, and none of them said anything about the *mikveh*.<sup>39</sup> Rabbi Appel bemoaned the fact that R' Amsel had decided to go public with the matter, and that any such improvements to the *mikveh* that are warranted should have been handled outside of the public arena. He ended by pointing out the damage that R' Amsel had caused to the overall reputation of the Seattle Jewish community, and hoped that R' Amsel might clarify the matter for his readership.

In response, Rabbi Amsel claimed that it was not he but Rabbi Shapiro who had first attempted to go public with the issue by forwarding his letter to other Jewish publications (all of which refused to print his letter). Furthermore, he never intended to sully the reputation of an entire community, but was rather motivated by a sincere attempt to correct what in his mind was halakhically wrong. He did not understand why Rabbi Shapiro, though well intentioned, remained so stubborn and defiant, in light of all the great authorities who came out against him and he closed by expressing hope that R' Shapiro might yet change his mind.

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<sup>38</sup> Dec. 1957.

<sup>39</sup> Though R' Appel did not list any names, among these included sages who went on to become leading *roshei yeshiva* in America in the latter half of the 20th century: Rabbi Aaron Kotler, Rosh Yeshiva of Beth Medrash Govoha in Lakewood, NJ (See *Hapardes* 68.1 [Sept. 1993], 30), Rabbi Refael Reuven Grozovsky, Rosh Yeshiva of Mesivta Torah Vodaath in Brooklyn (see Wolpin, Nissan ed., "From Kamenitz to America", in *The Torah World*, p. 212), Rabbis Chaim Mordechai Katz and Elyah Meir Bloch, both *roshei yeshiva* of Telshe Yeshiva in Cleveland (see Helmreich, William, "The World of the Yeshiva", Hoboken, NJ: 2000, 39) and Rabbi Yaakov Kamenetzky, Rosh Yeshiva of Mesivta Torah Vodaath, who had even served for a brief time as rabbi of Congregation Bikur Cholim (see Silver, David, "Noble Lives Noble Deeds 3", NY: Mesorah Publications, 2004, 77).

Another couple months went by until the February 1958 edition of *Hama'or*. In it, a letter appeared from Rabbi Shapiro, which this time Rabbi Amsel decided to publish in full. Rabbi Shapiro reiterated some of the arguments he presented in his first letter, and provided a brief history of the *mikveh* situation in Seattle. He had arrived in the city after Rabbi Halpern had already built the community *mikveh* using city water with the blessings of Rabbis Widrewitz and Gordon. Years later, when the *mikveh* was in need of repair, he spent much time delving into the laws of *mikva'ot* together with the members of his *chevre shas* study group, and they all concluded unanimously that, given the specific situation in Seattle, it was permitted to use tap water. They had in fact considered building a rain water *mikveh*, but discovered that the rain water in Seattle when collected emitted a foul odor, and it would be objectionable to the women to immerse themselves in such water.<sup>40</sup>

Rabbi Shapiro then made a point that, in my opinion, defined the basis of his general outlook toward deciding halakha, and was the crucial doctrine that set him apart from his opponents:

*I have delved into the depths - the depths of halakha. I have weighed it with scales<sup>41</sup>, and I have agreed with the words of those who permit it. Indeed, those who forbid it are shield-bearers (i.e. great debaters) and certainly G-d-fearing. However those who permit it are ones about whom it is said, "Great is one who benefits from his toil" (Berakhot 8a) - this is one who toils and dwells in the depths of halakha, and emerges that the thing is permitted, and partakes of it. He is "greater than one who fears Heaven" - this is one who is afraid that perhaps there is a possibility that it is prohibited, and refrains from partaking of it. "Who is a wise scholar? He who sees something that is seemingly not kosher, something that others would deem as not kosher. But because of his deep analysis, he concludes that it is kosher. This is a wise scholar."<sup>42</sup> Come and see how great is "ko'ah de'hetera" (the power of leniency). The Maharsha (Rabbi Samuel Eidels, 1555-1631) on Hulin 44b interprets the following pasuk in this manner: "Fortunate are those who fear G-d"<sup>43</sup> - this applies to one who is presented with something of questionable kosher status, and is stringent. However, "For you shall eat the toil of your hands"<sup>44</sup> - this applies (only) to one who exerts himself and emerges with the conclusion that it is permitted. This is a person who merits two worlds.<sup>45</sup>*

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<sup>40</sup> It should be noted as a possible factor that Seattle was a heavy industrial town for the better part of the 20th century, during which time it was plagued by a serious problem of air pollution, which contributed to the presence of acid rain. It wasn't until the late 1960s when significant efforts toward air pollution reduction were initiated in Seattle, leading to greater degree of cleaner air. See McCloud, Maria. "When the Sky was Falling, Air Pollution's Early Years: An interview with Alan Newman, Senior Air Quality Engineer, Washington State Department of Ecology". Washington State Department of Ecology, Historically Speaking, An Oral History In celebration of the first 35 years, 1970 – 2005. Olympia, WA: WS Dept. of Ecology, 2005, 403-416. Accessed here - <http://www.ecy.wa.gov/pubs/0501006.pdf> on Feb. 7, 2012.

<sup>41</sup> See Isaiah 40:12.

<sup>42</sup> *Midrash Shemuel* (de Uzida) on *Pirke Avot* 1:10.

<sup>43</sup> Psalms 128:1

<sup>44</sup> *Ibid*, v. 2.

<sup>45</sup> i.e. this world and the World to Come.

Then, after having taken offense by what he perceived to be Rabbi Amsel's lack of respect for him and a complete unawareness of who he was, Rabbi Shapiro sheepishly provided excerpts of congratulatory letters from leading rabbis around the country who had heaped praise upon praise of him, after he was appointed rabbi of the Herzl Congregation in 1923. These included letters from Rabbi Elchanan Zvi Guterman, Chief Rabbi of Scranton, PA<sup>46</sup>, Rabbi Yehuda Leib Levin of Detroit, MI<sup>47</sup>, Rabbi Dr. Bernard Revel, and Rabbi Eliezer Silver, president of the *Agudat Harabonim*<sup>48</sup>.

Rabbi Amsel responded by stating that first off, he held nothing but high regard for Rabbi Shapiro, which made it all the more troubling why he remained obstinate. The bottom line was that the overwhelming weight of opinions on the matter disqualified city water for *mikva'ot*. He then offered a point by point refutation of the arguments presented by Rabbi Shapiro.

After the exchange, Rabbi Shapiro, exasperated and bitter over the negative publicity directed towards him, finally acceded to renovating the *mikveh*. In a letter to the Helmetzer Rebbe signed by "The *Avrechim* (yeshiva students) of Seattle and environs", dated March 18, it was announced that the Seattle rabbinate agreed to upgrade the *mikveh* according to the specifications laid out by him. A wealthy patron of the community had stepped up and offered to cover the requisite expense and two recent yeshiva graduates who were in the construction business accepted the task of making the necessary renovations.<sup>49</sup> Then in 1963, a brand new rain water *mikveh* was built next to the Bikur Cholim synagogue and the Helmetzer made a follow-up trip to Seattle to inspect and give his stamp of approval for it. However, the community's use of this new *mikveh* was short lived, since by 1970, Bikur Cholim was the last remaining Orthodox synagogue to migrate away from the Seattle's Central District to the Seward Park neighborhood, where the current *mikveh* continues to serve the needs of its community.<sup>50</sup>

## Discussion

The Seattle *mikveh* controversy was a symptom of the changing times of the American rabbinate in the mid-20th century. As pointed out previously, it was around this time that dozens if not hundreds of Jewish communities abandoned their use of city water for their *mikva'ot*. However, it was in Seattle where two forces, the waning authority of the local rabbi and the emerging authority of the Nation's *gedolim*, came to a head.

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<sup>46</sup> d. 1966. R' Shapiro attended RIETS around the same time as R' Guterman and likely became acquainted with him in those early years.

<sup>47</sup> d. 1926. R' Levin founded the Union of Hebrew Orthodox Congregations of Detroit and was a founding member of Mizrachi and Agudath Harabonim.

<sup>48</sup> d. 1968. In 1923, he had been serving in Harrisburg, PA.

<sup>49</sup> Hama'or 9.6 (Apr. 1958) 38.

<sup>50</sup> There is further anecdotal evidence of specific details about the Seattle *mikveh* controversy in the 1950s, concerning the motivations of the individuals involved, which sides the other community leaders took, and the residual effects of the eventual resolution of the matter. Though most of the main figures in the story have passed on, there are still individuals who are still around who may have specific recollections of how the events played out. Suffice it to say that it is beyond the scope of this essay to get into these details.

From the earliest inception of an organized Orthodox union in the US, it was generally accepted that the autonomous authority of the congregational rabbi would be respected. When the convention of the very first union of Orthodox congregations in the US was held on June 8, 1898, with Rev. H. Pereira Mendes as president, among the principles adopted by its members was “to strengthen congregational life, *but not to interfere in congregational autonomy*” (emphasis added).<sup>51</sup>

In the beginning of the 20th century, the model for most of the rabbis that served these early American Orthodox communities was that of a learned man in all areas of halakha, a jack of all trades who set *kashrut* standards, wrote *gittin*, was the town *mohel*, built *mikva’ot*, etc. He was more than likely European-born and European-trained. Moreover, the hierarchical structure for halakhic authority in the US was very loose or non-existent in those early years. Despite the erudition of the early American rabbinic leaders, universally or even widely recognized final arbiters in halakha (leaders of the stature of a Rabbi Moshe Feinstein, for example) were not really found on the American Orthodox scene. The *roshei yeshiva* and mentors of these early rabbis often resided thousands of miles away in Europe and were thus not always easily accessible to field questions of their former students. In times when they were able to do so, they were not always tuned in to the specific circumstances of the case at hand, nor of the state of affairs of the community in question, factors that might possibly affect the outcome of a decision. As a result, the final halakhic authority, whether by rights or by default, rested upon the local rabbi of a given location.

Over the years, as more and more home-grown American students assumed positions in the rabbinate, these rabbis tended to compartmentalize their talents. Rabbis who were equipped to evaluate all areas of halakha became less and less common. For the more complicated halakhic matters that were beyond the scope of their expertise, they deferred their halakhic decisions to their *roshei yeshivot* and highly acclaimed *gedolei Yisrael*, who resided outside of their community. Modes of communication were improved and the length of time in which rabbinic authorities could consult with one another was vastly shortened. Thus, this new group of Torah leaders slowly began to supplant the local rabbi as the final authority in halakha. This more centralized model of authority provided an advantage as well as a disadvantage in evaluating questions posed in localized communities. On the one hand the *gadol* might bring to the fore a higher level of erudition and analysis to the specific matter at hand. But on the other hand, only the local rabbi was privy to all the minutiae and subtle particulars of the case and was personally acquainted with the parties affected by the outcome of the decision. Therefore no one was more uniquely suited than he to decide the matter, from his vantage point.<sup>52</sup>

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<sup>51</sup> “Conferences, Rabbinical.” Jewish Encyclopedia 1906 ed.

<sup>52</sup> A common illustration of a an outcome in halakha that is affected solely by the party involved is the principle of *hefsed merubah*, a case that might involve great financial loss. Numerous examples abound throughout *Yore De’ah* concerning the laws of *kashrut*, where a food of doubtful status is rendered not-kosher unless in a situation of great financial loss. Thus, only an authority with first-hand knowledge of the involved party and his financial standing in his community can make the determination whether or not the case rises to the level of *hefsed merubah*.

In my opinion, this last point is one that should have played a major role in determining the validity of the Seattle *mikveh*. The outcome of the issue was very dependent on a detailed understanding of the specific water system in question. Were there any pumps or holding tanks that might pose a problem? Did the conveyance of water in the system involve direct human intervention? It is clear from the available literature that those authorities who came out against the Seattle *mikveh* (and all other such *mikva'ot*) in the 1950s did so, not because they paid close attention to the specifics of its municipal water system, but because they wished to unilaterally do away with the practice for all communities in all situations. Though it is now very difficult to turn back the clock and analyze the specific features of the Seattle water system as it existed in the 1950s, we do know that it was a) a gravity based system that b) was fed, at least from the watershed to the reservoirs, by a series of woodstave pipes, both factors that would mitigate some of the concerns raised about a city water system.

Furthermore, Rabbi Shapiro was a leader who by no means favored a liberal attitude toward observance of Jewish law. To the contrary, he belonged to the traditional camp of Orthodox Jewry and was a champion of strict adherence to halakha. In 1929, when his synagogue voted to remove its *mechitza*, he promptly resigned and formed a new congregation that was called "Machzikay Hadath" (Upholders of the Faith) with the members who remained loyal to him. Nevertheless, his guiding principle in rendering halakhic decisions was "*ko'ah de'hetera*" – a penchant toward leniency that was grounded upon a solid footing in traditional halakhic sources.

In the end, the opponents of city water *mikva'ot* have succeeded in completely doing away with a practice that, was once ubiquitous upon the American landscape.<sup>53</sup>

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<sup>53</sup> Two additional factors that, in my mind, sealed the fate of city-water *mikva'ot* in America should also be mentioned. 1) In a terse reference to the issue, the widely acclaimed *posek* Rabbi Moshe Feinstein wrote in 1962 that city-water is not valid for a *mikveh*. (*Iggerot Moshe* Y"D 3:63). Also the proliferation of Chabad locations throughout America in the second half of the 20th Century played a role in the diminishing presence of city water *mikva'ot*, after the Lubavitcher Rebbe in a letter dated May 24, 1954, weighed in on the issue and declared that such *mikva'ot* are invalid. (*Likutei Sichot* 27. NY: *Otzar Chasidim*, 2006, 358)